AGREEMENT FOR A PERMITTING SYSTEM FOR THE POLICE DEPARTMENT
BETWEEN THE CITY OF SAN JOSÉ
AND
TRUEPOINT SOLUTIONS, LLC

This Agreement is entered into as the City's execution date ("Effective Date") between the City of San José, a municipal corporation ("City"), and TruePoint Solutions, LLC, a limited liability company registered to conduct business in the State of California, (hereinafter "Contractor"). Each of City and Contractor are sometimes hereinafter referred to as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, City issued a Request for Proposal ("RFP") to acquire a Permitting System ("Solution" or "System") for the Police Department (the "Department"), including related services; and

WHEREAS, Contractor has the necessary expertise and skills to implement such Solution and perform such Services, and Contractor's proposal demonstrates Contractor's ability to meet the City's needs; and

WHEREAS, Contractor has a good understanding of City's requirements through Contractor's examination of the Request for Proposal documents and the exchange of information; and

WHEREAS, based on this in-depth understanding and combining it with Contractor's knowledge and expertise with public organizations, Contractor warrants that the proposed Solution will meet the City's specifications and requirements as described in the Scope of Services; and

WHEREAS, the Recitals are true and correct and are incorporated into this Agreement;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1 AGREEMENT DOCUMENTS
The documents forming the entire Agreement between City and Contractor shall consist of this Agreement including:

Exhibit A-1	-	Scope of Services
A-2	-	Price List
A-3	-	Preliminary Project Implementation Schedule
A-4	-	Final System Acceptance Certificate
A-5	-	Payment Card Industry (PCI) Requirements
A-6	-	Privacy and Disclosure Policy
Exhibit B	-	Compensation and Payment Schedule
Exhibit C	-	Insurance Requirements
Exhibit D	-	Change Order Form

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Exhibit E	-	Notice of Option to Extend Agreement
Exhibit F	-	Infor Public Sector, Inc. Software-as-a-Service (SaaS) Subscription Agreement

In the event any discrepancies or inconsistencies between the provisions of this Agreement and the above-referenced documents arise, the provisions of this Agreement will prevail except the terms of the Infor Public Sector, Inc. Software-as-a-Service (SaaS) Subscription Agreement (Exhibit F) shall control solely with respect to the Software license. The provisions in the Exhibits shall prevail over conflicting terms in any Attachments to the Exhibits. Contractor and City hereby acknowledge that they have drafted and negotiated the Agreement jointly and that the Agreement will be construed neither against nor in favor of either, but rather in accordance with its fair meaning.

This Agreement and the Exhibits set forth above, contain all of the agreements, representations and understandings of the Parties hereto, and supersede and replace any previous understandings, commitments, or agreements, whether oral or written. Any other terms or conditions included in any shrink-wrap or boot-screen license agreements, quotes, invoices, acknowledgments, bills of lading, or other forms utilized or exchanged by the Parties shall not be incorporated in this Agreement or be binding upon the Parties unless the Parties expressly agree in writing or unless otherwise provided for in this Agreement.

2 TERM OF AGREEMENT

2.1 Term
The term of this Agreement is from the Effective Date to December 31, 2021 ("Initial Term"), inclusive, subject to the provisions of Section 13 TERMINATION and subsection 2.2 "Options to Extend."

2.2 Options to Extend
After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for one (1) additional three-year term ("Option Period") through June 30, 2024 for ongoing services as required. City shall provide Contractor written notice in the form of Exhibit E of its intention to extend the Agreement prior to the end of the then current term.

2.3 No Waiver
City's agreement to extend the term of this Agreement is not a waiver of the "time is of the essence" provision in Section 4.

3 SCOPE OF SERVICES

3.1 Scope of Work
Contractor shall implement the Solution and perform the Services as set forth in the Scope of Services (the "Scope of Services" or "Scope) which is attached as Exhibits A-1 through A-6 and Exhibit F hereto and incorporated as through fully set forth herein.

3.2 Notification

Contractor agrees to notify City promptly of any factor, occurrence, or event coming to its attention that may affect Contractor's ability to meet the requirements of the Agreement, or that is likely to occasion any material delay in completion of the projects contemplated by this Agreement. Such notice shall be given in the event of any loss or reassignment of key employees, threat of strike, or major equipment failure.

3.3 Privacy and Disclosure Policy

Contractor agrees in the performance of services to comply with the City's Privacy and Disclosure Policy set forth in Exhibit A-6, entitled "Privacy and Disclosure Policy," which is attached hereto and incorporated herein. Contractor shall ensure that all webpages that it creates are consistent with this Policy. Contractor further agrees that it shall treat all information received through this Agreement in strict accordance with the Policy.

3.4 Non-Contractor Software

The City shall procure the third party software required to complete the Scope of Services of this Agreement. City shall execute the Software-as-a-Service (SaaS) Subscription Agreement attached hereto as Exhibit F. Nothing in this Section 3 shall derogate from the obligations of Contractor to provide the guarantees and warranties described herein and to comply with the provisions of this Agreement.

4 PRELIMINARY PROJECT IMPLEMENTATION SCHEDULE

Contractor shall perform the Services according to the terms and provisions of the preliminary schedule set out in the attached Exhibit A-3, entitled "Preliminary Project Implementation Schedule." Time is expressly made of the essence with respect to each and every term and provision of this Agreement.

5 DATA AND FACILITIES

Contractor acknowledges that it has in its possession all applicable specifications and drawings, and all other documents to which reference is made herein and/or which are matched hereto, and all such data are adequate to enable Contractor to fairly determine its ability to perform the work called for herein at the price and in accordance with the schedule set forth herein. Contractor represents that it now has or can readily procure, without assistance of City, all facilities, machinery, and equipment necessary for the performance of this Agreement.

6 STANDARDS OF SERVICE

In connection with the performance of any Services pursuant to this Agreement:

6.1 Number of Employees

Contractor warrants it will provide sufficient employees to complete the Services ordered within the applicable time frames established pursuant to this Agreement. Furthermore, Contractor shall, at its expense, supply all tools, equipment, and other materials necessary to perform the Services contemplated in this Agreement.

6.2 Skill of Employees

Contractor warrants that employees shall have sufficient skill, knowledge, and training to perform Services and that the Services shall be performed in a professional and workmanlike manner.

6.3 Duty of Confidentiality

All data, documents, discussions, or other information developed or received by or for one Party in performance of this Agreement are confidential and must not be disclosed to any person except as authorized by the other Party, or as required by law. The receiving Party warrants that all employees utilized by it in performing Services are under a written obligation to the receiving Party requiring the employee to maintain the confidentiality of information of the other Party to the extent permitted by law.

6.4 Security and Safety

Contractor shall require employees providing Services at a City location to comply with applicable City security and safety regulations and policies. City may require each employee providing Services to undergo a background investigation, including, but not limited to a criminal records and fingerprint check. Contractor shall promptly replace any employee found to be unacceptable to City, in its sole discretion, on the basis of a significant infraction found in the background investigation.

6.5 Contractor's Obligations to Employees

Contractor shall provide for and pay the compensation of its employees and shall pay all taxes, contributions, and benefits (such as, but not limited to, workers' compensation benefits) which an employer is required to pay relating to the employment of employees. City shall not be liable to Contractor or to any employee for Contractor's failure to perform its compensation, benefit, or tax obligations. Contractor shall indemnify, defend and hold City harmless from and against all such taxes, contributions and benefits and will comply with all associated governmental regulations, including the filing of all necessary reports and returns.

6.6 Replacement of Employees

During the course of performance of Services, City may request replacement of an employee or a proposed employee, provided there is reasonable cause. In such event, Contractor shall, within five (5) working days of receipt of such request from City, provide a substitute employee of sufficient skill, knowledge, and training to perform the applicable Services. If, within the first thirty (30) days after an employee's commencement of Services, City notifies Contractor (1) such employee's level of performance is unacceptable, (2) such employee has failed to perform as required, or (3) such employee, in City's sole opinion, lacks the skill, knowledge or training to perform at the required level, then Contractor will be required to review the work performed by said employee, confirm the quality of work, and correct any items the Contractor deems incorrect. If City requests replacement of an employee for the above-referenced reasons after such thirty (30) day time period, or at any time for any other reasonable cause, City shall not be required to pay for, and shall be entitled to a refund of, any sums paid to Contractor for such employee's Services after the date of City's requested replacement of such employee.

7 CHANGE ORDER PROCEDURE AND AUTHORIZATION

7.1 Changes

Any changes to this Agreement after the Effective Date that relate to (i) the deletion of products or Services, (ii) adding additional products or Services, (iii) changing or modifying products or Services, or (iv) making other changes that materially alter the scope of this Agreement or the deliverables required under this Agreement, including approval of all performance and/or payment schedules shall be made by the Director of Finance in accordance with the procedures set forth below.

7.2 Contract Change Requests

Either Party hereto may, from time to time, and at any time during the term hereof request a change, as defined in the above Section. The Party requesting the change is hereinafter referred to as the "Requesting Party." Requests for changes shall be in writing and shall be addressed and delivered to the other Party as provided herein. Such writing shall be identified as a "Contract Change Request," shall carry a sequential number for ease of tracking, shall set forth in detail the nature of the change requested and the costs associated therewith, and shall identify the products, Services, deliverables or schedules to be changed.

7.3 Procedures

As soon as practical after receipt by the notified Party of copies of the request, the Parties shall meet as necessary to discuss the change and to ascertain its cost and schedule impacts, if any.

7.4 Change Orders

If the Parties decide to implement a change request, a Change Order ("CO") shall be prepared in a form substantially similar to the form attached hereto as Exhibit D, which CO shall describe the change, delineate the cost, schedule, and other impacts of the change, and include the payment terms for any price increase. Only City's Director of Finance and Contractor's Authorized Representative shall have authority to execute COs to this Agreement. Execution of a CO by City's Director of Finance and Contractor's Authorized Representative shall constitute a modification hereof and shall be binding on both Parties hereto.

8 COMPENSATION

8.1 Contract Maximum

The total contract price in U.S. dollars shall not exceed **Three Hundred Seventy-Five Thousand Dollars ($375,000)** during the Initial Term ("Maximum Compensation"). The terms, rates, and schedule of payment are set forth in the attached Exhibit B, entitled "Compensation and Payment Schedule." Contractor shall submit to City invoices at the completion of each milestone, but no more frequently than monthly, with a breakdown of Services as provided in the attached Exhibit B, entitled "Compensation and Payment Schedule." City will make payments to Contractor within thirty (30) days after the date of approval of each invoice. City will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a U.S. financial institution.

8.2 Non-Funding

Each payment obligation of City is conditioned upon the availability of state or local government funds which are apportioned or allocated for the payment of such an obligation. If the funds are not allocated and available for the continuance of the function performed by Contractor, the product or Service directly or indirectly involved in the performance of that function may be terminated by City at the end of the period for which funds are available. City shall notify Contractor at the earliest possible time of any products or Services which will or may be affected by a shortage of funds.

No penalty shall accrue for City in the event this provision is exercised, and City shall not be liable for any future payments due or for any damages as a result of termination under this Section. This provision shall not be construed so as to permit City to terminate this Agreement or any products or services in order to acquire similar products or services from another party. Contractor agrees to render any assistance which City may seek in affecting a transfer of any right of City in this Agreement, or any part hereof, that is required of City pursuant to the securing of financing hereunder. Despite the foregoing, the City shall pay Contractor for any Services performed in accordance with this Agreement up to the date of termination.

9 TAXES AND CHARGES

Contractor shall be responsible for payment of all taxes, fees, contributions, or charges applicable to the conduct of Contractor's business.

10 FINAL SYSTEM ACCEPTANCE

Upon final delivery of the System, City and Contractor shall conduct Acceptance Tests. The criteria for the Acceptance Tests shall be mutually agreed upon by the Parties and in accordance with the Scope of Services (Exhibits A-1 through A-6). Final System Acceptance will occur upon successful completion of the Acceptance Tests. When Final System Acceptance occurs, the Parties will memorialize this event by promptly executing a Final System Acceptance Certificate (Exhibit A-4).

If, in the reasonable discretion of the City, the System does not meet the requirements of the Acceptance Test specifications, City may (1) permit Contractor to repair or replace the System so that the same meets the Acceptance Test specifications in all material respects, all at no additional expense to City, or (2) return the System to Contractor, at Contractor's expense and without liability to City, and any amounts paid by City for the System shall be promptly refunded by Contractor to City.

All warranties shall become effective and begin to run upon the successful completion of the Acceptance Tests and the date of Final System Acceptance.

Payment for any part or parts of the System or Services provided hereunder, or inspection or testing thereof by City, shall not constitute acceptance or relieve Contractor of its obligations under this Agreement. City may inspect the components of the System when delivered and reject upon notification to Contractor any and all of the System which does not conform to the Specifications or other requirements of this Agreement. Components of the System which are rejected shall be promptly corrected, repaired, or replaced by Contractor in accordance with Contractor's warranty obligations under this Agreement, such that the System conforms to the warranties, specifications, and other requirements of this Agreement. If City receives components of the System with defects or nonconformities not reasonably apparent on inspection, then City reserves the right to require prompt correction, repair, or replacement by Contractor in accordance with Contractor's warranty obligations under this Agreement following the discovery of such defect or nonconformity.

11 CONTRACTOR REPRESENTATION AND WARRANTIES

11.1 Contractor Responsibility
Contractor understands and accepts full responsibility for all requirements and deliverables defined in this Agreement. Contractor warrants it:

11.1.1 Has read and agrees with the specifications contained in the Scope of Services (Exhibits A-1 through A-6);

11.1.2 Fully understands the facilities, difficulties, and restrictions attending performance of the Services; and

11.1.3 Agrees to inform City of any unforeseen conditions which will materially affect performance of the work within 45 days of the execution of this Agreement and shall not proceed until written instructions are received from City.

11.2 Authority to Make Agreement
Contractor represents and warrants that Contractor has full right and authority to perform its obligations under this Agreement. City shall be entitled to use the System without disturbance.

11.3 Contractor Agreements with City Employees

Contractor agrees to not enter into a relationship that may result in a financial conflict of interest with any employee or agent of the City who participated in the making of governmental decisions related to this Agreement.

11.4 Warranty for Services and Software Customizations

Contractor warrants to City that Contractor shall render all Services and software customizations provided under this Agreement with reasonable care and skill and warrants that they will function per the approved business requirements and design under ordinary use and operation in conformance with the specifications and documentation. Additionally, Contractor shall warrant its Services and software customizations for a period of one (1) year after Final System Acceptance ("Warranty Period"). During the Warranty Period, City will notify Contractor if any Services or software customizations do not conform to City's specifications as contained in the Scope of Services (Exhibits A-1 through A-6). Upon receipt of such notice, Contractor will investigate the warranty claim. If this investigation confirms a valid warranty claim, Contractor shall (at no additional cost to the City) repair the defective Services or software customizations. The one (1) Warranty Period is reset for any repaired or replaced item(s), beginning upon City acceptance of the repaired or replaced item(s). If despite its reasonable efforts, Contractor is unable to provide the City with Services or software customizations in compliance with the foregoing warranty, City may pursue its remedy at law to recover direct damages resulting from the breach of this warranty.

11.5 Warranty for Software

The Software warranties are covered by the Software-as-a-Service (SaaS) Subscription Agreement between the City and the software provider, Exhibit F.

11.6 Operability

Contractor warrants that the Software and any software customizations will be delivered to the City malware free and do not contain any timers, counters, or preprogrammed devices that will cause the Software or the software customizations to become erased, inoperable, or incapable of processing in the manner as documented in the contract documents specified.

11.7 Upgrades

The Contractor agrees to ensure that the Software and software customizations are maintained and will operate on all compatible upgrades of the hardware product line and operating systems used by City and as further specified in the Software License Agreement.

11.8 New Media

Media upon which any Software or software customizations are delivered to City by Contractor:

> 11.8.1 Shall be new and free from defects in manufacture and materials;

> 11.8.2 Shall be manufactured in a good and workmanlike manner using a skilled staff fully qualified to perform their respective duties;

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11.8.3 Shall, during the Warranty Period, function properly under ordinary use and operate in conformance with the specifications; and

11.8.4 In the event that media on which any Software Application, Customer Software, or Third Party Application Software is delivered is defective and cannot be read or utilized for its intended purpose by Contractor supplied or approved equipment, Contractor shall replace the defective media as soon as possible. Any delays occasioned by the failure of new media shall not be considered excusable delay.

12 WARRANTY AGAINST INFRINGEMENT

Contractor agrees to defend and indemnify City of all direct losses, costs, and damages resulting from a determination that the Services, software customizations, or any article sold hereunder to City infringe on any third party patent rights, copyrights, or trademarks provided that: City promptly notifies Contractor in writing upon City becoming aware of the existence of any such suit, action, proceeding threat; allows Contractor sole control of the defense and/or settlement thereof; and provides such reasonable cooperation as Contractor may require. In no event shall City consent to any judgment or decree or do any other act in compromise of any such claim without Contractor's express prior written consent. In no event will Contractor be liable for the payment of any amount agreed to in settlement without Contractor's express consent. In the event that City is enjoined from use of the Services, Software, or software customizations due to a proceeding based upon infringement of patent, copyright or trademark, Contractor shall, at its option, either:

- Modify the infringing item(s) at Contractor's expense, so it becomes non-infringing; or

- Replace the infringing item(s) with equal non-infringing item(s), at Contractor's expense; or

- Procure, at Contractor's expense, the necessary licenses for the City to continue using the item(s); or

- Remove the item(s) and refund the purchase price less a reasonable amount for depreciation.

13 TERMINATION

13.1 Termination for Convenience
City shall have the right to terminate this Agreement, without cause, by giving not less than thirty (30) days' written notice of termination.

13.2 Termination for Default
If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.

13.3   Termination Authority

The Director of Finance ("Director") is empowered to terminate this Agreement on behalf of City.

13.4   Consequences of Termination

In the event of termination, Contractor shall deliver to City copies of all reports, documents, and other work performed by Contractor under this Agreement, and upon receipt thereof, City shall pay Contractor for Services performed and reimbursable expenses incurred to the date of termination.

14 INDEMNIFICATION

Contractor shall defend, indemnify and hold harmless City, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this Agreement due to the willful or negligent acts (active or passive) or omissions by Contractor's officers, employees or agents. The acceptance of said Services and duties by City shall not operate as a waiver of such right of indemnification. This provision shall survive the termination of this Agreement.

15 INSURANCE REQUIREMENTS

Contractor agrees to have and maintain the policies set forth in Exhibit C, entitled "Insurance Requirements," which is attached hereto and incorporated herein. All policies, endorsements, certificates, and/or binders shall be subject to approval by the Risk Manager of the City of San José as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. Contractor agrees to provide City with a copy of said policies, certificates, and/or endorsements before work commences under this Agreement.

16 WAIVER

Contractor agrees that City's waiver of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver of any other provision or a waiver of any subsequent breach or violation of the same or any other provision. City's acceptance of the performance of any of Contractor's services will not be a waiver of any provision of this Agreement.

17 INDEPENDENT CONTRACTOR

Contractor, in the performance of this Agreement, is an independent contractor. Contractor shall maintain complete control over all of Contractor's employees, any subcontracting subcontractors, and Contractor's operations. Neither Contractor nor any person retained by Contractor may represent, act, or purport to act as the agent, representative or employee of City. Neither Contractor nor City is granted any right or authority to assume or create any obligation on behalf of the other.

18 COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws, ordinances, codes, and regulations (collectively, "laws") of the federal, state, and local governments, including without limitation, any and all laws specified elsewhere in this Agreement.

19 CONFLICT OF INTEREST

Contractor shall avoid all conflict of interest or the appearance of conflict of interest in performance of this Agreement.

20 NONDISCRIMINATION

Contractor agrees that there shall be no discrimination against, or segregation of, any person, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, marital status, or family status, in connection with or related to the performance of this Agreement.

21 GIFTS

21.1   Prohibition on Gifts
Contractor acknowledges that Chapter 12.08 of the San José Municipal Code prohibits City's officers and designated employees from accepting gifts as defined in Chapter 12.08.

21.2   No Offer
Contractor agrees not to offer any City officer or designated employee any gift prohibited by Chapter 12.08.

21.3   Breach of Agreement
Contractor's offer or giving of any gift prohibited by Chapter 12.08 will constitute a material breach of this Agreement. In addition to any other remedies City may have in law or equity, City may terminate this Agreement for such breach as provided in Section 13 TERMINATION of this Agreement.

22 DISQUALIFICATION OF FORMER EMPLOYEES

Contractor is familiar with Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance") relating to the disqualification of City's former officers and employees in matters which are connected with their former duties or official responsibilities. Contractor shall not utilize either directly or indirectly any officer, employee, or agent of Contractor to perform Services under this Agreement, if in the performance of such Services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

23 CONFIDENTIAL INFORMATION

23.1   Confidentiality
All data and information generated, collected, developed, discovered, or otherwise saved in the System exclusively for the City, including derivative data, (collectively the "Data") by the Contractor in the performance of this Agreement are confidential and must not be disclosed to any person except as authorized by City, or as required by law.

23.2   Ownership of Materials
City and Contractor agree that Contractor shall own the entire right, title, and interest, including patents, copyrights, and other intellectual property rights, in and to all tangible materials, inventions, works of authorship, software, information and data solely conceived

and developed by Contractor in the performance of the project, and developed using Contractor's facilities or personnel. City and Contractor agree that City shall own the entire right, title, and interest, including all patents, copyrights, and other intellectual property rights, in and to all tangible materials, inventions, works of authorship, software, information and data solely conceived and developed by City's facilities or personnel. Technology that is jointly developed using both City and Contractor personnel and facilities shall be jointly owned.

23.3   Ownership of Data

The City shall maintain ownership and control of the Data throughout the Agreement period and in perpetuity. Contractor shall have the right to use the Data solely to perform Services under the Agreement with the City. Contractor may not use the Data, a subset of the Data, and/or a summary of the Data, or, cause or permit the Data, a subset and/or a summary thereof, to be used by any third party, outside the Scope of this Agreement without the express written consent of the City. If requested, Contractor shall provide City with a copy of the Data in a mutually agreed upon format at regular intervals and at such additional times as the City deems appropriate. Contractor warrants that throughout all operational and maintenance activities the accuracy of the Data will be preserved.

23.4   Security

Security and controls to protect the Data shall be as provided in the Agreement for a Software-as-a-Service Permitting System with Infor Public Sector, Inc. (Exhibit F).

23.5   Exit Strategy

Upon request of the City or in the event this Agreement is terminated, Contractor agrees to cooperate with the City to help ensure a smooth transition of all Data to the City's new environment, including purging the Data at the Contractor's (and Contractor's subcontractors') facilities following City's confirmation that it has received a satisfactory copy of the Data. The City may request that Contractor provide additional services to help the City facilitate the transition. Such services are subject to the Change Order Procedures noted in Section 7.

23.6   Enforcement

The City and Contractor agree that damages are not adequate and no adequate remedy at law exists for any threatened or actual disclosure or use of information by Contractor in violation of the provisions of this Agreement. Accordingly, Contractor consents to the entry of an injunction against threatened or actual disclosure or use of the information in violation of any provision of this Agreement.

24 CONTRACTOR'S BOOKS AND RECORDS

24.1   Maintenance during Term

Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other documents evidencing or relating to charges for services or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer

period required by law, from the date of final payment to Contractor pursuant to this Agreement.

24.2   Maintenance after Term

Contractor shall maintain all documents which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

24.3   Inspection

Any documents required to be maintained pursuant to this Agreement must be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Contractor shall provide copies of such documents to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this Agreement.

24.4   Custody of Records

Where City has reason to believe that any of Contractor's documents relating to this Agreement may be lost or discarded due to dissolution, disbandment, or termination of Contractor's business, City may, by written request by any of the above-named officers, require that custody of the Contractor's documents be given to City and that these documents be maintained in City Hall. City agrees to grant access to Contractor's documents to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

25 ASSIGNABILITY

The Parties agree that the expertise and experience of Contractor are material considerations for this Agreement. Unless specifically authorized by City in writing, Contractor may not assign the performance of any obligation or interest under this Agreement without the prior written consent of City. Any attempt by Contractor to assign this Agreement in violation of this Section will be voidable at City's sole option.

26 SUBCONTRACTORS

26.1   Authorized Subcontractors

Notwithstanding the ASSIGNABILITY section above, Contractor may use designated subcontractors approved in advance in writing by City in performing Contractor's Services. Contractor must obtain City's prior written consent in order to change or add subcontractors. Contractor shall be responsible for directing the work of the approved subcontractors and for any compensation due to subcontractors. City assumes no responsibility whatsoever concerning such compensation.

26.2   Compliance with Agreement
Contractor shall ensure that Contractor's subcontractors comply with this Agreement. At City's request, Contractor shall require any or all of Contractor's subcontractors to sign an agreement with Contractor requiring compliance with this Agreement.

27 GOVERNING LAW
This Agreement must be construed -- and its performance enforced -- under California law.

28 JURISDICTION AND VENUE
In the event that suit is brought by either Party to this Agreement, the Parties agree that venue must be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

Contractor further agrees that in the event a lawsuit involving this Agreement is filed by City, Contractor will unconditionally accept the jurisdiction of a federal or state court located in Santa Clara County, California.

29 NOTICES
All notices and other communications required or permitted to be given under this Agreement must be in writing and must be personally served, or mailed, postage prepaid via U. S. mail, or sent via courier service, addressed to the respective Parties as follows:

To City:	City of San José
	Attention: Director of Finance
	200 East Santa Clara St., 13th Floor
	San José, CA 95113
To Contractor:	Kent Johnson
	TruePoint Solutions, LLC
	3262 Penryn Road, 100B
	Loomis, CA 95650

Notice will be effective on the date personally delivered or if sent by courier service, on the date of receipt. If mailed, notice will be effective three (3) days after deposit in the mail. The Parties may change their respective addresses in accordance with the provisions of this Section.

30 MISCELLANEOUS

30.1   Survival of Provisions
If any part of this Agreement is for any reason found to be unenforceable, all other parts nevertheless remain enforceable.

30.2   Assignment
Subject to the provisions of ASSIGNABILITY, this Agreement binds and inures to the benefit of the Parties and their respective successors and assigns.

30.3 Headings

The headings of the sections and exhibits of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and are not to be used in its construction.

30.4 Authority of City Manager

Where this Agreement requires or permits City to act and no officer of the City is specified, City's Manager or the designated representative of City's Manager has the authority to act on City's behalf.

City of San José
a municipal corporation

By_____

Jennifer Cheng

Deputy Director, Finance

Date: _____

TruePoint Solutions, LLC
a California limited liability company

By_____Kent John_____

Kent Johnson

CEO

Date: _____11-9-2018_____

APPROVED AS TO FORM:

_____

Rosa Tsongtaatarii
Senior Deputy City Attorney

EXHIBIT A-1
SCOPE OF SERVICES

The following Scope of Services defines the principal activities and responsibilities of the Contractor and the City for the design, configuration, implementation, and deployment of a Permitting System for the Police Department.

1 PROJECT BACKGROUND AND INTRODUCTION

1.1   The City is procuring a Permitting System ("System" or Solution") to manage permits that are administered by the Police Department (the "Department"). The Department issues over 5,000 permits per year and ensures compliance with applicable laws for a variety of businesses, including, but not limited to, taxi companies, tow companies, massage parlors, entertainment venues, gaming establishments, bingo parlors, and peddlers.

1.2   Contractor has proposed and shall deploy the Infor Public Sector Inc.'s ("Infor") Rhythm for Civics and Community Development and Regulation (CDR) Software-as-a-Service (SaaS) applications which are being procured by the City through a separate agreement with Infor to meet the Department's Solution requirements.

1.3   To the extent not inconsistent with this Agreement between the City and Contractor, including this Scope of Services, the City's RFP 17-18-04, Contractor's proposal response dated October 30, 2017, Contractor's Best and Final Offer (BAFO) response dated April 9, 2018, and subsequent updates to the RFP scope and cost are hereby incorporated by reference herein and provide context, supplemental information, and are subject to the terms and conditions of this Agreement.

2 SOLUTION REQUIREMENTS

Contractor shall deploy the Solution, which shall include the following:

2.1   A cloud-based Software as a Services (SaaS) Solution with an intuitive, user friendly interface that is accessible from a standard web browser, including, but not limited to, Microsoft Internet Explorer, Google Chrome, and Apple Safari.

2.2   Minimum 99.5% guaranteed uptime, excluding planned system maintenance.

2.3   Applicant registration, terms of use, and the Peddler permit application must be provided in the System in both Spanish and English. Note that the City has already performed most if not all of the required translations. All other permit applications are to be published only in English at this time.

2.4   Produces and issues unlimited permits.

2.5   Must provide City the ability to override any auto-generated permit numbers.

2.6   Must have the ability to accept and designate payment by credit card, mail in, or walk in and generate and print a daily receipts report by type.

2.7   Provides user-defined fields for custom City use, such as for VIS codes, etc.

2.8   Includes electronic signature technology compliant with the United States Electronic Signatures in Global and National Commerce (ESIGN) Act and the Uniform Electronic Transactions Act (UETA).

2.9   Ability to save partially completed information and resume at a later time (for both applicants and City employees).

2.10 Maintains a full audit trail log by user for actions performed in the System. Specific actions required to be logged will be determined as part of the Business Assessment during project implementation. See Section 5.2 below.

2.11 Must utilize public key cryptography and meet the National Institute of Standards and Technology (NIST) FIPS 140-2 requirements and the Criminal Justice Information Services (CJIS) standards for access control, encryption in transit, and encryption at rest or Transport Layer Security (TLS) 1.2+ for data in transit and Advanced Encryption Standard (AES) 256 bit for data at rest, whichever requirement for each that is most stringent.

2.12 Ability to upload documents such as criminal background documents, business tax certificates, and other documents in Adobe pdf, Microsoft Word, or similar format and attach to applicant record.

2.13 Includes a public-facing portal where unlimited applicants can set up a user account, submit their permit application online and pay via web-based credit card processing that complies with the City's Payment Card Industry (PCI) Requirements (Exhibit A-5) and Privacy and Disclosure Policy (Exhibit A-6).

2.14 Credit card processing shall be handled through a gateway usable by the City's banking institution. Wells Fargo is the City's current banking institution, but in the event that the City changes banking institutions, Contractor will work with the City to affect the necessary changes in the System to facilitate credit card processing with the new bank.

2.15 Unlimited data/storage, reads, and transactions.

2.16 Advanced reporting capability, including the ability to develop custom reports.

2.17 Must provide printed payment receipts for fiscal reporting and customers.

2.18 Workflow tracking from start of the application process through conclusion and compliance.

2.19 Ability to create and customize workflows.

2.20 Stores multiple records per applicant, including complete history.

2.21 Stores permitting data, including inspection records, photos, applications, and investigation notes, for a minimum of six (6) years.

2.22 Ability to schedule inspections for vehicles used in business, e.g. taxi cabs, peddler carts, and other vehicles.

2.23 Integrates with a standard desktop scheduling system such as Microsoft Office 365.

2.24 Configurable to automatically send notifications, alerts, and reminders via text and email to permit holders and applicants regarding renewals, status of permit, needed items, etc.

2.25 Solution must be interoperable with City's Microsoft-centric core technology stack as applicable to vendor-hosted systems.

2.26 Must have an Open Application Program Interface (API) using an industry standard Web service (e.g. RESTful), SOAP, XML, JSON or similar protocols and languages to allow easy interface with the Department's mug capture, staff scheduling system, and records management systems.

2.27 Commercial Off-The-Shelf (COTS) Solution.

2.28 SAML 2.0 compliant by the end of 2018 to allow Single Sign-On (SSO) authentication.

2.29 Advanced search/lookup and ad hoc reporting capabilities.

2.30 Provides mobile downloadable applications for smartphones and tablets (iOS, iPad, Android, and Windows).

2.31 Provides ability for citizens to look up current permits and submit permit-related complaints online.

2.32 Allows for automating notifications to applicants and permit holders. However, if the City wants to customize the automated notifications, additional costs may apply.

2.33 Accepts Esri base map updates.

2.34 Can be customized to output a tab delimited text file of citations, based on specified selection criteria such date, in a defined order and format of columns (to be provided by the City at a later date) for import into the City's Revenue Results system (by Ontario Systems). This report will either be included as one of the 5 custom reports included in the Solution implementation services or will be added as a change order at a later date.

3 PROJECT ASSUMPTIONS

3.1 *City Responsibilities:*

3.1.1 The City will provide a project manager and subject matter experts as required to ensure that the implemented Solution meets the City's requirements as detailed in this Scope of Services and Requirements.

3.1.2 City's Project Manager (PM): (1) Coordinates project resources, (2) Manages the project on behalf of the City, (3) Manages expectations and issues, (4) Ensures that the project stays on track to deliver results, (5) Acts as the primary point of contact for the City and co-leads the project in partnership with the Contractor's PM, and (6) Approves documentation and status reports as required.

3.1.3 Subject matter experts: (1) Provide understanding of business and technical environments and requirements, (2) Work with the Contractor to define processes and System requirements as needed, (3) Provide specific expertise to the project in the area(s) of functional and/or technical requirements, (4) Create and maintain a knowledgebase of answers related to the System, and (5) Coordinate appropriate IT resources as needed.

3.1.4 The City shall attend meetings, workshops, and discovery sessions as required.

3.1.5 The City will assist in the development of workflows, approval processes, and procedures.

3.1.6 The City shall designate/provide testers to perform acceptance testing tasks.

3.2 *Contractor Responsibilities:*

3.2.1 Contractor shall assign a project manager to implement the System.

3.2.2 Contractor's PM: (1) Acts as the primary point of contact and co-leader of all project activities in partnership with the City's PM, (2) Provides expertise in project management best practices, (3) Manages expectations and issues, (4) Ensures the project stays on track to deliver results, (5) Leads project meetings, (6) Maintains project implementation schedule, including tracking task duration and progress, and (7) Is responsible for alerting the project team to tasks that are not being performed in accordance with the schedule and this Agreement so that the team can address.

3.2.3   Contractor Project Executive: Contractor shall design a project executive who will be responsible for project guidance and support to ensure the City's satisfaction with the project and to provide upper management support for issue resolution.

3.2.4   Contractor shall provide testers and trainers as required to provide training and support testing as required in this Scope of Services.

3.2.5   Contractor shall attend meetings, workshops, and discovery sessions as required.

3.2.6   Contractor will be responsible for leading all configuration and implementation activities.

4 IMPLEMENTATION

4.1 Contractor shall conduct a **Project Kick-off Meeting** to include:

    4.1.1   Introduce project team members, including qualifications and project roles and responsibilities.

    4.1.2   High level overview of the Proposed Solution.

    4.1.3   Deliver Preliminary Project Implementation Schedule in a critical path format so that the timelines and milestones can be clearly identified and measured.

    4.1.4   Discuss and define Notice to Proceed Procedures.

    4.1.5   Define processes for tracking project status.

    4.1.6   Define change control procedures.

    4.1.7   Define the deliverable review and Final System Acceptance processes.

    4.1.8   Determine the format and protocol for periodic, ongoing meetings, reports, and communications.

    4.1.9   Review escalation management process, including lines of communication, reporting relationships, etc.

    4.1.10   Identify high-risk or problem areas and discuss resolution process.

    4.1.11   Finalize Project Implementation Schedule.

4.2 Contractor shall conduct workshops, meetings, and discovery sessions as required to conduct a **Business Assessment** and produce/document a **Business Process Map**.

4.3 Contractor shall deliver Business Process Map documentation to the City for review and approval.

4.4 Contractor shall setup, configure, and implement the Permitting System in accordance with the City-approved **Business Process Map.**

4.5 Contractor shall develop at least five custom reports specified by the City in a format acceptable to the City.

5 TRAINING

Contractor shall provide training and documentation (including Department-specific documentation) to the Department on the Permitting System as follows:

5.1 *3 Days of Super User/Administrator in-person, on-site training for approximately 3-5 persons*

    5.1.1   System Configuration and Administration

        5.1.1.1   Administrative functions and features

        5.1.1.2   Configuration and management of users, including adding/modifying users, user security, dashboard setup and assignment, and other role-based tasks as determined.

        5.1.1.3   System best practices for maintenance

    5.1.2   Design and implementation of new permits/templates

    5.1.3   Reports

    5.1.4   How to access and review audit log

    5.1.5   Process for contacting vendor technical support for assistance

    5.1.6   Other topics as appropriate to ensure Super Users/Administrators have a good understanding of the Permitting System and its features and functionality.

    5.1.7   Note: It is intended that Super Users/Administrators will assist with System testing.

  5.2 *5 Days of End User in-person, on-site training for approximately 10-12 persons*

    5.2.1   Entering and processing permits

    5.2.2   Permit review and approval workflow

    5.2.3   Applicant walk through and troubleshooting

    5.2.4   Process for contacting vendor technical support for assistance

    5.2.5   Reports

    5.2.6   Other topics as appropriate to ensure City users have a good understanding of the Permitting System and its features and functionality.

  5.3 Ongoing training as required for patches, updates, new features and functionality, subject to the Change Order Procedures in Section 7 of the Agreement for time and travel if on-site training required.

6 GO-LIVE, TESTING, AND FINAL SYSTEM ACCEPTANCE

  6.1 Contractor shall provide an online demonstration of the Permitting System to City staff when it is believed the System is ready for Go-live. The City will provide System feedback, and when the City agrees that the System is ready for go-live will indicate such in writing to the Contractor.

  6.2 Contractor shall provide on-site staff for System Go-Live to assist City staff and troubleshoot as required.

  6.3 Contractor shall demonstrate that the Permitting System meets all requirements as stated in this Scope of Services and Requirements and as further defined in the **Business Process Map.**

  6.4 Contractor shall prepare a test plan for each set of requirements to demonstrate that they are included and implemented in the Permitting System.

  6.5 Contractor shall provide guidance to the City during completion of the test plan to ensure that it is done in accordance with vendor-provided training and documentation.

  6.6 Following testing, the City and Contractor shall prepare a punch list of items required to properly complete System configuration and implementation.

  6.7 Punch list items shall be completed by the respective party according to a mutually agreed upon schedule.

  6.8 Following completion of all punch list items and City's validation that the System meets requirements, both Parties will execute a Final System Acceptance Certificate to memorialize System acceptance.

6.9 Upon execution of the Final System Acceptance Certificate, the City agrees to pay vendor any remaining and approved outstanding invoice and any previously withheld retainage.

6.10 Upon City approval, Go-Live and System Acceptance Testing may occur simultaneously. Contractor shall provide onsite staff for up to 5 days for these two activities combined.

7 TECHNICAL SUPPORT AND MAINTENANCE

7.1 During the Warranty Period as defined in Section 11.4 of the Agreement, Contractor shall provide post-implementation support to the City at a minimum during the City's regular business hours which are Monday – Friday from 8:00am to 5:00pm Pacific Time, excluding City holidays.

7.2 Post-implementation support shall include unlimited incidents and shall be available by telephone, email, and through an online portal.

7.3 Contractor must have an online trouble reporting system that tracks open trouble tickets and includes automatic escalation and notification based on service level requirements and issue progress.

7.4 Technical support shall be provided in accordance with the following service levels during the City's regular business hours:

Severity	Description	Maximum Response Time*	Target Resolution Time
1	System down or critical functionality severely impaired or not operational.	15 minutes	2 hours
2	Major functionality severely impaired but a temporary workaround is available.	30 minutes	24 hours
3	Loss of non-critical functionality or partial loss of functionality, but System is still usable.	1 hour	5 business days

*This is the maximum time it takes to receive an acknowledgement that the issue has been logged and assigned a case number.

7.5 Following the Warranty Period, technical support and maintenance shall be provided by the software provider pursuant to the the Infor Public Sector, Inc. Software-as-a-Service (SaaS) Subscription Agreement (Exhibit F).

	Year 1	Year 2	Year 3	Total Not to Exceed
1. TruePoint Solutions, LLC **Implementation Services: One-Time Costs**				
a. Project Kick-Off/Project Management/Project Implementation Plan	$29,800	-	-	$29,800
b. Business Requirements Development/Business Process Map	$52,000	-	-	$52,000
c. System Design/Configuration/Implementation in accordance with Business Process Map	$105,600	-	-	$105,600
d. Integration with eResource (scheduling software), Mug Capture, and Versaterm (3 one-way interfaces based on batch processing)	$74,600	-	-	$74,600
e. 5 Custom Reports	$18,000	-	-	$18,000
f. 3 days of Administrator Training and 5 days of End User Training	$22,000	-	-	$22,000
g. Testing, including 5 days of User Acceptance Training/Testing	$14,000	-	-	$14,000
h. Go-Live	$28,000	-	-	$28,000
i. Travel Reimbursement Not to Exceed[1]	$31,000	-	-	$31,000
Subtotal One-Time Implementation	**$375,000**	-	-	**$375,000**
2. Infor Public Sector, Inc. **Ongoing Software Subscriptions, Technical Support, & Maintenance[2]**	**$50,000**	**$55,887**	**$55,888**	**$161,775**
3. MAXIMUM COMPENSATION (Initial Term)	$425,000	$55,887	$55,888	$536,775

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[1] Pre-approved travel expenses shall be reimbursed by the City based on actual cost and must comply with current Internal Revenue Service maximum rates for mileage and per diems according to the federal government general services schedule for the continental United States.

[2] To be purchased directly from Infor Public Sector, Inc. under a separate agreement. Detailed license list included in the Infor agreement.

EXHIBIT A-3
PRELIMINARY PROJECT IMPLEMENTATION SCHEDULE

Implementation of this project will proceed in accordance with the Preliminary Project Implementation Schedule set forth below modified into a Final Project Implementation Schedule that is approved by the City during project initiation and/or throughout th the appropriate order with estimated dates and based on elapsed time as approved by the City. The Final Project Implementation governing project schedule incorporated into the Agreement. The Project Implementation Schedule is based upon work being ac Friday during normal business hours (defined as 8:00am to 5:00pm Pacific Time), excluding City holidays.

Table A1: Preliminary Project Implementation Schedule

	Task Name	Duration	Start Date	End Date	Q1 Jan Feb Mar Apr	Q2 May Jun
1	San Jose Police Department Project Implementation	229.25d	01/14/19	12/12/19		
2	Project Initiation	4.25d	01/14/19	01/18/19		
3	Project Team Process Meetings	4d	01/14/19	01/17/19		
4	Kick-off Meeting	0.25d	01/18/19	01/18/19		
5	Interfaces/Integrations Implementations	185d	01/18/19	10/11/19		
6	Scheduling System	105d	01/18/19	06/19/19		
7	Develop Design Document (Scheduling System)	15d	01/18/19	02/11/19	TPS	
8	Update and Approve Design document (Scheduling System)	15d	02/11/19	03/05/19	Agency, TPS	
9	Approve Design Document (Scheduling System)	5d	03/05/19	03/12/19		
10	Develop Interface (Scheduling System) (Time is only an estimate)	45d	03/12/19	05/14/19	TPS	
11	Test and update Interface (Scheduling System)	20d	05/14/19	06/12/19		Age
12	Approve Interface (Scheduling System)	5d	06/12/19	06/19/19		Ap
13	Mug Capture System	105d	01/18/19	06/19/19		
14	Develop Design Document (Mug Capture)	15d	01/18/19	02/11/19	TPS	
15	Update and Approve Design document (Mug Capture)	15d	02/11/19	03/05/19	Agency, TPS	
16	Approve Design Document (Mug Capture)	5d	03/05/19	03/12/19		
17	Develop Interface (Mug Capture) (Time is only an estimate)	45d	03/12/19	05/14/19	TPS	
18	Test and update Interface (Mug Capture)	20d	05/14/19	06/12/19		Age
19	Approve Interface (Mug Capture)	5d	06/12/19	06/19/19		Ap
20	Versaterm	105d	05/14/19	10/11/19		
21	Develop Design Document (Versaterm)	15d	05/14/19	06/05/19		TPS
22	Update and Approve Design document (Versaterm)	15d	06/05/19	06/26/19		A
23	Approve Design Document (Versaterm)	5d	06/26/19	07/03/19		
24	Develop Interface (Versaterm) (Time is only an estimate)	45d	07/03/19	09/06/19		
25	Test and update Interface (Versaterm)	20d	09/06/19	10/04/19		
26	Approve Interface (Versaterm)	5d	10/04/19	10/11/19		
27	Infor Public Sector Implementation	130d	01/18/19	07/25/19		
28	Permitting Design/Development	130d	01/18/19	07/25/19		
29	Analysis (Permitting)	40d	01/18/19	03/19/19		
30	Analysis meetings (Permitting)	20d	01/18/19	02/19/19	Agency, TPS	
31	Analysis Documentation (Permitting)	20d	01/18/19	02/19/19	TPS	
32	Analysis Updates and Approval (Permitting)	15d	02/19/19	03/12/19	Agency, TPS	
33	Analysis Approve (Permitting)	5d	03/12/19	03/19/19	Agency	
34	Admin Training	3d	03/19/19	03/22/19		

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Agreement for a Permitting System for the Police Department with TruePoint Solutions, LLC
Exhibit A-3 – Preliminary Project Implementation Schedule

	Task Name	Duration	Start Date	End Date	Q1			Q2		
					Jan	Feb	Mar	Apr	May	Jun
35	Configuration (Permitting)	50d	03/19/19	05/29/19						
36	Configuration (Permitting)	20d	03/19/19	04/16/19				TPS		
37	Configuration Testing and updates (Permitting)	20d	04/16/19	05/14/19					Agency, TPS	
38	Configuration Approve (Permitting)	10d	05/14/19	05/29/19					Agency	
39	Report Definitions (Permitting)	40d	04/16/19	06/12/19						
40	Report Design Documents Development (5) – (Permitting)	15d	04/16/19	05/07/19					TPS	
41	Report Design Updates and Approval (Permitting)	20d	04/23/19	05/21/19					Agency, T	
42	Report Configuration Development (Permitting)	20d	04/30/19	05/29/19					TPS	
43	Report Testing and updates (Permitting)	20d	05/07/19	06/05/19					Agenc	
44	Report approval (Permitting)	20d	05/14/19	06/12/19					Agen	
45	Mobile (Permitting)	35d	05/29/19	07/18/19						
46	Mobile Setup/Install (Permitting)	10d	05/29/19	06/12/19					Agen	
47	Mobile Test (Permitting)	20d	06/12/19	07/11/19						
48	Mobile Approve (Permitting)	5d	07/11/19	07/18/19						
49	Rhythm (Permitting)	40d	05/29/19	07/25/19						
50	Rhythm Test and Update Rhythm configuration (Permitting)	30d	05/29/19	07/11/19						
51	Rhythm Approve (Permitting)	10d	07/11/19	07/25/19						
52	User Acceptance	20d	10/11/19	11/12/19						
53	User Acceptance Training	5d	10/11/19	10/21/19						
54	User Acceptance Testing	15d	10/21/19	11/12/19						
55	End User training	10d	11/12/19	11/28/19						
56	Go Live	5d	11/28/19	12/05/19						
57	Go Live Support	5d	12/05/19	12/12/19						

Agreement for a Permitting System for the Police Department with TruePoint Solutions, LLC
Exhibit A-3 – Preliminary Project Implementation Schedule

EXHIBIT A-4
FINAL SYSTEM ACCEPTANCE CERTIFICATE

After the City is satisfied with all test results and resolutions, the City will initiate execution of the Final System Acceptance Certificate for that Phase.

FINAL SYSTEM ACCEPTANCE CERTIFICATE

Customer Name: City of San José ("City")

Project Name: Permitting System for the Police Department

This Final System Acceptance Certificate memorializes the occurrence of Final System Acceptance.

Contractor and the City acknowledge that:

1   Contractor has delivered the System, Software, Services, and documentation promised under this Agreement.

2   The System is accepted, and all punch list items generated during testing have been complete.

3   By acknowledging the Final Acceptance of the System, the City agrees to pay any remaining and approved outstanding invoices to Contractor, including previously withheld retainage.

City of San José ("City")   **TruePoint Solutions, LLC ("Contractor")**

By: _____   By: _____

Name: _____   Name: _____

Title: _____   Title: _____

Date: _____   Date: _____

EXHIBIT A-5
PAYMENT CARD INDUSTRY (PCI) REQUIREMENTS

Contractor represents and warrants that any system used by the Contractor and the software applications it provides for the purpose of performing services related to storing, processing or transmitting payment cardholder data at any point during the term of this contract shall be secured and certified to meet the Payment Card Industry Data Security Standard ("PCI-DSS") and the Payment Application Data Security Standard ("PA-DSS") established by the Payment Card Industry Security Standards Council as set forth online at https://www.pcisecuritystandards.org, as may be amended by the PCI Security Standards Council from time to time.

1   **Performance Standards:** PCI-DSS is a multifaceted security standard comprised of twelve (12) general requirements, including requirements for security management, policies, procedures, network architecture, software design, and other critical protective measures. The following requirements are designed to build and maintain a secure network; protect cardholder data; ensure the maintenance of vulnerability management programs; implement strong access control measures; regularly monitor and test networks; and ensure the maintenance of information security policies:

1.1 Build and Maintain a Secure Network
  1.1.1   Install and maintain a firewall configuration to protect cardholder data.
  1.1.2   Do not use vendor-supplied defaults for system passwords and other security parameters.

1.2 Protect Cardholder Data
  1.2.1   Protect stored cardholder data using methods such as encryption, truncation, masking, hashing, and any other effective methods of protecting stored data to mitigate potential risks.
  1.2.2   Encrypt transmission of cardholder data over open, public networks.

1.3 Maintain a Vulnerability Management Program
  1.3.1   Use and regularly update anti-virus software or programs.
  1.3.2   Develop and maintain secure systems and applications.

1.4 Implement Strong Access Control Measures
  1.4.1   Restrict access to cardholder data to ensure critical data can only be accessed by authorized personnel, systems, and processes based on the least amount of data and privileges needed to perform a job.
  1.4.2   Assign a unique identification ("ID") to each person with computer access to maintain accountability and traced actions taken on critical data and systems to known and authorized users.
  1.4.3   Restrict physical access to cardholder data.

1.5 Regularly Monitor and Test Networks
  1.5.1   Track and monitor all access to network resources and cardholder data.

1.5.2   Regularly test security systems and processes.

1.6 Maintain an Information Security Policy
1.6.1   Maintain a policy that addresses information security for all personnel.

2   **Certification:** Contractor agrees to promptly provide, from time to time at the request of the City, current evidence, in form and substance reasonably satisfactory to City, of compliance with PCI-DSS and PA-DSS, which has been properly certified by an authority recognized by the payment card industry for that purpose. If during the term of this Agreement, Contractor undergoes, or has reason to believe that it will undergo, an adverse change in its certification or compliance status with the PCI-DSS or PA-DSS or other material payment card industry standards, it will promptly notify the City of such circumstances.

3   **Audit:** Contractor agrees to, at Contractor's own expense, perform an independent audit of any system used to store, process, or transmit payment cardholder data by an independent third party on a quarterly basis to ensure the system is and continues to satisfy PCI-DSS. At a minimum, the audit shall scan for all known methods used by hackers to access private information and vulnerabilities that would allow malicious software (i.e. viruses and worms) to gain access to or disrupt the network devices.

4   **Material Breach:** Failure by Contractor to comply with any provision of these PCI Requirements shall constitute a material breach of this Agreement.

Notifications: Should the Contractor have a failure of security protocols such that customer data is compromised, the Contractor shall immediately notify the City.

EXHIBIT A-6
PRIVACY AND DISCLOSURE POLICY

The purpose of this statement is to define the City of San José's policy with regard to the collection and use of personally identifiable information (PII). PII is any information relating to an identified or identifiable individual who is the subject of the information. Users of the City Web Site should be informed of the following:

The City of San José collects two kinds of customer information: (1) anonymous and (2) personally identifiable information (PII).

1   Anonymous information
This type of information does not identify specific individuals and is automatically transmitted by City browser. This information consists of:
- The URL (Uniform Resource Locator or address) of the web page user previously visited,
- The domain names and/or IP addresses which are numbers that are automatically assigned to City computer whenever user are connected to the Internet or World Wide Web.
- The browser version users are using to access the site.

This information is used to help improve the City's Web Site. None of the information can be linked to an individual.

2   Personally Identifiable Information (PII)
This type of information could include name, address, email address, telephone number, and credit/debit card information. The City will make every reasonable effort to protect the user's privacy. It restricts access to personally identifiable information to those employees who will respond to the request. The City does not intentionally disclose any personal information about customers to any third parties or outside the City except as required by law or by the consent of the person providing the information.

The City only collects personally identifiable information that is required to provide service. Users can decline to provide us with any personal information. However, if a user should choose to withhold requested information, the City may not be able to provide the user with the online services dependent upon the collection of that information.

3   Access to Personally Identifiable Information
Access to personally identifiable information in public records at local levels of government in San José is controlled primarily by the California Public Records Act (Government Code Section 6250, et. seq.). Information that is generally available under the Public Records Act may be posted for electronic access through the City's Web Site. While the Public Records Act sets the general policies for access to City records, other sections of the California code as well as federal laws also deal with confidentiality issues.

4 Email addresses

Email addresses obtained through the City's Web Site will not be sold or given to other private companies for marketing purposes. The information collected is subject to the access and confidentiality provisions of the Public Records Act, other applicable sections of the California code, as well as federal laws. Email or other information requests sent to the City Web Site may be maintained in order to respond to the request, forward that request to the appropriate City staff, communicate updates to the City page that may be of interest to citizens, or to provide the City web designer with valuable customer feedback to assist in improving the site. Individuals can cancel any communications regarding new service updates at any time.

5 Use of "Cookies"

Some City applications use "cookies." A cookie is a small data file that certain web sites write to the user's hard drive when the user visits them. A cookie file can contain information such as a user id that the site uses to track pages the user has visited. However, the only personal information a cookie can contain is information supplied by the user. A cookie is only a test file and cannot read data off the user's hard disk or read cookie files created by other sites. Cookies can track user traffic patterns, recognize the user's browser when the user returns, and provide personalized content without requiring sign-in.

Users can refuse cookies by turning them off in their browser. However, cookies may be required to use some of the web applications on the City's website.

6 Security

The City of San José is committed to data security and the data quality of personally identifiable information that is either available from or collected by the City's website and has taken reasonable precautions to protect such information from loss, misuse, or alteration.

7 Contractual Services for the City's Web Site and On-Line Services

To ensure that contractors who have access to or provide contractual services for the City's online (e-government) services are not allowed to re-sell or in any way share or convey to another party or use it for another purpose any information that they may have access to in the course of doing business for the City, all City contracts regarding such services shall contain a requirement that the Contractor must comply with the City's website and e-government policies, including this policy.

8 Electronic Signatures and Payments

The City of San José is committed to data security and the data quality of personally identifiable information that is either available from or collected by the Contractor website and has taken reasonable precautions to protect such information from loss, misuse, or alteration. When a City application accepts credit cards or any other particularly sensitive information for any of its services, it encrypts all ordering information, such as the customer's name and credit card number, in order to protect its confidentiality.

9 Disclaimer

The City website should contain a disclaimer substantially containing the following information:

9.1 The City of San José is neither responsible nor liable for any delays, inaccuracies, errors, or omissions arising out of user's use of the City's website or with respect to the material contained on the website, including without limitation, any material posted on the website nor for any viruses or other contamination of user's system. The City website and all materials contained on it are distributed and transmitted "as is" without warranties of any kind, either express or implied, including without limitations, warranties of title or implied warranties of merchantability or fitness for a particular purpose. The City of San José is not responsible for any special, indirect, incidental, or consequential damages that may arise from the use of, or the inability to use, the website and/or the materials contained on the website whether the materials contained on the website are provided by the City of San José or a third party. The City of San José is neither responsible nor liable for any viruses or other contamination of user's system.

9.2 *Access to Information*
Unless otherwise prohibited by state or federal law, rule or regulation, user will be granted the ability to access and correct any personally identifiable information. The City will take reasonable steps to verify user's identity before granting such access. Each City service that collects personally identifiable information will allow a review and update of that information.

9.3 *Non-City Web Sites*
Non-City websites may be linked through the City's website. Many non-City sites may or may not be subject to the Public Records Act and may or may not be subject to other sections of the California code or federal law. Visitors to such sites are advised to check the privacy statements of such sites and to be cautious about providing personally identifiable information without a clear understanding of how the information will be used.

9.4 The City is not responsible for, and accepts no liability for, the availability of these outside resources. Linked websites are not under the control of, nor maintained by, the City, and the City is not responsible for the content of these websites, which can and does change frequently, nor for any internal links the displayed website may contain. In addition, inclusion of the linked websites does not constitute an endorsement or promotion by the City of any persons or organizations sponsoring the displayed website.

EXHIBIT B
COMPENSATION AND PAYMENT SCHEDULE

1   Compensation and Payment Terms

1.1   The maximum amount payable for all products and services provided under this Agreement shall not exceed **Three Hundred Seventy-Five Thousand Dollars ($375,000)** during the Initial Term. Any additional services requested by the City that would exceed the preceding maximum amount will be addressed in accordance with the Change Order Procedures. No additional services will be performed unless both Parties execute a Change Order outlining the services requested and the compensation agreed for such services.

1.2   Progress payments shall be made to Contractor by City based on net thirty (30) days payment terms, following delivery and acceptance of designated milestones as shown below in Table B1: Payment Schedule. All payments are based upon City's acceptance of Contractor's performance as evidenced by successful completion of all of the deliverables as set forth for each milestone. City shall have no obligation to pay unless Contractor has successfully completed and City has approved the milestone for which payment is due.

1.3   Payment for any deliverable under this Agreement, or inspection or testing thereof by City, shall not constitute acceptance or relieve Contractor of its obligations under this Agreement. City may inspect each deliverable and reject upon notification to Contractor any that do not conform to the specifications or other requirements of this Agreement. Rejected deliverables shall be promptly corrected, repaired, or replaced by Contractor. If City receives deliverables with defects or nonconformities not reasonably apparent on inspection, the City reserves the right to require prompt correction, repair, or replacement by Contractor in accordance with Contractor's warranty obligations.

2   Project Performance and Payment Schedule

2.1   Work shall commence within two weeks of Agreement execution. All timeline dates are understood to be close of business, 5:00 pm Pacific Time. If timeline dates fall on a weekend or City holiday, the date is understood to be the next business day.

2.2   Compensation and payments shall be made to Contractor by City based on Net Thirty (30) days payment terms.

2.3   Implementation Invoicing Procedure: Contractor will invoice the City upon completion of each milestone but not more frequently than monthly.

2.4   The City agrees to compensate Contractor for the Services performed and the software customizations provided in accordance with the terms and conditions of this

Agreement. Contractor shall invoice City in accordance with the Payment Schedule in Table B1 below:

Table B1: Payment Schedule

Deliverable/Milestone	Estimated Completion	Cost	Payment Less 20%	Estimated % Complete
Implementation Services: One-Time Costs				
Project Kick-Off/Project Management/Project Implementation Plan	Jan. 2019	$29,800	$23,840	6%
Business Requirements Development/Business Process Map	April 2019	$52,000	$41,600	11%
System Design/Configuration/Implementation in accordance with Business Process Map	Aug. 2019	$105,600	$84,480	22%
Integration with eResource (scheduling software), Mug Capture, and Versaterm (3 one-way interfaces based on batch processing)	Oct. 2019	$74,600	$59,680	16%
5 Custom Reports	June 2019	$18,000	$14,400	4%
3 days of Administrator Training and 5 days of End User Training	Mar. 2019	$22,000	$17,600	5%
Testing, including 5 days of User Acceptance Training/Testing	Nov. 2019	$14,000	$11,200	3%
Go-Live	Dec. 2019	$28,000	$22,400	6%
Travel Reimbursement Not to Exceed	-	$31,000	$24,800	7%
Final Acceptance*	Dec. 2019	--	$75,000	20%
4. MAXIMUM COMPENSATION (Initial Term)		$375,000	$375,000	100%

All amounts stated above are in United States Currency.
*The signed Final Acceptance Certificate (Exhibit A-4) triggers payment of the 20% retainer.

3 **Renewal Period Compensation**

3.1 After the Initial Term, the City reserves the right to extend the term of this Agreement pursuant to Section 2.2 ("Options to Extend") at the same rates as the Initial Term unless otherwise requoted and agreed to in writing by the Parties.

3.2 Price Renegotiation. Contractor may request adjustments to the compensation rates sixty (60) days prior to an option term. Contractor shall provide information justifying reasons for any increase, and City shall not unreasonably withhold approval of any increase provided the renewal quote for ongoing services does not increase more than the Producer Price Index (PPI) over the previous year's fees, unless otherwise negotiated.

3.3 City shall provide Contractor prior written notice in the form of Exhibit E of its intention to exercise its option for the next term prior to the end of the then current term. The City's Director of Finance or designee is authorized to exercise options on behalf of the City.

4   Additional Services

4.1   In the event the City requires additional services, Contractor shall provide a written quotation, at no cost to the City, of the type of Additional Service requested and the time required to complete requested work.

4.2   Supplemental professional service rates shall not exceed the following:

Supplemental Services	Year 1 Hourly Rate	Year 2 Hourly Rate	Year 3 Hourly Rate
Project Management	$185	$185	$185
Integration Services	$185	$185	$185
Software/Web Development	$185	$185	$185
Database Development	$185	$185	$185
Training	$185	$185	$185
Custom Report Writing	$175	$175	$175

4.3   The City reserves the right to request a fixed priced quote in lieu of time and materials. Any fixed price quotes shall be consistent with the agreed-upon supplemental service rates in Section 4.2 above and must be good for at least ninety (90) days.

4.4   Quotes must be approved by the City through an executed Change Order prior to any work being performed.

EXHIBIT C
INSURANCE REQUIREMENTS

Contractor, at Contractor's sole cost and expense, shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by Contractor, its agents, representatives, employees or subcontractors or suppliers.

I.   Minimum Scope and Limit of Insurance

There shall be no endorsements reducing the scope of coverage required below unless approved by the City's Risk Manager.

Type of Insurance	Minimum Limit
1 Commercial General Liability The coverage provided by Insurance Services Office "occurrence" form CG 0001, including coverages for contractual liability, personal injury, broad form property damage, independent contractors, products and completed operations.	$1,000,000 per occurrence for bodily injury, personal injury and property damage or $2,000,000 annual aggregate.
2 Automobile Liability The coverage provided by Insurance Services Office form number CA 0001. Coverage shall be included for all owned, non-owned and hired automobiles.	$1,000,000 combined single limit per accident for bodily injury and property damage.
3 Workers' Compensation and Employer Liability As required by the Labor Code of the State of California.	
4 Professional Errors and Omissions Including coverages for negligent acts, errors, or omissions arising from professional services provided under this contract, with any deductible not to exceed $25,000 each claim.	Not less than $1,000,000 each claim and annual aggregate.
5 Cyber & Technology Errors & Omission Technology/professional liability insurance and data protection liability insurance covering liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering services provided under this agreement as well as all Vendor costs, including damages it is obligated to pay Client or any third party, which are associated with damaged, lost or corrupted data. This may be met through a standalone policy or included as a component in a Commercial General Liability Policy.	Not less than $1,000,000 each occurrence.

II. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City's Risk Manager.

III. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages

   a. The City, its officials, employees, and agents are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, Contractor; products and completed operations of Contractor; premises owned, leased 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 the City, its officials, employees, and agents.

   b. Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees, and agents. Any insurance or self-insurance maintained by the City, its officials, employees, and agents shall be excess of Contractor's insurance and shall not contribute with it.

   c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or agents.

   d. Coverage shall state that 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.

   e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, and agents.

2. Workers' Compensation and Employers Liability

   Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, and agents.

3. All coverages

   Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after

thirty (30) days' prior written notice has been given to the City; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

IV. Acceptability of Insurance

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

V. Verification of Coverage

Contractor shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by Contractor's insurance company as evidence of the stipulated coverages.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San José – Finance Department
Risk & Insurance
200 East Santa Clara St., 14th Floor
San Jose, CA 95113-1905

VI. Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

EXHIBIT D
CHANGE ORDER FORM

CHANGE ORDER # _____

Pursuant to Section 7 of the Agreement for a Permitting System for the Police Department between _____ ("Contractor") and the City of San José ("City"), the Agreement is hereby amended as follows:
(The following language is provided as an example of how to complete this form.)
1. Contractor shall provide the following additional services at the costs indicated below:

TOTAL	

2. The following services, products or deliverables are hereby deleted and the associated costs in amounts set forth below are also deleted.

TOTAL	

3. Exhibit ___ is hereby amended to read as set forth in the Revised Exhibit ___ which is attached hereto.

4. All of the terms and conditions of the Agreement not modified by Change Order shall remain in full force and effect.

	Total Cost of Change	
	Total Credit of Change	
	Previous Amendments and/or Change Orders	
	Original Contract	

ACCEPTANCE	**APPROVED AS TO FORM**
Contractor hereby agrees to accept the amount set forth herein as payment in full of the work described and further agrees that Contractor is entitled to no additional time or compensation for such work other than as set forth herein.	
	_____
	Senior Deputy City Attorney
Contractor	**City of San José**
_____ _____	_____ _____
Date	Name
	Title

EXHIBIT E
NOTICE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE:	Permitting System for the Police Department
CONTRACTOR Name and Address:	
DATE:	

Pursuant to Section 2.2 of the Agreement referenced above, the City of San José hereby exercises its option to extend the term under the following provisions:

OPTION NO.	

NEW OPTION TERM

Begin date:	
End date:	

☐ **CHANGES IN RATE OF COMPENSATION**

Percentage change in CPI upon which adjustment is based:	

Pursuant to Section ___ of the Agreement the Rates of Compensation are hereby adjusted as follows:
(use attachment if necessary)

MAXIMUM COMPENSATION for New Option Term:	

For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of San José hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

CITY OF SAN JOSÉ a municipal corporation
By_____ Name: Title: Date:

EXHIBIT F
SOFTWARE-AS-A-SERVICE (SAAS) SUBSCRIPTION AGREEMENT
BETWEEN THE CITY OF SAN JOSÉ
AND
INFOR PUBLIC SECTOR, INC.

Infor SaaS Agreement and Order From to be inserted here.

SUBSCRIPTION LICENSE AND SERVICES AGREEMENT
BETWEEN THE CITY OF SAN JOSÉ
AND
INFOR PUBLIC SECTOR, INC.

THIS SUBSCRIPTION LICENSE AND SERVICES AGREEMENT (the "SLSA" or "Agreement") is between **Infor Public Sector, Inc.** ("Infor") and **City of San José** ("Licensee") as of the Effective Date. Each of Infor and Licensee are sometimes hereinafter referred to as a "Party" and collectively as the "Parties." The Parties agree as follows:

1. **Definitions.**
   a. **"Affiliate"** means any entity, directly or indirectly, controlling, controlled by, or under common control with, Infor.
   b. **"Authorized Users"** means Licensee's employees registered in the database with a unique UserID and a unique password.
   c. **"Confidential Information"** means non-public information that is identified as or would be reasonably understood to be confidential and/or proprietary. Confidential Information of Infor includes, without limitation, the Documentation and the Subscription Software, including any software code and all algorithms, methods, techniques, and processes revealed or utilized therein. Confidential Information of Licensee includes Licensee Data. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the Recipient; (ii) the Discloser regularly discloses to third parties without restriction on disclosure; (iii) the Recipient obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation known to Recipient; (iv) is independently developed by the Recipient without use of Confidential Information; or (v) information subject to disclosure in accordance with the California Public Records Act or the Freedom of Information Act.
   d. **"Discloser"** means the Party providing Confidential Information to the Recipient.
   e. **"Documentation"** means the then-current Infor-provided documentation relating to the features, functions, and use of the Subscription Software.
   f. **"Documented Defect"** means a material deviation between the then-current, general release version of the Subscription Software and its Documentation.
   g. **"Effective Date"** means the date identified on the signature page of this SLSA as the Effective Date.
   h. **"Initial Subscription Term"** means the initial subscription period set forth in the Order Form.
   i. **"Intellectual Property Rights"** means any and all rights in patents, copyrights, trademarks and service marks.
   j. **"Licensee Data"** means information provided, entered or uploaded for use by or with the Subscription Software by the Licensee or its Authorized Users.
   k. **"License Restriction"** means any limitation on the use of the Subscription Software identified in the Agreement (e.g., number of Authorized Users, locations, connections).
   l. **"Personal Information"** means information provided to Infor by or at the direction of Licensee, or to which access was provided to Infor in the course of Infor's performance under this SLSA that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit report information, biometric or health data, answers to security questions and other personal identifiers). Personal Information shall include any non-public personal

information regarding any individual that is subject to applicable national, state, regional, and/or local laws and regulations governing the privacy, security, confidentiality and protection of non-public personal information.

m. "**Recipient**" means the Party receiving Confidential Information of the Discloser.

n. "**Renewal Term**" means any renewal or extension of Licensee's license to use the Subscription Software following the expiration of the Initial Subscription Term.

o. "**Residual Knowledge**" shall mean ideas, concepts, know-how or techniques related to the Discloser's technology and Confidential Information that are retained in the unaided memories of the Recipient who had rightful access to Confidential Information.

p. "**Service Level Description**" means the Service Level Description document attached to the Order Form.

q. "**Subscription Fees**" means the fees for the Subscription Services as set forth in the Order Form.

r. "**Subscription Services**" means the Subscription Software-related application hosting services and Support (as defined in Section 3(b)) that Infor provides Licensee under this SLSA.

s. "**Subscription Software**" means collectively or individually the computer software programs for which Infor is providing the Subscription Services.

t. "**Subscription Term**" means the Initial Subscription Term or any Renewal Term.

u. "**Third Party Licensor**" means a third party whose software products ("**Third Party Products**") have been made available to Infor for distribution and licensing under the terms of its agreement with Infor (a "**Third Party Agreement**").

v. "**Updates**" means generally available updates, enhancements or modifications to the then-current, general release version of the Subscription Software that are not separately priced or licensed as new products.

w. "**UserID**" means a unique user identification credential used in combination with a unique password to access the Subscription Services.

x. "**Order Form**" means any order form executed between the Parties incorporating the terms of this Agreement which shall contain, without limitation, a list of the Subscription Software and associated quantity and License Restrictions, a description of the Subscription Services, Subscription Fees, and payment terms.

2. **License.** Subject to the terms and conditions of this SLSA Infor hereby grants to Licensee a non-exclusive, non-transferable, limited license (without the right to sublease or sublicense) to access and use the Subscription Software and the Subscription Services, during the Subscription Term, in an operating environment hosted by Infor, for Licensee's own internal use. Any rights not expressly granted in this SLSA are expressly reserved.

a. Documentation. Licensee may make a reasonable number of copies of the Documentation for the Subscription Software for its internal use in accordance with the terms of this SLSA.

b. Additional Restrictions on Use of the Subscription Software and Subscription Services. In no event shall Licensee access the Subscription Software on any environment outside the hosted environment selected by Infor as part of the Subscription Services. In no event shall Licensee or its Authorized Users possess or control the Subscription Software or any related software code. Licensee is prohibited from causing or permitting the reverse engineering, disassembly or de-compilation of the Subscription Software. Except as expressly provided by this SLSA, Licensee is prohibited from using the Subscription Software to provide service bureau services to third parties. Licensee will not allow the Subscription Software to be used by, or disclose all or any part of the Subscription Software to, any person except Authorized Users. Licensee acknowledges and agrees that U.S. export control laws and other applicable export and import laws govern its use of the Subscription Software and Licensee will neither export or re-export, directly or indirectly, the Subscription Software, nor any direct product thereof in violation of such laws, or use the Subscription Software for any purpose prohibited by such laws.

c. Intellectual Property Rights Notices. Licensee is prohibited from removing or altering any of the Intellectual Property Rights notice(s) embedded in the Subscription Software or that Infor otherwise provides with the Subscription Services. Licensee must reproduce the unaltered Intellectual Property Rights notice(s) in any full or partial copies that Licensee makes of the Documentation.

d. Ownership. Use of the Subscription Software and Subscription Services does not grant any ownership rights in or to the Subscription Software, the Subscription Services, or the Documentation. Licensee Data shall be the sole property of Licensee; however, Infor may aggregate anonymous statistical data regarding use and functioning of its system by its various licensees, and all such data (none of which shall be considered Licensee Data), will be the sole property of Infor.

3. **Subscription Services.**
   a. Hosted Environment. Infor will provide the application hosting environment, including the hardware, equipment, and systems software configuration on which Infor supports use of the Subscription Software and Subscription Services, on servers located at a facility selected by Infor.

   b. Support. Infor shall (a) provide Licensee with access (via the internet, telephone or other means established by Infor) to Infor's support helpline, (b) install, when and if generally available, Updates; and (c) use reasonable efforts to correct or circumvent any material deviation between the then-current, general release version of the Subscription Software and its Documentation (the foregoing referred to collectively as "Support"). Support is included in the Subscription Fee.

   c. User Accounts. Licensee is responsible for maintaining its own Authorized User UserIDs and passwords which can be managed through the Subscription Software interface. Licensee is responsible for maintaining the confidentiality of Licensee's UserIDs and passwords and shall cause its Authorized Users to maintain the confidentiality of their UserIDs and Passwords. Licensee is responsible for all uses of and activities undertaken with UserIDs registered on Licensee's account. Licensee agrees to immediately notify Infor of any unauthorized use of Licensee's UserIDs of which Licensee becomes aware.

   d. Connectivity. Infor will be responsible for maintaining connectivity from its network to the Internet which is capable of servicing the relevant Internet traffic to and from the hosted environment. Licensee is responsible for providing connectivity to the Internet for itself and its Authorized Users. Licensee shall also be responsible for ensuring that latency and available bandwidth from the user's desktop to Infor's hosted routers is adequate to meet Licensee's desired level of performance. If Licensee requires a VPN or private network connection to the Subscription Services, Licensee is responsible for all costs associated with any specialized network connectivity required by Licensee.

   e. Restrictions. Infor shall have no obligation to correct a problem caused by Licensee's negligence, Licensee's equipment malfunction or other causes beyond the control of Infor.

4. **Payment and Taxes.**
   a. Payment. Licensee shall pay Infor annual Subscription Fees. Subscription Fees are payable in advance and Infor will invoice Licensee for Subscription Fees prior to the commencement of the portion of the Subscription Term to which such fees apply. After the Initial 3-Year Term, the Subscription Fees shall be subject to annual adjustments not to exceed 5% over the previous year's fees for the same Subscription Software and Subscription Services and quantities. Any other requests for an increase in the annual Subscription Fee must be justified by Infor and approved by Licensee. Except as otherwise set forth in the Agreement, Subscription Fees are non-refundable. Licensee will pay each Infor invoice in accordance with the terms set forth in

the Order Form. Notwithstanding anything to the contrary in this SLSA, Infor reserves the right to suspend access to the Subscription Services in the event of any past due Subscription Fees.

    b. <u>Taxes</u>. Licensee is responsible for paying all sales and use taxes applicable to this Agreement (except for taxes based on Infor's net income or capital stock). Applicable tax amounts (if any) are not included in the Subscription Fees set forth on any Order Form.

5. **<u>Limited Warranties, Disclaimer of Warranties, and Remedies.</u>**
    a. <u>Right to Grant License</u>. Infor warrants that it owns all rights, titles and interests in and to the Subscription Software or has obtained rights in such Subscription Software sufficient to grant the licenses granted to Licensee under this SLSA. Licensee's exclusive remedy, and Infor's exclusive obligation, for a breach of this warranty is set forth in Section 7 (Indemnity).

    b. <u>Limited Subscription Software Warranty by Infor and Remedy For Breach.</u> Infor warrants that the Subscription Software licensed to Licensee will operate without a Documented Defect for a period of ninety (90) days from the Order Form Date as defined in the Order Form. Infor's sole obligation with respect to a breach of the foregoing warranty shall be to repair or replace the Subscription Software giving rise to the breach of warranty. If Infor is unable to repair or replace such Subscription Software within a reasonable period of time, then, subject to the limitations set forth in Section 14 of this SLSA, Licensee may pursue its remedies at law to recover direct damages resulting from the breach of this warranty. The remedies in this Section 5(b) are exclusive and in lieu of all other remedies, and represent Infor's sole obligations, for a breach of the foregoing warranty. Licensee must provide notice to Infor of any warranty claim within the warranty period. For clarity, Licensee's entitlement to Support (as defined in Section 3(b)) in connection with any Documented Defect shall continue throughout the Subscription Term.

    c. <u>Malicious Code</u>. Infor represents that it has used commercially reasonable best efforts utilizing generally accepted industry tools and practices to provide Subscription Software that does not contain any "time bombs," "worms," "viruses," "Trojan horses," "protect codes," "data destruct keys," or other programming devices that are intended to access, modify, delete, damage, deactivate or disable the Subscription Services ("Malicious Code"). As Licensee's sole remedy for breach of this representation, Infor shall take action immediately to investigate, identify and remove such Malicious Code from the Subscription Software, at no cost to Licensee.

    d. <u>Limited Services Warranty and Remedy For Breach.</u> Infor warrants to Licensee that, Infor will render the Subscription Services with commercially reasonable care and skill. Infor further warrants that the hosted environment will be available at all times throughout the Subscription Term, subject to the exceptions and allowances described in the Availability section of the Service Level Description Exhibit attached to the applicable Order Form. The level of unavailability shall not exceed one half of one percent (0.5%) per month, excluding Scheduled Maintenance as described in the Service Level Description (the "Down Time Warranty"). In the event of a breach of the foregoing warranty, Infor shall apply service level credits based on the actual availability measured for the applicable period as follows:

Availability	Service Level Credit
99.500% or greater	No Service Level Credit
99.499% - 99.000%	5% of the monthly prorated subscription fee
98.999% - 98.500%	15% of the monthly prorated subscription fee
98.499% - 95.000%	25% of the monthly prorated subscription fee
Below 95.000%	35% of the monthly prorated subscription fee

Service level credits for Subscription Fees paid on an annual basis shall be based on a monthly equivalent fee. For example, a 5% service level credit on an annual subscription fee shall be 5% of 1/12 of the annual fee. Service level credits shall be applied to Licensee's next invoice or, if Licensee has paid the final invoice under this SLSA, service level credits shall be paid to Licensee within thirty (30) calendar days following the determination that the credit is due. The service level credit is the exclusive remedy and is in lieu of all other remedies for breach of the Down Time Warranty.

e. Disclaimer of Warranties. The limited warranties in this Section 5 are made to Licensee exclusively and are in lieu of all other warranties. **INFOR MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE SUBSCRIPTION SOFTWARE AND SUBSCRIPTION SERVICES PROVIDED UNDER THIS SLSA, IN WHOLE OR IN PART. INFOR EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. INFOR EXPRESSLY DOES NOT WARRANT THAT THE SUBSCRIPTION SOFTWARE OR SUBSCRIPTION SERVICES, IN WHOLE OR IN PART, WILL BE ERROR FREE OR OPERATE WITHOUT INTERRUPTION OR MEET LICENSEE'S REQUIREMENTS.**

f. Abrogation of Limited Warranty. Infor will have no obligation under this Section 5 to the extent that any alleged breach of warranty is caused by any modification of the Subscription Software not performed by or on behalf of Infor. To the extent that an alleged breach of warranty concerns a Third Party Product that is subject to a more limited warranty under a Third Party Agreement than specified in Section 5 above, Infor's obligations hereunder will be further limited accordingly.

g. **FAILURE OF ESSENTIAL PURPOSE. THE PARTIES HAVE AGREED THAT THE LIMITATIONS SPECIFIED IN SECTIONS 5 AND 13 WILL SURVIVE AND APPLY EVEN IF ANY REMEDY SPECIFIED IN THIS SLSA IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, AND REGARDLESS OF WHETHER LICENSEE HAS ACCEPTED ANY SUBSCRIPTION SOFTWARE OR SUBSCRIPTION SERVICE UNDER THIS SLSA.**

h. **HIGH RISK ACTIVITIES. THE SUBSCRIPTION SOFTWARE IS NOT FAULT-TOLERANT AND IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE AS ON-LINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR AIRCRAFT COMMUNICATION SYSTEMS, MASS TRANSIT, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF THE SUBSCRIPTION SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK ACTIVITIES"). ACCORDINGLY, INFOR DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES. LICENSEE AGREES THAT INFOR SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM OR RELATED TO THE USE OF THE SUBSCRIPTION SOFTWARE IN SUCH APPLICATIONS.**

6. **Confidential Information.**
   a. Confidentiality. The Confidential Information disclosed under this SLSA may be used, disclosed or reproduced only to the extent necessary to further and fulfill the purposes of this SLSA, or as required by law. Except as otherwise permitted under this SLSA, the Recipient will not knowingly disclose to any third party, or make any use of the Discloser's Confidential Information, unless required to do so by law. The Recipient will use at least the same standard of care to maintain the confidentiality of the Discloser's Confidential Information that it uses to maintain the confidentiality of its own Confidential Information, but in no event less than reasonable care. The non-disclosure and non-use obligations of this SLSA will remain in full force with respect to each item of Confidential Information for a period of five (5) years after Recipient's receipt of that item; provided, however, that Licensee's obligations to maintain the Subscription Software and Documentation as confidential will survive in perpetuity. Each of Licensee and Infor shall be shall be responsible for the breach of the confidentiality terms contained in this Section 6 by any of its directors, officers, employees, Authorized Users, agents, accountants and advisors. Notwithstanding the foregoing, this Section is not intended to prevent (a) a Recipient from using Residual Knowledge, subject to any Intellectual Property Rights of the Discloser, or (b) Infor from using aggregated data regarding the use of the Subscription Services to provide reports or analytics to Licensee or to improve the performance of Infor's products, provided such data does not contain any Personal Information regarding Licensee, its employees, customers or Authorized Users, or (c) disclosure in accordance with the California Public Records Act or the Freedom of Information Act. If the Recipient should receive any legal request or process in any form seeking disclosure of Discloser's Confidential Information, or if the Recipient should be advised by counsel of any obligation to disclose such Confidential Information, the Recipient shall (if allowed by law) provide the Discloser with prompt notice of such request or advice so that the Discloser may seek a protective order or pursue other appropriate assurance of the confidential treatment of the Confidential Information. Regardless of whether or not a protective order or other assurance is obtained, the Recipient shall furnish only that portion of the Discloser's Confidential Information which is legally required to be furnished and to use reasonable efforts to assure that the information is maintained in confidence by the Party to whom it is furnished.
   b. Security Policies and Safeguards. Infor shall establish and maintain administrative, technical, and physical safeguards designed to protect against the destruction, loss, unauthorized access or alteration of Licensee Data and Personal Information in the possession or under the control of Infor or to which Infor has access, which are: (i) no less rigorous than those maintained by Infor for its own information of a similar nature; (ii) no less rigorous than generally accepted industry standards; and (iii) required by applicable laws. The security procedures and safeguards implemented and maintained by Infor pursuant to this Section 6(b) shall include, without limitation:
      i. User identification and access controls designed to limit access to Licensee's Data to authorized users;
      ii. the use of appropriate procedures and technical controls regulating data entering Infor's network from any external source;
      iii. the use of encryption techniques when Licensee's Data is transmitted or transferred into or out of the hosted environment;
      iv. physical security measures, including without limitation securing Licensee's Data within a secure facility where only authorized personnel and agents will have physical access to Licensee Data;
      v. operational measures, including without limitation IT Service Management (ITSM) processes designed to ensure the correct and secure operations of information processing activities;

  vi. periodic employee training regarding the security programs referenced in this Section; and

  vii. periodic testing of the systems and procedures outlined in this Section.

 c. <u>Review of Controls</u>. Once in each 12 month period during the Subscription Term, Infor shall, at its cost and expense, engage a duly qualified independent auditor to conduct a review of the design and operating effectiveness of Infor's defined control objectives and control activities in connection with the Subscription Services. Infor shall cause such auditor to prepare a report in accordance with the American Institute of Certified Public Accountants Statement on Standards for Attestation Engagements No. 16 (SSAE 16) or an equivalent standard, which may include ISAE 3402 (the "Audit Report"). Licensee shall have the right to request and receive a copy of the Audit Report and Licensee may share a copy of such Audit Report with its auditors and regulators, provided that, such Audit Report shall be Infor's Confidential Information (as defined in this SLSA).

 d. <u>Security Incident Response</u>. In the event that Infor becomes aware that the security of any Licensee Data or Personal Information has been compromised, or that such Licensee Data or Personal Information has been or is reasonably expected to be subject to a use or disclosure not authorized by this SLSA (an "Information Security Incident"), Infor shall: (i) promptly (and in any event within 24 hours of becoming aware of such Information Security Incident), notify Licensee, in writing, of the occurrence of such Information Security Incident; (ii) investigate such Information Security Incident and conduct a reasonable analysis of the cause(s) of such Information Security Incident; (iii) provide periodic updates of any ongoing investigation to Licensee; (iv) develop and implement an appropriate plan to remediate the cause of such Information Security Incident to the extent such cause is within Infor's control; and (v) cooperate with Licensee's reasonable investigation or Licensee's efforts to comply with any notification or other regulatory requirements applicable to such Information Security Incident.

 e. <u>Notification and Credit Monitoring</u>. If Infor breaches its obligations in this Section 6 and such breach directly results in an unauthorized disclosure of Personal Information, then Infor will provide: (1) set up a call center for one year, (2) provide credit monitoring services as required by law for one year, and (3) pay the costs of mailing notices of the data security breach to affected parties of such breach.

7. **Indemnity by Infor.** Infor will defend, indemnify and hold Licensee harmless from and against any loss, cost and expense (including reasonable attorneys' fees) arising out of or relating to any third party claims against Licensee that the Subscription Software infringes any Intellectual Property Rights of others. Infor's obligations under this indemnification are expressly conditioned on the following: (i) Licensee must promptly notify Infor of any such claim; (ii) Licensee must, in writing, grant Infor sole control of the defense of any such claim and of all negotiations for its settlement or compromise so long as such settlement or compromise does not result in payment of money by Licensee or an admission of guilt by Licensee (if Licensee chooses to represent its own interests in any such action, Licensee may do so at its own expense, but such representation must not prejudice Infor's right to control the defense of the claim and negotiate its settlement or compromise); (iii) Licensee must reasonably cooperate with Infor to facilitate the settlement or defense of the claim. Infor will not have any liability hereunder to the extent the claim arises from (a) any modification of the Subscription Software by, on behalf of, or at the request of Licensee; or (b) the use or combination of the Subscription Software with any computer, mobile device, computer platform, operating system and/or data base management system other than provided by Infor. If any Subscription Software is, or in Infor's opinion is likely to become, the subject of an Intellectual Property Rights infringement claim, then Infor, at its sole option and expense, will either: (A) obtain for Licensee the right to continue using the Subscription Software under the terms of this SLSA; (B) replace the Subscription Software with products that are substantially equivalent in function, or modify the Subscription Software so that it becomes non-infringing and substantially

equivalent in function; or (C) refund to Licensee the un-used portion of the Subscription Services fee, if any, paid to Infor for the Subscription Software giving rise to the infringement claim, and discontinue Licensee's use of such Subscription Software. **THE FOREGOING SETS FORTH INFOR'S EXCLUSIVE OBLIGATION AND LIABILITY WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.**

8. **Term and Termination.**
   a. Term. With respect to the Subscription Software, the Initial Subscription Term shall be as set forth on the Order Form. After the Initial Term, the Parties may extend the term with a Renewal Term by entering into a mutually executed Order Form.
   b. Right of Termination. If either Party breaches any material obligation in this SLSA (including, without limitation, any obligation to pay Subscription Fees), and fails to remedy such breach (if such breach can be remedied) within thirty (30) days of receipt of written notice of such breach, the other Party may terminate this SLSA. Notwithstanding the foregoing, to the extent such material breach cannot be remedied through efforts of the breaching Party, the other Party has the right to terminate this SLSA on less than thirty days' written notice.
   c. Effect of Termination. Upon termination of this SLSA by either Party, Licensee's license to access and use the Subscription Software and Subscription Services shall immediately terminate as of the effective date of such termination. Termination of this SLSA will not release either Party from making payments which may be owing to the other Party under the terms of this SLSA through the effective date of such termination. Termination of this SLSA will be without prejudice to the terminating Party's other rights and remedies pursuant to this SLSA, unless otherwise expressly stated herein.
   d. Return of Licensee Data. Upon termination or expiration of this SLSA, Infor shall promptly make all Licensee Data available to Licensee as a native database export provided through Infor's FTP server. In the event that Licensee requires the return of Licensee Data in an alternate format or requires any other termination assistance services, Infor and Licensee shall mutually agree upon the scope of such termination assistance services and the fees and expenses payable for such termination assistance services.
   e. Survival of Obligations. All obligations relating to non-use and non-disclosure of Confidential Information, limitation of liability, and such other terms which by their nature survive termination, will survive termination or expiration of this SLSA.
   f. Non-Appropriation. Each payment obligation of Licensee is conditioned upon the availability of state or local government funds which are apportioned or allocated for the payment of such an obligation. If the funds are not allocated and available for the continuance of the function performed by Infor, the Order Form directly or indirectly involved in the performance of that function may be terminated by Licensee at the end of the period for which funds are available by providing Infor with written notice of such nonappropriation at least sixty (60) days prior to the first day of such period for which appropriations cannot be made. Licensee shall notify Infor at the earliest possible time of any Order Form which will or may be affected by a shortage of funds.

   No penalty shall accrue for Licensee in the event this provision is exercised, and Licensee shall not be liable for any future payments due or for any damages as a result of termination under this Section 8.f. This provision shall not be construed so as to permit Licensee to terminate this Agreement or any products or services in order to acquire similar products or services from another party. Contractor agrees to render reasonable cooperation to the City pursuant to the securing of financing hereunder. Despite the foregoing, the Licensee shall pay Infor for any Subscription Software or Subscription Services rendered in accordance with this Agreement up to the date of termination.

9. **Notices.** All notices and other communications required or permitted to be given under this SLSA must be in writing and must be personally served, or mailed, postage prepaid via U. S. mail return receipt requested, or sent via courier service, addressed to the respective Parties as follows:

| To City: | City of San José
Attention: Director of Finance
200 E. Santa Clara Street, 13th Floor
San José, CA 95113 |
| To Contractor: | Infor Public Sector, Inc.
Attention: General Counsel
40 General Warren Blvd
Suite # 110
Malvern, PA 19355 |

Notice will be effective on the date personally delivered or if sent by courier service, on the date of receipt. If mailed, must be registered or certified mail with return receipt requested. The parties may change their respective addresses in accordance with the provisions of this Section.

10. **Force Majeure.** Except with respect to the payment of fees hereunder, neither party will be liable to the other for any failure or delay in performance under this SLSA due to circumstances beyond its reasonable control, including Acts of God, war, terrorist acts, and labor disruption.

11. **Assignment.** Licensee may not assign or transfer any of its rights or obligations under this SLSA without the prior written consent of Infor, whether by operation of law or otherwise, including in connection with a change in control, merger, acquisition, consolidation, asset sale or other reorganization, and any attempt at such assignment or transfer will be void.

12. **No Waiver.** A party's failure to enforce its rights with respect to any single or continuing breach of this SLSA will not act as a waiver of the right of that party to later enforce any such rights or to enforce any other or any subsequent breach.

13. **Choice of Law; Severability.** This SLSA shall be governed by and interpreted in accordance with the laws of the State of California, without application of any conflict of laws provisions thereof, and all claims relating to or arising out of this SLSA, or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the State of California, without application of any conflict of laws provisions thereof. This SLSA is originally written in the English language and the English language version shall control over any translations. If any provision of this SLSA is illegal or unenforceable, it will be deemed stricken from the SLSA and the remaining provisions of the SLSA will remain in full force and effect. The United Nations Convention on the International Sale of Goods (CISG) shall not apply to the interpretation or enforcement of this SLSA.

14. **LIMITATION OF LIABILITY.**

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, AND/OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE LIABILITY OF A PARTY, WHETHER BASED ON AN ACTION OR CLAIM IN CONTRACT, EQUITY,

NEGLIGENCE, TORT, OR OTHERWISE FOR ALL EVENTS, ACTS, OR OMISSIONS UNDER THIS AGREEMENT SHALL NOT EXCEED 2X THE FEES THAT THE CITY HAS PAID TO CONTRACTOR FOR THE 12-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE LIABILITY UNDER THE APPLICABLE ORDER FORM.THE FOREGOING LIMITATION SHALL NOT APPLY TO: (A) A PARTY'S OBLIGATIONS OF INDEMNIFICATION, AS FURTHER DESCRIBED IN THE SLSA; (B) DAMAGES CAUSED BY A PARTY'S GROSS NEGLIGENCE OR WILFULL MISCONDUCT; (C) LICENSEE'S MISUSE OR MISAPPROPRIATION OF THE SUBSCRIPTION SOFTWARE OR SUBSCRIPTION SERVICES; (D) FEES OWED TO INFOR; OR (E) ANY ACT OR OMISSION RESULTING IN DAMAGES FOR PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE (EXCLUDING LOSS OF DATA).

LIABILITY FOR DISCLOSURE OF PERSONAL INFORMATION. THE TOTAL LIABILITY OF INFOR, ITS AFFILIATES AND THIRD PARTY LICENSORS FOR BREACH OF SECTION 6 (CONFIDENTIAL INFORMATION) WITH RESPECT TO PERSONAL INFORMATION, SHALL NOT EXCEED DIRECT DAMAGES IN THE AMOUNT OF ONE MILLION DOLLARS ($1,000,000.00). THE $1,000,000 LIMITATION DOES NOT LIMIT INFOR'S SECTION 6.e OBLIGATIONS WITH RESPECT TO THE PROVISION OF NOTIFICATIONS AND CREDIT MONITORING SERVICES TO PERSONS WHOSE PERSONAL INFORMATION MAY HAVE BEEN ACCESSED OR DISCLOSED DUE TO SUCH BREACH (COLLECTIVELY, "NOTIFICATION COSTS"). FOR CLARITY, WHILE THE NOTIFICATION COSTS MAY EXCEED $1,000,000 AS PROVIDED ABOVE, ALL NOTIFICATION COSTS SHALL COUNT TOWARD THE $1,000,000 LIMITATION.

15. **Audit Rights.** Infor (including any third party auditor retained by Infor) may audit the records and systems of Licensee to ensure compliance with the terms of this SLSA. Infor will notify Licensee in writing at least ten (10) business days prior to any such audit. Any such audit will be conducted during regular business hours and will not interfere unreasonably with Licensee's business activities. Infor may audit Licensee no more than once in any twelve (12) month period. If an audit reveals that Licensee is using the Subscription Software or Subscription Services beyond the scope of the license granted herein (for example, in excess of the License Restriction), then, in addition to any other remedies available to Infor, Licensee will promptly pay Infor the underpaid Subscription Fees associated therewith based on Infor's then-current list rates, as well as any applicable late charges.

16. **Compliance with Laws.** Licensee will comply with all laws, rules and regulations applicable to the use of the Subscription Software and the Subscription Services including, without limitation, by not submitting any Licensee Data that is illegal, defamatory, or that infringes any third party proprietary rights.

17. **Agreement.** This Agreement contains the entire understanding of the Parties with respect to its subject matter, and supersedes and extinguishes all prior oral and written communications between the Parties about its subject matter. Any purchase order or similar document, which may be issued by Licensee in connection with this Agreement, does not modify, supplement, or add terms to this Agreement. No modification of this Agreement will be effective unless it is in writing, is signed by each Party, and expressly provides that it amends this Agreement.

18. **Insurance.** Contractor agrees to have and maintain the policies set forth in Exhibit 1, entitled "Insurance Requirements," which is attached hereto and incorporated herein.

THE PARTIES have executed this Subscription License and Services Agreement through the signatures of their respective authorized representatives.

Effective Date: _____

Infor Public Sector, Inc.	**LICENSEE: City of San José**

Signature: _____
First Authorized Signature

Printed Name: Lindsay Pritchard_____

Title: Associate General Counsel_____

Address: 380 St. Peter Street_____

Address: St. Paul, MN 55102_____

Signature Date: November 15, 2018_____

Signature: _____
Second Authorized Signature

Printed Name: Brad Steiner_____

Title: VP & Deputy General Counsel_____

Signature Date: 11/16/2018_____

Signature: _____

Vickie J. Davis

Information Technology Procurement Manager

200 East Santa Clara Street, 14th Floor

San José, CA 95037

Signature Date:_____

APPROVED AS TO FORM:

_____
Rosa Tsongtaatarii
Senior Deputy City Attorney

EXHIBIT 1
INSURANCE REQUIREMENTS

Contractor, at Contractor's sole cost and expense, shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by Contractor, its agents, representatives, employees or subcontractors or suppliers.

I.   Minimum Scope and Limit of Insurance

There shall be no endorsements reducing the scope of coverage required below unless approved by the City's Risk Manager.

Type of Insurance	Minimum Limit
1 Commercial General Liability The coverage provided by Insurance Services Office "occurrence" form CG 0001, including coverages for contractual liability, personal injury, broad form property damage, independent contractors, products and completed operations.	$1,000,000 per occurrence for bodily injury, personal injury and property damage or $2,000,000 annual aggregate.
2 Automobile Liability The coverage provided by Insurance Services Office form number CA 0001. Coverage shall be included for all owned, non-owned and hired automobiles.	$1,000,000 combined single limit per accident for bodily injury and property damage.
3 Workers' Compensation and Employer Liability As required by the Labor Code of the State of California.	Worker's Compensation – Statutory, Employer's Liability $1,000,000 Limit Per Accident, $1,000,000 Per Disease and $1,000,000 Per Employee.
4 Professional Errors and Omissions Including coverages for negligent acts, errors, or omissions arising from professional services provided under this contract, with any deductible not to exceed $25,000 each claim.	Not less than $1,000,000 each claim and annual aggregate.
5 Cyber & Technology Errors & Omission Technology/professional liability insurance and data protection liability insurance covering liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering services provided under this agreement as well as all Vendor costs, including damages it is obligated to pay Client or any third party, which are associated with damaged, lost or corrupted data. This may be met through a standalone policy or included as a component in a Commercial General Liability Policy.	Not less than $1,000,000 each occurrence.

II.   Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City's Risk Manager.

III.   Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1.   General Liability and Automobile Liability Coverages

   a.   The City, its officials, employees, and agents are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, Contractor; products and completed operations of Contractor; premises owned, leased 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 the City, its officials, employees, and agents.

   b.   Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees, and agents. Any insurance or self-insurance maintained by the City, its officials, employees, and agents shall be excess of Contractor's insurance and shall not contribute with it.

   c.   Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or agents.

   d.   Coverage shall state that 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.

   e.   Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, and agents.

2.   Workers' Compensation and Employers Liability

   Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, and agents.

3.   All coverages

   Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

IV.   Acceptability of Insurance

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

V.   Verification of Coverage

Contractor shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by Contractor's insurance company as evidence of the stipulated coverages.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

> City of San José – Finance Department
> Risk & Insurance
> 200 East Santa Clara St., 14th Floor
> San Jose, CA 95113-1905

VI.   Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

Order Form

This Order Form is subject to the terms of the Subscription License and Services Agreement between the **City of San José** ("Licensee") and **Infor Public Sector, Inc.** ("Infor") with an Effective Date of _____ (the "Agreement"). All terms of the Agreement are incorporated herein by reference. In the event of a conflict, the terms of the Agreement shall control. Capitalized terms not defined in this Order Form are defined in the Agreement. In the event the capitalized terms in this Order Form differ from the terminology used in the Agreement, references herein to: "Subscription Software" and "Component Systems" shall have the same meaning, refer to the computer software programs identified this Order Form and may be referred to in the Agreement as Component Systems, Products, Software Products, Subscription Software, Software, Standard Software, Programs or Licensed Programs; "Support" may be referred to in the Agreement as Support, Maintenance and Support, Annual Support, Support Services, On-Going Support or One Point Support; and "License Restriction" means any limitation on the use of the Subscription Software and may be referred to in the Agreement as License Restriction or User Restriction.

I.   Subscription Software

	Part # (if applicable)	Subscription Software	License Restriction*		Support Level**
			Quantity	**Type**	
1	RFG-S-CIVICS-S	Infor Rhythm for Civics - SaaS	UNL***	AASTX	CXTP
2	HAN-S-H8AWS-MT	Infor Public Sector Suite - Assets Web Services - SaaS MT	25	NU	CXTP
3	HAN-S-H8BWS-MT	Infor Public Sector Suite - Billing Web Services - SaaS MT	25	NU	CXTP
4	HAN-S-H8CDR-MT	Infor Public Sector Suite - CDR Bundle - SaaS MT	25	NU	CXTP
5	HAN-S-H8CDREB-MT	Infor Public Sector Suite - CDR Enhanced Bundle - SaaS MT	25	NU	CXTP
6	HAN-S-H8CWS-MT	Infor Public Sector Suite - CDR Web Services - SaaS MT	25	NU	CXTP
7	HAN-S-MEXC-MT	Infor Public Sector Suite - Microsoft Exchange - SaaS MT	25	NU	CXTP
8	HAN-S-O311-MT	Infor Public Sector Suite - Open 311 API - SaaS MT	25	NU	CXTP
9	BBI-S-DPRO-PLT	Birst Cloud Professional Edition Platform License (Direct)	15	NU	CXT
10	HAN-S-H8CM-MT	Infor Public Sector Suite Cashiering - SaaS MT	15	NU	CXTP
11	HAN-S-MOBILE-CDR-MT	Infor Field Inspector CDR - SaaS MT	15	NU	CXTP

For the purpose of the definitions below, Component System and Subscription Software may be used interchangeably.

*If specified in the License Restriction field:

"AASTX" = **Annual Active Searchable Transactions** - Quantity represents the number of entries within a single year which are active and searchable by the Component System, including but not limited to permits, service requests, business licenses and utility billing accounts, regardless of whether such entries are entered manually or electronically via the Component System or any other means.

"NU" = **Named Users** - Allows access to the Component System up to the stated maximum number of individual named users, irrespective as to whether any such user is actively logged on to the Component Systems at a given point in time; The Licensee agrees to assign to each Named User a unique identification profile, it being agreed that to the extent Licensee uses generic user profiles as a means to access the Component System, each separate log-on accessing the Component System will be counted as a separate user.

**Support Level for Subscription Software:

**CXT = Essential Support – During the Subscription Term, Licensee is eligible to receive the standard support that Infor makes generally available to its subscription customers. No subscription options for support are included unless otherwise specified herein. For additional information on CXT, support, please see Exhibit 4. Additional information regarding Subscription Services support may be found at: http://www.infor.com/cloud/subscription/.

**CXTP = Essential Support plus Critical Incident Support ("CIS") – During the Subscription Term, Licensee is eligible to receive the standard support which Infor makes generally available to its subscription customers, and Licensee is eligible to receive CIS 24 hours a day x 7 days a week support for Severity 1 incidents. A Severity 1 incident means that Licensee's production system is not available or that the production system is available but a critical application failure has occurred, business processes are halted, and no workarounds are available. For additional information on CXTP support, please see Exhibit 3. Additional information regarding Subscription Services support may be found at: http://www.infor.com/cloud/subscription/.

*** Infor Rhythm for Civics:

At the end of the initial contract term, the Parties will negotiate pricing in good faith.

II. Annual Subscription Fees:
  Annual Subscription Fee for Year 1: $50,000.00
  Annual Subscription Fee for Year 2: $55,887.50
  Annual Subscription Fee for Year 3: $55,887.50
  Initial Subscription Term: Order Form Date through 3 years from Order Form Date.

Currency: USD

III. Payment Terms:

Annual Payment Terms:

Licensee shall pay the Annual Subscription Fee, in advance, as invoiced by Infor. The first Annual Subscription Fee, plus applicable taxes, will be invoiced promptly after execution of this Order Form. All other Annual Subscription Fees will be invoiced such that they are due prior to the commencement of the portion of the Subscription Term to which the Annual Subscription Fee applies. Licensee shall pay all invoices within 30 days of the date of the invoice.

Licensee Account ID:	372698
Infor GL ID:	US06A
Account Executive Name:	Michele McDowell

Primary-use Address:	Invoice Address:
City of San José 201 W Mission St. San José, CA 95110 USA	City of San José 201 W Mission St. San José, CA 95110 USA
Contact Name: Jennifer Biebel	Contact Name: Jennifer Biebel
Contact Phone: 408 -277-4452	Contact Phone: 408 -277-4452
Contact email: jennifer.biebel@sanjoseca.gov	Contact email: jennifer.biebel@sanjoseca.gov

IV. Additional Terms

Exhibit 1 – Service Level Description is attached to and made a part of this Order Form.

No changes or modifications of any kind to this Order Form shall be accepted after execution unless signed in writing by both Parties.

For U.S. Government entities, the following restricted rights clause applies: This Component System is a "commercial component," as this term is defined in 48 C.F.R. 2.101, consisting of "commercial computer software" and "computer software documentation," as such terms are defined in 48 C.F.R. 252.227-7014(a)(I) and 48 C.F.R. 252.227-7014(a)(5), respectively, and used in 48 C.F.R. 12.212 and 48 C.F.R. 227.2702, as applicable, and all as amended from time to time. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202, and other relevant sections of the Code of Federal Regulations, as applicable, and all as amended from time to time, all U.S. Government entities acquire this Component System only with those rights set forth in the license agreement accompanying this Component System. Use, duplication, reproduction, or transfer of this commercial software and accompanying documentation is restricted in accordance with FAR 12.212 and DFARS 227.7202 and by a license agreement.

Infor's provision of the Subscription Services with respect to personally identifiable information conforms to industry best practices and shall provide no less protection for personally identifiable information than is provided by Licensee's Privacy and Disclosure Policy attached hereto as Exhibit 2. Usc of the term "personally identifiable information" in this paragraph shall have the same meaning as defined in Exhibit 2.

V. Termination for Convenience.

Notwithstanding anything to the contrary in the Subscription License and Services Agreement, Licensee may terminate Year Two or Year Three of this Order Form for any or no reason in accordance with this Section. If Licensee elects to terminate this Order Form for convenience it shall provide no less than ninety (90) days advance written notice of such termination and upon the effective date of such termination pay to Infor a fee equal to fifty percent (50%) of the unpaid Subscription Fees remaining on the Initial Subscription Term as of the effective date of termination. For example, if Licensee terminates at least 90 days prior to Year 2, Licensee shall pay $55,887.50; and if Licensee terminates at least 90 days prior to Year 3, Licensee shall pay $27,943.75. Except as may be provided in the Agreement, Licensee agrees it will not receive a refund of payments made to Infor for the remaining months of the current subscription year.

THE PARTIES have executed this Order Form through the signatures of their respective authorized representatives.

Effective date of this Order Form: _____ (the "Order Form Date").

Infor Public Sector, Inc.

Signature: _[signature]_
First Authorized Signature

Printed Name: Lindsay Pritchard

Title: Associate General Counsel

Address: 380 St. Peter Street

Address: St. Paul, MN 55102

Signature Date: November 15, 2018

Signature: _[signature]_
Second Authorized Signature

Printed Name: Brad Steiner

Title: VP & Deputy General Counsel

Signature Date: 11/16/2018

LICENSEE: City of San José

Signature: _____

Vickie J. Davis

Information Technology Procurement Manager

200 East Santa Clara Street, 14th Floor

San José, CA 95037

Signature Date: _____

APPROVED AS TO FORM:

_____
Rosa Tsongtaatarii
Senior Deputy City Attorney

EXHIBIT 1 TO ORDER FORM
SERVICE LEVEL DESCRIPTION

Infrastructure - The services are supported by commercially reasonable redundant infrastructure including
- Power infrastructure that includes redundant sources (multiple power feeds, generators, battery backups), multiple power distribution systems, and redundant power supplies;
- Environmental controls that include highly available precision HVAC systems, humidity controls, and water detection systems;
- Network infrastructure that includes multiple Internet Service Providers, redundant edge routers, firewalls, and switches;
- Hardware and software redundancy in support of virtualized and physical servers; and
- Storage solutions that provide redundant back end data storage.

Infor maintains a disaster recovery site where Licensee's data is replicated on a regular basis.

Technical Change Management – Infor maintains change management system to ensure review and controlled implementation of changes that Infor may make from time to time in the support of the services. Changes require both a risk analysis and a peer review before being implemented in Infor's infrastructure.

Security & Privacy – Infor takes great care to protect non-public information provided to us by our customers. Infor may have access to non-public information from multiple sources that include:
- Directly from use of one of Infor's hosted applications.
- Directly from a customer's designated service representative or indirectly via batch data transfers.
- In the course of transactional activities as information is updated or processed by an Infor hosted application, or through data maintenance activities.
- Other sources as defined by one of our solutions.

Infor has implemented a defense-in-depth strategy to protect non-public information. This strategy is based upon best-practices designed to comply with applicable laws and regulations and is based upon widely accepted industry standards. Our security management system is based on the following:
- Security Policies: We require that all employees be responsible for the security of non-public information and follow the practices defined within the Information Security Management System.
- Information Security Organization: Infor's management is committed to security and has established an organization responsible for the security of non-public information.
- Asset Management: All assets are strictly controlled and all information is classified in order to determine the appropriate controls required for access and handling.
- Human Resources Security Practices: In the US, Infor conducts a comprehensive background check and screening at the time each employee is hired and requires that employees maintain familiarity and compliance with security responsibilities. When employees leave Infor, a formal process is established to remove their physical and virtual access to the Infor infrastructure.
- Physical and Environmental Security: Infor places critical components in physically controlled spaces with best-practices in place to secure infrastructure. Physical and environmental security measures include card and/or biometric access controls, and limited access to secure locations based on job function.
- Access Control: All access to systems, networks, and applications is controlled down to the user and resource level with role-based privilege techniques. This access is reviewed on a periodic basis to ensure that a change of personnel or a change of role has not modified the access needs of the individual.
- Communication and Operations Management: Infor has implemented strong operational procedures to protect information. Our controls surrounding system planning, protection from

malicious code, backup processes, network security, media handling and exchange of information are constantly being analyzed and monitored to insure they provide reasonable protection for your data. Third party service providers with access to confidential information are required to adhere to security and privacy requirements that are consistent with and at least as restrictive as Infor's own policies and procedures regarding the protection of confidential information.

- System Development: Security requirements of all applications that handle confidential information are defined early in the development stage. Appropriate data protection techniques are designed into the application while changes to developed software must go through a mature change management process.
- Incident Management: In the unlikely event of an actual or reasonably suspected security incident, our teams immediately begin work to identify the scope of impact, mitigate any exposure, determine the root cause of the incident and take appropriate corrective action.
- Compliance: We are constantly analyzing the requirements of legal, regulatory, and contractual obligations to ensure we are abiding by the requirements that apply to the handling of your data.

Scheduled Maintenance – The services shall be subject to a regularly scheduled weekly maintenance window. Infor makes commercially reasonable efforts to establish maintenance windows during times that minimize impact to Licensee's users. While most of Infor's maintenance can be completed during regularly scheduled maintenance windows, from time to time maintenance must be performed outside of the scheduled maintenance windows to maintain the integrity and security of the services. In such cases, Infor will provide Licensee's primary point of contact as much advance notice of the planned maintenance as is technically feasible. The regularly scheduled weekly maintenance windows and any period of unavailability due to maintenance for which Licensee is given at least 72 hours advance notice is considered "Scheduled Maintenance".

Availability – Infor's goal is to provide access to the services at Infor's Internet gateway(s) twenty-four hours per day, seven days a week, except during Scheduled Maintenance. Infor's service level objective is 99.5% Availability measured on a monthly basis.

Availability for the Subscription Services is measured monthly as a percentage of Scheduled Available Minutes.

- "Scheduled Available Minutes" are the total minutes in a month less the number of Scheduled Maintenance minutes in the applicable month.
- "Available Minutes" is the number of Scheduled Available Minutes in a month less the aggregate number of minutes the Subscription Services were unavailable outside of Scheduled Maintenance.
- "Availability" is a percentage calculated as the Available Minutes in a month divided by the Scheduled Available Minutes in the month.

For example, in a 30 day month with 4 weekly Scheduled Maintenance windows of 8 hours, there are 41,280 Scheduled Available Minutes ((60 min. x 24 hrs. x 30 days)-(60 min. x 8 hrs. x 4 weeks) = 41,280). If the Subscription Services experienced an outage of two hours outside of Schedule Maintenance, there were 41,160 Available Minutes in the month (41,280 Scheduled Available Minutes – 120 minutes of unavailability). The resulting Availability percentage is 41,160 / 41,280 = 99.7%.

The following shall not be considered periods of unavailability for purposes of the Availability calculation:

- Outages due to factors outside of Infor's reasonable control (for example, a network or device failure at Licensee's site or between Licensee and Infor's data centers);
- Delays in email or webmail transmission to or from the hosted application;
- Connectivity issues outside of Infor's direct control (e.g. DNS issues);
- Force Majeure events;

- Outages attributable to the acts or omissions of Licensee or Licensee's employees, agents, contractors, or vendors, or anyone gaining access to the services means of UserIDs or equipment controlled by Licensee;
- Periods of Down Time at Licensee's request;
- Outages that result from Licensee's equipment, software, or other technology and/or third party equipment, software or other technology (other than those which are under Infor's direct control); and
- Performance degradation due to Licensee's use of the services in excess of the scope of Licensee's license, usage restrictions, or product limitations outlined in the applicable Agreement.

System Monitoring – Infor leverages multiple monitoring solutions to gauge the health of its systems and alert the Infor Operations teams when issues occur.

EXHIBIT 2 TO ORDER FORM
PRIVACY AND DISCLOSURE POLICY

The purpose of this statement is to define the City of San José's policy with regard to the collection and use of personally identifiable information (PII). PII is any information relating to an identified or identifiable individual who is the subject of the information. Users of the City Web Site should be informed of the following:

The City of San José collects two kinds of customer information: (1) anonymous; (2) personally identifiable information (PII).

1   Anonymous information
This type of information does not identify specific individuals and is automatically transmitted by City browser. This information consists of:
- The URL (Uniform Resource Locator or address) of the web page user previously visited;
- The domain names and/or IP addresses which are numbers that are automatically assigned to a City computer whenever user are connected to the Internet or World Wide Web.
- The browser version users are using to access the site.

This information is used to help improve the City's Web Site. None of the information can be linked to an individual.

2   Personally Identifiable Information (PII)
This type of information could include name, address, email address, telephone number, credit/debit card information. The City will make every reasonable effort to protect City privacy. It restricts access to City personally identifiable information to those employees who will respond to City request. The City does not intentionally disclose any personal information about Contractor customers to any third parties or outside the City except as required by law or by the consent of the person providing the information.

The City only collects personally identifiable information that is required to provide service. User can decline to provide us with any personal information. However, if user should choose to withhold requested information, the City may not be able to provide user with the online services dependent upon the collection of that information.

3   Access to Personally Identifiable Information
Access to personally identifiable information in public records at local levels of government in San José is controlled primarily by the California Public Records Act (Government Code Section 6250, et. seq.). Information that is generally available under the Public Records Act may be posted for electronic access through the City's Web Site. While the Public Records Act sets the general policies for access to City records, other sections of the California code as well as federal laws also deal with confidentiality issues.

4   Email addresses
Email addresses obtained through the City's Web Site will not be sold or given to other private companies for marketing purposes. The information collected is subject to the access and confidentiality provisions of the Public Records Act, other applicable sections of the California code as well as Federal laws. Email or other information requests sent to the City Web Site may be maintained in order to respond to the request, forward the request to the appropriate City within the City, communicate updates to the City page that may be of interest to citizens, or to provide the City web designer with valuable customer feedback to assist in improving the site. Individuals can cancel any communications regarding new service updates at any time.

5   Use of "Cookies"
Some City applications use "cookies." A cookie is a small data file that certain web sites write to the user's hard drive when the user visits them. A cookie file can contain information such as a user id that the site uses to track the pages user have visited. But the only personal information a cookie can contain is information supplied by user. A cookie is only a test file and cannot read data off user's hard disk or read cookie files created by other sites. Cookies can track user traffic patterns, recognize user's computer's browser when user return, and could provide personalized content without requiring sign-in.

User can refuse cookies by turning them off in user's browser settings. However, they may be required to use some of the web applications on the City's Web Site.

6   Security
The City of San José is committed to data security and the data quality of personally identifiable information that is either available from or collected by the City's Web Site and has taken reasonable precautions to protect such information from loss, misuse, or alteration.

7   Contractual Services for the City's Web Site and On-Line Services
To insure that contractors who have access to or provide contractual services for the City's On-Line (e-government) Services are not allowed to re-sell or in any way share or convey to another party or use it for another purpose any information that they may have access to in the course of doing business for the City; all City contracts regarding such services should contain a requirement that the Contractor must comply with the City's Web Site and e-Government policies.

8   Electronic Signatures and Payments
The City of San José is committed to data security and the data quality of personally identifiable information that is either available from or collected by Contractor web site and has taken reasonable precautions to protect such information from loss, misuse, or alteration. When a City application accepts credit cards or any other particularly sensitive information for any of its services, it encrypts all ordering information, such as the customer's name and credit card number, in order to protect its confidentiality.

9   Disclaimer
The City Web Site should contain a disclaimer substantially containing the following information:

9.1　The City of San José is neither responsible nor liable for any delays, inaccuracies, errors or omissions arising out of user's use of the City's Web Site or with respect to the material contained on the Site, including without limitation, any material posted on the Site nor for any viruses or other contamination of user's system. The City Web Site and all materials contained on it are distributed and transmitted "as is" without warranties of any kind, either express or implied, including without limitations, warranties of title or implied warranties of merchantability or fitness for a particular purpose. The City of San José is not responsible for any special, indirect, incidental or consequential damages that may arise from the use of, or the inability to use, the Web Site and/or the materials contained on the Web Site whether the materials contained on the Web Site are provided by the City of San José or a third party. The City of San José is neither responsible nor liable for any viruses or other contamination of user's system.

9.2　*Access to Information*
Unless otherwise prohibited by state or federal law, rule or regulation, user will be granted the ability to access and correct any personally identifiable information. The City will take reasonable steps to verify user's identity before granting such access. Each City service that collects personally identifiable information will allow or review and update of that information.

9.3　*Non-City Web Sites*
Non-city web sites may be linked through the City's Web Site. Many non-city sites may or may not be subject to the Public Records Act and may or may not be subject to other sections of the California code or federal law. Visitors to such sites are advised to check the privacy statements of such sites and to be cautious about providing personally identifiable information without a clear understanding of how the information will be used.

The City is not responsible for, and accepts no liability for, the availability of these outside resources. Linked Web sites are not under the control of, nor maintained by, the City and the City is not responsible for the content of these Web sites, which can and do change frequently; nor for any internal links the displayed Web sites may contain. In addition, inclusion of the linked Web sites does not constitute an endorsement or promotion by the City of any persons or organizations sponsoring the displayed Web sites.

A general explanation of the Infor Cloud Premium Support Plan is, located at
www.infor.com/support/support-plan-features/, and the Customer Success Plus Program explanation
is located at **https://www.infor.com/support/customer-success-plus/** . This exhibit provides a more
comprehensive description of Infor Support and supplements the explanation set forth in the links above.
These descriptions are subject to change at Infor's discretion; however, changes to these descriptions
will not cause any material decrease in the Support provided to you during the Subscription Term for
which you have paid the applicable subscription fees. These descriptions do not replace any rights or
obligations set forth in the Agreement with Infor, but in the event of a conflict between the Agreement
and this Exhibit, this Exhibit shall govern and control. Capitalized terms not defined herein shall have
the meaning(s) set forth in the Agreement.

1. SUPPORT SERVICES
1.1 Telephone Technical Support
Generally, Infor will provide telephone support Monday through Friday, 8:00 a.m. to 5:00 p.m., local
time, in the Licensee's time zone, excluding holidays observed by Infor, which fall within the applicable
coverage window. Support hours may vary based on the applicable Subscription Software product, in
which case applicable Support hours are noted in specific knowledge base articles, on the Infor Support
Portal, located at **www.inforxtreme.com.**

1.2 Electronic Support
Infor will provide 24x7x365 online access to the Infor Support Portal which contains services such as
online incident logging, tracking and management, knowledge base articles, latest Subscription Software
release information, and Subscription Software Documentation.

1.3 Critical Incident Support
System Availability issues are considered Severity 1 incidents. If the Subscription Software is not
accessible, then you are entitled to access Infor Support 24x7x365. Critical Incident Support for System
Availability is included in every Cloud subscription. When a licensee requests technical assistance
regarding a Severity 1 System Availability issues outside of Infor Support Services coverage hours or
during locally observed holidays, the request will be routed to an open Infor Support Center or to the on-
call resource.

 "Critical Incident Application Support" is defined as the delivery of support for Severity 1 (production
down) situations, as defined in Section 2.2 below.

1.4 24 x7 Critical Incident Application Support
Infor will respond to Severity 1 support incidents 365 days a year and 24 hours per day. This service
will also be available during holidays observed by Infor. When Licensee requests assistance regarding a
Severity 1 issue outside of Infor Support coverage hours or during locally observed holidays, the request
will be routed to an open Infor Support center or to the on-call resource. Severity 1 incidents will be
worked within the applicable Infor Premium Support Plan or Customer Success Plus Program terms,
until the Subscription Software is operational, a commercially reasonable workaround is in place, or the
incident severity can be lowered to Severity 2 or below.

1.5 Critical Solution Notification

The Infor Support Portal enables each Designated Contact to develop a unique profile. "Designated Contact(s)" means a Licensee's contact(s) that has a thorough understanding of the specific Subscription Software, along with applicable technical knowledge, required to assist in troubleshooting and the timely resolution of incidents. Each Designated Contact may also choose to sign up for knowledge base articles that may be of particular interest. When Infor develops a knowledge base article for a critical incident, the Designated Contact can receive notifications about its availability and how to access it.

2. Resolution of Support Incidents

2.1 Initiation of an Incident

The Designated Contact may contact the Infor Support team via telephone or may log an incident online via the Infor Support Portal to initiate a Support request referred to as an "incident".

The general definition of a Support incident is a single, reproducible issue, problem, or symptom, a request for assistance, or a question fully and accurately logged with the Infor Support Portal that is related to the Subscription Software or information requests about our Cloud Premium Support Plan or Customer Success Plus Program, and options.

To help ensure a timely response to a Support incident, the Designated Contact shall provide the following information: (a) the Infor Customer Number and contact details, (b) applicable Subscription Software name, (c) severity level of the Support incident, (d) details of the Support incident, including error messages and error reproduction steps if any, and applicable screen shots and output examples if logging online, and (e) description of the incident impact and frequency.

2.2 Severity Levels

The Designated Contact will use reasonable business judgment to identify the severity of the Support incident according to the following severity level descriptions:

(a) **Severity 1 – Production Down/Critical.** The production instance of the Subscription Software is not available, or the Subscription Software is available but a critical application failure has occurred and business processes are halted. There are no workarounds available. Severity 1 issues that occur after standard Support Services hours must be reported by telephone.

(b) **Severity 2 – High.** The operation of the Subscription Software or a critical business process or is impaired, causing a serious disruption of a major business function, a serious impact on daily functions or processing, and there is no acceptable workaround.

(c) **Severity 3 – Medium.** Non-critical issues with the Subscription Software. You are able to access and use the Subscription Software, and there is an acceptable workaround for the issue.

(d) **Severity 4 – Low.** An inquiry and/or low impact issue that does not require immediate attention. This includes cosmetic issues on screens, errors in documentation, or a request regarding the use of the Subscription Software.

2.3 Response

Infor shall use commercially reasonable efforts to meet the Response Targets set forth below. Infor calculates Response Targets as the difference between the time an incident is appropriately logged into the Infor support system and the time of Infor's first value-added communication.

For Licensees that have purchased the Infor Premium Support Plan, Infor will make commercially reasonable efforts to respond to Severity 1 incidents within one (1) hour during scheduled business hours; for Severity levels 2-4, Infor will make commercially reasonable efforts to respond within two (2) hours during scheduled business hours.

For Licensees that have purchased the Infor Customer Success Plus Program, Infor will make commercially reasonable efforts to respond to Severity 1 incidents within thirty (30) minutes during

scheduled business hours; for Severity levels 2-4, Infor will make commercially reasonable efforts to respond within one (1) hour during scheduled business hours.

2.4 Resolution

A resolution can be, without limitation, an answer that resolves a Support incident; a code fix; a software patch release; a change in an operational process; a commercially reasonable workaround; or the provision of steps that, upon completion, will lower the criticality of the Support incident. Support incident resolution is often an iterative process that is dependent upon many variables. At times determination of root cause and resolution of an incident requires collaboration and troubleshooting by various teams within Infor and the Licensee. The nature of this process makes providing specific target resolution times difficult. As Infor progresses through the troubleshooting process in an effort to resolve the issue, Infor works to provide regular updates and strives to allow Licensee to continue doing business.

2.5 Escalation

Most Support incidents are best resolved through Infor's standard operating procedures. If you believe that a particular Support incident requires a higher level of attention, Licensee should contact the regional Infor Support Center and request that a Support Manager become involved. Escalation or routing of Support incidents outside of standard procedures is reserved for issues that warrant a higher degree of attention, and such escalation is not appropriate for all Support incidents. If escalation is requested, Infor will notify the appropriate Support Manager. The Support Manager will act promptly to assess the situation, contact Licensee to discuss a resolution plan, identify required resources, and implement the agreed upon resolution plan.

Birst Support Guidelines and Service Level Objectives by Tier

February 2017

birst

Connect to a New Level of Trusted Analytics.

BIRST SUPPORT GUIDELINES AND SERVICE LEVEL OBJECTIVES (SLOS)

We strive to support a highly-available, scalable and dependable business intelligence platform. Birst support defines and measures certain service level objectives (SLOs) to easily incorporate into your existing corporate service frameworks. Providing these simple and measurable objectives presents your internal business users and IT department with a transparent framework for understanding how Birst customer success and support will work with you.

ACCESS TO BIRST SUPPORT PORTAL

Birst production customers with a support portal account have access to file a support ticket. If you do not have a support portal account, please contact the Birst Admin at your company who does to proceed. This document is meant to help customers select the right severity and urgency level for cases. Moreover, this document will discuss response and resolution time for each severity based on the Support level for which your organization has contracted with Birst.

BIRST SUPPORT TEAM LOCATION & AVAILABILITY

The support team is located at Birst corporate headquarters in San Francisco, California with presence in India and elsewhere around the world too. Depending on your contracted Support level and location, our Support organization is available to help you for the hours outlined below.

STATUS OF SUPPORT CASE

New: Default status assigned when a case is created.

In Process: Support engineer assigned and working a case.

Waiting-Customer Response: Action required by customer. Support is awaiting a response in order to continue troubleshooting the case.

Resolved-Please Confirm: Action required by customer. Support believes case is resolved and requires customer confirmation. Please note, "resolved" does not mean case closed. However, if customer does not respond after a period of time, the case will then automatically be closed.

Resolved-Code Change Requested: Support has filed a case with engineering for a fix/enhancement into a Birst production release. Please note, "resolved" does not mean case closed. Customer will be notified of resolution when code change has been scheduled for a production release.

Closed: Case will be marked closed upon customer confirmation. Customer can close a case directly through the support portal by themselves.

SERVICE LEVEL DEFINITIONS

Service Availability: This is measured as the % of time the service is available, outside of scheduled maintenance periods.

System Response Time: The amount of time in seconds, it takes to log into the Birst system.

Support Response Time: The amount of time it takes in minutes, for Birst support to respond to new support incidents.

Support Availability: Birst support is available as defined below by the various Support Levels below.

Maintenance Notification Time: The minimum time in hours, for announcement of a scheduled maintenance event, occurring inside a scheduled maintenance period.

Scheduled Maintenance Periods: Regularly scheduled maintenance windows, occurring on a periodic basis.

Proactive Outage Notification: The amount of time to inform the customer of service issues in hours.

RFO Reporting: The amount of time for Birst to report reason for outage findings and mitigation steps.

BASIC SUPPORT

Basic Support is offered to all customers who have contracted with Birst to use its Birst Professional version. Basic Support entitles customers to:

1. Support during Local Business Hours.

2. 1 named Support Contact.

3. Access to Support monitored Community Space.

SEVERITY LEVEL	DESCRIPTION	TARGET RESPONSE TIME
Critical [24/5 Support Available]	Severe business impact due to a non-functioning Birst feature.	4 Hours
Non-Critical [Local Business Hours Support Available]	A non-critical question about Birst functionality	1 Business Day

STANDARD SUPPORT

Standard Support is offered to all customers who have contracted with Birst to use its Birst Enterprise edition. Standard Support entitles customers to:

1 24x5 support for all S0/S1 level incidents

2 Local business hour support for all S2/S3/S4 incidents

3 2-4 Named Support Contacts, depending on contract size

    a Primary Contract <$100,000 per year entitles customer to 2 named Support contacts

    b Primary Contract $100,000-$250,000 per year entitles customer to 3 named Support contacts

    c Primary Contract >$250,000 per year entitles customer to 4 named Support contacts

SEVERITY LEVEL	DESCRIPTION	TARGET RESPONSE TIME	TARGET RESOLUTION TIME
S0: No Access to Birst System meltdown [24/5 Support Available]	S0 Severity refers to a situation when NONE of the Birst Spaces are available for use. Birst Spaces are down or unavailable A critical part of Birst functionality is unavailable or not working as documented or is inaccessible resulting in disruption of work.	2 Hours	8 Hours
S1: Space Down Need immediate assistance [24/5 Support Available]	S1 Severity refers to a situation when one or more Birst Space is unavailable OR there is a blocking production issue affecting all users that does not have any workaround. A critical part of Birst functionality is unavailable or not working as documented or is inaccessible resulting in disruption of work.	4 Hours	16 Hours
S2: Major Issue Help me now [Local Business Hours Support Available]	S2 Severity refers to a situation that significantly impacts performance for most users OR when major functionality is impacted for some or all users OR when work cannot be done in a non-production environment. Functionality works but performance is highly degraded beyond reasonable considerations OR the functionality is a critical piece of the business solution and not having it will reduce the value proposition of the Birst solution. No reasonable workaround is available.	8 Hours	5 Business Days
S3: Normal Take a look please [Local Business Hours Support Available]	S3 issues refer to an issue that affects some but not all users. A short-term workaround is available but may not work out in the long term. The problem affects a non-critical functionality.	1 Business Day	7 Business Days
S4: Low I am surviving but need assistance [Local Business Hours Support Available]	S4 refers to information request related to application capabilities, installation (Appliance) or configuration and minor problems not affecting service functionality Missing or erroneous documentation Technical questions related to Product Features	2 Business Days	10 Business Days

PRIORITY SUPPORT

Priority Support is offered for an additional fee to customers who have contracted with Birst to use its Birst Enterprise edition. Priority Support entitles customers to:

1. 24x7 support for all S0/S1 level incidents

2. 24x5 for all S2/S3/S4 incidents

3. Up to 6 Named Support Contacts

4. Up to 2 named users for Birst's online training in its Learning Management System

5. Up to 5 hours per quarter of Developer Support

6. Quarterly Upgrade Readiness Consultations

7. 1 complementary ticket to Birst FORWARD

SEVERITY LEVEL	DESCRIPTION	TARGET RESPONSE TIME	TARGET RESOLUTION TIME
S0: No Access to Birst System meltdown [24/7 Support Available]	S0 Severity refers to a situation when NONE of the Birst Spaces are available for use. Birst Spaces are down or unavailable A critical part of Birst functionality is unavailable or not working as documented or is inaccessible resulting in disruption of work.	1 Hour	4 Hours
S1: Space Down Need immediate assistance [24/7 Support Available]	S1 Severity refers to a situation when one or more Birst Space is unavailable OR there is a blocking production issue affecting all users that does not have any workaround. A critical part of Birst functionality is unavailable or not working as documented or is inaccessible resulting in disruption of work.	2 Hours	8 Hours
S2: Major Issue Help me now [24/5 Support Available]	S2 Severity refers to a situation that significantly impacts performance for most users OR when major functionality is impacted for some or all users OR when work cannot be done in a non-production environment. Functionality works but performance is highly degraded beyond reasonable considerations OR the functionality is a critical piece of the business solution and not having it will reduce the value proposition of the Birst solution. No reasonable workaround is available.	4 Hours	3 Business Days
S3: Normal Take a look please [24/5 Support Available]	S3 issues refer to an issue that affects some but not all users. A short-term workaround is available but may not work out in the long term. The problem affects a non-critical functionality.	8 Hours	5 Business Days
S4: Low I am surviving but need assistance [24/5 Support Available]	S4 refers to information request related to application capabilities, installation (Appliance) or configuration and minor problems not affecting service functionality Missing or erroneous documentation Technical questions related to Product Features	12 Hours	8 Business Days

STANDARD SUPPORT, RETIRED

This level of support was offered to all Birst customers until January 31, 2017 and is still in effect for customers that:

1 Are still in the initial contract term of their relationship with Birst and

2 Have an effective date of their initial contract with Birst of January 31, 2017 or earlier.

The Support Level Objectives and other definitions for Standard Support, Retired are outlined below.

Severity of Support Case

SEVERITY LEVEL	DESCRIPTION	TARGET RESPONSE TIME	TARGET RESOLUTION TIME
S0: No Access to Birst System meltdown [24/7 Support Available]	S0 Severity refers to a situation when NONE of the Birst Spaces are available for use. Birst Spaces are down or unavailable A critical part of Birst functionality is unavailable or not working as documented or is inaccessible resulting in disruption of work. Birst commits to providing 24x7 support to S0 and S1 issues related to a cloud outage or service interruption with the understanding that the customer will also assign dedicated resources to work with Birst Support until the issue is resolved.	1 Hour	3 Hours
S1: Space Down Need immediate assistance [24/7 Support Available]	S1 Severity refers to a situation when one or more Birst Space is unavailable OR there is a blocking production issue affecting all users that does not have any workaround. Birst Space is down or unavailable A critical part of Birst functionality is unavailable or not working as documented or is inaccessible resulting in disruption of work. Birst commits to providing 24x7 support to S0 and S1 issues related to a cloud outage or service interruption with the understanding that the customer will also assign dedicated resources to work with Birst Support until the issue is resolved.	4 Hours	8 Hours
S2: Major Issue Help me now [24/5 Support Available]	S2 Severity refers to a situation that significantly impact performance for most users OR when major functionality is impacted for some or all users OR when work cannot be done in a non-production environment. Functionality works but performance is highly degraded beyond reasonable considerations OR the functionality is a critical piece of the business solution and not having it will reduce the value proposition of the Birst solution. No reasonable workaround is available.	8 Hours	3 Business Days
S3: Normal Take a look please [24/5 Support Available]	S3 issues refer to an issue that affects some but not all users. A short-term workaround is available but may not work out in the long term. The problem affects a non-critical functionality.	16 Hours	5 Business Days
S4: Low I am surviving but need assistance [24/5 Support Available]	S4 refers to information request related to application capabilities, installation (Appliance) or configuration and minor problems not affecting service functionality Missing or erroneous documentation Technical questions related to Product Features	24 Hours	10 Business Days

Status of Support Case

New: Default status assigned when a case is created.

In Process: Support engineer assigned and working a case.

Waiting-Customer Response: Action required by customer. Support is awaiting a response in order to continue troubleshooting the case.

Resolved-Please Confirm: Action required by customer. Support believes case is resolved and requires customer confirmation. Please note, "resolved" does not mean case closed. However, if customer does not respond after a period of time, the case will then automatically be closed.

- Auto close reminder email will be sent >
- S0- No Access to Birst: 1 Business Day
- S1- Space Down: 1 Business Day
- S2- Major Issue: 3 Business Days
- S3- Normal: 5 Business Days
- S4- Low: 5 Business Days

Resolved-Code Change Requested: Support has filed a case with engineering for a fix/enhancement into a Birst production release. Please note, "resolved" does not mean case closed. Customer will be notified of resolution when code change has been scheduled for a production release.

Closed: Case will be marked as Closed upon customer confirmation OR when customers themselves close the case directly through the support portal.

Service Level Definitions

Service Availability: This is measured as the % of time the service is available, outside of scheduled maintenance periods.

System Response Time: The amount of time in seconds, it takes to log into the Birst system.

Support Response Time: The amount of time it takes in minutes, for Birst support to respond to new support incidents, as defined by incident severity level.

Support Availability: Birst support is available 24/7 for production blocking cases (S0 and S1) and 24/5 for all other case types (S2, S3, and S4).

Maintenance Notification Time: The minimum time in hours, for announcement of a scheduled maintenance event, occurring inside a scheduled maintenance period.

Scheduled Maintenance Periods: Regularly scheduled maintenance windows, occurring on a periodic basis.

Proactive Outage Notification: The amount of time to inform the customer of service issues in hours.

RFO Reporting: The amount of time for Birst to report reason for outage findings and mitigation steps.