

CLARK COUNTY STAFF REPORT



DEPARTMENT: Community Development

DATE: December 9, 2014

REQUEST: Approval of a contract and related agreements for a new electronic permitting system

CHECK ONE: Hearing X Consent

BACKGROUND

Clark County issued a Request for Proposals (RFP #634) in September 2012 to replace its fifteen-year old electronic permit tracking system. A total of nine vendors submitted proposals. In early 2013 a team of staff representing business, financial, management and technical fields reviewed the proposals for further consideration. Four vendors were screened for comprehensive evaluation and scoring, with two chosen for on-site demonstrations in June 2013.

To obtain 'on the ground' experiences and perspective, a team of seven staff (including myself) conducted site visits to four jurisdictions that utilized the two vendors' services. Afterwards, the team evaluated the vendors and concluded we needed more information about specific functional requirements, such as: cashiering, mobile inspection, and a citizen access portal for e-business.

Last fall, staff evaluated further whether the selected vendors would be able to provide the product and services the county required. In the end the decision was made to cancel RFP# 634, refocus our efforts and priorities, and to re-issue an improved RFP.

The second RFP (RFP# 666) was released on January 29, 2014, and three vendors submitted proposals. The vendors were evaluated on: financial health, references checks (business needs and technical needs), cost profiles, functional and technical requirements, and implementation and project management success. Computronix emerged as the top vendor, and was invited on-site to present its proposed solutions to multiple county departments.

Since then Clark County and Computronix continued their efforts to prepare a final statement of work to accurately reflect the county's business processes/needs and Computronix's software configuration/customization.

The master contract (Contract for Procurement, Licensing and Maintenance of a Permit Tracking System RFP NBR 666), related exhibits, and a Hosting Service Level Agreement between Clark County and Computronix, U.S.A., Inc., have been reviewed and vetted by staff in Application Services, the Prosecuting Attorney's office, and Community Development.

A few key points to note are:

- The term of the contract is up to seven (7) years in duration;
- The contract includes key performance measures ensuring the vendor delivers intended functionality, within timelines and budgeted resources;
- A vendor hosted solution; and
- Implementation of the new system will be phased, with phase I including all system functionality with a vast majority of the features at a 'go-live' state in August of 2016.

*man
OK
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An executive Steering Committee, comprised of the County Administrator, the Finance Director and the directors of Application Services, Community Development (Executive Sponsor), Environmental Services and Public Works, was established from the outset of the project. The Steering Committee was kept apprised of the project status and made recommendations on proceeding with the project.

After a report to the Steering Committee on November 25th, 2014, they unanimously agreed to recommend that the Board of County Commissioners approve the final contract and related agreements.

COMMUNITY OUTREACH

Other than one or two high-level overviews of the new system's benefits and goals to Clark County's Development and Engineering Advisory Board (DEAB), there has been no community outreach.

BUDGET AND POLICY IMPLICATIONS

Within adopted budgets, the overall cost related to this project is \$4,710,766 and has several main components.

The components related to Computronix total \$3,618,450 and are: 1) the master contract for \$2,385,700, 2) the software licensing costs for \$323,250, 3) five years of maintenance and support for \$419,500, 4) optional additional software and services (supplements and reports) for \$100,000, and 5) a hosting agreement for \$390,000.

The components related to Clark County total \$1,092,316 and are 1) three varying duration project employees (an IT project manager, a business/management analyst, and a report writer) to assist with the implementation of the system, 2) contingency and estimated taxes, 3) electronic plan review (Bluebeam) costs, 4) Interactive Voice Recognition (Selectron) costs and 5) minimal hardware costs.

In keeping with a policy to provide better and more cost-effective service to citizens and customers, the new system will be geared to provide the following high-level benefits/goals:

- Improved customer service;
 - On-line status of projects, inspections, inspection results
 - On-line permitting
- Efficiency gains; and
 - Workflows and electronic checklists – standardizing processes and increased staff accountability
- Improved reporting.
 - Dashboards
 - Electronic plan review

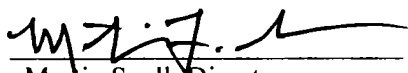
FISCAL IMPACTS

Yes (see attached form)

No

ACTION REQUESTED

Approve the Contract for Procurement, Licensing and Maintenance of a Permit Tracking System RFP NBR 666 with Computronix, U.S.A., Inc. and related agreements. ↴


Martin Snell, Director
Community Development

Approved: 
CLARK COUNTY
BOARD OF COMMISSIONERS

Dec-16, 2014 SR 292-14

FISCAL IMPACT ATTACHMENT

Part I: Narrative Explanation

I. A – Explanation of what the request does that has fiscal impact and the assumptions for developing revenue and costing information

The request will put in motion replacement of a fifteen-year old electronic permitting system, which is currently a legacy system. The cost reflects the final statement of work and cost pricing from the vendor, both built by the nascent partnership of the county and the vendor.

Revenue sources to cover the cost of the system come from the participating departments and/or programs that use the system. The breakdown of funding (by %) is as follows: Community Development (Fund 1011) – 69%; General Fund – 25%; Public Works (Fund 1012) – 5%; and Environmental Services (Clean Water Fund) – 1%.

Part II: Estimated Revenues

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Non GF	GF	Non GF	GF	Non GF
1011/Planning & Code Fund	0	200,905	0	3,027,004	0	0
0001/General Fund	1,187,337	0	0	0	0	0
1012/Road Fund	0	0	0	235,105	0	0
4420/Clean Water Fund	0	0	0	60,415	0	0
Total	1,187,337	200,905	0	3,322,524	0	0

II. A – Describe the type of revenue (grant, fees, etc.)

Property taxes from the General Fund and Road Fund and fees from the Planning and Code Fund and Clean Water Fund are the types and sources of revenue.

Part III: Estimated Expenditures

III. A – Expenditures summed up

Fund #/Title	FTE's	Current Biennium		Next Biennium		Second Biennium	
		GF	Non GF	GF	Non GF	GF	Non GF
1011/Planning & Code Fund		0	200,905	0	3,027,004	0	0
0001/General Fund		0	0	1,187,337	0	0	0
1012/Road Fund		0	0	0	235,105	0	0
4420/Clean Water Fund		0	0	0	60,415	0	0
Total	0	0	200,905	1,187,337	3,322,524	0	0

III. B – Expenditure by object category

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Non GF	GF	All Funds	GF	Non GF
Salary/Benefits	0	190,905		588,904	0	0
Contractual	0	0		3,920,957	0	0
Supplies	0	10,000	0	0	0	0
Travel	0	0	0	0	0	0
Other controllables (ER&R)	0	0	0	0	0	0
Capital Outlays	0	0	0	0	0	0
Inter-fund Transfers (TER&R)	0	0	0	0	0	0
Debt Service	0	0	0	0	0	0
Total	0	200,905		4,509,861		

Clark County

CONTRACT FOR PROCUREMENT, LICENSING, AND MAINTENANCE OF A PERMIT TRACKING SYSTEM RFP NBR: 666

THIS AGREEMENT is made this 16th day of December 2014, (the "Effective Date"), by and between CLARK COUNTY, a political subdivision of the State of Washington ("County"), and Computronix (U.S.A.), Inc. ("Contractor"), a corporation organized and existing under the laws of the State of Colorado, and authorized to do business in the State of Washington.

The Initial Term of this Agreement shall be from December 16, 2014 through December 16, 2019, with the County's option to extend for two (2) additional years for a maximum total term of seven (7) years. This Agreement and Contract may refer to the County and Contractor individually as a "Party" or jointly as the "Parties." The total not-to-exceed price under this Agreement shall be \$2,385,700 for the Initial Term.

Contractor Contact:

Clark County Contact:
Jim Hominiuk, IT Director

TEL: ()

TEL: (360)-397-6121 x5226

E-MAIL:

EMAIL: Jim.Hominiuk@clark.wa.gov

Recitals:

Whereas, Clark County issued a request for proposals, RFP 666, for the provision and installation of a Permit Tracking Application; and

Whereas, as a result of the RFP process, subsequent meetings and a Scoping Session the Contractor will have an opportunity to review the County's existing systems, infrastructure, business policies and procedures, interface and reporting/query requirements and data necessary to determine the specific functional and technical requirements required of the Application being implemented, and the professional services needed to implement the Application. Subsequently, the Contractor will prepare a Statement of Work (SOW) including an agreed upon target implementation date based on these opportunities, which includes the capabilities generally described in the RFP that we are seeking, and the services we need to implement the Application using best practices within the industry; and

Whereas, on April 2, 2014, Contractor submitted its response to the request for proposals in which it indicated that it was willing to provide services to Clark County; and

Whereas, the County and the Contractor desire to enter into this Agreement to set forth their understanding relating to the installation and implementation of the Application.

NOW, THEREFORE, it is agreed as follows:

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1. DEFINITIONS

Defined terms within this Contract will be designated with the first letter of the word in capital letter, as it appears below. If the word appears without capital letters, the definition will have its normal ordinary course of business definition. These definitions apply to the entire Contract including all Exhibits and Appendices, subsequent Amendments and Change Orders unless modified in an Amendment:

"Acceptance" means that the County has issued a Certificate of Acceptance for a Deliverable, Product, or Service.

"Acceptance Criteria" means all items stated in the Acceptance Test Plan that are drawn from all specifications, functionality, and performance requirements as set forth in the RFP (as such specifications, and requirements and Statement of Work may be changed from time to time by mutual agreement in writing), Contractor's proposal and Contractor's representations and warranties.

"Acceptance Date" means the date on which the County issues a Certificate of Acceptance for the System or a Deliverable.

"Acceptance Test" means the evaluation and testing method, procedures, or both, that are used to determine whether or not the System or a Product or a Deliverable requiring Acceptance Testing operates in accordance with the Acceptance Criteria. Acceptance Testing may occur in one or more phases, depending on the delivery and implementation schedule, integration of contingent products, scalability, performance tuning or other measurable features or milestones.

"Acceptance Test Plan" means the written compilation of Unit and System Acceptance Tests, Methodologies, Test Data and Acceptance Criteria which will be utilized in conducting tests of Equipment, Software, Deliverables and the System.

"Affiliates" means with respect to a named individual or entity, any individual, association, partnership, corporation or other entity controlling, controlled by, or under common control with the named individual or entity. The term "control" means the power to direct or cause the direction of the management and policies of an individual or entity, whether through the ownership of voting securities, by contract, agreement or otherwise.

"Amendment" means a written document required to be signed by both Parties when in any way altering the Master Terms and Conditions, Term or Cost Provisions of the Contract or changing, adding to, or substantially altering a Statement of Work.

"Applicable Laws" All laws, ordinances, rules, regulations, orders, interpretations, requirements, standards, codes, resolutions, licenses, permits, judgments, decrees, injunctions, writs and orders of any court, arbitrator, or governmental (federal, national, state, municipal, local or other, having jurisdiction over a Party and the location where a particular element of the service is performed or where any part of the application is situated) agency, body, instrumentality or authority that are applicable to any or all of the Parties, the services or the Terms of the Agreement, including all environmental and hazardous materials laws which are applicable to performing the services.

"Business Day" means a calendar day of twenty-four hours, excluding weekends and holidays, beginning at midnight and ending at midnight twenty-four hours later.

"Calendar Day" means a calendar day of twenty-four hours, including weekdays, weekends and holidays, beginning at midnight and ending at midnight twenty-four hours later.

"Certificate of Acceptance" means a written instrument by which the County notifies Contractor either that in its sole discretion the Acceptance Criteria for a specific deliverable have been met or waived, in whole or in part.

"Certificate of Final System Acceptance" means a written instrument by which the County notifies Contractor that all of the Acceptance Criteria have been met for the system, all of its components, and for all products and deliverables requiring Acceptance Testing.

"Change Order" means a written change to the scope of work. Change Orders are incorporated into this Contract by reference.

"Confidential Information" means any information that is disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, labeled or identified at the time of disclosure as being confidential or its equivalent; or if the information is in verbal form, it is identified as confidential or proprietary at the time of disclosure and is confirmed in writing within thirty (30) days of the disclosure.

Confidential information does not include any information that: is or becomes publicly known through no wrongful or negligent act of the receiving party; is already known to the receiving party without restriction when it is disclosed; is, or subsequently becomes, rightfully and without breach of this Contract or any other agreement between the Parties or of any applicable protective or similar order, in the receiving party's possession without any obligation restricting disclosure; is independently developed by the receiving party without breach of this Contract; or is explicitly approved for release by written authorization of the disclosing party. All usage of the term "Confidential Information" in this Contract shall be deemed to include the qualifications set forth in Section 2.31.

"Configuration" means a) revisions or modifications to software to enhance features and functionality but which do not include changes to the source code, and/or b) selection of functional options from choices provided within the software.

"Contingent Products" means a product or service which the County intends to use in conjunction with some other product or service and from which the County would not derive the essential purpose of the bargain if acquiring one without the other.

"Contract" means the Master Terms and Conditions and all the documents referenced in Paragraph 2.1.

"Contract Price" means the not-to-exceed price agreed upon by the Parties for the system as set forth in Exhibit A, subject to the provisions herein and as such price may be modified from time to time by Amendment.

"County Confidential Information" means any information, in any form or media, including verbal discussions, whether or not marked or identified by the County, which is reasonably described by one or more of the following categories of information: (1) financial, statistical, personnel, human resources data or personally identifiable information as described in the RCW 9.35.020; business plans, negotiations, or strategies; (3) unannounced pending or future products, services, designs, projects or internal public relations information; (4) trade secrets, as such term is defined by RCW 41.05.200; (5) exempt per RCW 41.05.026 (6) attorney/client privileged communications, (7) exempt per federal laws (including but not limited to copyright, HIPAA) and (8) information relating to or embodied by designs, plans, configurations, specifications, programs, or systems developed for the benefit of the County including without limitation, data and information systems, any software code and related materials licensed or provided to the County by third parties; processes; applications; codes, modifications and enhancements thereto; and any work products produced for the County.

"Coverage Hours" means those hours specified in this Contract during which period Contractor shall provide maintenance.

"Customization" means (a) any modification to the products, (b) any new component or accessory, or (c) in the case of software, new or modified code, whether any of the above have been prepared, created, or developed (1) by Contractor at the County's request, (2) by Contractor at the County's request as a work for hire, or (3) by the County, in conjunction with or as authorized by, Contractor.

"Data Configuration Acceptance Test" means the test that demonstrates the system operates as specified in the Contract after system configuration has been completed for the County. This test includes but is not limited to creating user profiles, setting up system security, building workflows, creating fees, loading validation tables, implementing approval processes and converting historical data.(Is this a full load test, for how long?

"Data Conversion" means the process of collection, clean-up and migration of all required data and related documents from the County's existing Permit Tracking system (Tidemark) and other sources identified by the County to the new System.

"Deliverable" means the goods, services, documents or tangible work products described in the Statement of Work to be provided to the County by Contractor under this Contract.

"Delivery of Products" means product has been received at the location specified in this Contract. Delivery of products is distinguished from final acceptance following delivery of the system.

"Documentation" means user manuals, training manuals and other written materials in any form that describe the features or functions of the products and system, including but not limited to published specifications, marketing materials, technical manuals, and operating instructions provided by Contractor to the County, or readily available to the public, or as required to be produced by Contractor subject to the terms of this Contract.

"Equipment" means any hardware, machinery, device, tool, computer, computer component, computer system, including add-ons, or peripherals of tangible form together with the necessary supplies for upkeep and maintenance, and other apparatus necessary for the successful implementation of the System and acceptable completion of the project as specified in this Contract.

"Error" means any defect, problem, condition, bug or other partial or complete inability of the system to operate in accordance with the applicable specifications, including unnecessary processing delays and documentation.

"Failure" means an error which results in the complete inability of the system or a product, or any component of the system or a product, to operate in accordance with the applicable specifications and documentation or to meet relevant acceptance criteria during Acceptance Testing.

"Final Acceptance" means the County has determined that a deliverable or a product requiring Acceptance Testing: (a) has met the Acceptance Criteria and the County has provided a Certificate of Acceptance to Contractor; and (b) the deliverable or product functions and performs compatibly and without error when integrated as a functional component of the system.

"Final Implementation Date" means the date upon which the County issues a Certificate of Final System Acceptance for the System.

"Final System Acceptance" means that the system including all system components, equipment, software, connections, and interfaces, and Third Party Software : (a) has met all of the acceptance criteria for functionality and performance when fully integrated with County systems and networks, for the system and any products requiring Acceptance Testing, that the system has successfully completed the Reliability Acceptance Test and the County has provided a Certificate of Final System Acceptance to Contractor; and (b) all products perform in accordance with specifications throughout Acceptance Testing and the Reliability Test without error when integrated as functional components of the system and with County-specific data.

"Final System Acceptance Date" means the date on which the County issues a Certificate of Final System Acceptance for the system.

“Functional Acceptance Test” means the test that demonstrates the correct operation of the system's functions as specified within the contract including all of the interfaces, fees, workflows, system security, and data conversion components.

“Hosting SLA” means the agreement between the County and Contractor to provide the infrastructure needed to run Contractor's system at a remote site.

“Infrastructure” means the physical components used to operate the system and to connect users to the system, including but not limited to equipment, software, network, firewalls, routers, etc. Infrastructure serves as the foundation upon which the system and the project capabilities are built.

“Installation Acceptance Test” means verifying the installation and configuration of all system equipment at its final/permanent location along with verifying basic functionality (how is this measured?) of all components.

“Interface” means a point of interaction between system components or the device or code which enables such interaction; applicable to both equipment and software.

“Key Personnel” means specific individual identified by Contractor in its proposal to fill key positions.

“Key Position” means the Contractor's Project Manager, Business Analyst, Technical Lead and Architect, Deputy Project Manager, Senior Strategic Advisor and the Project Manager or Lead person for any subcontractor, or the equivalent positions regardless of titles in Contractor's proposal.

“Maintenance” means services, other than repairs during the maintenance period, provided by Contractor to the County designed to keep the system operating in optimum condition and at a minimum level to comply with the contract specifications.

“Maintenance Fee” means the fee paid by the County for maintenance.

“Maintenance Period” means the time period when Contractor provides maintenance to the County, which begins upon expiration of the Warranty Period.

“Maintenance Request” means a request by the County to Contractor for maintenance.

“Manufacturer's Warranty” means a written statement to the County from a third party or from the Contractor on behalf of the third party that one or more components of the system or its products or services will meet the required specifications, functionality and performance level, and Contractor will provide repairs as needed during the Manufacturer's Warranty Period, independent of Contractor's maintenance obligations..

“Manufacturer's Warranty Period” means the time period during which a Manufacturer's Warranty is valid and enforceable by the County.

“Master Terms and Conditions” means this document, the body of text from the preamble through the signature page.

“Material Breach” means any breach of this Contract that (a) causes or may cause substantial harm to the non-breaching party; or (b) substantially deprives the non-breaching party of the benefit it reasonably expected under this Contract.

“Open Source Software” means any computer program for which the license provides the rights to run the program, view and change the source code, distribute exact copies, distribute modified copies and frees parties from any obligation to pay license fees or royalties.

“Operating System Software” means any computer program product that is installed on, and is a component integral to the function of, the equipment.

"Party" or "Parties" means the County and Contractor individually as a "Party" or jointly as the "Parties."

"Priced Options" means features and functionality that are available, offered, and priced in the contract, but which the County may or may not purchase at the time the contract is executed. The County may purchase Priced Options at any time during the contract term. The quoted price of Priced Options shall remain effective for one year following Final System Acceptance, and may be adjusted per the Contract for subsequent years.

"Product(s)" means supplies, equipment, documentation and software, as well as updates, upgrades, customization and training.

"Production Environment" means the instance of the System which purpose is daily use for conducting the County's business.

"Project" means the overall collection of activities required for delivery and support of the system including, without limitation, design, development, integration, testing, support and maintenance, any of which Contractor may be providing in whole or in part.

"Proposal" means Contractor's response to the County's RFP referenced on page one of this Contract.

"Reliability Acceptance Test" means operating and monitoring the complete system in a live production mode for a period of ninety (90) consecutive calendar days to verify the system meets the performance and response requirements of the contract while providing the functions and capabilities of the specifications. All open tickets must be resolved prior to this testing being signed off by the County.

"Repair" means to fix, patch, reprogram or replace the system or any equipment or software component thereof so as to eliminate errors or failure.

"Resolution Time" means the elapsed time between when a help desk ticket is logged until the time it is closed and accepted by the County.

"Response Time" means the elapsed time between the time a help desk ticket is submitted to the Contractor's Help Desk and the Contractor's staff contacts the ticket submitter at the County.

"Services" means both ordinary and professional services as required to be performed by Contractor under this contract for the County. Services include, but are not limited to, software maintenance, consulting, training, installation, analysis, programming, needs assessment, or technology review.

"Software" means the object code version of any proprietary or licensed computer programs, firmware, applications or operating system software which are components of the system and are licensed by Contractor to County pursuant to this Contract, including, without limitation, any custom software or customization, application software, base software, diagnostic software, updates, upgrades and any related documentation. Software may include Third Party Software and/or Open Source Software delivered by Contractor if required to operate and maintain the system.

"Software Enhancement or Customization" means a modification of Contractor's software source code to increase its capabilities.

"Source Code" means a complete copy, expressed in high-level (i.e., human readable; not machine language or object code) computer language, of the software which, when assembled or compiled, becomes the executable object code of the software. Source Code shall include all material including but not limited to design documentation, software documentation, reference manuals and documentation, libraries for the software, and interface software (patch or whole programs), in any form (printed, electronic, or magnetic) and any other information necessary for a reasonably skilled programmer or analyst to understand, maintain, and modify the software.

"Specifications" means the capabilities, functionality and performance requirements, for the system and its components and other elements of the project set out in the following priority: change orders, the acceptance criteria, the statement of work, documentation, Contractor's proposal, proposal clarifications and the County's request for proposals. The governing document shall be the most current of the documents listed herein; in the absence of an applicable reference in one document, reference shall be made to the immediately preceding document.

"Statement of Work" (SOW) means a detailed description of the tasks and deliverables required to successfully implement and deliver the system, and the product(s), and/or service(s) to be provided to the County by Contractor under this Contract.

"Subcontractor" means any person or business entity employed to perform all or part of an obligation of this Contract under the control of the Contractor.

"System" means collectively all equipment, products and software, labor, and training to be provided by Contractor to County under this Contract.

"System Response Time" (SRT) means the time between the depression of the last keystroke or activation of a pointing device that initiates a system transaction and the initial appearance of the system response resulting from the completed transaction (e.g., first page, pop-up window, etc.). Response Time is measured at the initial completion of the resulting transaction, not when the transaction begins or during system processing of the transaction as may be reflected by one or more system status messages.

"Test Environment" means an instance of the system which purpose is used for testing and evaluating the system or components of the system separately from the Production Environment.

"Thin Client" (sometimes also called a lean or slim client) is a computer or a computer program which depends heavily on some other computer (its server) to fulfill its traditional computational roles. This stands in contrast to the traditional fat client, a computer designed to take on these roles by itself.

"Third Party Software" means software other than Contractor-Owned software provided to County by Contractor under this Contract and that Contractor is authorized to license to the County subject to the original manufacturer's standard provisions, or recommended by Contractor as a component of the system for the County to purchase from someone other than Contractor.

"Training Environment" means an instance of the system whose purpose is used for training end users on the system or components of the system in an environment separate from the Production Environment.

"Throughput Test/Projected Load Acceptance Test" means the test which demonstrates over a specified time period that system response times meet the performance specifications of the Contract, even when a maximum load is placed upon the system and during peak system load periods.

"Update" means a change, modification, or enhancement to the equipment or software and related documentation, which improves its performance or efficiency, but does not alter its core functionality.

"Upgrade" means a newer, better version, change, modification, or enhancement to the equipment or software (including Third Party Software), and related documentation, which Contractor makes available from time to time, which incorporates major new features or increases the core functionality of the software and may be considered a new version. Software upgrades may include error correction, bug fixes, additions to, or patches to the software.

"Use" means the County's right to install, integrate, configure, implement, test, access, benefit from, maintain and operate the system, or any system components; any Contractor-provided software tools to customize the system; documentation listed in the Contract; training materials County may acquire to provide internal training on the system to County users; any software enhancements produced by or in collaboration with Contractor to develop the system to County's unique business processes and/or programming environment for purposes of installing, operating, configuring or using the system.

"User" means any person employed by or working on behalf of the County, the County's Offices, Departments and Divisions, Officers, Directors, and any person or entity authorized by the County to provide it with services requiring use of the system, and to use the County's resources in whole or in part, in the course of assisting the County.

"Authorized System User" means any user that has passed the authentication process of the system and is thereby authorized to use the system's functions and components based on the permissions established by that user's credentials (User ID and password, etc.).

"Inquiry-Only System User" means any user that is authorized by the County to use only the query functions and components of the system and does not enter or change data.

"Concurrent System User" means all users that are logged into the system at the same time.

"Full System User" means any user that is authorized to use one or more components of the system.

"Warranty Period" – ninety (90) consecutive calendar days during which the County performs Reliability Acceptance Testing.

"Web" means the World Wide Web, abbreviated as WWW and commonly known as the Web.

"Web-based" means a software application that is accessed on the Internet via a web browser.

2. GENERAL PROVISIONS

2.1 Order of Precedence:

In the event there is a conflict between the terms and conditions of one portion of this Contract with another portion of this Contract, the terms of the Master Terms and Conditions will take precedence over the other terms of the Contract, except where a clear statement of precedence other than that set forth in this section is included in the document. In this Contract, the order of precedence shall be:

- a. Exhibit B: Contractor's Response to County RFP #666
- b. Amendments to this Contract
- c. Master Contract
- d. Change Orders
- e. Exhibit A: Contractor's Price
- f. Exhibit C: Statement of Work
- g. Exhibit D: POSSE One-Time Perpetual Software License Agreement
- h. Exhibit E: POSSE Annual Product Support Agreement
- i. Exhibit F: County RFP # 666 (including any addenda issued)

2.2 Point of Contact:

Contractor shall be the sole point of contact for the County with regard to the Contract.

2.3 Capacity to Contract:

Contractor warrants it has the legal authority and capacity to enter into and perform this Contract.

2.4 Compliance with Law/Venue:

2.4.1 Authority to Conduct Business: Contractor warrants it is duly authorized to operate and do business in all places where it shall be required to do business under the Contract; that it has obtained or shall obtain all necessary licenses and permits required in connection with the Contract and that it shall fully comply with all laws, codes, ordinances, orders, decrees, labor standards and regulations of its domicile and wherever performance occurs during the term of this Contract. Contractor warrants it is lawfully organized and constituted under all federal, state and local laws, ordinances and other authorities of its domicile and is otherwise in full compliance with all legal requirements of its domicile.

2.4.2 Washington State Venue/Choice of Law: This Contract shall be construed according to the laws of the State of Washington without reference to its conflict of law provisions. Any litigation between the County and Contractor arising under this Contract or out of work performed under this Contract shall occur in the Clark County Superior Court.

2.4.3 Compliance with Applicable Law: Contractor warrants it has complied and shall comply with all applicable law, codes, ordinances, orders, decrees, labor standards and regulations of its domicile and wherever performance occurs in connection with the execution, delivery and performance of this Contract.

2.4.4 Conflict of Interest: Contractor warrants it has no present interest and shall not acquire any interest that would conflict in any manner with its duties and obligations under the Contract.

2.4.5 Rule of Construction/Contract Elements/Headings: This Contract has been drafted by the County in the general format as a convenience to the Parties only but has been equally negotiated by both parties and the contract shall not, by reason of authorship, be construed against the County. Section headings are for ease of reference and convenience only and shall not affect or enter into the interpretation of any portion of the Contract.

2.5 Term:

Unless terminated earlier under the provisions herein, this Contract shall remain in effect during the Initial Term as well as any option years exercised at the County's discretion. Initial term cannot exceed five (5) years.

2.6 Changes to Contract:

2.6.1 Amendment of the Contract: Any changes to the provisions of this Contract shall be in the form of an Amendment. No provision of this Contract may be amended unless such Amendment is approved as to form by the County Attorney and executed in writing by authorized representatives of the Parties. If the requirements for amendment of this Contract as described in this section are not satisfied in full, then such amendments automatically will be deemed null, void, invalid, non-binding, and of no legal force or effect.

2.6.2 Change Orders to a Statement of Work: The County reserves the right to make changes, at any time to a Statement of Work in the form of a Change Order. Contractor agrees to timely alter the delivery of products or services accordingly. If such changes materially increase or decrease Contractor's obligations, the Parties shall also execute an Amendment to the Contract as needed and/or adjust the fee and/or time schedule accordingly. If the amount of such adjustment cannot be calculated as a function of hours or tasks, the Parties shall negotiate in good faith a modified schedule and/or price.

2.7 Personnel:

2.7.1 Key Positions: The County has designated Key Positions under this Contract. The job titles and persons set forth herein include the equivalent positions which may have different position titles in Contractor's proposal. The named individuals set forth in Contractor's proposal to fill these Key Positions are Key Personnel.

2.7.2 County Requested Substitution of Key Personnel: The County reserves the right to request a change in Contractor's Key Project personnel for cause at any time.

2.7.3 Substitution of Key Personnel: Any substitutions or a replacement of Key Personnel by the Contractor, requires the written approval of the County, such approval not to be unreasonably withheld. For any proposed substitute Key Personnel, Contractor shall provide the following information to the County: a detailed explanation of the circumstances necessitating the proposed substitution, a complete resume for the proposed substitute, and any additional information requested by the County. Proposed substitutes should have qualifications comparable to or better than those of the person(s) being replaced. The County reserves the right to interview and approve proposed substitutes. The County will notify Contractor within five (5) business days after receipt of all required information of the acceptability of proposed substitute Key Personnel. No change in Contract prices may occur as a result of substitution or replacement of Key Personnel.

2.7.4 **County Personnel:** The County has identified County employees within this Contract with certain responsibilities and designated authority. The job titles and persons set forth herein include the equivalent positions which may have different position titles. The County has discretion to delegate the responsibilities and authority to another employee or different employee as the County's designee for purposes of fulfilling its obligations under this Contract.

2.8 Delivery:

Contractor shall deliver the system and product's freight and insurance prepaid, F.O.B. to the County's designated location at the time indicated in this Contract or on any Statement of Work or Change Order. Shipments will be complete and partial shipments will be avoided unless the County agrees in writing to the partial shipment in advance of such a shipment. The risk of loss or damage in transit shall be upon Contractor until product is received by the County at the delivery site subject to a reasonable inspection period (not to exceed five days). Contractor shall furnish on-site or other assistance, as may be required to install the product as set forth in the Contract, Statement of Work or Change Order, at no additional cost to the County. Acceptance shall not relieve Contractor from its responsibility under any representation or warranty. If the County makes a payment for a product prior to Final Acceptance, the payment does not grant a waiver of any representation or warranty by Contractor. In the case of the system, delivery of products shall not be deemed to be complete until the system is available for commencement of the Acceptance Test.

2.9 Delivery Schedule:

Contractor shall work collaboratively with the County to meet all required schedules and deadlines for delivery of product(s) and or services in accordance with the agreed upon final implementation date as set forth in this Contract or an individual Statement of Work or Change Order. Contractor shall not be responsible for delays in schedules or deadlines caused by the County's inability to meet required timeframes.

2.10 Written Notifications:

All written notifications and written amendments shall be sent to the following:

For Clark County:	For Contractor:
Name:	Name: Dave den Otter
Title:	Title: VP, Operations
Address:	Address: 3900 S. Wadsworth Blvd, Suite 510
City, State:	City, State: Lakewood, CO
e-mail:	e-mail: dave.denotter@cxusa.com

Copy to: Clark County Office of Purchasing P.O. Box 5000 1300 Franklin Street, 6 th Floor, Suite 650 Vancouver, WA 98660	Copy to: Computronix (Canada) Ltd. VP, Business Development Suite 200, 18354 – 118 Ave NW Edmonton, AB Canada T5S 3G2
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2.11 County Reporting Requirements:

The County is required to track certain types of contract data for reporting purposes. Items which the County must report on may include, but are not limited to, Subcontractor utilization, Minority, Women,

and Emerging Small Business (M/W/ESB) participation and Subcontractor/Supplier Payment. If Contractor uses any Subcontractors in the performance of this Contract, Contractor shall submit a Monthly Sub-consultant Payment and Utilization Report reporting ALL Subcontractors employed in the performance of this Contract. The County will enforce all diversity in workforce and subcontracting commitments.

2.12 Payment:

Unless subject to successful completion of an Acceptance Test or other payment milestone specified in any Statement of Work or Change Order, payment for the system and/or any product, deliverable or service shall be in accordance with the payment schedule. Payment shall be issued by the County net thirty (30) days from receipt and acceptance of a proper invoice from Contractor. Contractor invoices must contain Contractor's name and address; invoice number; date of invoice; Contract number and date; description of products and/or services; quantity, unit price, (where appropriate), and total amount; County- required reporting, if any, and the title and phone number of the responsible official to whom payment is to be sent. The County may stipulate how line items are entered on an invoice to ensure compatibility with the County's accounting and financial systems and to facilitate payment to Contractor.

2.13 Payment of Taxes/Contractor Shall Withhold:

Contractor shall, at its own expense, timely (a) pay all salaries, wages, and other compensation to its employees; (b) withhold, collect, and pay all applicable federal, state, and local income taxes (domestic or foreign), FICA, Medicare, unemployment insurance and any other taxes or charges in connection with its employees; and (c) provide and pay for workers compensation insurance and any statutory or fringe benefits to employees. Contractor shall be solely responsible for all such obligations for its employees. Contractor shall also assure that any Subcontractor shall comply with the foregoing obligations for its employees. The County has no duty to withhold.

2.14 Independent Contractor:

Contractor is a contractor independent of the County and nothing in this Contract is entered into as a joint venture, partnership, or agency between the Parties. No employment relationship is or is intended to be created between the County and any individual representing Contractor. During the term of this Contract, employees of Contractor and any authorized Subcontractors shall at all times remain employees of Contractor or authorized Subcontractors and ultimately shall remain under Contractor's sole control.

2.15 Assignment:

Neither Party is authorized to assign, transfer, subcontract, or delegate all or any part of this Contract, or any interest therein, without the other Party's prior written consent, which shall not be unreasonably withheld, except that (a) either Party may assign to any corporate affiliate pursuant to any merger, consolidation or other reorganization, without the other Party's consent but upon written notice to the other Party, (b) in the event that the County's business needs change or the County enters into an agreement with a provider for outsourcing services, Contractor agrees that the County shall have the right to assign this Contract to a successor of all, substantially all, or specified area(s) of the County's business, including an outsourcing provider, provided such outsourcing provider operates the software licensed hereunder expressly and solely for the County's benefit, upon written notice to the other Party, and (c) Contractor may not, without the other Party's consent but upon prior written notice to the other Party, assign its right to payment under this Contract or grant a security interest in

such payment to any third party without requiring that the third party be liable for the obligations of Contractor under this Contract.

2.16 Delegation of Obligations/Subcontractors:

Contractor shall not subcontract any work, assign any rights (including, without limitation, in connection with the sale of all or substantially all of Contractor's assets, stock, or the line(s) of business applicable to this Contract), or delegate any obligations under this Contract, cancel or change any previously approved subcontract without the County's prior written consent, such consent not to be unreasonably withheld. Contractor shall be fully responsible for the acts and omissions of its Subcontractors at all levels, and of their agents and employees. Contractor shall ensure that all applicable provisions of this Contract (including those relating to Insurance, Indemnification, and Confidentiality) are included in all of its subcontracts. The County reserves the right to review any agreements between Contractor and its Subcontractors for Products and/or Services authorized under this Contract.

All minority subcontractors/suppliers identified in Contractor's proposals shall be used in their proposed capacity during Contract performance. If Contractor desires to replace any minority Subcontractors / Suppliers under this Contract all substitution requests must have approval from the County's Chief Procurement Officer before such substitutions can be made. In no event shall Contractor subcontract any work, assign any rights, or delegate any obligations under this Contract without the County's prior written consent.

2.17 Warranties:

Contractor warrants as follows:

2.17.1 **Disclosure and Assignment of Manufacturer's Warranties:** In all cases where products or equipment or services are covered by a Manufacturer's Warranty, Contractor will provide the County with all Manufacturer's Warranties pertaining to all services or products provided by Contractor. Contractor will assign to the County any Manufacturer's Warranty applicable to any respective product, equipment or service. Notwithstanding the foregoing, Contractor shall be held responsible by the County for correction to or replacement of the system or any of its components during the period of Warranty and Maintenance.

2.17.2 **Equipment and Parts Warranty:** Contractor warrants that equipment and parts will be new, the latest model and free from material defects in material and workmanship during the Manufacturer's Warranty Period when put into use and service under contract specifications. If Contractor proposes to provide refurbished, reclaimed or remanufactured parts or equipment to the County, Contractor shall request the County's acceptance in writing in advance of delivery and the County retains the right to accept or refuse Contractor's use of refurbished, reclaimed or remanufactured parts. If the County accepts the use of refurbished, reclaimed, or remanufactured parts or equipment, Contractor warrants such products have the same warranty as that of new and current products and are subject to all the same provisions of this Contract. If Contractor uses refurbished, reclaimed or remanufactured parts without the prior consent required by the County, Contractor may be required, at the County's sole discretion, to replace such parts and equipment with new and current manufactured parts and equipment at Contractor's sole expense.

- 2.17.3 Warranty Against Planned Obsolescence and Reclaimed Parts and Equipment: The Contractor warrants that at the time of delivery of products, it will not in the next eighteen (18) months, announce replacements for those products delivered pursuant to this Contract and will not reduce support for the products delivered.
- 2.17.4 Industry Standards: The system and all components of the system are compliant with all other generally accepted industry standards.
- 2.17.5 Warranty and Representations:
Contractor warrants and represents the following:
- 2.17.5.1 Performance to Specifications: The system, including all components and upgrades supplied by Contractor shall operate in accordance with acceptance criteria, or specifications (which may be updated from time to time), and all documentation during the Warranty Period.
- 2.17.5.2 All Necessary Materials: The County has all necessary materials and that no other equipment, software, Interfaces, applications or other products and/or services are required to be used in conjunction with the system for the system to operate in accordance with the acceptance criteria and documentation.
- 2.17.5.3 System Compatible: The system is compatible with the County's existing data files and systems as applicable and identified in the RFP and shall run in accordance with the documentation.
- 2.17.5.4 No Material Defects or Viruses/Illicit Code: The system (a) is free of any defect in material of the media in which it is delivered; and (b) is free of any virus, Trojan horse, spyware, malware, or other program code designed to erase, disable or otherwise harm or interfere with the County's equipment, data or other programs that Contractor or any Subcontractor to Contractor knew or should have known was contained in the software or other code or program.
- 2.17.5.5 Illicit Code: Contractor's software and third party software shall not (a) contain any hidden files that Contractor or any Subcontractor to Contractor knew or should have known were contained in the software or programming; (b) replicate, transmit, or activate itself without the control of an authorized person operating computing equipment on which it resides, unless requested or authorized by the County's Contract Manager; (c) Alter, damage or erase any data or computer programs without the control of an authorized person operating the computing equipment on which it resides; or (d) contain any key, node lock, time-out or other function, whether implemented by electronic, mechanical or other means, which restricts or may restrict use or access to any programs or data developed under this contract, based on residency on a specific hardware configuration, frequency of duration of use or other limiting criteria. Any of the foregoing shall constitute "illicit code".

- 2.17.6 Documentation Explains Use: Contractor warrants that the documentation shall explain the operation of the system in terms understandable by County users of reasonable technical competence.
- 2.17.7 No Third Party Conflict or Infringement: Contractor warrants the execution, delivery, and performance of this Contract shall not contravene the terms of any contracts with third parties or any third-party rights in any patent, trademark, copyright, trade secret, or similar right; and, as of the date of this Contract, there are no actual or threatened legal actions with respect to the matters in this provision.
- 2.17.8 Commencing of the Warranty Period: Where contingent products are ordered and no acceptance test is required, the Warranty Period shall not commence until acceptance by the County of all required or all contingent products. The County may, at its election, postpone services in support of products so as to coincide with delivery and acceptance of all contingent products. The County shall not incur any additional fees whatsoever for reordered or replacement contingent products.

2.18 Contract:

This Agreement, together with all Exhibits, Attachments and those documents, which by their reference have been incorporated herein, constitutes the entire Contract between the County and the Contractor and supersedes all proposals, oral and written agreements, between the parties on this subject.

2.19 Flow-down Clauses:

Contractor shall include the following clauses, or substantially similar language, in its subcontracts under this Contract.

Section 2.7, Personnel

Section 2.11, County Reporting Requirements Section 2.21, Indemnification

Section 2.24, Insurance and Bonding Section 2.33, Confidentiality

2.20 No Third Party to Benefit:

This Contract is entered into for the benefit of the County and Contractor. Except as set forth herein, nothing in this Contract shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, the general public or any member thereof, or to authorize anyone not a party to this Contract to maintain a suit for breach of contract, personal injuries, property damage, or any other relief in law or equity in connection with this Contract.

2.21 Indemnification:

Contractor shall defend, save, and hold harmless the County, its elected officials, agents, and employees, from all claims, demands, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature (including all attorneys' fees and costs), resulting from or arising out of the activities, errors or omissions of Contractor or its officers, employees, Subcontractors, or agents, including intentional acts, under this Contract.

Contractor agrees to hold harmless and indemnify the County and its affiliates against any taxes, premiums, assessments, and other liabilities (including penalties and interest) that the County or its

affiliates may be required to pay arising from products and/or services provided by Contractor under this Contract.

2.22 Limitation of Liability:

Except for infringement indemnity under Section 2.17.7, personal injury or death, neither the County nor Contractor, its partners, principals, or employees shall be liable for more than the total value of this Contract for any actions, damages, claims, liabilities, costs, expenses, or losses in any way arising out of or relating to the products and/or services provided hereunder.

In no event shall the County or Contractor, its partners, principals, or employees be liable for indirect, incidental, consequential, special, punitive, or exemplary damages, costs, expenses or losses. The provisions of this paragraph shall apply regardless of the form of action, whether in contract, statute, tort (including without limitation negligence) or otherwise.

2.23 Force Majeure:

2.23.1 In the event that either Party is unable to perform any of its obligations under this Contract (or in the event of loss of use) due to natural disaster, (hereinafter referred to as a "Force Majeure Event"), the Party who has been so affected immediately shall give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, this Contract and/or any affected Statement of Work or Change Order shall immediately be amended or modified by the Parties to reflect any mutually agreed changes to project schedule(s) or delivery dates.

2.23.2 If the period of nonperformance exceeds fifteen (15) Calendar Days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract or any Statement of Work or Change Order.

2.23.3 If delay in delivery due to a Force Majeure Event does not exceed thirty (30) Calendar Days, such delays in delivery shall automatically extend the delivery date for a period equal to the duration of such events; any Warranty Period affected by a Force Majeure Event shall likewise be extended for a period equal to the duration of such event so long as it does not exceed thirty (30) Calendar Days.

2.23.4 If delay in delivery due to Force Majeure Event is longer than thirty (30) Calendar Days, the County shall have the right to terminate this Contract, or a Change Order, upon written notice to Contractor, in accordance with this Section.

2.23.5 If this Contract involves the acquisition of equipment or software that contains personally identifiable information and/or processes credit card transactions, a security breach of Contractor's system shall not be considered a Force Majeure Event.

2.24 Insurance and Bonding:

Work shall not commence until all insurance requirements listed below have been met and certificates have been approved by the County Attorney and filed with the Auditor. All required insurance must be issued by companies or financial institutions that are financially rated "A" or better and duly licensed, admitted and authorized to do business in the State of Washington.

2.24.1 Insurance Certificate: As evidence of the required insurance coverage, Contractor shall furnish acceptable insurance certificates to the County prior to or with the return of the signed contract. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance. If the insurance is canceled or terminated prior to completion of the Contract, Contractor shall provide a new policy with the same terms. Contractor agrees to maintain continuous, uninterrupted coverage for the duration of the Contract. Failure to maintain insurance as required by this Contract may be cause for immediate termination of the Contract by the County. Contractor's insurance will cover damages excluded from any limitation of liability to the extent of its policy limits indicated herein.

2.24.2 Additional Insureds: The coverage shall apply as to claims between insureds on the policy. The insurance shall be without prejudice to other coverage. For liability coverage, the insurance certificate shall name as additional insureds "Clark County, Washington State, and its elected officials, agents and employees." Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

2.24.3 Insurance Costs: Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

2.24.4 Required Coverage is as follows:

2.24.4.1 Public Liability and Property Damage: The Contractor shall obtain, and keep in force during the entire term of the agreement, liability insurance against any and all claims for damages to person or property which may arise out of operations under the agreement, whether such operations be by the Contractor, a sub-contractor, or anyone directly or indirectly employed by either the Contractor or a sub-contractor.

The amount of coverage provided by such insurance should not be less than \$1,000,000 combined single limit for bodily injury and property damage. In addition a General Aggregate Limit Endorsement, CG 25 03 or its equivalent, must be attached to the certificate.

All liability insurance required herein shall be under a comprehensive or commercial general liability (Occurrence Form Only) and business automobile policy or policies, and shall provide coverage as to:

- a. Premises and operations of the Contractor
- b. Products – completed operations
- c. Owners and Contractors protective
- d. Contractual liability
- e. Explosion (x), collapse (c), and underground hazards (u) coverage
- f. Broad form property damage.

- g. Employer's liability/stop-gap
- h. Automobiles, including all owned, hired and leased vehicles, and employer's auto non-ownership liability.

The County shall be named as an additional insured with respect to all such policies by endorsement CG 20 10 11 85 which must be attached to the certificate and copies of all policies shall be furnished to the County upon execution of this agreement by both Parties. An insurance company licensed to do business in the State of Washington shall issue all policies. At least seven (7) days prior to commencing any operations under the agreement, the County must receive an insurance certificate outlining the Contractor's insurance coverage. Said certificate must be provided on a standard "ACORD" or comparable form, must include as additional insured Clark County, with respect to the agreement, must provide that coverage shall not be canceled or modified without 30 days prior written notice to the County, and must state that all policies are written with an "occurrence" trigger.

2.24.4.2 Workers' Compensation: Contractor shall comply with the workers' compensation law under RCW 51 Industrial Insurance. Contractor shall maintain coverage for all subject workers as defined by RCW 51 and shall maintain a current, valid certificate of workers' compensation insurance on file with the County Auditor for the entire period during which work is performed under this Contract.

Contractors who are non-subject workers meeting one of the exceptions in RCW 51.12.020 may not be required to carry workers compensation insurance. Any Contractor requesting an exemption from the workers compensation coverage listed above must make that request in writing to the County Attorney, stating Contractor's qualification for exemption under RCW 51.12.020.

2.24.4.3 Technology Errors and Omissions; Information Security & Privacy Liability: Contractor shall maintain liability insurance covering acts, errors or omissions arising out of the performance or failure to perform professional services related to the services under this Contract. The coverage shall be placed with an insurer with an AM Best Rating of A or better and shall include the following coverage:

Technology Products and Services E&O - Information Security & Privacy Liability for Service Provided to Others.

Such insurance shall cover any and all errors, omissions and/or negligent acts in the delivery of products, services and software under this Contract. Such errors and omissions insurance shall include coverage for claims and losses with respect to network risks (such as data breaches, unauthorized access/use, ID theft, invasion of privacy, damage/loss/theft of data,

degradation, downtime, etc.) and infringement of intellectual property, such as copyrights, trademarks, service marks and trade dress.

Such insurance shall include limits of coverage of the local currency equivalent of not less than \$3,000,000.00 (Three Million U.S. dollars) and shall remain in effect for not less than three (3) years following the date of termination or expiration of this Contract. Evidence of coverage must be sent to the County for three years following termination or expiration of this Contract.

2.24.4.4 Insurance Requirements for Subcontractors: Should Contractor subcontract any part of the Contract, Contractor will require those Subcontractors or affiliates if not covered under Contractor's insurance, to obtain and keep in force for the duration of the Contract, insurance equal to the minimum values indicated above.

2.24.4.5 Performance Bond: In lieu of a performance bond, the County will withhold 10% of the total contract amount (excluding license costs) until all three (3) phases of the project have successfully completed Reliability Acceptance Testing and the County has issued a Certificate of Acceptance.

2.25 Ownership of Property

Title to all equipment purchased under this Contract shall pass to the County upon delivery at the County's designated location. Any work products produced or created by Contractor for the County shall be understood to be, to the fullest extent of the law, works made for hire unless the Parties have expressly agreed otherwise in writing.

2.26 Proprietary Rights:

Except customizations, all trademarks, service marks, patents, copyrights, trade secrets, and other proprietary rights in or related to the products or services are and will remain the exclusive property of Contractor or its designees. County shall not decompile, disassemble or otherwise reverse engineer the software.

2.27 Return of Parties' Property:

When the Contract or any Task/Change Order placed pursuant to the Contract is terminated or expires, each Party shall return to the other all papers, materials, and properties of the other Party then in its possession. The County will retain one (1) copy of the documentation for the express purposes of public record archiving.

If the County has paid in full for licensed product prior to the expiration date of this Contract the County shall retain licenses to product for which the County may continue to order maintenance and upgrades. Terms of this Contract relating to such licensed product, maintenance and upgrades shall survive expiration of the Contract.

2.28 Financing of Property:

If Contractor finances any property, real or personal, that comprises any part of the system, the term of such financing shall not exceed the term of the Contract. If Contractor finances or leases any such property or equipment, Contractor shall ensure that any agreements ancillary to or supporting the

principal lease or financing agreement (e.g., hardware, software, maintenance, insurance) are coterminous to the principal financing or leasing arrangement. In addition, if the Contract is terminated, Contractor shall ensure that the County or any successor contractor shall have the right to terminate, renegotiate or be assigned any lease of property or equipment or ancillary agreement (other than, in the case of the County, any financing agreement or insurance).

2.29 Disclosure of Litigation or Financial Condition:

Contractor warrants and represents that there are no suits, actions, other proceedings or reasonable anticipation of litigation in any judicial or quasi-judicial forum that will or may adversely affect Contractor's ability to fulfill its obligations under this Contract. Contractor further warrants that it will immediately notify the County if, during the term of this Contract or any extension of this Contract, Contractor becomes aware of any lawsuits, actions or proceedings or has reasonable anticipation of litigation in any judicial or quasi-judicial forum that involve Contractor or any Subcontractor and that will or may adversely affect Contractor's ability to fulfill its obligations under this Contract or extension of the Contract.

2.30 Notice of Change in Ownership or Financial Condition:

Contractor must maintain a financial condition commensurate with the requirements of the Contract. If during the Contract, Contractor experiences a change in its financial condition which may adversely affect its ability to perform, or experiences a change in ownership or control, Contractor shall immediately notify the County in writing. Failure to notify the County of such a change in financial condition or change in ownership or control is a material breach of the Contract.

2.31 Audits and Access to Records:

2.31.1 Records Retention: Contractor shall maintain current financial records in accordance with professional accounting standards. Contractor agrees to maintain and retain supporting financial and Contract related documents during the term of the Contract and for a period of three (3) years after the date of submission of the final billing or until the resolution of all audit questions or claims, whichever is longer. All financial records, supporting documents, statistical records and all other records pertinent to this Contract shall be retained by Contractor for a minimum of three (3) years.

2.31.2 County Audits: The County, either directly or through a designated representative, may conduct financial and performance audits of the billings and services during the records retention period listed above. County audits shall be conducted in accordance with generally accepted auditing standards. Contractor shall provide the County's internal auditor or external auditor, and their designees with a copy of all reports, including any management letters issued as a result of the specified audits.

2.31.3 Access to Records: The County internal auditor or County external auditor, and their designees, shall be given the right, and the necessary access, to review the work papers of Contractor audits if the County deems it necessary. Copies of applicable records shall be made available upon request.

2.32 Overpayment:

If an audit discloses that payments to Contractor were in excess of the amount to which Contractor was entitled, then Contractor shall repay the amount of the excess to the County. Under no circumstances will the payment of previous invoices constitute an acceptance of the charges associated with those invoices. If any audit shows performance of Services is not efficient in

accordance with the U.S. Government Accountability Office's Government Auditing Standards, or that the services are not effective in accordance with these Government Auditing Standards, the County may pursue remedies as provided under Section 2.33, Termination, and Section 2.35, Remedies.

2.33 Confidentiality:

- 2.33.1 Maintenance of Confidentiality: Contractor shall treat as confidential any County Confidential Information that has been made known or available to Contractor or that Contractor has received, learned, heard or observed; or to which Contractor has had access. Contractor shall use County confidential information exclusively for the County's benefit and in furtherance of the products and/or services provided by Contractor. Except as may be expressly authorized in writing by the County, in no event shall Contractor publish, use, discuss or cause or permit to be disclosed to any other person such County Confidential Information. Contractor shall (a) limit disclosure of the County confidential information to those directors, officers, employees and agents of Contractor who need to know the County confidential information in connection with the County project, (b) exercise reasonable care with respect to the County Confidential Information, at least to the same degree of care as Contractor employs with respect to protecting its own proprietary and confidential information, and (c) return immediately to the County, upon its request, all materials containing County confidential information, in whatever form, that are in Contractor's possession or custody or under its control. Contractor is expressly restricted from and shall not use County confidential information or the intellectual property of the County without the County's prior written consent
- 2.33.2 Scope: This Contract shall apply to all County confidential information previously received, learned, observed, known by or made available to Contractor. This Contract shall not apply to County confidential information which (a) is or later becomes part of the public domain without breach of this Contract and through no wrongful act of Contractor; (b) Contractor lawfully receives from a third party; (c) was developed independently by and was reduced to writing by Contractor prior to the earlier of the date of this Contract or the date of any access or exposure to any County confidential information, or (d) is required to be disclosed under operation of law. Contractor's confidentiality obligations under this Contract shall survive termination.
- 2.33.3 Equitable Remedies: Contractor acknowledges that unauthorized disclosure of County Confidential Information or misuse of a County computer system or network will result in irreparable harm to the County. In the event of a breach or threatened breach of this Contract, the County may obtain equitable relief prohibiting the breach, in addition to any other appropriate legal or equitable relief.
- 2.33.4 Contractor's Confidential Information: During the term of the Contract, Contractor may disclose to the County, certain Contractor Confidential Information pertaining to Contractor's business. Contractor shall be required to mark CONFIDENTIAL with a restrictive legend or similar marking. If CONFIDENTIAL is not clearly marked or the Contractor's Confidential Information cannot be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, Contractor shall identify the Confidential Information at the time of disclosure or within a reasonable time thereafter.

The County shall not be deemed to have breached this Section if (a) Contractor's Confidential Information later becomes part of the public domain through no act or omission of the County; (b) is required to be disclosed under operation of law; (c) the County lawfully receives Confidential Information from a third party with no breach of any duty of confidentiality; or (d) was developed independently by and was reduced to writing by the County prior to the earlier of the date of this Contract or the date of any access or exposure to any Contractor Confidential Information.

- 2.33.5 Public Records Request: Contractor acknowledges that Clark County is subject to the Washington State Public Records Act and Federal law. Third persons may claim that the confidential information Contractor submitted to the County hereunder may be, by virtue of its possession by the County, a public record and subject to disclosure pursuant to the Washington State Public Records Act. Subject to the following conditions, the County agrees not to disclose any information Contractor submits to the County that includes a written request for confidentiality and as described above, specifically identifies the information to be treated as confidential. The County's commitments to maintain certain information confidential under this Contract are all subject to the constraints of Washington State and Federal laws. Within the limits and discretion allowed by those laws, the County will maintain the confidentiality of information.

County's Obligation to Notify Contractor: If the County receives a public records request for information that Contractor has marked CONFIDENTIAL and submitted in confidence, the County shall notify Contractor of the request. The County shall provide Contractor with written notice and a copy of the request. Contractor shall have ten (10) business days within which to seek a relief from a Clark County Superior Court, provided that Contractor shall be responsible for its attorney fees and costs in such action and shall save and hold harmless the County from any penalties, attorney's fees or costs under Ch. 42.56 RCW for withholding or delaying public disclosure of such information caused by Contractor's claim that such information is its confidential information that is exempt from disclosure.

- 2.33.6 Discovery of Documents: In the event a party to litigation seeks discovery of information submitted by Contractor in confidence, the County will notify Contractor of the request. The County shall allow Contractor to participate in the response at its own expense. The County will comply with any effective order issued by the court having jurisdiction over the matter.

2.34 Dispute Resolution:

Contractor shall cooperate with the County to assure that all claims and controversies which arise during Contractor's performance of Services under this Contract and which might affect the quality of such Services will be resolved as expeditiously as possible in accordance with the following resolution procedure:

- 2.34.1 Any dispute between the County and Contractor arising prior to completion of Contractor's services or the earlier termination of the Contract shall be resolved, if possible by the Contract Manager or their designee on behalf of the County and on behalf of Contractor.
- 2.34.2 If the Contract Manager or the Contract Manager's designee and Contractor are unable to resolve any dispute within three (3) business days after notice of such dispute is given by either Party to the other, the matter shall be submitted to the Director of Application

Services and the Director of Community Development on behalf of the County and to the VP, Operations on behalf of Contractor for resolution, if possible.

- 2.34.3 Should any dispute arise between the Parties concerning this Contract that is not resolved by mutual agreement above, it is agreed that such dispute will be submitted to mandatory mediation prior to any Party's commencing arbitration or litigation. In such an event, the Parties to this Contract agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the Parties, but in the absence of such agreement each Party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the Parties.
- 2.34.4 Should an equitable solution not result from the foregoing, the County and Contractor shall be free to pursue other remedies allowed under this Contract.
- 2.34.5 Unless ordered by the County to suspend all or any portion of Contractor's services, Contractor shall proceed with the performance of such services or delivery of products without any interruption or delay during the pendency of any of the foregoing dispute resolution procedures and shall comply with any mutually agreed upon change orders that the County may issue regarding the acceleration of all or any portion of the products or services. During the pendency of any of the foregoing dispute resolution procedures, the County shall continue to make all payments that are not in dispute, in accordance with the provisions of the Contract.

2.35 Termination:

The following conditions apply to termination of this Contract. The County, on thirty (30) days written notice to Contractor, may terminate this Contract for any reason deemed appropriate in its sole discretion.

- 2.35.1 The County and Contractor, by mutual written agreement, may terminate this Contract at any time.
- 2.35.2 Either Party may terminate this Contract in the event of a Material Breach of the Contract by the other. Prior to such termination, however, the Party seeking the termination shall give to the other Party written notice to cure the Material Breach and of the Party's intent to terminate. If the Party has not entirely cured the Material Breach within thirty (30) Days of the notice, then the Party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination. In the event of default under this Contract, the non-defaulting Party shall have the option (upon the expiration without cure of any applicable cure period) to: (a) terminate in whole or in part this Contract or any related Statement of Work or Change Order, (b) seek remedies pursuant to this Contract (c) seek any other remedies in the Contract, in law, or at equity, to the extent not otherwise limited by the terms of this Contract, or (d) any combination thereof.
- 2.35.3 County Termination for Cause: The County may terminate this Contract for the following reasons, which constitute cause for purposes of this Section:

- 2.35.3.1 Bankruptcy: The County may terminate this Contract if Contractor:

- (a) becomes insolvent, makes a general assignment for the benefit of creditors;
- (b) suffers or permits the appointment of a receiver for its business or assets;
- (c) becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, and such proceeding has not been dismissed within a sixty (60) day period; or (d) has wound up or liquidated, voluntarily or otherwise.

2.35.3.2 Maintenance Default: The County may terminate this Contract if Contractor fails to provide Warranty or Maintenance services as defined in this contract or Contractor has not cured its failure to provide Maintenance as provided and paid for in this Contract.

2.35.3.3 System or Product or Software Performance Default: The County may terminate this Contract for Material Breach if the system or product exhibits errors causing serious disruption of use and/or repeated periods of downtime, over a continuous period of 90 days or more. Refer to Section 4.11 Severity Level, Escalation, and Response Time for details.

2.35.3.4 Software Code: Inclusion of illicit code as set forth in Section 2.17.5, Warranty and Representations, shall be considered a Material Breach of the Contract and no notice or cure period will apply. In addition to any other remedy available to it under this Contract with respect to any such material breach, the County reserves the right to pursue any civil and/or criminal penalties available to it against a Contractor, including without limitation the Deceptive Trade Practices & Consumer Protection Act, the Computer Crimes Law, Computer Fraud and Abuse Act, and any other remedy at law or equity.

2.35.3.5 Void Assignment: In the event that Contractor assigns its obligations to provide products and/or services under this Contract to any third party in a manner other than as set forth in Section 2.15, Assignment, the County shall have the option to seek specific performance, terminate this Contract or any Statement of Work or Change Order for products and/or services, and promptly receive a pro rata refund for fees paid for such Products and/or Services.

2.35.4 Termination Force Majeure: County may terminate this Contract due to a Force Majeure event as set forth in Section 2.21, Force Majeure.

2.35.6 Contractor Termination for County Breach: In the event of Material Breach of this Contract by the County, then Contractor's remedy shall be limited to termination of the Contract and receipt of equitable payment for services rendered.

2.36 Succession:

This agreement will be binding on the legal successors or representatives of Contractor and County. It will also be binding on any party that receives licensing and distribution rights to POSSE from Contractor. Any right granted to either party under this Agreement may not be assigned by that

party or the successor to that party, without the prior written approval of the other party, which will not be unreasonably withheld.

2.37 Rights and Obligations:

If either Contractor or County terminates this Agreement, Contractor will retain all fees for products or services delivered to County up to the date of termination.

2.37.1 Any termination by Contractor as provided in this Agreement will not in any way operate to deny any right or remedy of Contractor, either at law or in equity, or to relieve County of any obligation to pay the sums due under this Agreement or of any other obligation accrued prior to the effective date of termination.

2.37.2 Any termination by County as provided in this Agreement will not in any way operate to deny any right or remedy of County, either at law or in equity, or to relieve Contractor of any obligation to pay the sums due under this Agreement, or of any other obligation accrued prior to the effective date of termination.

2.37.3 POSSE is subject to the export control laws of the United States and other countries. County may not export or re-export POSSE software without the appropriate United States and foreign government licenses. County must comply with all applicable export control laws and will defend, indemnify and hold Contractor harmless from any claims arising from County's violation of such export control laws.

2.37.4 Termination Force Majeure: County may terminate this Contract due to a Force Majeure event as set forth in Section 2.21, Force Majeure.

2.37.5 County Termination for Contractor Breach: In the event of termination by the County due to a Material Breach by Contractor, then the County may complete the Project itself, by agreement with another contractor, or by a combination thereof. In the event of any Material Breach by Contractor, which Breach shall not have been cured as agreed to between the Parties, the County shall have the ability to pursue the County's rights at law.

2.38 Currency:

Unless otherwise noted, all references to payment amounts in this Agreement are in U.S. dollars.

2.39 Waiver:

No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach of this Contract.

2.40 Remedies:

The remedies provided in this Contract are cumulative, and may be exercised concurrently or separately. The exercise of any one remedy shall not constitute an election of one remedy to the exclusion of any other.

2.40.1 Software: In the event of Software failure as set out in the General Provisions above, the County shall have the right to one or more of the following non-exclusive remedies: (a) Contractor provide engineering/technical support on site at the County's location with source code for the software, if necessary for resolving the problem causing the breach. The County has the option to assign one or more of its full time employees to assist

Contractor's engineer/technician(s) in repairing the problem. Contractor retains copyright and all ownership rights to the source code and any changes made during this on-site period if such repair involves software. The County agrees to maintain confidentiality of the source code and all residual know-how and knowledge that may be transferred to County employees as a result of this effort; however, the County shall be entitled to use the source code for purposes of error correction or operations continuity, at the County's sole discretion; or (b) the County may terminate this Contract in its entirety or solely as to the affected Change Order and exercise the remedies included in this Contract, in the County's sole discretion.

2.41 Severability:

Any section of this Contract which is held or declared void, invalid, illegal or otherwise not fully enforceable shall not affect any other provision of this Contract and the remainder of this Contract shall continue to be binding and of full force and effect. This Contract shall be binding upon and inure to the benefit of the County and its successors and assigns.

2.42 Rolling Estoppel:

Unless otherwise notified by Contractor, it shall be understood that the County shall have met all its obligations under the Contract. The County will be conclusively deemed to have fulfilled its obligations, unless it receives a deficiency report from Contractor by the fifteenth (15th) day of the month following the month of the alleged deficiency and Contractor identifies the specific deficiency in the County's fulfillment of its obligations in that report. Deficiencies must be described in terms of how they have affected a specific performance requirement of Contractor.

2.42.1 Contractor is estopped from claiming that a situation has arisen that might otherwise justify changes in project timetable, the standards of performance under the contract or the contract price, if Contractor knew of that problem and failed to include it in the applicable report.

2.42.2 In the event Contractor identifies a situation that is impairing Contractor's ability to perform for any reason, Contractor's deficiency report should contain Contractor's suggested solutions to the situation. These suggestions should be in sufficient detail so that the County's project manager can make a prompt decision as to the best method of dealing with the problem and continuing the project in an unimpeded fashion.

2.42.3 If the problem is one that allows Contractor (within the terms of the Contract) to ask for changes in the project timetable, the standards of performance, the project price or all of these elements, the report should comply with the Change Order or Amendment procedure.

2.43 Business License:

Contractor shall register for a Washington State business license and a Vancouver City business license prior to beginning work under this Contract. Additionally, Contractor shall pay all fees or taxes due under the Business License Law during the full term of this Contract. Failure to be in compliance may result in payments due under this Contract to be withheld to satisfy amount due under the Business License Law.

2.44 Packaging:

All packaging should be minimized to the maximum extent possible without compromising product quality. The County encourages packaging that is reusable, readily recyclable in local recycling programs, is made from recycled materials, and/or is collected by Contractor for reuse/recycling.

2.45 Cooperative Purchasing:

Pursuant to RCW 39.26.060, as additional consideration for this Contract, Contractor agrees to extend an option to purchase any product, equipment, or service covered under this Contract at the same prices as are specified in this Contract for purchase by the County, under the same terms and conditions to all public agencies in the State of Washington.

2.46 News Releases and Public Announcements:

Contractor shall not use the County seal or other representations of the County in its external advertising, marketing, website, or other promotional efforts, nor shall Contractor issue any news release or public announcements pertaining to this Contract or the project without the express written approval of the County, such approval not to be unreasonably withheld. Contractor shall not use the County seal without specific written permission from Clark County.

2.47 Survival:

All obligations relating to confidentiality; indemnification; publicity; representations and warranties; proprietary rights; perpetual licenses, including licensing obligations as stated in this Contract; limitation of liability; and obligations to make payments of amounts that become due under this Contract shall survive the termination or expiration of this Contract and shall, to the extent applicable, remain binding and in full force and effect. Nothing in this Contract shall alter, modify, or supersede the content and survival of such provisions, except as otherwise expressly agreed to in writing by the Parties and with the prior written approval of the County Attorney's office.

2.48 User Conferences:

Vendor shall waive the registration fees for five (5) years for the Vendor's User Conference for three (3) County employees.

3. COUNTY FACILITY ACCESS

3.1 Access to County Facilities:

Contractor agrees that Contractor's physical or remote access to the County facilities shall be subject to the security interests and controls necessary to protect public property, and the County shall not be liable for any delays necessary in granting Contractor access to any portion of the facilities or systems.

3.2 Protection of Persons and Property:

3.2.1 Property: Contractor agrees to take reasonable steps to protect the County's property from injury or loss arising in connection with Contractor's performance of this Contract.

3.2.2 OSHA/WISHA: The Contractor certifies that it is in compliance with the conditions of the Federal Occupational Safety and Health Act of 1970 (OSHA), the Washington Industrial Safety and Health Act of 1973 (WISHA), and the standards and regulations issued thereunder and certifies that all items furnished or purchased under this agreement will conform to and comply with said standards and regulations. The Contractor further agrees to indemnify and hold harmless the County from all damages assessed against the County as a result of the Contractor's failure to comply with the acts and the standards issued thereunder and for the failure of the items furnished under this agreement to so comply.

3.2.3 Persons: Contractor and the County shall each take reasonable precautions for the safety of employees and shall each comply with all applicable provisions of applicable laws to prevent accidents or injury to persons on, about or adjacent to any premises where work is being performed.

3.2.4 Cleaning Up: Contractor shall ensure that project work sites are maintained in a clean and orderly fashion. Immediately after completion of the work, Contractor shall clean up and remove all refuse and unused materials resulting from the work. Upon Contractor's failure to do so within twenty-four (24) hours after having been notified in writing by the County, the work may be done by others at the direction of the County and the cost thereof charged to Contractor and deducted from any payments due.

3.2.5 No Smoking: Contractor shall not allow Contractor's or sub-Contractor's employees to smoke inside any County facilities, except as may be explicitly permitted by the County.

3.2.6 Security and Access Restrictions: Access to County facilities will be restricted to personnel who have received a security clearance from the County. Access may also be restricted with respect to the time and day. Restricted access shall not result in additional charges to the County for overtime or schedule delays. However, the County shall provide to Contractor and its agents access to its facilities, information and equipment as is reasonably necessary for Contractor to perform its obligations under this Contract. Any County property furnished to Contractor shall be used only for the performance of this Contract.

- 3.2.7 Storage of Materials: It shall be Contractor's responsibility for storage of any materials and the County will not be responsible for loss of or damage to materials, tools, appliances, or work arising from acts of theft, vandalism, malicious mischief or other causes unless such loss or damage results from negligence of the County.
- 3.2.8 Risk of Loss: The Contractor shall bear the risk of loss or damage to the purchased hardware during the period of transportation and storage until acceptance.
- 3.2.9 Loss or Damage: Contractor shall be responsible for any loss or damage to County property which results from Contractor's acts or omissions or from the failure on the part of Contractor to maintain and administer in accordance with sound management practices that property. Contractor will ensure that the property will be returned to the County in like condition to that in which it was furnished to Contractor, reasonable wear and tear excepted.

Upon the loss of, destruction of, or damage to any of the County property, Contractor shall notify the County Project Manager thereof and shall take all reasonable steps to protect that property from further damage.

4. ACCEPTANCE TESTING

4.1 Right to Perform Acceptance Testing:

Prior to Accepting the System, the County shall have the right to perform Acceptance Testing. Acceptance Testing shall be completed at County-designated facilities using the System software and County Infrastructure and data (if County-Hosted) or the Infrastructure/data located at the Contractor's designated Contractor-hosted site.

4.2 Obligations of Contractor in Acceptance Testing:

Contractor shall cooperate with the County in the development of Acceptance Criteria and the Acceptance Test Plan that shall codify and set forth the location, date, and other specifications of the Acceptance Tests. Specifically, Contractor shall provide the following Services and material:

- 4.2.1 Sufficient training for County personnel to create and maintain Acceptance Test Scripts with the assistance of the Contractor and,
- 4.2.2 Qualified Contractor staff to assist County personnel to complete the required Acceptance Testing, and
- 4.2.3 Non-System equipment, software and system documentation required to complete Acceptance Testing.

4.3 Acceptance Criteria and Acceptance Test Plan:

The County agrees to establish the Acceptance Criteria in writing in an Acceptance Test Plan for the purpose of conducting Acceptance Testing. Acceptance Criteria and the detailed Acceptance Test Plan shall be finalized and agreed by Contractor and the County, and shall be incorporated into the Statement of Work and thereby into this Contract.

The Acceptance Test Plan shall include the following types of Acceptance Tests, each of which shall be considered successfully completed when the County issues a Certificate of Acceptance for all the specific Products or Deliverables tested:

- 4.3.1 Installation Acceptance Testing shall include installing and configuring System Equipment at its final/permanent locations along with verifying the connectivity of all System components. System Equipment and Equipment components must perform within Original Equipment Manufacturer (OEM) specifications and the Specifications set forth in this Contract for the Installation Testing to be considered successfully completed.
- 4.3.2 System Configuration Acceptance Testing shall demonstrate that the System operates as specified in the Contract after Configuration specific to the County (e.g., custom fields, fee schedules, validation tables, Contractor customization, workflow processes implemented, interfaces, mobile components, citizen portal, etc.) have been configured or developed as appropriate. System functions must perform as specified in the Contract; components integrated, and the System customized and configured as required for the System Configuration Testing to be considered successfully completed.
- 4.3.3 Data Conversion Acceptance Testing shall demonstrate that the System operates as specified in the Contract after data (e.g., historical data, documents, system tables, fees, etc.) have been converted to the new system. System functions must perform as specified

in the Contract after County selected information in the existing Tidemark system has been successfully converted into the System for the Data Conversion Acceptance Testing to be considered successfully completed.

4.3.4 User Acceptance Testing shall demonstrate the correct operation of the System's functions as specified in the Contract, including all of the Interfaces, System configurations, data conversion, mobile components, citizen portal, security, fees, and workflows, etc. System functions must perform as specified in the Contract for the Functional Acceptance Testing to be considered successfully completed.

4.3.5 Failover and Throughput/Projected Load Acceptance Testing shall include placing a load on the installed System comparable to the maximum anticipated System load and demonstrating over a specified time period that the System Response Times users would experience are compliant with the requirements in the Contract. System Response Times must meet the metrics in the Specifications during the peak System loads experienced during the Throughput/Projected Load Acceptance Testing and the Failover Testing must be successful for this test to be considered successfully completed.

4.3.6 Reliability Acceptance Testing includes operating and monitoring the complete System in a live production mode for a period of ninety (90) consecutive Calendar Days during which the System performs without any major failures of Equipment (provided by Contractor), Software, and/or System functions and capabilities for the Reliability Testing to be considered successfully completed. Major Failures are defined as System failures that result in a Level 1 or Level 2 Severity System Error as defined in Exhibit J – POSSE Software Maintenance Agreement, of this Contract. The County's use of the System during the Reliability Testing period shall not be interpreted as Acceptance of the System by the County. The System repair and Maintenance procedures in effect during the Reliability Testing must be the same repair and Maintenance procedures that will be in effect during normal System operation after Final System Acceptance. Because the System will be in production mode during the Reliability Testing period, the Contractor will not be afforded full access to the System to fix any encountered problems. Forced shutdowns of the System to replace or gain access to failed components must only occur with the express written permission of County representatives. This access may not be granted until proper arrangements have been made to secure System databases and work in progress and to ensure that production is not adversely affected. Failures that are not attributable to the System as provided by the Contractor are not charged against the Acceptance Testing period. If such Failures occur, the Acceptance Test will be suspended until the problems are corrected.

After the condition that caused a Major Failure is remedied, the Reliability Testing period is restarted from the beginning and the System must operate for another ninety (90) successive Calendar Days without any major failures for the Reliability Testing to be considered successfully completed.

4.3.7 The County will issue Final System Acceptance only after the successful completion of all of these individual Acceptance Tests and the Reliability Acceptance Test.

4.4 Procedure and Timetable:

Unless otherwise specified in the Statement of Work, the following procedures will be used for Acceptance Testing and are applicable to Acceptance Tests for single Deliverables or Products, components of the System, and the Reliability Acceptance Test:

- 4.4.1 The County shall commence Acceptance Testing no later than thirty (30) Calendar Days after receipt of a Deliverable;
- 4.4.2 Contractor shall provide, at no additional cost, reasonable and appropriate support, assistance, and consultation regarding the System to facilitate Acceptance Testing as provided in the Statement of Work;
- 4.4.3 Unless mutually agreed in writing by the Parties, Acceptance Testing for a specific Deliverable shall not exceed thirty (30) Business Days or other period as specified in the Acceptance Test Plan for a specific Deliverable or Acceptance Test. The County will make all reasonable efforts to complete the Acceptance Test within the time period specified. If errors are found in the software that result in receiving a fix from the Contractor, the clock will begin again giving the County thirty (30) business days from receipt of the fix to perform testing. If the Acceptance Test is successful the County shall issue a Certificate of Acceptance, a sample of which is attached as Exhibit F.

4.5 Failure of Acceptance Test:

The County will notify Contractor if a Deliverable or a portion of a Deliverable or the System fails to pass an Acceptance Test and will specify in reasonable detail the identified Failures and possible reasons for Failure. After County's notification, Contractor shall correct the Deliverable, or the affected portion, within ten (10) business days, or other period as mutually agreed upon in writing, and notify the County that the correction has been completed. After Contractor's correction notification, the County shall perform a second Acceptance Test. If the Deliverable, or portion of the Deliverable, fails to pass the second Acceptance Test, the County shall notify Contractor in writing, and the Contractor shall have a subsequent correction period of ten (10) business days to correct the Deliverable. If the Deliverable, or portion of the Deliverable, fails to pass the third Acceptance Test, the County shall notify the Contractor in writing, and the County may, in its sole discretion: (a) terminate the Contract or Statement of Work or Change Order with no further liability; (b) request Contractor to replace the Deliverable or defective portion of the Deliverable at no additional cost to the County, (c) request Contractor make further corrections to prepare for retesting again; (d) accept the Deliverable at a reduced cost to be negotiated between the Parties; or (e) issue an Acceptance Certificate entitled "Acceptance with Exception(s)."

- 4.5.1 If the County issues an "Acceptance with Exception(s)" the County will list the exception(s) and the date for Contractor's correction. If exceptions are corrected by the listed date(s), the County agrees to commence further Acceptance Testing of the Deliverable or affected portion(s). If the Deliverable passes the Acceptance Tests, the County will issue a Certificate of Acceptance.
- 4.5.2 If a Deliverable fails a second Acceptance Test (or in the event of a single Acceptance Test) in no event shall there be an increase to the original price agreed to by the Parties for the System.

4.6 Revocation of Acceptance:

The County shall have the right to revoke "Acceptance with Exception(s)" if the County granted an "Acceptance with Exception(s)" based on Contractor's commitment to correct the Error within a reasonable period of time, but the defect has not been so corrected.

The County shall also have the right to revoke Acceptance if the County accepted the System or the Deliverable without discovery of the defect, and the Acceptance was reasonably induced by Contractor's assurances or by the difficulty of discovery of the defect before Acceptance. Revocation is effective only if it occurs within a reasonable time after the County discovers or should have discovered the reasons for revocation.

4.7 No Waiver:

Acceptance shall not relieve Contractor from its responsibility under any Warranty. Payment for Products, Services, or the System does not constitute Acceptance nor does it constitute a waiver of any Warranty applicable to the County.

5. PUBLIC CONTRACTING

5.1 Public Contracts:

Contractor shall observe all applicable state and local laws pertaining to public contracts. RCW Title 39 Public Contracts and Indebtedness, requires every public contract to contain certain provisions. Pursuant to those chapters, the following provisions shall be a part of this Contract, as applicable:

- 5.1.1 Pursuant to RCW 39.04.250, on every public contract, Contractor shall make payment promptly, as due, to all persons supplying to Contractor labor or material for the performance of the work provided for in the Contract.
- 5.1.2 Pursuant to RCW 49.46.130 (1), Except as otherwise provided in this section, no employer shall employ any of his or her salaried employees for a work week longer than forty hours unless such employee receives compensation for his or her employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he or she is employed.

6. TRAVELS

6.1 Reimbursement:

Contractor may be reimbursed, upon advance written approval by authorized County personnel, for certain expenses incurred in connection with personnel assigned to provide services for the County on the County's site. All invoices shall be accompanied by original receipts and any additional backup that may be appropriate. Reimbursement will be made based on the following guidelines:


- 6.1.1 **Commercial Air Travel:** Commercial air travel reservations are to be arranged based on the lowest coach fare available within a reasonable time frame surrounding the desired arrival or departure time. The County shall reimburse Contractor for one round trip to the subject work location, unless otherwise agreed to by the County in writing. When possible, air travel arrangements should be reserved at least fourteen (14) to twenty-one (21) days in advance. Direct billing for commercial air travel is NOT permitted; however, County may elect to arrange travel reservations on behalf of Contractor personnel. Weekend travel is not reimbursable, unless otherwise agreed to by the County's Project Manager in writing. In the event weekend travel is reimbursed, such reimbursement shall be made based on an amount up to and in lieu of any authorized per diem amounts and, if applicable, any other daily expense reimbursement.
- 6.1.2 **Rental Cars/Surface Transportation:** Contractor shall choose the most economical mode of transportation. Vehicle rental will be reimbursed based on a minimum ratio of one (1) compact auto per two (2) Contractor personnel. Reimbursement for vehicle rental will not be approved for Contractor personnel falling below that ratio. Cost for additional insurance is not reimbursable, nor will reimbursement be permitted for fuel obtained at a vehicle rental agency. County does not assume any liability of any type in connection with rental vehicles reserved or operated by Contractor personnel. Direct billing for rental vehicles is not permitted. If the County's Project Manager elects to provide a per diem for auto rental, such per diem shall be the same per diem as allowed for County employees. The County will reimburse Contractor personnel for surface transportation such as taxicabs, shuttles, and mass transit, at actual cost when reimbursement requests are accompanied by original receipts.
- 6.1.3 **Lodging:** Contractor shall arrange for their own lodging. The County will reimburse Contractor per individual for daily lodging expenses based on County per diem rates; such per diem shall be the same per diem as allowed for County employees.
- 6.1.4 **Meal and Incidental Expenses (M&IE):** The County will provide per diem for each full day (eight hours) worked for Contractor personnel assigned to deliver Services. The County per diem rate shall apply.
- 6.1.5 **Personal Entertainment:** Expenses incurred for personal entertainment while traveling on the County business are not reimbursable. Personal entertainment includes items such as in-room movie charges, sightseeing, attendance at sporting events, reading materials, birthday gifts, haircuts, etc.

7. EXECUTION

This Contract may be executed in counterparts, and each counterpart, when executed, shall have the efficacy of a signed original. Photographic, digital or electronic copies of such signed counterparts may be used in lieu of the originals for any purpose.

IN WITNESS WHEREOF, the County and Contractor have caused this Agreement to be executed.

CONTRACTOR

By: 

Title: VP OPERATIONS

Date: DEC. 2, 2014

CLARK COUNTY


By: 

Date: 12/16/2014

Approved as to form only:


Deputy Prosecuting Attorney

Attest:


Clerk to the Board

8. LIST OF EXHIBITS

Exhibit A: Contractor's Price

Exhibit B: Contractor's Response to County RFP #666

Exhibit C: Statement of Work

Exhibit D: POSSE One-Time Perpetual Software License Agreement

Exhibit E: POSSE Annual Product Support Agreement

Exhibit F: County RFP # 666 (including any addenda issued)

Exhibit G: Sample Change Order

Exhibit H: Sample Status Report

Exhibit I: Sample Certificate of Acceptance

Hosting Service Level Agreement (SLA) Between Computronix and Clark County

This Service Level Agreement describes the Hosting Services to be provided to Clark County (the "County") by Computronix (USA), Inc. of Lakewood Colorado (the "Contractor")

Section A – Definitions

- 1) **Final Acceptance** – County signoff that all conditions for approval have been met.
- 2) **Gross Negligence** – a substantial and appreciably greater breach of the duty of care necessary to support a claim of negligence. with respect to the SLA Agreement.
- 3) **Hosting Services** – the services described in Section D of this Agreement that are provided by Contractor to County in accordance with the terms and conditions of this Hosting SLA.
- 4) **Hosting Service Fees** - the monthly fees payable by County to Contractor for the Hosting Services provided under this Hosting SLA.
- 5) **Hosting Services Site** – the Third-Party "hardened" hosting facility, at a North American location of Contractor's choice, at which servers and related equipment are located. For an additional fee to be negotiated between County and Contractor, the Hosting Services Site may be at a location of County's choice.
- 6) **Hosting SLA** – this Hosting Service Level Agreement, and any subsequent addenda or amendments made in accordance with the provisions herein.
- 7) **Stable Network Connectivity** – the Hosting Service will provide, on average, sub-second response time 99.9% of the time between the hosting facility and the internet during the County's critical business hours of 7:00 AM – 5:00 PM Pacific Time (Monday-Friday).
- 8) **Stress Test** – enlisting multiple concurrent users to interact with the system at one time to determine if the required response time will be affected.

Section B - Final Acceptance of Hosting SLA

Final Acceptance of the Hosting SLA will occur upon:

- 1) Signing of the Hosting SLA **AND**,
- 2) As a condition precedent to Final Acceptance of the Hosting SLA, Contractor must submit proof that response time requirements can be sustained during the Reliability Acceptance Testing time period pursuant to Section 5.3.6 of the Master Terms and Conditions. During the Reliability Acceptance Testing period, the County will conduct a Stress Test. The results of this test must demonstrate, to the satisfaction of the County that the Hosting Service sustains on average, 2 second or less response time 99.9% for the entire testing period.

Upon Final Acceptance, the Hosting SLA will remain in effect for an initial term of five (5) years, unless the County provides a minimum of ninety (90) days advance written

Hosting Service Level Agreement (SLA) Between Computronix and Clark County

notification pursuant to Section 2.10 of the Master Terms and Conditions indicating they decline to renew the Hosting SLA.

Section C - Ownership of Data. Where Section C – Ownership of Data in this Hosting SLA conflicts with the Master Terms and Conditions, provisions within Section C – Ownership of Data in the Hosting SLA takes precedence over the Master Terms and Conditions.

- 1) Regardless of the location of the hosting facility, County will retain sole and complete, legal and beneficial ownership of its data stored on the hosting site by Contractor.
- 2) Contractor's responsibilities and rights regarding County data are solely restricted to the provision of services described in this Hosting SLA. Contractor may not make any other uses of County data for any reason whatsoever, without the express written consent of County, unless ordered to release such data by a court of competent jurisdiction.
- 3) County may request return of any or all of its data at any time, for any reason, and Contractor will provide such data within 30 days of notification of this request or within 30 days of notification of termination of this Hosting SLA. Contractor will provide the most current daily system backup to the County.
- 4) In the event of any impermissible disclosure, loss or destruction of County data, Contractor must immediately notify County and take all reasonable and necessary steps to mitigate any potential harm or further disclosure, loss or destruction.
- 5) Upon the termination of this Hosting SLA or the end of serviceable life of any media used in connection with this Hosting SLA, Contractor shall, at the County's option:
 - a. Securely destroy all media (including media used for backups) containing any County data and information and provide to the County a signed certificate of destruction and,
 - b. Return to the County all data and provide a signed certification documenting that no County data or information is retained by the Contractor in any format or media.

Section D - Overview of Hosting Services. Where Section D – Overview of Hosting Services in this Hosting SLA conflicts with the Master Terms and Conditions, provisions within Section D – Overview of Hosting Services in the Hosting SLA takes precedence over the Master Terms and Conditions.

Contractor is committed to providing secure, reliable and dedicated Hosting Services to County. For maximum protection and value to County, Contractor will provide software and software support services and will contract with a Third-Party for provision of a "hardened" primary hosting facility that adheres to the SSAE 16 Type 2 standard for data centers, at a North American location of Contractor's choice. In return for monthly Hosting Service Fees from County, Contractor will provide the following facilities and services to County:

- 1) Secure Hosting Site – through a third-party of Contractor's choice, Contractor will provide a secure hosting facility with 24X7 security controls. All systems will be located in a secure facility, with both physical and electronic security monitoring.

Hosting Service Level Agreement (SLA) Between Computronix and Clark County

- 2) Power Supply - Through a third-party of Contractor's choice, Contractor will provide a secure hosting facility with redundant and independent sources of electrical power with power conditioners, and UPS devices that ensure a clean, consistent power supply. The Contractor or third-party will test the power supply at least once per calendar year.
- 3) Backup Power Supply - Through a third-party of Contractor's choice, Contractor will provide a secure hosting facility with a backup diesel power generator. In the event the main electrical power supply is lost, the backup generator will automatically start. The Contractor or third-party will test the backup power supply at least once per calendar year.
- 4) Fire Suppression - Through a third-party of Contractor's choice, Contractor will provide a secure hosting facility with automated fire detection and suppression systems.
- 5) HVAC Provision - Through a third-party of Contractor's choice, Contractor will provide a secure hosting facility with redundant heating, venting and air conditioning (HVAC) units to ensure consistent environmental conditions.
- 6) Environmental Monitoring - Through a third-party of Contractor's choice, Contractor will provide a secure hosting facility with 24X7 monitoring of all environmental conditions in the hosting facility. Should an alarm trigger due to an environmental issue such as a loss of power or dramatic temperature change, notification will be automatically sent to hosting facility personnel and follow-up resolution will be initiated within one (1) hour of alert.
- 7) Internet Service Providers - Through a third-party of Contractor's choice, Contractor will provide a secure hosting facility with Stable Network Connectivity between the hosting facility and the County. Stable Network Connectivity will be provided by the Contractor via a site to site VPN connection between the County and the hosted site. Contractor will provide at least 100 Mbps full duplex connection from the hosting facility to the internet. Clark County will use the internet as a failover in the event the VPN connection is down.
- 8) 24X7 Facility Access – Contractor will be provided 24X7 physical, secured access to the hosting facility, as well as 24X7 remote access to systems and software. Under the supervision of Contractor, County will also be provided access to the Hosting Services Site upon request.
- 9) Backup Hosting Site - Contractor will provide a backup site in the cloud for use in the event of a catastrophic failure or financial insolvency of the hosting partner.

The Contractor will provide the Backup Hosting Site as a failover site for the County. In the event of a catastrophic failure, the Backup Hosting Site will be used by the County until the failed system is restored. The Backup Hosting Site will be available to the County within twenty four (24) hours of the failure.

Contractor shall conduct a successful disaster recovery test in coordination with the

Hosting Service Level Agreement (SLA) Between Computronix and Clark County

County once per year with a small group of County staff. The timing and duration of the test will be subject to the approval of the County and shall be coordinated and timed so as to cause minimal or no disruption to the County's business operations.

- 10) Systems and Routers/VPN Servers - Contractor will provide all systems, routers, VPN Servers, and switches at a location of Contractor's choice. The Contractor will be responsible for any repair, upgrade, or replacement of servers, routers, VPN Servers, and switches.
- 11) Software –Contractor will provide the following software, including licensing costs, for all systems at the Hosting Services Site:
 - a. Operating System (Windows Server or CentOS) and included utilities and options
 - b. Oracle Database Software
 - c. Performance Monitoring Software
 - d. Backup Software
 - e. Virus Software

Contractor will keep systems secure by applying security patches, security audits and all third-party critical updates within three (3) business days of third-party vendor notification.

- 12) Third-Party Software – County will be responsible for the licensing and cost of all other software licenses required at the Hosting Services Site. County will be responsible for the licensing, installation and maintenance of all software loaded onto County servers, workstations or other County equipment not at the Hosting Services Site.
- 13) Performance Monitoring - Contractor will constantly monitor the performance of systems, routers, VPN Servers, and switches at the Hosting Services Site, this will include such things as CPU, RAM, disk, network connectivity, and network traffic, to maintain system stability and performance.

Contractor will provide patch management, event log management and system tuning. Contractor will monitor systems, routers, VPN Servers, and switches by reviewing system logs on a weekly or as-needed basis.

- 14) Data Backups - Securing County data against loss is a key provision within the SLA. Full backups will be performed by Contractor for County on a daily basis. Contractor uses continuous data protection. Initial backups of the system are performed and incremental back-ups are done every 15 minutes to 2 hours. Periodically, the incremental backups are rolled up into a final back-up. The final backups will be free from errors or omissions 99.9% of the time. Backups will be stored off-site in a secure location based on the following retention schedule:
 - a. Daily backups shall be kept for two weeks
 - b. Weekly backups shall be kept for six weeks
 - c. Monthly backups shall be kept for a year

**Hosting Service Level Agreement (SLA)
Between Computronix and Clark County**

- d. Yearly backups shall be kept for 6 years
 - e. Special backups (litigation holds, etc.) shall be kept indefinitely. Special backups can be burned to a CD or DVD and mailed to the County if needed. The County will be responsible for all costs associated with creating and delivering special backups. The costs associated with this service are identified in **Schedule A – Services Fees**.
- 15) Root Cause Analysis – Contractor will conduct a root cause analysis and provide the County with a Root Cause Analysis Report including how the resolution prevents reoccurrence for all outages affecting the County within five (5) working days of the outage.
- 16) Contractor ISP Provider – Contractor is solely responsible for maintaining all County connections with local Internet Service Providers (ISPs) and for resolving any problems that might arise with local ISP connections for the leased circuit between the County and the Contractor Hosting Facility.
- 17) Security – Contractor’s procedures for the following must be documented and approved by the County prior to Final Acceptance:
- a. Intrusion detection, incident response and incident escalation/investigation
 - b. Providing and resetting access controls to the facility
 - c. Maintaining controls that ensure separation of County data, confidential information and security information from that of the Contractor’s other clients or customers.
 - d. Not allowing Peer to Peer Software (P2P) or any other PC file-sharing software to be installed onto any network managed by the Contractor where County data/files reside unless County specifically permits it in writing on a case-by-case-basis.
- 18) Monthly Reporting – Contractor will provide a monthly report to the County by the 5th of each month. The report will contain the following information:
- a. System performance monitoring report by month that includes:
 - i. Average system availability per month with the ability to drill down to daily availability
 - ii. Average response time from hosting facility to the internet
 - iii. Number of times a daily system backup does not exist
 - b. Security
 - i. Contractor shall report to County if any unauthorized parties are successful in accessing any of the servers (including fail over servers) where County’s

Hosting Service Level Agreement (SLA) Between Computronix and Clark County

data/files are housed, within 24 hours of becoming aware of the incident. Contractor shall provide County with a detailed incident report within five (5) days of the breach including remedial measures instituted and any law enforcement involvement.

- ii. Contractor shall protect any Internet interfaces provided under this Agreement using a Security Certificate provided by the County.
- iii. Contractor will provide a monthly report to the County by the 5th of each month. The report will contain the following information:
 - Number of times a system intrusion was detected

Contractor will provide notification to the County of any outages to the services identified in Section D1 within 24 hours. A follow-up notification will be sent stating the reason for the outage and the resolution.

At any time, by providing appropriate notification to Contractor, the County or its designate may conduct an on-site inspection of the Contractor's Hosting Services and Hosting Site to validate and verify the above services and infrastructure.

- 19) POSSE Updates – Contractor will test and install into the POSSE system at the Hosting Services Site all updates to the POSSE system and POSSE Add-On Modules for County-specific Emergency Bug Fixes, as well as all POSSE Point, Maintenance and Patch releases which are made available during the term of this Agreement. Installation and testing of any new Version releases of POSSE are not included, and will be implemented under a separate SOW between the Contractor and County.

Section E - Availability Commitment. Where Section E – Availability Commitment in this Hosting SLA conflicts with the Master Terms and Conditions, provisions within Section E – Availability Commitment in the Hosting SLA takes precedence over the Master Terms and Conditions.

- 1) While the Hosting Services Site availability will generally be expected to be 24 x 7 (except for scheduled or critical outages), the commitment of Contractor is to provide Hosting Services site availability during the County's Business Hours (7:00 AM – 5:00 PM five (5) days a week, Monday - Friday (Pacific Time) for 99.9% uptime or better in a calendar month. Credits may be claimed only against loss of Hosting Services during County business hours.
- 2) Subject to Sections E1 - E5, if the Contractor, during regular County business hours, fails to provide Hosting Services availability or sub-second response time between the hosting facility and the internet, as defined below in any given calendar month, Contractor will issue a credit toward the next month's Hosting Service Fees in accordance with the following schedule:

**Hosting Service Level Agreement (SLA)
Between Computronix and Clark County**

Hosting Services Site Availability and Response Time	Maximum Downtime (per month)	Credit Percentage (of monthly fee)
99.9 to 100%	13.2 minutes	0%
99.5 to 99.9%	66 minutes	2.5%
99.0 to 99.5%	2.2 hours	5%
98.6 to 99.0%	3 hours	7.5%
Less than 98.6% (County will Re-evaluate the Hosting Option)		

- 3) The Contractor shall monitor the Hosting Services Site. If downtime is experienced during County business hours for that month, it shall be reported on the Monthly Report (as defined in section D18). The County's bill for the month following shall automatically be adjusted by the Contractor based on the above.
- 4) The total amount credited to County for any given month under this Hosting SLA will not exceed the total hosting fee paid by County for such month for the affected service, except in cases of Gross Negligence. If gross negligence is found on the part of the Contractor, the County has the right to immediately end the Hosting SLA without penalty. The Contractor will provide back-ups from the prior night and log files and will assist the County in setting up their own environment to assume responsibility for the hosting function. This transition will occur within 30 business days of the gross negligence event.

County specifically acknowledges and confirms that under no circumstances whatsoever will Contractor be liable for any incidental, indirect, exemplary, special or consequential damages of any nature or kind, or any loss resulting from business disruption arising from any services covered under the terms of this agreement, regardless of the form of action, whether in contract, tort (including negligence), strict product liability or otherwise, even in the event that Contractor has been advised of the possibility of such damages.

- 5) County will not receive any credits under this Agreement in connection with any failure or deficiency of Contractor Hosting Services caused by or associated with:
 - a. Scheduled Maintenance – Time allocated for scheduled monthly maintenance or critical updates of servers and other Contractor equipment will not be considered “down time” as used in the calculation of Hosting Services availability described in Section E.2 of this Hosting SLA. Maintenance will be scheduled for outside of County Business hours specified in Section E.1 of this Hosting SLA. Except for emergencies, maintenance outages will be communicated via e-mail to the County at least 2 business days in advance of any such event
 - b. County Equipment – County is solely responsible for maintaining all County equipment not at the Hosting Services Site and for ensuring that such equipment is in proper working order, has the correct software installed, and has the ability to connect to the Contractor Hosting Services for the exchange of data.
 - c. Internet Outages – Contractor is not responsible for Internet outages or delays (including ISP peering) that may make the Contractor Hosting Services appear

Hosting Service Level Agreement (SLA) Between Computronix and Clark County

inaccessible when others can still connect, during the time the Internet is used as a failover (when the leased circuit provided by the Contractor is down).

- d. County Acts or Omissions – including acts or omissions of others engaged or authorized by the County, including, without limitation, any negligence, willful misconduct, or use of the Hosting Services in breach of the terms and conditions of this Hosting SLA.
- e. Force Majeure – To the extent that these circumstances are beyond Contractor's reasonable control, the following events are included without limitation; acts of any governmental body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, unavailability or interruption in telecommunications or third-party services, virus attacks or hackers, failure of third-party software, or inability to obtain power used in or equipment needed for provision of this Hosting SLA.

Section F - Hosting Service Fees. Where Section F – Hosting Service Fees in this Hosting SLA conflicts with the Master Terms and Conditions, provisions within Section F – Hosting Service Fees in the Hosting SLA takes precedence over the Master Terms and Conditions.

- 1) County agrees to pay Contractor a monthly fee (see **Schedule A – Services Fees**) for Hosting Services described in Section D of this Hosting SLA. Hosting Service Fees will be invoiced monthly covering services to be provided for the duration of the Agreement. For partial months of service, Hosting Service fees will be pro-rated based on the number of full or partial calendar days of Hosting Services provided to County.
- 2) Hosting Service Fees are subject to review and adjustment upon renewal of this Agreement. In year six (6), Contractor may increase the Hosting Services' annual fee to a maximum amount not greater than five (5) year US Consumer Price Index (CPI) compounded annually over the previous five years. County will be given the option to revisit the new contracted price for another two (2) year fixed price extension. Contractor shall not charge a greater rate than charged to new customers with similar duration contracts.
- 3) The hourly rate for support services not covered in this Hosting SLA is noted in Schedule A – Service Fees. After the first year, the rate is subject to annual adjustment by the Contractor, any such increase not to exceed the amount of the US Consumer Price Index (CPI) compounded annually since the last increase.
- 4) All fees referred to in this Agreement exclude any applicable federal, provincial, local or sales taxes. County agrees to remit payment to Contractor within 30 calendar days of receipt of the invoice.
- 5) County is permitted to use hosting services for processing transactions in relation to services provided by County within its legal jurisdictional boundaries. County may not use hosting services for processing for another jurisdiction or organization. Requests for processing for other jurisdictions or organizations must be reviewed by the Contractor and is subject to additional fees.

Hosting Service Level Agreement (SLA) Between Computronix and Clark County

Section G - Termination. Where Section H –Termination in this Hosting SLA conflicts with the Master Terms and Conditions, provisions within Section H –Termination in the Hosting SLA takes precedence over the Master Terms and Conditions.

- 1) If the either Party terminates the Master Terms and Conditions or any Exhibit listed in Section 2.1 of the Master Agreement, the Hosting SLA terminates as well.
- 2) County may terminate this Hosting SLA, without cause, by giving Contractor 90 calendar days' notice of termination. If County elects to terminate this Hosting SLA, without cause, after the first 90 days but within the first year term of the Hosting Services, an additional three months of Hosting Service Fees will apply as a penalty for early termination.
- 3) Contractor may terminate this Hosting SLA, without cause, by giving County one year's notice of termination. If Contractor elects to terminate this Hosting SLA, without cause, after the first 90 days but within the first year term of the Hosting Services, an additional three months of Hosting Service Fees will be credited to the County.
- 4) If either County or Contractor terminates this Hosting SLA for a Material Breach, then no penalty for early termination will apply.
- 5) If either the County or Contractor terminates this Hosting SLA for a Material Breach or with or without cause or if the County elects not to renew this Hosting SLA as provided in Section B, the Contractor will assist and work with the County in good faith to transition the Hosting Service to the County's hosting site. The Contractor will assist in transitioning any Hosting Services as provided in this Hosting SLA without causing any unnecessary interruption of, or adverse impact on, the County. The Contractor shall cooperate with the County to take any necessary action and perform any additional tasks that the County may reasonably request to ensure a timely and orderly transition of the Hosting Services. This will include, but is not limited to, the following:
 - a. Providing the most recent back-ups.
 - b. County will procure any software licenses required for operating the system in the County's Hosted environment.

Should the County require assistance in configuring software/hardware currently on the County's hosted site; the Contractor will charge the then current hourly consulting services fees.


**Hosting Service Level Agreement (SLA)
Between Computronix and Clark County**

Section H - Signature Page

This Hosting SLA may be executed in counterparts, and each counterpart, when executed, shall have the efficacy of a signed original. Photographic, digital or electronic copies of such signed counterparts may be used in lieu of the originals for any purpose.

IN WITNESS WHEREOF, the County and Contractor have caused this Hosting SLA to be executed.

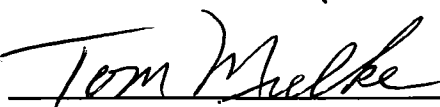
CONTRACTOR

By:  _____

Title: VP OPERATIONS

Date: DEC. 2, 2014

CLARK COUNTY

By:  _____

Date: 12/16/2014

Approved as to form only:



Deputy Prosecuting Attorney

Attest:



Clerk to the Board

**Hosting Service Level Agreement (SLA)
Between Computronix and Clark County**

Schedule A – Services Fees

All prices are in U.S. dollars and exclude applicable taxes.

Hosting Services Fees

Item No.	Description of Hosting Services Fees	Price
1.	YEAR ONE Computronix Hosting Services \$6,500/month for hosting \$800/month for maintenance	\$7,300 per month
2.	YEAR TWO Computronix Hosting Services	\$7,300 per month
3.	YEAR THREE Computronix Hosting Services	\$7,300 per month
4.	YEAR FOUR Computronix Hosting Services	\$7,300 per month
5.	YEAR FIVE Computronix Hosting Services	\$7,300 per month

Pricing for Optional Additional Hosting Services from Contractor

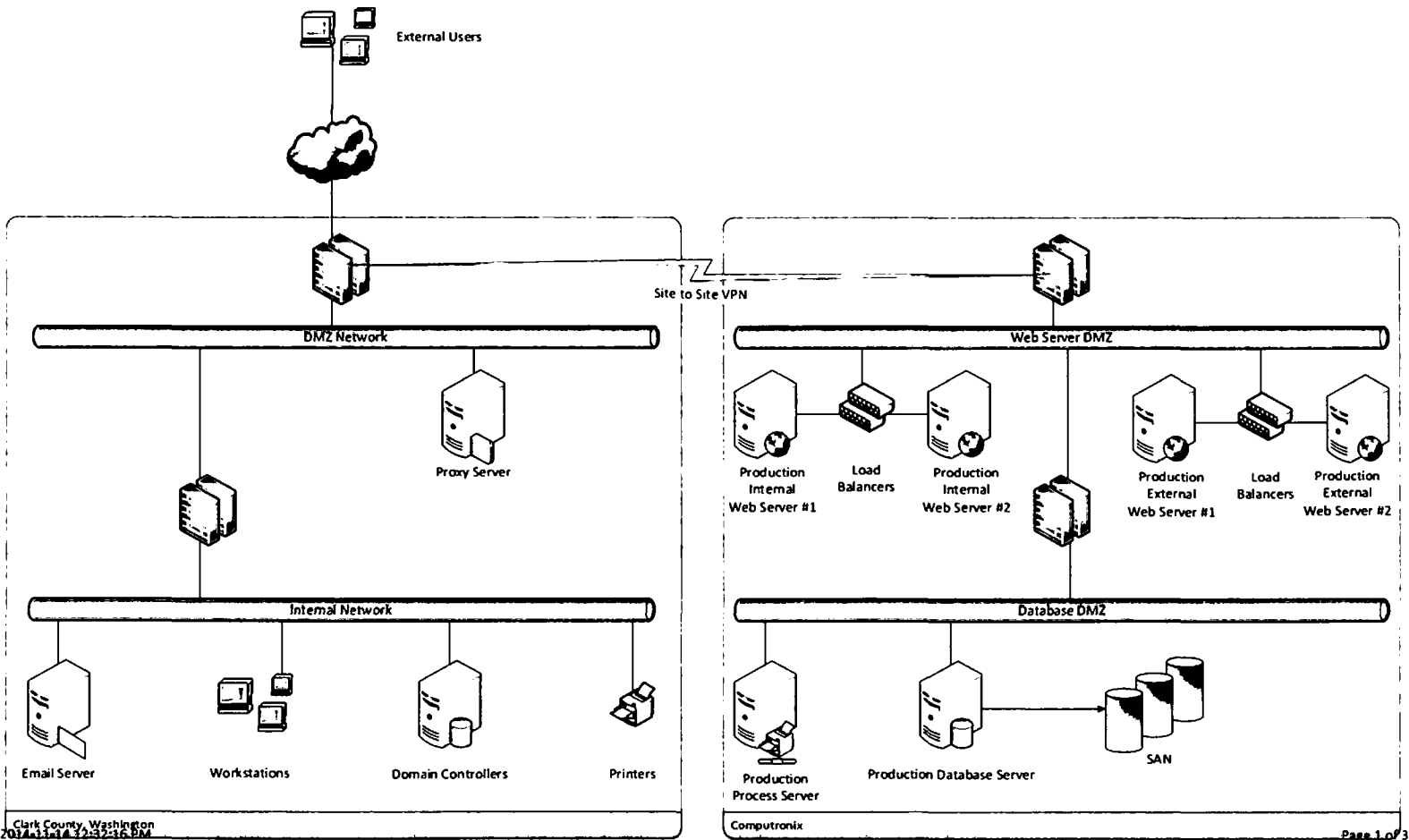
Should the County wish to purchase additional hosting-related services, the following Contractor's pricing shall apply:

Item No.	Description of Software or Service	Price
1.	Special backups	\$400 per backup
2.	Time-and-materials hourly rate for Computronix Professional Services (for all roles, all services)	As per POSSE Annual Product Support Agreement

**Hosting Service Level Agreement (SLA)
Between Computronix and Clark County**

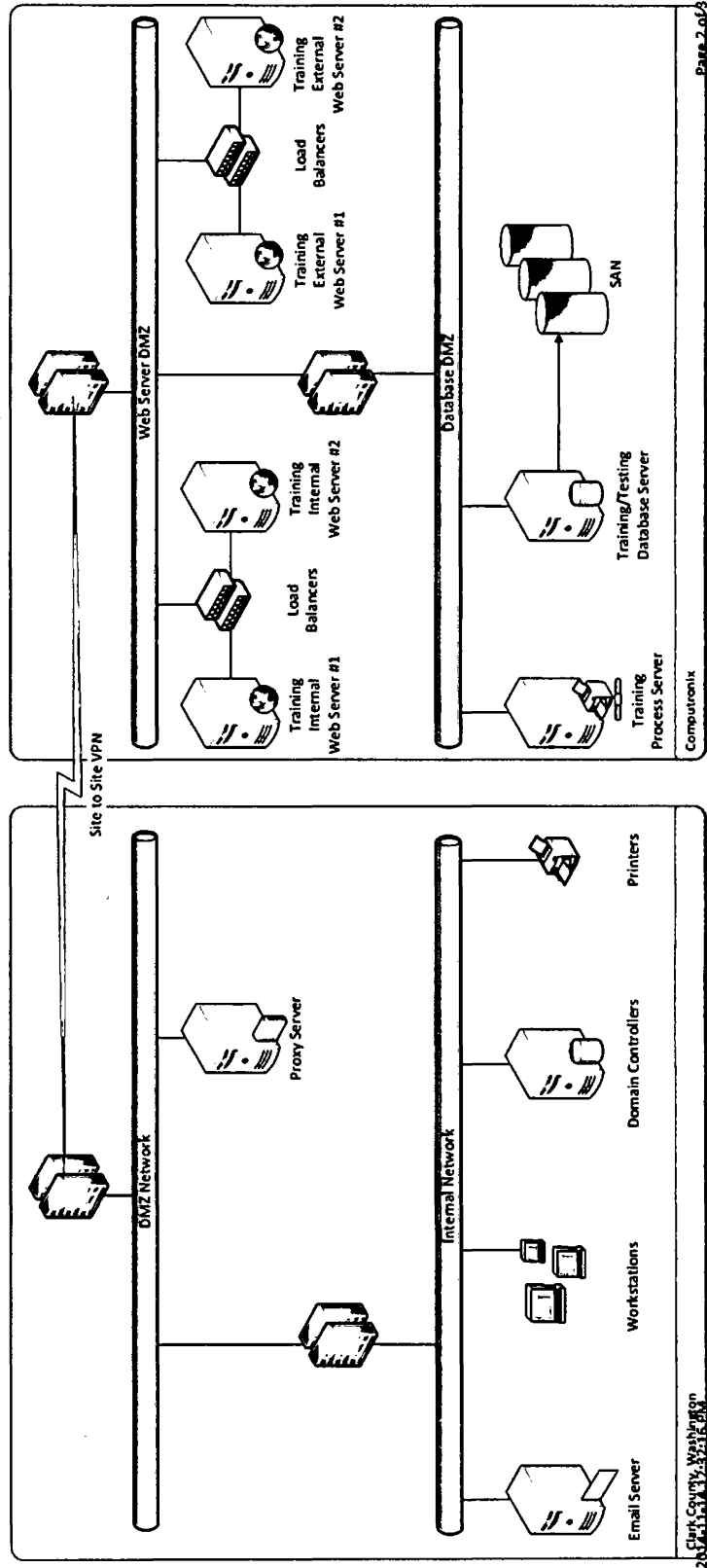
Schedule B – County Hosting Site Setup

Clark County, Washington LMS Production Environment

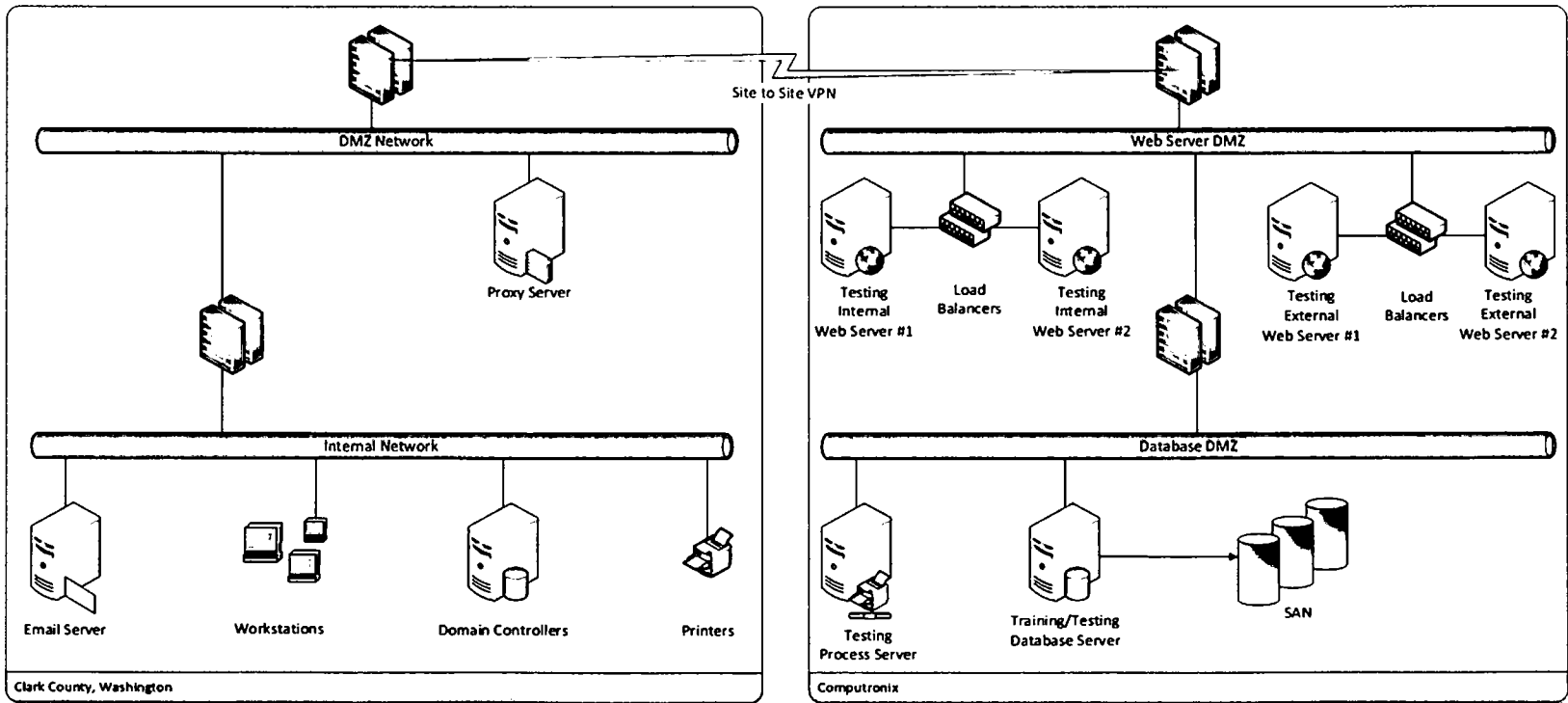


Hosting Service Level Agreement (SLA) Between Computronix and Clark County

Clark County, Washington LMS Training Environment



Clark County, Washington LMS Testing Environment



Clark County, Washington
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 Between Computronix and Clark County