CONTRACT SERVICES AGREEMENT

By and Between

THE CITY OF BELL,
A MUNICIPAL CORPORATION

and

SPRINGBROOK SOFTWARE
AGREEMENT FOR CONTRACT SERVICES
BETWEEN
THE CITY OF BELL, CALIFORNIA
AND
SPRINGBROOK SOFTWARE

THIS AGREEMENT FOR CONTRACT SERVICES (herein “Agreement”) is made and entered into this 4th day of SEPTEMBER, 2013 by and between the City of Bell, a municipal corporation ("City") and Springbrook Software, ("Consultant" or "Contractor"). City and Contractor are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”. (The term Contractor includes professionals performing in a consulting capacity.)

RECITALS

A. The City’s Datastream financial accounting system is at least 20 years old. Multiple generations of technology have come and gone since the system’s original purchase. There exists no disagreement -- in opinions ranging from interim and permanent staff to the City’s audit firm -- that this DOS-based technology has far outlived its useful life and is a serious liability to the City’s financial management.

B. The limitations of this technology require that the Finance Department maintain a high level of part-time staffing to accommodate data entry requirements of a manual nature.

C. Bell Municipal Code Chapter 3.12.080 (H) establishes that the purchasing ordinance does not apply to “software and other intellectual property with unique purpose.”

D. Nonetheless, in an effort to acquire the best price for the City, the Finance Department has conducted a search for the best Contractor for the City's needs, focusing its analysis on the product offering best fit for the size and complexity and of the Bell organization by comparing and contrasting proposals from five of the leading providers of these products in California and has concluded Contractor best meets the City's needs.

E. Pursuant to the City of Bell’s Municipal Code, City has authority to enter into this Agreement Services Agreement and the Chief Administrative Officer has authority to execute this Agreement.

F. The Parties desire to formalize the selection of Contractor for performance of those services defined and described particularly in Section 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein. (See Exhibit B).

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the parties agree as follows:
ARTICLE 1. SERVICES OF CONTRACTOR

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by this reference, which services may be referred to herein as the “services” or “work” hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Contractor’s Proposal.

The Scope of Service shall include the Contractor’s scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Contractor shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor’s performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or
will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact and shall not proceed except at City’s risk until written instructions are received from the Contract Officer. (See Exhibit B).

1.6 Care of Work.

The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City’s own negligence.

1.7 Warranty.

Contractor warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at his sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor’s obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor’s sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand. This provision may be waived in Exhibit “B” if the services hereunder do not include construction of any improvements or the supplying of equipment or materials. (See Exhibit B).
1.8 Prevailing Wages.

Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

1.9 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.10 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Agreement Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to five percent (5%) of the Agreement Sum or $25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor. (See Exhibit B).

1.11 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.
ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in the “Schedule of Compensation” attached hereto as Exhibit “C” and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed $232,838.00 (the “Contract”), unless additional compensation is approved pursuant to Section 1.10.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Contractor’s rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses if an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings. (See Exhibit B).

2.4 Invoices.

Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City’s Director of Finance. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories.

City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor’s correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission. (See Exhibit B).

2.5 Waiver.

Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.
ARTICLE 3. PERFORMANCE SCHEDULE

3.1 **Time of Essence.**

Time is of the essence in the performance of this Agreement.

3.2 **Schedule of Performance.**

Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 **Force Majeure.**

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the Agency, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer’s determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor’s sole remedy being extension of the Agreement pursuant to this Section.

3.4 **Inspection and Final Acceptance.**

City may inspect and accept or reject any of Contractor’s work under this Agreement, either during performance or when completed. City shall reject or finally accept Contractor’s work within forth five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City’s acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Article 5, pertaining to indemnification and insurance, respectively. (See Exhibit B).

3.5 **Term.**

Unless earlier terminated in accordance with Article 8 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").
ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Contractor.

The following principals of Contractor (Principals) are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

(Name)  
(Vice President)  
(Title)

(Name)  
(Title)

(Name)  
(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor’s staff and subcontractors, if any, assigned to perform the services required under this Agreement. Contractor shall notify City of any changes in Contractor’s staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Contractor.

Contractor shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor’s officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor’s officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City’s employees. Contractor expressly waives any claim Contractor may have to any such rights.
4.3 **Contract Officer.**

The Contract Officer shall be such person as may be designated by the Chief Administrative Officer of City. It shall be the Contractor’s responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the Chief Administrative Officer, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 **Independent Contractor.**

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor’s employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

4.5 **Prohibition Against Subcontracting or Assignment.**

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the Agency to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the Agency. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of Agency. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of Agency. (See Exhibit B).

**ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS**

5.1 **Insurance Coverages.**

The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:
a. **Comprehensive General Liability Insurance** (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than $1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

b. **Worker’s Compensation Insurance.** A policy of worker’s compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Contractor and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.

c. **Automotive Insurance** (Form CA 0001 (Ed 1/87) including “any auto” and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than either (i) bodily injury liability limits of $100,000 per person and $300,000 per occurrence and property damage liability limits of $150,000 per occurrence or (ii) combined single limit liability of $1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Contractor’s insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City.

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated “A” or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City’s Interim Chief Administrative Officer or other designee of the City due to unique circumstances.

d. **Professional Liability.** Professional liability insurance appropriate to the Contractor’s profession. This coverage may be written on a “claims made” basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Contractor’s services or the termination of this Agreement. During this additional 5-year period, Contractor shall annually and upon request of the City submit written evidence of this continuous coverage.
e. **Additional Insurance.** Policies of such other insurance, as may be required in the Special Requirements. (See Exhibit B).

5.2 **General Insurance Requirements.**

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

**CANCELLATION:**

**SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.**

[to be initialed]  

__________________________  
Agent Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, directors, officials, agents, employees and volunteers or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The
Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor’s activities or the activities of any person or persons for which the Contractor is otherwise responsible nor shall it limit the Contractor’s indemnification liabilities as provided in Section 5.3.

In the event the Contractor subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

5.3 Indemnification.

To the full extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable ("indemnitors"), or arising from Contractor's reckless or willful misconduct, or arising from Contractor's indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys’ fees incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder; and Contractor agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys’ fees.

Contractor shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Contractor shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or
omission, or reckless or willful misconduct of Contractor in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City’s sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City’s negligence, except that design professionals’ indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement. (See Exhibit B).

5.4 Performance Bond.

Concurrently with execution of this Agreement, and if required in Exhibit “B”, Contractor shall deliver to City performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement. (See Exhibit B).

5.5 Sufficiency of Insurer or Surety.

Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated “A” or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager of City (“Risk Manager”) determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Contractor shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager. (See Exhibit B).

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Contractor shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the “books and records”), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such
records in the event any audit is required. In the event of dissolution of Contractor’s business, custody of the books and records may be given to City, and access shall be provided by Contractor’s successor in interest.

6.2 Reports.

Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the “documents and materials”) prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City’s sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, revise or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom. (See Exhibit B).

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Contractor gives City notice of such court order or subpoena.
(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Contractor’s conduct.

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Los Angeles.

7.2 Disputes; Default.

In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Contractor’s default shall not be deemed to result in a waiver of the City’s legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds.

Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Contractor’s acts or omissions in performing or failing to perform Contractor’s
obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of Zero as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be
such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days’ written notice to Agency, except that where termination is due to the fault of the Agency, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2. (See Exhibit B).

7.9 Termination for Default of Contractor.

If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys’ Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys’ fees. Attorneys’ fees shall include attorneys’ fees on any appeal, and in addition a party entitled to attorneys’ fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of Agency Officers and Employees.

No officer or employee of the Agency shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.
8.2 Conflict of Interest.

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor’s performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the Agency shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

8.4 Unauthorized Aliens.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the Chief Administrative Officer and to the attention of the Contract Officer, City of Bell, 6330 Pine Avenue, Bell, CA 90201 and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed
communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF BELL

Violeta Alvarez,

ATTEST:

City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

David Aleshire, City Attorney

CONTRACTOR:

Springboard Software, Inc.

By:
Name: Rich Pascarella
Title: Vice President

By:
Name:
Title:

Address:

Two signatures are required if a corporation.

NOTE: CONSULTANT’S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER’S BUSINESS ENTITY.
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF OREGON
COUNTY OF MULTNOMAH

On Sept. 9, 2013 before me, [Signature], personally appeared [Signature], proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Oregon that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: [Signature]

OFFICIAL SEAL
KELLY AMANDA NISSL
NOTARY PUBLIC-OREGON
COMMISSION NO. 473731
MY COMMISSION EXPIRES DECEMBER 07, 2016

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

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SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF __________

On __________, __________, __________, personally appeared __________, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: ________________________________

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

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SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE
EXHIBIT “A”

SCOPE OF SERVICES

I. Contractor will provide City with a License Grant under the following terms (“Software License Section” or “this Section”):

1. DEFINITIONS

Capitalized terms in this Section mean the following unless specifically defined elsewhere in this Section.

“Application” means a Licensed Software Product module as set forth on the appropriate Order Form, which is attached hereto as Exhibit C-1.

“Custom” means any modification, enhancement or addition to the Licensed Software Products developed by or for Contractor for City’s use or at City’s Request.

“Enhancement” has the meaning assigned in the Maintenance Section (Section II, below). Contractor reserves the right to charge for Enhancements.

“Escrow Agreement” means an agreement that Contractor has entered into with an appropriate escrow management firm for the storage of the current release of Contractor’s Licensed Software Products. Selection of such firms and the right to change firms at any time is solely at the discretion of the Contractor.

“Licensed Software Products” or “Contractor Software” means the machine-readable, object-code version of the software licensed by Contractor to City, including all related Documentation and any modified, updated or enhanced versions of the software that Contractor may provide to City, as set forth in the applicable Order Form and under the terms and conditions of this Agreement.

“Material” as applied to changes to Licensed Software Products or an Application, shall mean a significant or substantial alteration or effect on the function or Output thereof, and “cure” as applied to a Material failure shall mean the provision of functional equivalent functions or means.

“Order Form” means the ordering documents, in a form specified by Contractor, representing the initial purchase of the Products as well as any subsequent purchases of Products that are signed and submitted by City to Contractor.

“Specifications” mean the written (both hard copy and electronic text files) description of the functions, capacity and features of the Licensed Software Products delivered by Contractor to City to the extent specifically incorporated in an Order Form or Statement of Work. Contractor reserves the right to update, change or retire the Specifications, in whole or in part.
"Statement of Work" means a written description of work signed by the parties pursuant to which Contractor provides Professional Services to City and is covered by the terms and conditions of this Agreement.

"User Materials" means all written and electronic Documentation, provided by Contractor to City for use in connection with the Licensed Software Products.

2. GRANT OF LICENSE

2.1 Scope of License

Contractor hereby grants City a limited, irrevocable, non-exclusive, non-transferrable license to use, copy and distribute the Licensed Software Products (in machine-readable, object code form only) and User Materials provided to City pursuant to an Order Form (Exhibit C-1) or Statement of Work, during the term described in Section 2.3 of this Section, subject to the terms and conditions of this Section and the Agreement, all for City’s ordinary, internal business purposes only, including, without limitation, the rights to;

(a) support City’s use of the Licensed Software Products under this Section;

(b) install, use and execute the Licensed Software Products on computers that City owns or leases for purposes of serving City’s internal business needs;

(c) transfer Licensed Software Products to replacement hardware owned by City. The costs for Contractor to provide any replacement media or technical assistance to accommodate the transfer are billable charges to the City. City will give Contractor advance written notification of its intent to transfer licenses to new hardware; and

(d) store the Licensed Software Products machine-readable instructions or data on a temporary basis in main memory, extended memory, or expanded memory of such computers as necessary for such use, and transmit such instructions or data through City’s computers and associated devices.

2.2 License Restrictions

City may only use the Licensed Software Products and User Materials within the limited scope set forth herein. In particular, and without limitation, City agrees that City and City’s employees will not;

(a) assign, sublicense, transfer, pledge, grant a security interest in, lease, rent or share the Licensed Software Products or City’s rights under this Section with or to any third party;
reverse assemble, reverse compile, cross compile or otherwise adopt, translate or modify the Licensed Software Products;

refer to or use any portion of the Licensed Software Products or User Materials as part of any effort to develop any other Licensed Software Products program; or

modify the Licensed Software Products in any way other than that supported through configuration options available to the City from Contractor.

2.3 Conditions of License

The term of the license granted to City pursuant to this Section begins on the Effective Date and will continue as long as;

City provides payment for the fee set out in Task A of the Schedule of Compensation at the execution of the Agreement; and

City is in compliance with the terms and conditions of this Section, the Agreement, all Addenda and appropriate invoices or Statements of Work. Contractor reserves the right to revoke licenses for failure to meet any conditions of the Agreement or any applicable Addenda, provided Contractor first notifies the City immediately in writing of such failure and provides City with 60 days to cure same.

2.4 Source Code

Contractor will maintain an Escrow Agreement under which Contractor will place the source code for each major release of Contractor’s Licensed Software Products. At City’s request, Contractor will add City as a beneficiary on its Escrow Account. City agrees to pay all fees and charges associated with adding City as a beneficiary on the Escrow Account. City is solely responsible for maintaining its status as a beneficiary.

3. OWNERSHIP; PROPRIETARY PROTECTION

Nothing in this Section, the Agreement, or any Addenda provides City with title to or ownership of any Licensed Software Product, but only a limited license to use the Products consistent with the limitations identified in this Section. Contractor shall have sole and exclusive ownership of all right, title and interest in and to the Licensed Software Products and User Materials, all copies thereof, all derivative works, and all related material generated from the Licensed Software Products including material displayed on the screen such as icons, screen displays, etc. (including ownership of all copyrights, trademarks and other intellectual property rights pertaining thereto), whether created by Contractor or any other party, subject to the rights of City expressly granted herein.
3.1 Acceptance Period

Upon completion of the implementation of each Licensed Software Product purchased by the City as set forth in the appropriate Statement of Work, Exhibit C-1 or invoice, City will have 60 calendar days to validate that the Products are performing in accordance with this Section, the Agreement, and any related Addenda. Each Application will be considered accepted by the City if and when the following has occurred:

(a) City provides Contractor written affirmation that the Application is performing within the terms of this Section, the Agreement and any related Addenda;

4. CITY RESPONSIBILITIES

City assumes all responsibility for the selection of, use of, and results obtained from the License Software Products. City agrees to and is solely responsible for implementing the appropriate internal controls to ensure the accuracy of and appropriate use of any Licensed Software Products. All warranties, express or implied, extend solely to City and not to any third parties.

5. CUSTOM AND ENHANCEMENTS

Contractor reserves the right at its own discretion to determine if and when any type of Enhancements or Custom modifications will be made to the Licensed Software Products.

6. THIRD PARTY SOFTWARE

To the extent any Licensed Software Product incorporates or necessarily interacts with third party software, City agrees to either procure that third party software on terms acceptable to it or to agree and abide with the third party software provider’s standard end user license agreement. City agrees to execute any documents and take all other steps necessary to satisfy any third party licensing requirements.

II. Contractor will provide City with Maintenance Services under the following terms ("Maintenance Section" or "this Section"):  

1. DEFINITIONS

Capitalized terms in this Section mean the following unless specifically defined elsewhere in this Section.

"Enhancement" any change to a Licensed Software Product that the Contractor, in its sole discretion, has determined will become part of the Licensed Software Product, including any modification or addition that, when made or added to a Licensed Software Product, materially changes its utility, efficiency, functional capability, or Output, but that does not constitute solely an Error Correction, and does not constitute a New Product Release. Contractor may designate
Enhancements as “Major Enhancements” or simply as “Enhancements,” depending on Contractor’s assessment of their value and of the function added to the Licensed Software Product or Application. A “Major Enhancement” is a substantial rewrite of an Application or a Licensed Software Product.

“Temporary Fix” means an initial correction or “fix” to a problem in the Licensed Software Products prior to the release of an Error Correction.

“Error Correction” means either a modification or an addition that, when made or added to the Licensed Software Products, brings the Licensed Software Products into material conformity with its Specifications, or a procedure or routine that, when observed in the regular operation of the Licensed Software Products, avoids the practical adverse effect of such nonconformity.

“Maintenance Fees” means Fees paid by City on a periodic basis to purchase the Product Maintenance Services under this Section.

“New Product Release” means either the total rewrite of an Application or new version(s) of the Licensed Software Products (including, without limitation, offering of an Application in a new language), the offering of new suites of Applications or databases, generally packaged as a separate module, and which may incorporate Error Corrections and/or Enhancements. A New Product Release shall be distinguished from an Enhancement by Contractor’s determination, based on Contractor’s assessment of the New Product’s value and of the function added to the Licensed Software Products or an Application.

2. SCOPE OF MAINTENANCE AGREEMENT

City has purchased certain Licensed Software Products from Contractor and City wishes to have Contractor maintain and support City’s use of those Licensed Software Products. Contractor and City therefore agree as follows:

2.1 Scope of Support Services

(a) As long as City is current on Maintenance Fees, Contractor agrees to provide “Basic Support Services” in support of the Product. Basic Support Services shall consist of:

(b) a toll-free line plus Internet access to Contractor’s support department during Contractor’s normal hours of operation to answer questions about the Licensed Software Products and help resolve issues not related to Error Corrections as defined below; and

(c) After hours support during hours other than Contractor’s normal hours of operation, which are from 6:00 a.m. to 6:00 p.m. on Monday through Thursday and 6:00 a.m. until 5:00 p.m. on Fridays. After hours and Saturday and Sunday, Contractor has a support line available. City will pay for after-hours support at Contractor’s standard hourly rates for after-hours support, or as documented on the appropriate invoice or Statement of Work.

DOCS-#136719-v9-(Bell)_Springbrook_Software_-_Accounting_Services_Agreement
2.2 Scope of Product Maintenance Services

As long as City is current on Maintenance Fees, Contractor agrees to provide Product Maintenance Services in support of the Licensed Software Products as set forth in Exhibit C-1 or the applicable invoice. Product Maintenance Services shall consist of:

(a) Error Correction. Contractor will use all reasonable diligence to correct verifiable and reproducible errors in Licensed Software Products that are not performing in accordance with the Specifications. Error Corrections will be made within a reasonable time period after reported to Contractor. The Error Correction, when completed, may be provided in the form of a Temporary Fix or, in Contractor’s discretion, a work around may be provided in the form of recommended alternate methods of using the Licensed Software Products.

(b) Changes in State and Federal Reporting Requirements. Contractor will provide Enhancements needed to conform to state and federal reporting requirements, including changes to tax tables and routine forms, as changes become effective. Product Maintenance Services under this Section do not include updates to conform to any changes in local governmental regulations, including without limitation changes in utility billing rates, reports or methods. Contractor reserves the right to determine final form of State and Federal reporting functionality to ensure that functionality meets the requirements of the controlling regulation and all clients within the scope of said regulation. Enhancements to meet local needs are not included in this Service.

(c) Service Packs. Contractor may, from time to time, issue routine minor releases of the Licensed Software Products, known as service packs, which contain Error Corrections, to clients who have Software Maintenance Addenda in place. Installation of Service Packs is provided at no charge to City if completed over the Internet. Installation of routine releases, Service Packs, and Enhancements by Contractor at City’s site will be billed to City at Contractor’s then-current hourly rate.

(d) Discounts on Major Enhancement Releases. Contractor may, from time to time, offer Major Enhancements to City. To the extent Contractor offers such Major Enhancements, Contractor shall permit City to obtain one copy of each Major Enhancement for each copy of the Licensed Software Products or Application being maintained under this Section at the discount then specified by Contractor.

2.3 Limitation of Support and Maintenance Services

The following is not covered by this Agreement:

(a) Additional training, data conversion, Consulting Services, and project management services (whether onsite or offsite) outside the scope of the initial Order Form;
(b) Maintenance or support services resulting from any problem resulting from City’s deliberate misuse, alteration (including local reports written by the City), or damage of the Licensed Software Products;

(c) Support of operating systems; support of non-Contractor software (including but not limited to spreadsheets, word processors, general office software, and report writers (including Crystal Reports, except for the standard Springbrook reports written in Crystal));

(d) On-site installation and management services for Upgrades or Major Enhancements;

(e) Providing or recommending internal controls or balancing City’s books;

(f) Any training, consulting, implementation management services, and data conversion services required on an individual City basis for Major Enhancements (whether onsite or offsite);

(g) Any set up, support for and maintenance of additional production databases (whether onsite or offsite);

(h) New (additional) Product license and service fees.

(i) City is responsible for testing City-specific modifications or Custom. Services associated with upgrading or migrating Custom to new release levels is not included in this agreement.

3. CITY RESPONSIBILITIES

Under this Section the City is responsible for items not specifically assigned to the Contractor, including the following:

3.1 Cooperation of City

City agrees to notify Contractor promptly following the discovery of any error. Further, upon discovery of an error, City agrees, if requested by Contractor, to submit to Contractor a listing of Output and any other data that Contractor may require in order to reproduce the error and the operating conditions under which the error occurred or was discovered. Contractor shall treat any such data as confidential. City agrees to pay reasonable travel (including travel time) and living expenses for onsite support or services, with the exception of the initial onsite training.

3.2 Contractor Access

City agrees to provide and maintain a means for Contractor to remotely access and maintain the Licensed Software Products as installed on City’s computers or networks. This access will include the following:

(a) An Internet connection and a static IP address that allows connectivity from Contractor support centers to the City’s servers,
(b) Appropriate Contractor approved software that will allow Contractor support personnel to access the City’s server environment for the purposes of installation of Products, troubleshooting and problem resolution;

(c) City will allow Contractor personnel to access servers and Products with administrative level access;

(d) City is responsible for maintaining the security of any access solution; and

(e) Contractor’s failure to provide services under this Section as a direct result of City’s failure to provide access to Contractor will not constitute a breach of this Section.

3.3 Key City personnel replacement

If key City personnel replacement occurs, Contractor reserves the right to require that the new employee(s) acquire Contractor-required training. Contractor offers free training at Contractor’s Portland Training Center to all new department heads and one (1) new primary user per year for Products purchased by the City.

3.4 Additional Costs not covered by this Section

Contractor reserves the right to bill hourly for maintenance and support outside of the Products and Services listed in Section 2.1 of this Section. Among other things, Contractor will bill City on an hourly basis for the following services;

(a) Support or maintenance in cases where repeated operator-produced error by the same user continues to occur despite notification to City;

(b) Support and maintenance services associated with applications not purchased by City from Contractor, as documented in an appropriate invoice or Statement of Work;

(c) Support and maintenance services outside the scope of this Section;

(d) Support and maintenance services necessitated by City’s failure to provide adequate internal controls to ensure the accuracy and appropriate use of the Products and compliance with local, state and federal regulations and auditors requirements;

(e) Support and maintenance services associated with City’s failure to provide adequate internal controls to ensure the accuracy and appropriate use of the Products;

(f) Costs associated with City’s creation or modification of data in Contractor’s database except through the appropriate use of Contractor Products;

(g) Costs associated with City’s own actions to integrate Contractor Products with applications or services not purchased from Contractor;

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(h) Costs associated with City’s failure to meet the terms and conditions of section 3 of this Section;

(i) Costs associated with additional labor or out of pocket expenses incurred while providing support to City in cases where Contractor has requested but City has denied remote access into a user workstation or the server housing Contractor’s Products; and

4. MAINTENANCE FEES

4.1 Failure to pay Maintenance Fees

If City fails to pay Maintenance Fees as specified in the applicable invoice or Statement of Work, City will have sixty days (60) to cure or remedy the failure to pay Maintenance Fees upon receiving written notice from Contractor. Following the sixty (60) days, Contractor reserves the right to suspend all Services under this Section. If City’s account is placed on hold due to failure to pay Maintenance Fees, Contractor will suspend all Services under this Section. City’s account will not be taken off hold until the following occurs:

(a) A “Reconnect” fee consisting of 10% of the full year annual maintenance amount is paid; and

(b) All outstanding Maintenance Fees are paid in full. City may choose to purchase new licenses from Contractor and restart Product Maintenance Services at that point in lieu of paying all outstanding Maintenance Fees.

5. USE AND RESTRICTIONS

Error Corrections, Enhancements, New Product Releases and any other programming provided by Contractor, regardless of its form or purpose shall be considered part of theLicensed Software Products for purposes of determining the parties’ rights and obligations related thereto pursuant to the Software License Section and this Section. Contractor shall have sole and exclusive ownership of all right, title and interest in and to such works (including ownership of all copyrights, trade secret rights and other intellectual property rights pertaining thereto), subject to the terms and conditions of the Software License Section.

III. In addition to the requirements of Section 6.2, during performance of the Services, Contractor will keep the City apprised of the status of performance by delivering the following status reports: Not Applicable.

IV. All work product is subject to review and acceptance by the City, and must be revised by the Contractor without additional charge to the City until found satisfactory and accepted by City.
EXHIBIT “B”

SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

Section 1.5 “Familiarity with Work” is revised to read the following:

By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, and (ii) has carefully considered how the services should be performed. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact and shall not proceed except at City’s risk until written instructions are received from the Contract Officer.

Section 1.7 “Warranty” is revised to read the following:

Contractor warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, as set out in Section 3.4, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at his sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor’s obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and
replace any defective or non-conforming Work and any work damaged by such work or the
generation or correction thereof at Contractor's sole expense. Contractor shall be obligated to
fully reimburse the City for any expenses incurred hereunder upon demand. This provision may
be waived in Exhibit “B” if the services hereunder do not include construction of any
improvements or the supplying of equipment or materials.

Section 1.10 “Additional Services” is revised to read the following:

City shall have the right at any time during the performance of the services, without invalidating
this Agreement, to order extra work beyond that specified in the Scope of Services or make
changes by altering, adding to or reasonably deducting from said work. No such extra work may
be undertaken unless a written order is first given by the Contract Officer to the Contractor,
incorporating therein any adjustment in (i) the Agreement Sum, and/or (ii) the time to perform
this Agreement, which said adjustments are subject to the written approval of the Contractor.
Any increase in compensation of up to five percent (5%) of the Agreement Sum or $25,000,
whichever is less; or in the time to perform of up to one hundred eighty (180) days may be
approved by the Contract Officer. Any greater increases, taken either separately or cumulatively
must be approved by the City. It is expressly understood by Contractor that the provisions of this
Section shall not apply to services specifically set forth in the Scope of Services or reasonably
contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to
be provided pursuant to the Scope of Services may be more costly or time consuming than
Contractor anticipates and that Contractor shall not be entitled to additional compensation
therefor.

Section 2.3 “Reimbursable Expenses” is revised to read the following:

Compensation may include reimbursement for actual and necessary expenditures for
reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in
advance, or actual subcontractor expenses if an approved subcontractor pursuant to Section 4.5,
and only if specified in the Schedule of Compensation. The Contract Sum shall include the
attendance of Contractor at all project meetings reasonably deemed necessary by mutual
agreement between the City and Contractor. Coordination of the performance of the work with
City is a critical component of the services. If Contractor is required to attend additional
meetings to facilitate such coordination, Contractor shall not be entitled to any additional
compensation for attending said meetings.

Section 2.4 “Invoices” is revised to read the following:

At each point of the module, Contractor shall furnish to City an original invoice for all work
performed and expenses incurred during the module in a form approved by City’s Director of
Finance. The invoice shall detail charges for all necessary and actual expenses by the following
categories: project fees (by sub category) reasonable travel expenses, and maintenance fees (by
sub category). Sub-contractor charges shall also be detailed by such categories.
City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor’s correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission.

Section 3.4 “Inspection and Final Acceptance” is revised to read the following:

City may inspect and accept or reject any of Contractor’s work under this Agreement, either during performance or when completed. City shall reject or finally accept Contractor’s work within sixty (60) days after submitted to City. City’s acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Article 5, pertaining to indemnification and insurance, respectively.

Section 4.5 “Prohibition Against Subcontracting or Assignment” is revised to add the following to the end of the section:

Neither party will indirectly or directly transfer or assign any rights under this Agreement, in whole or part, without the prior written consent of the other party. Notwithstanding the foregoing, the Contractor may, assign in its entirety or in part this Agreement to a subsidiary or affiliated entity as part of a divestiture, corporate reorganization or consolidation, or to another party in connection with a merger, acquisition, or sale of assets or stock, provided the successor agrees in writing to assume all of the assigning party’s obligations hereunder. Any assignments contrary to this Section 4.5 will be void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties and their respective successors and permitted assigns.

Sections 5.4 “Performance Bond” is removed.

Section 5.5 “Sufficiency of Insurer or Surety” is removed.

Section 6.3 “Ownership of Documents” is revised to read the following:

(a) Title
City acknowledges, represents and warrants that title to and ownership of the Licensed Products, Systems, and Documentation, including all corrections, enhancements, or other modifications to the Licensed Software, Products, systems, and Documentation, are the sole and exclusive property of Contractor and its third party Contractors. This includes all material displayed on the screen or generated, such as icons, screen displays, etc.
(b) Proprietary Rights Notices.
City shall not delete, alter, cover, or distort any copyright, trademark, or other intellectual property rights placed on or in the Products and shall ensure that all intellectual property right notices are reproduced on all copies thereof.

(c) Data
Notwithstanding the foregoing, City retains sole and exclusive ownership over all data generated and/or stored through the use of the Licensed Software, Products, or systems. All such data subject to the provisions set forth in Section 6.4 of the Agreement.
EXHIBIT “C”

COMPENSATION

I. Contractor shall perform the following tasks and shall be compensated as set forth herein:

Task A: Schedule Kickoff and Implementation Plan
$67,700 will be made payable to the Contractor following the executed contract. The remaining balance of $73,350 (as set forth in Tasks B, C and D) will be made payable in installments to the Contractor following the tasks listed below after submission and approval of valid Invoices. The total cost for this phase of the project will be $141,050.

Task B: Prepare Statement of Work
$24,450 will be made payable to the Contractor following the City’s acceptance of the Statement of Work after submission and approval of valid Invoice.

Task C: Complete Setup Phase
$24,450 will be made payable to the Contractor following the completion of the Setup Phase by module after submission and approval of valid Invoice.

Task D: Go-Live
$24,450 will be made payable to the Contractor following the Go-Live acceptance by module after submission and approval of valid Invoice.

II. Contractor shall perform maintenance set out in the Maintenance Section of Exhibit A and shall be compensated as set forth herein:

Year One:
All maintenance fees are waived for the first twelve (12) months.

Year Two:
$21,188 will be made payable to Contractor upon submission and approval of a valid invoice.

Year Three:
$22,322 will be made payable to Contractor upon submission and approval of a valid invoice.

Year Four:
$23,514 will be made payable to Contractor upon submission and approval of a valid invoice.

Year Five:
$24,764 will be made payable to Contractor upon submission and approval of a valid invoice.

III. Pursuant to Exhibit C-1, a retention of seventeen percent (17%) shall be held from each payment including the $67,700 “kick off” payment as a contract retention to be paid as a part of the final payment upon satisfactory completion of services.

IV. The City will compensate Contractor for the Services performed upon submission of a valid invoice. Each invoice is to include:

A. Line items for all fees properly charged to the Services.

B. Line items for all other approved reimbursable expenses claimed, with supporting documentation.

V. The total compensation for the Services and Maintenance Fees shall not exceed $232,838.00, as provided in Section 2.1 of this Agreement.

VI. The Contractor's billing rates and line items are attached as Exhibit C-1.
EXHIBIT “D”

SCHEDULE OF PERFORMANCE

I. Contractor shall perform all services timely in accordance with the following schedule:

The Schedule of Performance shall be developed after execution of this Agreement and shall be subject to the City Attorney’s approval. Pending contract execution no later than September 13, 2013, in no event shall the kick off date occur later than November 29, 2013. The entire project shall take no longer than nine (9) months from the execution of the contract.

III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.