The City of WORCESTER

Administration & Finance – Purchasing Division
Christopher J. Gagliastro, MCPPO – Purchasing Director
455 Main Street, Room 201, Worcester, MA 01608
P | 508-799-1220
purchasing@worcesterma.gov
www.worcesterma.gov

Christopher J. Gagliastro, MCPPO   **RFP NO.   8620-W6**
Purchasing Agent   **ISSUANCE DATE: 2/26/26**

BUYER: Christopher J. Gagliastro, MCPPO

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER
REQUEST FOR PROPOSALS
NOTICE TO PROPOSERS

RFP TITLE: Software – Cemetery Database / DPRC

REFER TO PAGE 7 FOR PROPOSAL SUBMISSION INFORMATION

General Conditions:

All proposals are subject to the terms, conditions and specifications herein set forth:

1. **Scope: Provide Software as a Service (SaaS) for a Cemetery Database Management Program / System per the attached requirements and specifications of the City of Worcester Department of Parks, Recreation & Cemetery.**

2. A certified check or bid bond made payable to the "City Treasurer, City of Worcester" in the amount of **N/A** must accompany this proposal. This must be submitted under separate sealed cover marked "Proposal Security." In the case of default, the surety shall be forfeited to the City as liquidated damages.

3. All terms and conditions are applicable to this proposal except the following section(s) which are hereby deleted from this RFP: **4, 27**

4. A performance bond in the amount of **not applicable** will be required. If this proposal is accepted by the City and the Proposer shall fail to contract as set forth in these requirements and to give a bond in the aforementioned amount, within ten (10) days, (not including Sundays, Saturdays, or a legal Holiday) from the date of the mailing of a notice from the City to the Proposer, according to the address given herewith, that the contract is ready for signature, the City may by option determine that the proposer has abandoned the contract and thereupon the proposal and acceptance shall be null and void and the proposal security accompanying this proposal shall become the property of the City as liquidated damages. Performance bond shall be on the City's form only.

Any prospective proposer requesting a change in or interpretation of existing specifications or terms and conditions must do so within 5 days (Saturdays, Sundays, and Legal Holidays excluded) before scheduled proposal opening date. All requests are to be in writing to the Purchasing Division. No changes will be considered nor will any interpretation issued unless request is in our hands within 5 days (Saturdays, Sundays, and Legal Holidays excluded) before scheduled proposal submission date.

Any inquiries related to technical or contractual matters must be submitted in writing to:

Christopher J. Gagliastro, MCPPO
Purchasing Director
City of Worcester, City Hall
455 Main Street, Room 201
Worcester, MA 01608
gagliastroc@worcesterma.gov

5. Nothing herein is intended to exclude any responsible Proposer or in any way restrain competition. All responsible Proposers are encouraged to submit proposals. The City encourages participation by Minority and Women Owned Business Enterprises (M/WBE).

6. The following meanings are attached to the defined words when used in this RFP.

   a) The word "City" means The City of Worcester, Massachusetts.

   b) The word "Proposer" or "Respondent" means the person, firm or corporation submitting proposal on these specifications or any part thereof.

   c) The word "Contractor" means the person, firm or corporation with whom the contract is made by carrying out the provisions of these specifications and the contract.

   d) The words "Firm Price" shall mean a guarantee against price increase during the life of the contract.

7. All proposals and other documents relating to this RFP are subject to the public records provisions of M.G.L. c.30B and shall remain confidential until the time specified in c.30B section 6 (d).

8. All material submitted by vendors becomes the property of the City. The City is under no obligations to return any of the material submitted by a vendor in response to this RFP.

9. Each vendor's proposal must remain in effect for at least 120 days from the deadline for its submission. The City will decide upon acceptance within 120 days of submission.

10. It is understood and agreed that it shall be a material breach of any contract resulting from this RFP for the Contractor to engage in any practice which shall violate any provision of Massachusetts General Laws, Chapter 151B, relative to discrimination in hiring, discharge, compensation, or terms, conditions or privileges of employment because of race, color,

religious creed, national origin, sex, age or ancestry.

11.   The City reserves the right to accept or reject any or all proposals submitted and waive informalities and technicalities.

12.   The City will review and analyze each proposal and reserve the right to interview selected proposers. The City shall select the proposer, which in the City's opinion, has made the proposal best suited to the needs and goals of the City and its operations and deemed to be in compliance with the terms of this RFP.

13.   The Contractor will be required to indemnify and save harmless the City of Worcester for all damages to life and property that may occur due to his or her negligence or that of his or her employees, subcontractors, etc. during the contract derived from this RFP.

14.   The Contract Agreement will be drafted by the City's Law Department in compliance with the terms of the RFP and may incorporate the terms of this RFP and of the proposal selected. The City's software template agreement for this purpose is included herein.

15.   The Proposer must certify that no official or employee of the City of Worcester, Massachusetts, is pecuniarily interested in this proposal or in the contract which the proposer offers to execute or in expected profits to arise therefrom, unless there has been compliance with the provisions of G.L.C. 43 section 27, and that this proposal is made in good faith without fraud or collusion or connection with any other person submitting a proposal.

16.   Any proposal withdrawn after time and date specified, the proposer shall forfeit deposit on proposal as liquidated damages.

17.   A vendor conference will be held as follows: n / a

18.   The Contractor shall not assign, transfer, sublet, convey or otherwise dispose of any contract which results from this RFP, or its right, title or interest therein or its power to execute the same to any other person, firm, partnership, company or corporation without the previous consent in writing of the City. Should the Contractor attempt any of the above without the written consent of the City, the City reserves the right to declare the Contractor in default and terminate the contract for cause.

19.   The Contractor shall obtain and maintain in force at all times during the term of the contract derived from this RFP, insurance coverage pertaining to Public Liability, Property Damage and Worker's Compensation as outlined herein.

A) PUBLIC LIABILITY INSURANCE - Contractor to supply the City of Worcester with certificates of insurance covering public liability in an amount not less than $1,000,000.00 to any one person, and not less than $ 1,000,000.00 on account of one accident.

B) PROPERTY DAMAGE INSURANCE - Contractor to supply the City with certificates of insurance covering property damage in an amount not less than $1,000,000.00 for damages on account of any one accident, and not less than $ 2,000,000.00 on account of all accidents.

C) <u>COMPENSATION INSURANCE</u> - The Contractor shall furnish the City with certificates showing that all its employees shall be connected with the management operations are protected under worker's compensation insurance policies.

20.   The Contractor shall carry Public Liability Insurance with an insurance company satisfactory to the City so as to save the City harmless from any and all claims for damages arising out of bodily injury to or death of any person or persons, and for all claims for damages arising out of injury to or destruction of property caused by accident resulting from the use of implements, equipment or labor used in the performance of the contract or from any neglect, default or omission, or want of proper care, or misconduct on the part of the Contractor or for anyone in his or her employ during the execution of the contract derived from this RFP.

21.   Prior to starting on the contract derived from this RFP, the Contractor shall deposit with the Purchasing Division, certificate from the insurer to the effect that the insurance policies required in the above paragraph have been issued to the Contractor. The certificates must be on a form satisfactory to the City.

22.   All prices quoted must include inside delivery, and set-up in place F.O.B. destination to pre-designated City of Worcester departments.

23.   No special charges will be allowed for rigging, packing, crating, freight, express, or carriage unless specifically stated and included in the vendor's proposal.

24.   The award to the successful proposer may be cancelled in the event of vendor nonperformance as may be determined by the City.

25.   The successful proposer shall comply with all applicable federal, state and local laws, ordinances, and regulations. The awarded contract shall be governed under the laws of the Commonwealth of Massachusetts.

26.   Purchases made by the City are exempt from Federal and Massachusetts state taxes and proposal prices must exclude any such taxes. Tax exemption certificates will be furnished upon request.

27.   When the contract is executed, a performance bond, in the full amount of the contract, is required. See paragraph 4. The bond will be of a surety company qualified to do business under the laws of the Commonwealth of Massachusetts. The cost of this bond is the vendor's responsibility. Bonds shall remain in force and effect thru the performance of the contract.

28.   Expenditures by the City and authorization to spend for particular purposes are made on fiscal year basis. The City's fiscal year is the twelve-month period ending June 30 of each year. The obligations of the City under any agreement to be reached are subject to the appropriation or authorization of the necessary funds. The City agrees to make reasonable efforts to obtain funding and all necessary authorization.

29.   No amendment to the contract shall be effective unless it is in writing and signed by authorized representatives of both parties and is accepted by the City of Worcester.

30.   The vendor (and its insurers, if any) shall bear all risk of loss or damage to the equipment which occurs in transit to the user site. The risk of loss or damage to purchased equipment shall remain with the vendor until the purchase price has been paid and title has passed. The vendor shall also bear the risk of loss or damage to leased or rented equipment during the City of Worcester's possession and use thereof subject, however to such conditions and limitations as may be stated elsewhere in the contract.

31.   The vendor shall not assign or in any way transfer any interest in the contract without the prior written consent of the City provided, however, that claims for money due or to become due to vendor from the City may be assigned to a bank, trust company, or other financial institution without such consent so long as notice of such assignment is furnished promptly to the City. Any such assignment shall be expressly made subject to all defenses, setoffs, or counterclaims which would have been available to the City against the vendor in the absence of such assignment.

32.   None of the services to be provided by the vendor pursuant to the contract shall be subcontracted or delegated to any other organization, association, individual, corporation, partnership or other such entity without the prior written consent of the City. No subcontract or delegation shall relieve or discharge the vendor from any obligation or liability under the contract except as specifically set forth in the instrument of consent. Any subcontract to which the City has consented shall be attached to the original of the contract on file in the City of Worcester.

33.   Neither party will be liable to the other or be deemed to be in breach of the contract for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight, embargoes, and unusually severe weather. If the vendor's failure to perform is caused by the default of the subcontractor, and if such default arises out of causes beyond the reasonable control of both the vendor and the subcontractor, and without the fault or negligence of either of them, the vendor shall not be liable for any excess costs for failure to perform, unless the equipment or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the vendor to meet the required delivery schedule. Dates or times of performance will be extended to the extent of delays excused in this section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.

34.   The vendor shall provide to the City of Worcester a warranty and a commitment which clearly states that all equipment and services proposed and supplied by the Vendor, and/or its subcontractors, performs as expected and promised by the Vendor.

35.   The vendor represents that no person other than bona fide employees working solely for the vendor, have been employed or retained to solicit or secure this agreement upon an arrangement or understanding for a commission, percentage, brokerage fee, gift or any other consideration contingent upon the award or making of this contract. For breach or violation of the representation, the City shall have the right to annul the contract without liability, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage fee or other

consideration.

36. Any contract made by the City in which the Purchasing Agent or any employee of his/her department, the heads of using agencies or any other officer or employee of the City having a part in the placing of such contract is financially interested, directly or indirectly, shall be void.

37. The vendor shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion or medical handicap. The vendor agrees to comply with all applicable Federal and State Statutes, rules and regulations prohibiting discrimination in employment including: Title VII of the Civil Rights Acts of 1964; The Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973; Massachusetts General Laws Chapter 151B, Section 4
(1) and all relevant administrative orders and executive orders.

        If a complaint or claim alleging violation by the vendor of such statutes, rules or regulations is presented to the Massachusetts Commission Against Discrimination (MCAD), the vendor agrees to cooperate with MCAD in the investigation and disposition of such complaint or claim.

        In the event of vendor noncompliance with the provisions of this section, the City shall impose such sanctions as it deems appropriate, including but limited to:

        1)   Withholding of payments due vendor under the contract until vendor complies.

        2)   Termination or suspension of the contract.

SUBMISSION OF PROPOSALS

38.   Proposals must be submitted in two (2) packages according to the instructions below. The City intends to consider responses in the Technical Proposal evaluation requirements before considering costs. *Therefore, no reference to pricing may be made in the Technical Proposal.*

A sealed package containing **the original, 3 copies, plus 1 PDF copy on USB drive** of the proposal **must** be labeled as follows:

Purchasing Agent, City of Worcester

Software – Cemetery Database Management / DPRC – *Technical Proposal*

455 Main Street, Room 201
Worcester, MA 01608

Re: **RFP No. 8620-W6**

A sealed package containing **the original copy** of the proposal **must** be labeled as follows:

Purchasing Agent, City of Worcester

Software – Cemetery Database Management / DPRC – *Price Proposal*

455 Main Street, Room 201
Worcester, MA 01608

Re: **RFP No. 8620-W6**

PRICE PROPOSAL PAGE IS LOCATED AT END OF SPECIFICATIONS

> **Proposals must be delivered no later than <u>Wednesday, March 18, 2026 at 10:00 AM LOCAL TIME</u>.** *Late submissions will be rejected, regardless of circumstances.* The City is not responsible for submittals not properly marked.

The evaluation and cost proposals will remain confidential until a formal and finalized contract has been executed.

RFP EVALUATION

39. The City of Worcester Purchasing Agent will assign an evaluation team, hereafter referred to as the Selection Committee, to perform a full and complete evaluation of RFP submittals. The Purchasing Agent will ultimately forward a formal recommendation of award to the City Manager who has final award authority.

40. RFP evaluation responses will be evaluated by the Selection Committee based directly upon vendor's response to mandatory and comparative evaluation criteria. Vendors must meet or exceed the mandatory criteria requirements or be rejected as non-responsive.

    Comparative criteria will be evaluated by use of four (4) rating categories as set forth by M.G.L. Chapter 30B:

    1) HIGHLY ADVANTAGEOUS - Vendor's submittal meets all the stated requirements and offers significant performance above the stated requirements.

    2) ADVANTAGEOUS - Vendor's submittal meets the stated requirements without risk or disadvantage.

    3) NOT ADVANTAGEOUS - Vendor's submittal contains some risk or disadvantage but is not unacceptable.

    4) UNACCEPTABLE - Vendor's submittal fails to meet the standards of the stated requirements.

    After proposals have been assigned ratings on the basis of each evaluation criterion, a composite rating will be established by the Selection Committee. Submittals will then be ranked based upon finalized composite rating.

41. The Purchasing Agent will identify the most advantageous proposal based upon the rankings of the Selection Committee and an evaluation of the price proposals received. The Purchasing Agent will forward a recommendation for award to the City Manager based upon the most advantageous proposal received considering evaluation rankings and price proposals received.

GIVE FULL NAMES AND RESIDENCES OF ALL PERSONS INTERESTED IN THE FOREGOING PROPOSAL.

(NOTICE: Give first and last name in full; in case of corporations, give corporate name and names of President, Treasurer, and Manager; and in case of firms give names of the individual members)

Name   Address   Zip Code

_____

_____

_____

KINDLY FURNISH THE FOLLOWING INFORMATION REGARDING BIDDER:

(1)   If an Individual or Proprietorship

    Name of Owner: _____

    Business Address: _____

    Zip Code _____   **Telephone No.** _____

    Email _____

    Home Address _____

    Zip Code _____   **Telephone No.** _____

(2)   If a Partnership, Full names and addresses of all partners

    <u>**Name**</u>   <u>**Address**</u>   <u>**Zip Code**</u>

_____

_____

_____

Business Address _____ **Zip Code**_____

                          Tel. No. _____

(3)   If a Corporation

Full Legal Name: _____

State of Incorporation: _____   Qualified in Massachusetts? Yes_____ No_____

Principal Place of Business _____
                                        Street   P.O. Box

                                    _____
                                       City/Town   State   Zip

                        Email: _____

                            Telephone No. _____

Place of Business in Massachusetts_____
                                         Street   P.O. Box

                                    _____
                                       City/Town   State   Zip

                          Telephone No. _____

GIVE THE FOLLOWING INFORMATION REGARDING SURETY COMPANY

Full Legal Name of Surety Company _____

State of Incorporation_____ Admitted in Massachusetts?   Yes____ No ___

Principal Place of Business _____
                                          Street   P.O. Box

                                    _____
                                       City/Town   State   Zip

Place of Business in Massachusetts_____
                                          Street   P.O. Box

                                    _____
                                       City/Town   State   Zip

                        Telephone No. _____

The Office of the Attorney General, Washington, D.C. requires the following information on all bid proposals amounting to $1,000.00 or more.

E.I. Number of bidder _____

This number is regularly used by companies when filing their "EMPLOYER'S FEDERAL TAX RETURN, U.S." Treasury Department Form 941.

AUTHORIZED SIGNATURE OF BIDDER _____

TITLE _____   DATE _____

UNDER MASSACHUSETTS GENERAL LAWS, CHAPTER 30B: SECTION 10, THE FOLLOWING CERTIFICATION MUST BE PROVIDED:

Section 10. A person submitting a bid or a proposal for the procurement or disposal of supplies, or services to any governmental body shall certify in writing, on the bid or proposal, as follows:

"The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals."

(Please Print) _____
                        Name of Person Signing Bid

_____

                        Signature of Person Signing Bid

_____

                        Company

No award will be made without vendor certification of the above.

Proposers must sign and submit the above form with their proposal submission.

CERTIFICATE OF AUTHORITY

At a duly authorized meeting of the Board of Directors of the
_____ held on _____ Directors were present or waived notice,
     (name of corporation)   (date)

it was voted that _____ of this company be and hereby is
                  (officer and title)

authorized to execute contracts and bonds in the name and behalf of said company, and affix its Corporate Seal thereto, and such execution of any contract or bond of obligation in this company's name shall be valid and binding upon this company.

A TRUE COPY, ATTEST:

_____
[Signed]

_____
[Company Name and Address]

_____

I hereby certify that I am the _____ of the _____
              (Title)   (Name of Corporation)

that _____ is the duly elected _____
    (Name of Officer)   (Title)

of said company, and the above vote has not been amended or rescinded and remains in full force and effect as of the date of this contract.

Signature: _____

Name/Title: _____

Date: _____
              (Corporate Seal)

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

On this ____ day of _____, 2026, before me the undersigned notary public, personally appeared _____, who proved to me through satisfactory evidence of identification, which was/were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me he/she signed it voluntarily for its stated purpose.

_____
Notary Public
My commission expires:

Software (Saas) – Cemetery Database Management / DPRC
Hope Cemetery - Worcester, MA

Index

1.0 SUMMARY AND BACKGROUND

1.1   The primary goal for implementing Cemetery Software is to consolidate existing records and maps into a more efficient and user-friendly sales, record keeping and genealogy system. This will include a database system, mapping system and financial system.

1.2   Since 2011, the Cemetery has used the HMIS (Batesville) software for owners, interment and payments but has no mapping capacity. The data is input by Interment number, contract number, section number, grave number, owner, deceased etc.

1.3   The records for the cemetery are detailed since 1888. (The cemetery was founded in 1852, but no records are known to exist prior to 1888). The records consist of paper records consisting of:
1) Typed Lot Cards 1888 to date, approximately 45,000 cards.
2) Typed Interment Cards 1888 to date, approximately 79,000- 100,00 cards with Interment numbers.
3) Handwritten Interment Cards in four boxes from 1942 -1959 and 1970 to date, approximately 45,000 cards.
4) Paper maps in large (24" x22") bound book and (loose) 8-1/2" x 11" maps, approximately 60 double sided pages.
5) 15 Ledger Books of handwritten interments, approximately 75,000.
6) 11 Boxes of interment slips (with cause of death) 1919-2010, approximately 48,000 slips.
7) Deeds since 2011. Deeds vary according to years from 1910-2025, approximately 25,000 deeds.
8) 8 Boxes of burial certificates, approximately 45,000 certificates.
9) 5 Map books in binders, approximately 60 double side pages.
10) 200 Loose Leaf partial maps.

1.4   Since 2011, the cemetery has also maintained an Excel spreadsheet, used to track owners, interments, interment type (cremation/ fill casket) and similar info.
The annual cemetery activity consists of approximately:
  250 interments /year.
  125 graves sold per year.
  10-15 graves are transferred to ownership per year.

1.5   Based on 115 acres of developed land including driveways, at 1,000 burials per acres (all burials are regular depth), there are an estimated 115,000 burials on the site. As such not all interments are documented.

1.6   The near-term inventory available for sale includes approximately 5,000 graves.

1.7   The cemetery tracks all payments (to tabulate department income) but the final accounting is completed by the City Treasurer.

1.8 The Term of the Contract shall be 365 days upon award to be operational (for initial set-up & training completion), technical support/trouble shooting and ongoing annual software support services including updates as necessary.

2.0 ABILITY TO PERFORM, SELECTION PROCESS AND EVALUATION CRITERIA

2.1 **Ability To Perform**

The following is required to demonstrate satisfactory evidence indicating the ability to meet the scope of services detailed in this RFP. The proposal must include the following information:

Minimum Evaluation Criteria

The Proponent must meet all the minimum criteria enclosed to be considered. Any proposal that does not meet the enclosed minimum criteria shall not be reviewed or considered.

1) All required documents are submitted properly and are clear and easily understood.
2) The proponent must demonstrate that they have provided services that meet the requirements included in this RFP of similar size to Hope Cemetery. The proponent shall list the cemetery, size and scope of services provided, including address, contact information, and time frames in which work was being performed.

2.2 Selection Process And Evaluation Criteria

The Commissioner of the Department of Parks, Recreation & Cemetery and/or their designee(s) will review each proposal to ensure that the submission requirements outlined are met and shall further evaluate and review all qualifying submissions.

The proponents must meet all the minimum criteria enclosed to be considered. Any proposal that does not meet the enclosed minimum criteria shall not be further reviewed or considered.

Unless otherwise stated each evaluation criteria shall be evaluated using the enclosed scale.

Highly Advantageous -Proponent's submittal meets all the stated requirements and offers significant performance above the stated requirements.
Advantageous.   -Proponent's submittal meets the stated requirements without risk or disadvantage.
Not Advantageous.   -Proponent's submittal contains some risk or disadvantage but is not unacceptable.
Unacceptable.   -Proponent's submittal fails to meet the standards of the stated requirements.

Additional review by other city departments may be required as needed. Selection will be based on identification of the solution that best meets the Project Objectives and selection criteria. Selection criteria will include, but are not limited to, the following considerations:

- Demonstrated knowledge of current cemetery software technology needs.
- Experience with systems designed for use by publicly owned cemeteries.
- Company tracks record, history, and viability/financial stability.
- Demonstrated ability to perform in a timely manner and work with City staff.
- Ability to regularly track performance and quantify how funds are being utilized.
- The quality of the services and product being proposed.

Submissions will be evaluated based on the following general criteria:

1. <u>Completeness of needs provided in software.</u>
   Provide a written document that shows and demonstrates how the proponent will assist with integrating the current cemetery software data base into the proposed system that meets the requirements of this RFP.
   Submittal form #1

Highly Advantageous.	- Proponent's submittal meets all the stated requirements and offers significant performance above the stated requirements.
Advantageous.	- Proponent's submittal meets the stated requirements without risk or disadvantage.
Not Advantageous.	- Proponent's submittal contains some risk or disadvantage but is unacceptable.
Unacceptable.	- Proponent's submittal fails to meet the standards of the stated requirements.

2. <u>Mapping Interface.</u>
   Provide a written document that shows and demonstrates how the proponent will provide a mapping interface that meets the requirements of this RFP.
   Submittal form #2

Highly Advantageous.	- Proponent's submittal meets all the stated requirements and offers significant performance above the stated requirements.
Advantageous.	- Proponent's submittal meets the stated requirements without risk or disadvantage.
Not Advantageous.	- Proponent's submittal contains some risk or disadvantage but is not unacceptable.
Unacceptable.	- Proponent's submittal fails to meet the standards of the stated requirements.

3. <u>Workplan and Quality of products.</u>
    Provide a written document that shows and demonstrates how the proponents proposed
    software will meet the requirements of this RFP.
    Submittal form #3

    Highly Advantageous. - Proponent's submittal meets all the stated requirements and offers
                                              significant performance above the stated requirements.
    Advantageous.   - Proponent's submittal meets the stated requirements without risk or
                                              disadvantage.
    Not Advantageous.   - Proponent's submittal contains some risk or disadvantage but is not
                                              unacceptable.
    Unacceptable.   - Proponent's submittal fails to meet the standards of the stated
                                              requirements.

4. <u>Qualifications of Personnel & Experience.</u>
    Provide documentation that shows qualifications of personnel and a listing of company
    experience related to work included in this RFP. Include a brief Company History including
    time in business, experience in cemetery software development, installation, set-up and
    configuration and experience with systems designed for use by publicly owned Cemeteries.
    Provide documentation of at least three (3) related projects. For each of these projects,
    include the name of the contact person, title , role on project and telephone number and /or
    email.
    Submittal form #4

    Highly Advantageous. - Proponent's submittal exceeds the scope of all requirements and
                                             offers significant performance above the stated requirements
                                             with seven (7) or more related projects with one (1) municipal
                                             project.
    Advantageous.   - Proponent's submittal meets the scope of all requirements and
                                              responsibilities with four (4) related projects and one (1)
                                              municipal project.
    Not Advantageous.   - Proponent's submittal meets some of the requirements and
                                              responsibilities with three (3) related projects.
    Unacceptable.   - Proponent's submittal fails to meet the standards of the stated
                                              requirements.

5. <u>Implementation Plan.</u>
    Provide as part of this proposal with written documentation that specifically identifies
    how your product will be implemented. This Plan must include as a minimum, all
    services outlined in this RFP. While it is recognized that specific deliverables are
    dependent on your unique services, the work plan should include as much detail as you
    determine appropriate to allow evaluation of the product and your expertise to deliver
    these services for implementation, useable by July 1, 2026, and all data entered by
    March 31, 2027.

The vendor's approach to protecting these documents and establishing accountability in regard to the care and integrity of the documents should be outlined in the Plan .

It is expected that the awarded company will be inputting all data, complete all scanning, all mapping and all other items necessary to operate the system. Provide a description of recommended approach, including a clear and detailed description of proposed implementation strategy. Describe the anticipated interaction with the City.
Submittal form #5

Highly Advantageous. - Proponent's submittal exceeds the scope of all requirements and responsibilities of all the services that includes details of the specific deliverables that are dependent on their unique services and a detailed description of proposed implementation strategy, useable by July 1, 2026, and all data entered by March 31, 2027. A highly advantageous shall be judged as a superior written interpretation plan.

Advantageous. - Proponent's submittal meets the scope of all requirements and responsibilities of all services that includes a description of a proposed implementation strategy, useable by July 1, 2026, and all data entered by March 31, 2027.

Not Advantageous. - Proponent's submittal meets the requirements and responsibilities of all services but the implementation plan is not usable until after July 1, 2026

Unacceptable. - Proponent's submittal fails to meet the standards of the stated requirements and services.

6. <u>Customer (Residents) facing system genealogy.</u>
Provide written documentation that shows and demonstrates how the proponent will assist the City with providing the software for a genealogy system that meets the requirements of this RFP. Documentation shall include information for a customer facing genealogy platform with a pay for information system with the ability:
- To access only specific data selected by the customer and preapproved by the city.
- To process credit card payments in the system, track assignments to the lot and obtain an information request form.
- To provide reporting capabilities for financial tracking purposes built in.
- Provide documentation of at least three (3) related systems.
Submittal form #6

Highly Advantageous. - Proponent's submittal exceeds the scope of all requirements and responsibilities of the services outlined in this RFP and have provided five (5) or more systems in operation that offer significant performance above the requirements.

Advantageous. - Proponent's submittal meets the scope of all requirements and responsibilities of all the services outlined in this RFP and have provided four (4) systems in operation that offer

performance with the requirements.

Not Advantageous.   – Proponent's submittal meets the scope of all requirements and responsibilities of all the services outlined in this RFP and have provided three (3) systems in operation that offer responsibilities outlined in this RFP.

Unacceptable.   - Proponent's submittal fails to meet the standards of the stated requirements.

7. References.

Submit a minimum of three (3) written client references that demonstrate the proponent's ability to perform the scope of work that meets the requirements of this RFP. References shall include contact information about the client referenced, location of work and type of work performed.
Submittal form #7

Highly Advantageous. - Proponent's submittal exceeds the scope of all requirements and responsibilities of the services outlined in this RFP, including six (6) or more strong client references that show a positive past interaction with proponent over a multi-year timeframe and demonstrate a willingness to retain the proponent's services.

Advantageous.   - Proponent's submittal meets the scope of all requirements and responsibilities of all the services outlined in this RFP, including five (5) strong client references that show a positive past interaction with proponent over a multi-year time-frame and demonstrates a willingness to retain the proponent's services.

Not Advantageous.   - Proponent's submittal meets the scope of some of the requirements and responsibilities of the services outlined in this RFP, including minimum of three (3) client references that show a positive past interaction with proponent over a multi-year timeframe and demonstrates a willingness to retain proponent's services.

8. Interview/Oral Presentation of Services (City Optional).
   Submittal Form #8

   Highly Advantageous: The proposer's presentation was conducted by the individuals who will perform/implement the services and included thorough, highly detailed information regarding how the firm will complete the scope of services. The presentation included multiple, relatable examples and dialog from services performed for other similar clients.

   Advantageous: The proposer's presentation was conducted by some of the individuals who will perform/implement the services and included adequate detailed information regarding how the firm will complete the scope of services. The presentation included one relatable example and dialog from services performed for other similar clients.

   Not Advantageous: The proposer's presentation was conducted by the firm's sales team and not the individuals who will perform/implement the services. It includes some information regarding how the firm will complete the scope of services but was not clear as to the firm's ability to comply with the stated scope of services. The presentation included no examples and dialog from services performed for other similar clients.

The successful proponent will be required to enter into a contract with the City. The City's software agreement template is included herein. The City reserves the right to award a contract based on the proposal deemed most advantageous to the City or not to award a contract at all.

The City may invite proponent(s) in to make a presentation after the proposal submission deadline. As part of the evaluation process, the Company may be required to provide a demonstration of their product and interview with the City.

Once a service agreement is awarded, an operating and use agreement regarding the facility use and specific program requirements will be drafted.

3.0 REQUEST FOR PROPOSALS

This RFP is intended to provide general information needed to provide your response. The precise Scope of Services, to be incorporated into a "Service Agreement," shall be negotiated with the selected organization. The anticipated requirements are listed below. The City encourages the consultant to suggest changes to the scope of services (as part of the proposal) in order to achieve the City's stated Project Objectives.

3.1 Project Objectives

3.1.1 The City's primary objective is to consolidate all paper and digital files and maps into one recordkeeping and sales system. Translate paper records into digital searchable data including, at a minimum:
License Holder Name, Address, Phone, Mobile Phone, Email

Section #, Lot #/Grave #
Record cards numbers
Logbook entries
Finance records for each lot
Monument Company
Monument approval date
Heirs Name, Address, Phone, Mobile Phone, Email
Deceased Name
     Death date, Interment date
     Age at time of death
     Section #, Lot #/Grave #
     Veteran Status
     Vault, Vault Dealer
     Funeral Director
     Cremation
     Cremation vault
     Indigent - Assisted Burial
     Cenotaph? (not interred here)
     Other.

- To provide multiple users(no less than 15) across different departments and offsite locations with access to the system for sales, mapping, and maintenance.
- Vendor offers Single Sign On and Multi-Factor Authentication.
- Set up and configure software to meet Worcester Department of Parks, Recreation and Cemetery as stated in Section 3.1.1.
- 40 hours of online training.
- 40 hours of onsite training.
- Project Management services to manage and implement a web-based data storage solution system.
- System shall allow the cemetery to send out notices for specific purposes.
- System shall have a public facing page.
- System shall have an individual access point to make payments, view details and all paper work.
- To provide the public with a mobile-friendly and user-friendly interface to locate graves and conduct online burial searches.
- To allow staff to input and edit data in various fields including addition of graves as they are developed.
- Provide a reporting functionality for cemetery sales, interment density per grave and overall cemetery inventory.
- Have a maintenance work order system for tracking regular maintenance, repairs and vandalism issues (Asset Management).
- Creating an index of information currently on cards and assorted documents and cards. Each scanned document shall be indexed with up to 30 fields.

3.1.2 The City is seeking scanning services and cemetery specific software that integrates recordkeeping with a financial system. The software shall:

- - Incorporate a mapping application to link cemetery graves to sales and interment data.
  - Have a communications feature for operational and public needs (searchable database for locating graves).
  - Track cemetery sales, rates and fees, and manage multiple interments per grave.

- All scanning must be performed on-site at Hope Cemetery (119A Webster St., Worcester, MA 01603)
- Some documents are over one hundred years old and are in varying conditions. These records are archival and need to be handled with care.
- The vendor's approach to protecting these documents and establishing accountability in regard to the care and integrity of the documents should be outlined in the RFP.
- Each scanned document must be scanned using Optical Character Recognition (OCR) wherever possible to allow for future full-text searches using a document management system.
- Images must be oriented correctly for viewing.
- Image Clean-up: the scanned document should be de-skewed and de-speckled, blank pages and black borders removed, inverting and background suppression where the image will be enhanced by such processes
- Manual image quality adjustment and QA of every image for clarity, quality, cut-offs, or compression errors.
- Indexing and image information in XML and CSV format with hyperlinks to the scanned documents or other formats approved by the City.
- Documents are single and double sided
- Scanned documents must be viewable in PDF format at a minimum of 300 dpi.
- File type: Single-page PDF.
- All scan dimensions must be the same size as the original document.
- Each scanned document must be saved electronically as an individual file.
- Using data from the lot cards, the selected vendor will be required to create an interactive and accurate digital mapping database.
- The mapping database will provide easy access to locate lots using burial records.
- Mapping software using high-resolution imagery captured by drone technology or other technology for best results.
- Where available, vendor shall overlay data onto current maps to offer a visual representation of cemetery data.
- Software should have the ability to provide range of mapping/plot reports.
- Software application that allows the City to carry out its own mapping.
- Vendor to provide a full ticket **asset** management system included in pricing.

4.0 SCOPE OF SERVICES

The scope of this request for proposals for the City of Worcester Cemetery Management Software project shall include:

4.1   Scanning of paper records for either conversion to text (as possible) or as "image only" to be attached to specific graves/lots.

4.2   Preparing and maintaining cemetery specific software that will meet industry best practices for record management and enable integration between record keeping and financial systems and GIS mapping of graves. The software is desired to have the following functional Requirements:

  4.2.1   The ability to take current data and transfer to the new software.
  4.2.2   Application Setup and import of data from the existing data management systems.
  4.2.3   A user-friendly interface solution that integrates GIS mapping with cemetery record using single entry of data.
  4.2.4   Comprehensive Grave / License Holder Management.
- License holder with address and section number and grave or lot number.
- Ability to update mapping and create new inventory in real time with cemetery operations: sales, inventory, grave type (description), grave status (interred, reserved, vacant, no record), location of casket (double depth or single depth) and/or urns (i.e. NE corner) in one grave.
- The database shall be initially established to include 2 interments per grave.
- Ability to add interments to a grave.
- Managing and tracking of:
  - Grave sales (with variable price structures) including ability to transfer and track changes in grave ownership.
  - Interments.
  - Grave marker installation, foundation for monuments, and other events (i.e. link to calendars).
- Generation of sales contracts and deeds in both Microsoft Word and PDF format with the ability to have secondary approval of these.
- Ability to enter sales and customer information.
- Functionality to export transactions in an ASCII format layout or XML format,
- Ability to export data to outside data bases such as Access, Excel or equal.
- Recordkeeping of the deceased' details and genealogy information
- GIS Mapping features.
- Tracking maintenance activities (including multiple work orders for one grave).
- Ability to export work orders, maintenance and repairs for reporting purposes.
- Ability to have a customer facing genealogy platform with a pay for information system. System shall have:
  - The ability to access only specific data selected by the customer and

preapproved by the city.
- o The ability to process credit card payments in the system, track assignments to the lot and obtain an information request form.
- o Built-in reporting ability for financial tracking purposes.
- o 3 operational systems in other communities.
- Payment platform must be integrated with Stripe, and credit card processing machines, including chip and tap. It must have the ability to provide detailed daily payment reports available for reconciliation.
- Ability to attach scanned documents to graves and interment records.
- Ability to attach photos to graves and interment records using a mobile device.
- Ability to communicate with grave owners, through built-in notifications.

4.2.5 Report Generation
- Ability to generate a variety of reports including total sales, sales by grave type, sales by resident/non- resident/veteran or indigent, number of interments per grave, inventory (interred, reserved, vacant, and no record) per grave type cremation, full casket, veteran status and maintenance work orders completed/not completed.
- Comprehensive search capabilities including internal and online searches.
- User/group-based permissions and track activity and changes by user
- Public searching for deceased name, section and lot and grave (and other information as the cemetery appropriate) and location on a map.
- Options for mobile applications for staff such as a smartphone/tablet app to allow mobile access for burial graves, headstones, a listing of events, interment services, grave availability, rates and fees, etc.
- Technical support including training (data entry, manuals, procedures maps) and ongoing technical support/trouble shooting.
- Include backup of all data that is seamless and immediate.

4.3   Baseline Technology Requirements
The proposed solution must meet the following minimum technical standards:

Security & Compliance
- System shall support Single Sign-On (SSO) and Multi-Factor Authentication (MFA).
- System shall integrate with Azure Active Directory for identity management.
- Vendor shall ensure compliance with Massachusetts Data Privacy Laws where applicable.
- System shall encrypt data at rest and in transit (AES-256 or equivalent).
- System shall provide role-based access control with audit logging.
- Vendor shall maintain established processes to regularly protect systems, identify security vulnerabilities, and remediate them in a timely manner.

- System shall include industry-standard security controls to protect public-facing components from misuse, excessive traffic, and common web-based attacks.
- System shall allow the City to configure and control the visibility of sensitive data elements for public access versus authorized internal users.

Performance & Availability
- Vendor shall provide an SLA of 99.9% uptime (maximum 44 minutes downtime per month).
- System shall support a Recovery Time Objective (RTO) of 4 hours or less.
- System shall support a Recovery Point Objective (RPO) of 1 hour or less.
- S0ystem shall provide monitoring and alerting capabilities to proactively track system availability and performance issues.

Hosting & Architecture
- System shall be a web-based application with responsive design for desktop and mobile devices.
- System shall be a SaaS or cloud-hosted solution in a U.S.-based data center.
- System shall include secondary backups in a geographically separate location.
- System shall provide logical separation between production and non-production (test/training) environments.

Compatibility
- The proposed cemetery management software must include a documented and supported API to allow for future integrations and data exchange. This ensures flexibility for potential system enhancements and interoperability. Vendors should describe any optional capabilities for Workday integration, but this will not be a scoring criterion.
- Integration with Munis (Tyler Technologies) is required for payment processing. The solution must support:
  - Daily file upload of payment transactions received at Hope Cemetery.
    - File format and structure compatible with Tyler Munis for automated ingestion.
    - Secure transfer method for the daily feed to ensure accurate accounting of receipted funds.
- System shall integrate with Esri ArcGIS.
- System shall support export of data to Excel and XML formats.
- System shall be compatible with the latest versions of Chrome, Edge, and Safari browsers.
- System shall support complete data export in non-proprietary formats upon request or contract termination.

Technical Specifications
- System shall support a minimum of 15 concurrent users with scalable architecture.
- System shall support Windows 10/11 and iOS/Android mobile devices.
- System shall use SQL Server or an equivalent enterprise-grade database management system.
- System shall support OCR-enabled scanning with PDF output at a minimum of 300 dpi.
- System shall enforce data integrity and maintain a historical audit trail for all system records as defined by the City.

Support & Maintenance
- Vendor shall provide 24/7 technical support with defined escalation procedures.
- Vendor shall provide regular security patches and software updates.
- Vendor shall maintain a disaster recovery and business continuity plan.
- Vendor shall provide advance notice of major system changes and publish release notes for system updates.

5.0 TIMELINE / SCHEDULE

5.1 An outline of anticipated schedule for completing consultant implementation tasks must be included with proposal submission. Consultant to deliver these services for implementation, useable by July 1, 2026, and all data entered by March 31, 2027.

PRICE PROPOSAL

Proposed costs associated with providing requested services. The estimate should include an outline of costs describing cost elements for the Scope of Services tasks. Costs should be based on the following information:

- o 1 cemetery
- o Total of Lots Sold – approximately 200,000
- o Total of Single Grave Lots – approximately 125,000
- o Total of Multi Grave Lots – approximately 75,000
- o Total of Unsold Lots – 5,000
- o Estimated number of Users – 15

The proposed costs must include the following components, as applicable:

Component	Cost
Application Cost	
Add on Modules needed to meet objectives (please list all with description)	
1.	
2.	
3.	
Additional Licenses	
3rd party Software (please list all with description)	
1.	
Scanning Data Cost	
Conversion Cost	
Mapping Cost	
On-site Training	
On-line Training	
Maintenance & Tech Support (during 1st year from date of go live)	
**** TOTAL COST =	
Unit Costs (not to be included in the grand total, to be used as needed by City)	
Maintenance & Tech Support – Year 2 (after the first year the system is live)	
Cost per hour of on-site training above initial 40 hours First year of agreement	
Cost per hour of on-line training above initial 40 hours First year of agreement	

****Award to be based on this total amount

1. SUBMITTAL FORM #1- Completeness of needs provided in software

Provide a written document that shows and demonstrates how the proponent will assist with integrating the current cemetery software data base into the proposed system that meets the requirements of this RFP.

2. SUBMITTAL FORM #2 – Mapping Interface

Provide a written document that shows and demonstrates how the proponent will provide a mapping interface that meets the requirements of this RFP.

3. SUBMITTAL FORM #3 – Workplan and quality of products

Provide a written document that shows and demonstrates that the proponents proposed software will meet the requirements of this RFP.

4. SUBMITTAL FORM #4 – Qualifications of Personnel & Experience

Provide a written document that shows qualifications of personnel and a listing of company experience related to work included in this RFP.

Include the following:
- A brief Company History including time in business, experience in cemetery software development, installation, set-up and configuration and experience with systems designed for use by publicly owned Cemeteries.
- Provide documentation of at least (3) related projects, one which shall be of a municipality. For each of these projects, include the name of the contact person, title, role on project and telephone number and /or email.

5. SUBMITTAL FORM #5 – Implementation Plan

Provide written documentation that specifically identifies how your product will be implemented. While it is recognized that specific deliverables are dependent on your unique services, the documentation should include:

- As much detail as you determine is appropriate to allow evaluation of the product and your expertise to deliver these services as well as a timeline for implementation.
- It is expected that the awarded company will be inputting all data, complete all scanning, all mapping and all other items necessary to operate the system.
- Provide a description of recommended approach, including a clear and detailed description of proposed implementation strategy. Describe the anticipated interaction with the City.

6. SUBMITTAL FORM #6 – Customer (Residents) Facing System Genealogy

Provide written documentation that shows and demonstrates how the proponent will assist the City with providing the required software for a genealogy system that meets the requirements of this RFP.

7. SUBMITTAL FORM #7 - References

Submit a minimum of three (3) written client references that demonstrate the proponent's ability to perform the scope of work that meets the requirements of this RFP. References shall include contact information about the client referenced, location of work and type of work performed.

Company/Municipality	
Address	
Date software was activated	
Number of years	
Contact Person	
Phone	
Email	

Company/Municipality	
Address	
Date software was activated	
Number of years	
Contact Person	
Phone	
Email	

Company/ Municipality	
Address	
Date software was activated	
Number of years	
Contact Person	
Phone	
Email	

Company/Municipality	
Address	
Date software was activated	
Number of years	
Contact Person	
Phone	
Email	

Company/Municipality	
Address	
Date software was activated	
Number of years	
Contact Person	
Phone	
Email	

Company/ Municipality	
Address	
Date software was activated	
Number of years	
Contact Person	
Phone	
Email	

8. SUBMITTAL FORM #8 - Interview/Oral Presentation of Service
   (City Optional)

SOFTWARE LICENSE AND SERVICE AGREEMENT

This Software License and Service Agreement ("Agreement") is made this _____ day of
_____, 202___, by and between the City of Worcester, a Massachusetts municipal
corporation with an address of 455 Main Street, Worcester, Massachusetts, 01608, acting
through its _____ Department ("City"), and _____,
a _____ with a principal place of business at
_____ ("Licensor"). City and Licensor may
collectively be referred to as the "Parties" and singly as "Party".

W I T N E S S E T H:

WHEREAS, the City seeks to license _____ software for the
_____ Department ("Project"); and

WHEREAS, Licensor is the successful proposer, and represents that it has the expertise,
experience and capacity to perform the services sought; and

NOW THEREFORE, the Parties hereto mutually agree as follows:

Article 1.   LICENSE OF SOFTWARE AND DESCRIPTION OF SERVICES

1.1   Grant of License. Subject to the terms and conditions herein, including the Recitals
above, Licensor hereby grants City a non-exclusive, non-transferable, license and right to use the
_____ ("Software"). The City shall be entitled to use the Software
for municipal purposes, including to copy, display, perform, modify, and otherwise use (and
permit others to use) any City Data, all purposes set forth in the RFP (defined below) and the
Proposal (defined below), those purposes required by law, and the purposes for which such
Software was designed.

1.2   Summary of Services. Licensor shall furnish and perform implementation, testing,
training, support, management and maintenance of said Software and related services, equipment
and materials, if any, as set forth herein and in Exhibit A, "Scope of Services," ("SOS") as
attached hereto and incorporated herein, and as further set forth in the RFP and the Proposal
(defined below). Licensor shall further provide the Service Level Agreement ("SLA") services as
set forth in Exhibit D, attached hereto and incorporated herein.

1.3   RFP and Proposal. The Project requirements are set forth at the Statement of Work,
Exhibit A, City's Request for Proposals issued _____, 20__,
No._____ ("RFP"), and Licensor's Proposal, dated _____, 20__,
("Proposal"), each of which are incorporated herein by this reference. The Parties each
acknowledge familiarity and possession of said RFP and Proposal. Notwithstanding any
provision to the contrary, no legal terms or conditions contained in the Proposal (including but
not limited to any proposed license or contract) shall be incorporated by this reference. Any such
legal terms and conditions in the Proposal shall be, by the execution of this Agreement, deemed
fully withdrawn and of no force or effect. In the event of a conflict that cannot be harmonized,

(a) this Agreement, including its attached exhibits, shall take precedence over the RFP and the Proposal, and (b) the RFP shall take precedence over the Proposal.

1.4   Equipment. To the extent Licensor is furnishing hardware, equipment and/or materials (collectively "Equipment") for this Project, Licensor shall bear all risk of loss to and/or damage for such Equipment that occurs in transit to the City's site(s) and during its installation. The risk of loss and/or damage to purchased Equipment further remains with Licensor until the purchase price for such Equipment is paid and title has passed. Licensor shall bear the risk of loss and/or damage to any licensed or rented Equipment during the City's possession and use thereof except to the extent of the City's negligence or wrongful misconduct; provided however, the express provisions set forth in the RFP shall control such risk of loss and/or damage to the extent of a conflict which cannot be reconciled.

1.5   Hosted Services. Licensor shall provide City with US domestic hosting services more particularly described in the SOS, the RFP and the Proposal ("Hosted Services").

1.6   Security. In addition to satisfying the security requirements set forth in the RFP, Licensor shall employ reasonable security measures which shall in no event be less than that required by all applicable federal and state laws and regulations regarding data security and privacy, including but not limited to that required for provision of the Hosted Service. Further, Licensor's security frameworks shall comply with generally accepted security frameworks, such as NIST or CIS.

1.6.1   *Security Monitoring*. In addition to other security requirements set forth elsewhere in this Agreement, Licensor shall conduct annual penetration testing. Licensor shall maintain industry standard intrusion detection and prevention systems to monitor malicious activity in the network and to log and block any such activity. Licensor shall promptly provide the City with a written or electronic record of the actions taken by Licensor in the event that any unauthorized access to the City's database(s) is detected as a result of Licensor's security protocols. Upon the City's reasonable request, Licensor shall undertake an additional security audit, on terms and timing agreed by the Parties. Licensor shall maintain an unqualified SOC 2 audit report and an attestation of compliance to PCI DSS and shall make the same available to the City or its designee upon request.

1.6.2   *Data Encryption at Rest*. Licensor (or its Hosted Services provider) shall salt/hash using Password Based Key Derivative Function, also known as PBKDF2, all sensitive credentialing data, such as passwords. In addition to the hashing of credentialing data, Licensor shall encrypt all other databases at rest in data center hardware using AES-256 encryption.

1.6.3   *Data Encryption in Transit*. All user communication with Licensor applications is through current securely encrypted TLS/SSL communication channels (https). Licensor shall use the most current technology for its SSL certificates. Insecure cipher keys are not used.

1.6.4   *City Data Uploads*. City data uploads are performed using secure FTP (SFTP) connections. IPSec VPN tunnels and TLS\SSL are used to transfer data between locations for disaster recovery and offsite backup.

1.7   Licensor's Subcontractors. If Licensor selects and/or engages any subcontractor or other third party (e.g., subcontractor, service provider) to provide any portion or component of the Services (including the Software), Equipment hereunder, Licensor shall be responsible to the same extent as if such Service were provided by Licensor directly. Without limiting the generality of the foregoing, Licensor shall be liable for the acts and omissions of such third parties to the same extent as if such acts or omissions were performed by Licensor and shall require such third parties to enter into a written agreement with Licensor requiring that such third parties abide by terms that are as protective of City Data (and other confidential information) as in this Agreement.

1.8   Third Party Equipment and Software. Licensor shall be responsible for the purchase of, and entering into appropriate licensing agreements concerning, the Software, any third party equipment, materials and/or other software, including but not limited to that necessary for the performance of the Hosted Service. Ownership and/or licenses for the third party equipment and software shall be in the name of Licensor.

1.9   Service Levels. Licensor shall satisfy the security requirements set forth in the RFP and as otherwise set forth in Exhibit D, attached hereto and incorporated herein.

1.10   Disaster Recovery. Licensor (or Hosted Services provider) shall maintain fully-redundant telecommunications access, electrical power, and the required hardware to provide access to the Services, including City Data, in the event of a disaster or component failure. Licensor shall maintain a disaster recovery plan for resumption of Services and shall provide a Recovery Point Objective ("RPO") of twenty-four (24) hours or better and a Recovery Time Objective ("RTO") of not more than twenty-four (24) hours (or such shorter time as set forth in the RFP or the Proposal). RPO is the maximum duration of time between the most recent recoverable copy of the City Data and subsequent data center failure. RTO is the maximum duration of time following data center failure within which the City's access to the Service must be restored. Licensor shall maintain backups of the City Data in accordance with its backup and retention policies (which shall be not less than nightly and monthly) to meet the RPO and RTO commitments contained herein. Licensor shall test its disaster recovery plan annually and, upon the City's reasonable request, shall schedule and execute a customer-specific disaster recovery test. Upon the City's reasonable request, Licensor shall provide the City with disaster recovery test results.

1.11   Upgrades. Licensor shall timely support its Software and Service by furnishing Subscriber with the implementation of upgrades, updates, patches, bug fixes and other enhancements and modifications to the Software.

Article 2.   TERM AND SCHEDULE

2.1   Term. This Agreement shall be effective upon the date set forth in the first paragraph above and terminate upon _____ (___) years thereafter, unless earlier terminated as set forth herein and/or unless otherwise extended in writing by the Parties.

2.2   Schedule. Licensor shall commence and complete implementation of the Project and make the Software available to the City in compliance with the schedule set forth at Exhibit C, attached and incorporated by reference.

Article 3.   FEE

3.1   Fee. The City shall pay Licensor an amount not to exceed _____ ($_____) ("Fee") in accordance with the procedures set forth herein. The above sum includes payment in full for all labor, services, software licenses, hosting, Equipment, professional service fees, overhead, profit, travel, and all other costs and/or expenses. The City shall pay Licensor solely on the basis of written invoices evidencing in complete detail the propriety of the charges. For the Software license fee, Licensor shall invoice annually for the amount of license fee for the relevant annual period. For all other payments, Licensor shall submit invoices periodically, but not more than monthly, reflecting services rendered and/or Equipment received. Licensor shall provide such additional detail and/or back up regarding any invoice that the City reasonably determines lacks in sufficient detail. The City shall make payments (except those amounts subject to good faith dispute) within forty five (45) calendar days after receipt of a sufficient invoice. The City shall not be subject to additional charges for late payments. The City's payment obligations are contingent upon an appropriation.

3.2   City Tax Exempt. City represents to Licensor that it is a tax exempt entity. Licensor shall not include any taxes in invoices and shall not be entitled to recover any such amount from City. City shall provide its tax exempt information to Licensor upon request.

3.3   Fee Breakdown. The fee breakdown and related details are set forth in Exhibit B, attached hereto and incorporated herein.

Article 4.   INFORMATION FURNISHED BY CITY

The City shall, to the extent the Services under this Agreement may require, furnish Licensor with any relevant information it may have concerning this Agreement. The City does not guarantee the accuracy or completeness of such information.

Article 5.   PROPRIETARY RIGHTS AND CONFIDENTIALITY

5.1   City Ownership.

5.1.1   As between Licensor (and its licensors, licensees, subcontractors and affiliates) and the City, the City owns and shall retain ownership of its City Data (including any documents, information, as well as any extract or aggregation thereof, in whatever nature or form (collectively, "City Data"). For clarity and for the purposes of this Agreement, said City Data shall include but not be limited to any data that is licensed or made available to the City through a third party, including but not limited to personal and private information. By this Agreement, City does not convey any right, title or interest in City Data (including but not limited to any rights owned by or licensed from any third party). Notwithstanding any provision to the contrary,

Licensor is prohibited from retaining or using any City Data for any reason other than its performance under this Agreement, even if said City Data is aggregated, de-identified, pseudonymized or anonymized. Without limiting the scope of Section 12.10 below, the requirements of this provision shall survive the termination of this Agreement.

In addition to City Data, any deliverables furnished by Licensor for the City's use shall be instruments of service and property of the City, whether the work for which they are made be executed or not, and are not to be used on other work except by agreement with the City.

5.1.2   City may, from time to time, engage or contract with contractors, consultants or other third parties (collectively for this Article "City Consultants") to provide separate software, services or products that relate to (and/or interact with) the Software and/or Services provided by this Agreement. Licensor will provide reasonable cooperation and work in good faith with City and City Consultants as reasonably requested by City. Further, to the extent Licensor has access to information of such City Consultant(s) that is marked as or may reasonably to be understood to be confidential information, Licensor shall, except as otherwise required by law, use such confidential information only for the purposes set forth in this Agreement and shall protect such confidential information in the same manner that it protects its own similar confidential information, but in no event using less than a reasonable standard of care.

5.1.3   At the termination of this Agreement, Licensor shall promptly (not less than five (5) calendar days) allow City to extract a copy of City Data at no cost for a period of one hundred twenty (120) calendar days, or such greater period as the Parties may agree. Within fifteen (15) calendar days of a written request by the City, Licensor shall return or destroy, at the City's option, all City Data, of whatever nature or form, including but not limited to all City Data received from or on behalf of the City or any City authorized user that is within Licensor's possession or control and shall (within five (5) calendar days following such destruction or return) certify in writing to the City that all City Data in its possession or control (including in the possession or control of Licensor's affiliates, subcontractors, licensees, licensors, and other agents) has been destroyed or returned to City.

5.2   <u>Licensor Ownership</u>

5.2.1   Licensor represents that it (or its licensors) own all right, title and interest in and to the Software (including but not limited to all source code, object code, class libraries, user interface screens, algorithms, development frameworks, repository, system designs, system logic flow, and processing techniques and procedures related thereto), technical and non-technical documentation, and other Licensor intellectual property rights (copyright, patent, trademark, trade secret and other proprietary rights in any of the foregoing), and subject to the limited license and other rights expressly granted hereunder, Licensor reserves all rights, title and interest thereto.

Additionally, reports or other data generated by Licensor regarding its traffic flow, feature use, system loads and/or product installation, and/or similar information, are the exclusive property of Licensor; expressly excluding however personally identifiable information (PII), which Licensor

shall neither collect (except to the limited extent necessary to perform its obligations under this Agreement), nor retain.

5.2.2   Restrictions. Except as otherwise required by law or order of a court with competent jurisdiction, or exempted by Section 5.3.3 or elsewhere in this Agreement, City agrees that it will not

(i) modify the Software or technical documentation or create any derivative works based on the Software or technical documentation beyond changes necessary to support intended functions and integrations;
(ii) copy the Software or technical documentation (except for archival copies of the technical documentation for use consistent with this Agreement, copies required as a step in the use of the Software or Service);
(iii) license, sublicense, sell, resell, rent, lease, assign, distribute, time share, offer in a service bureau, or otherwise make the Software or technical documentation available to any third party, other than to authorized user as permitted herein;
(iv) reverse engineer or decompile any portion of the Software or documentation;
(v) access the Software or documentation for the purpose of establishing a competing commercially available product or Service; or
(vi) modify, or create derivative works of any features, functions, integrations, interfaces or graphics of the Software or technical documentation.

For clarity, for purposes of this Agreement, (a) reports or other documents created from City Data and (b) configurations and customizations performed within the terms of the Agreement shall not be defined as derivative works and shall be available to the City for municipal uses, including public disclosure, in its discretion.

5.3   Confidential Information.

5.3.1   Licensor represents to the City that its Software and technical documentation contains proprietary information that are the exclusive property of Licensor (or the licensors of Licensor) ("Licensor Confidential Information"). Neither Party shall disclose or use any confidential information of the other Party except (i) as reasonably necessary to perform its obligations or exercise its rights pursuant to this Agreement, or (ii) to comply with applicable law or order of any court of competent jurisdiction. Subject to said first sentence, the Parties agree to protect the confidential information of the other Party in the same manner that it protects its own confidential information of like kind, but in no event using less than a reasonable standard of care. Notwithstanding any provision to the contrary, however, this Section 5.3.1 shall not affect the limits or exclusions to confidential information set forth elsewhere in this Agreement, including but not limited to Section 5.3.3.

5.3.2   Remedies. If a Party discloses or uses (or threatens to disclose or use) any confidential information of the other Party in breach of confidentiality protections hereunder, the other Party shall have the right, in addition to any other remedies available, to seek injunctive relief to enjoin such acts.

5.3.3   Exclusions. The definition of confidential information, including Licensor Confidential Information, shall not include any information (in any form) that: (i) is or becomes generally known to the public without breach of any obligation owed to the other Party; (ii) was known to a party prior to its disclosure by the other Party without breach of any obligation owed to the other Party; (iii) was independently developed by a Party without breach of any obligation owed to the other party; or (iv) is received from a third Party without breach of any obligation owed to the other Party. Notwithstanding any provision to the contrary in this Agreement, City Data (including but not limited to Personal Data) shall not be subject to the exclusions (i)-(iii) set forth in this Section 5.3.3. Notwithstanding any provision to the contrary in this Agreement, **expressly excluded from the Licensor Confidential Information provisions** shall be (a) this Agreement, as it may be amended (whether by change order, work order, order form, amendment or otherwise), and its appendices, addendum, order forms, exhibits, and (b) all other incorporated or referenced documents/attachments, including the RFP and the Proposal, (c) correspondence with the City by or on behalf of Licensor, (d) invoices and related details, (collectively for this Section "non-confidential documents and information"). City shall have the right to disclose publicly such non-confidential documents and information, in whatever form, for any municipal purpose consistent with the City's usual practices and activities. Without limiting the generality of Section 12.10, the requirements of this Section shall survive termination of this Agreement.

Additionally and for the avoidance of doubt, none of the requirements of this Agreement shall be interpreted to impede, limit or prohibit the City from disclosing Licensor's (or licensor, subcontractor, licensees, and affiliates) Confidential Information or other proprietary information, including trade secrets, to the extent that such information is required to be disclosed pursuant to any applicable law, including but not limited to Massachusetts public records law, open meeting law, or any other local public disclosure law applicable to City or pursuant to any order by a court of competent jurisdiction.

5.3.4   FERPA/COPPA. To the extent City is an educational institution subject to the Family Educational Rights and Privacy Act ("FERPA") and to the extent Licensor may have access to student information during the performance of this Agreement, Licensor agrees that it is a "School Official" (as that term is used in FERPA) with a "legitimate educational interest" in any City Data that is protected by FERPA and, therefore, Licensor agrees that with respect to all City Data that is protected by FERPA, to the extent that Licensor accesses unencrypted City Data that is subject to FERPA, Licensor shall comply with any and all obligations of a School Official with respect to such access. Without limiting the foregoing, Licensor shall use education records only for the purposes of fulfilling its duties under this Agreement. Except as required by law or court order, Licensor shall not disclose or share education records with any third party except to subcontractors who have agreed to maintain the confidentiality of the education records to the same extent required of Licensor and only to the extent such education records are needed to fulfill said subcontractor's duties under this Agreement. Additionally, and to the full extent applicable, Licensor shall comply with the requirements of the Children's Online Privacy Protection Act ("COPPA") and SHALL NOT KNOWINGLY COLLECT ANY PERSONALLY IDENTIFYING INFORMATION FROM CHILDREN UNDER THE AGE OF 13 THROUGH THE SOFTWARE AND/OR OTHER PRODUCT EXCEPT IN COMPLIANCE WITH COPPA.

Additionally, if the Parties attach and incorporate a Standard Student Data Privacy Agreement ("SDPA"), then, notwithstanding any contrary provisions of said SDPA, Article VII, sections 1, 2, 3 (third sentence only), 4-9 of said SDPA shall not supersede the corresponding provisions of this Agreement.

Article 6.   STANDARD OF CARE

6.1   Licensor shall provide all professional Services in a good, timely, thorough, and workmanlike manner, in accordance with the standard of care, skill, training, diligence, and judgment provided by highly competent providers and licensors performing services of a similar nature. Licensor shall be responsible for the security of the data (including but not limited to City Data) during any implementation, configuration and integration, and it shall be responsible for non-interference with those aspects of the City's existing computer and related systems that are not intended to be replaced or changed by this Project. Licensor shall be responsible for the professional and technical accuracy and the coordination of all work furnished under this Agreement. Licensor shall furnish duly qualified personnel with the degree of training and expertise required to provide such Services for each aspect and task so that detailed checking or reviewing by the City is not necessary.

6.2   Notwithstanding any provision to the contrary, the City's review, approval, testing, acceptance or payment for any of the software, deliverables, Equipment, labor, and/or services furnished shall not be construed to operate as a waiver of any rights under this Agreement or any cause of action arising out of the performance of this Agreement.

6.3   Without limiting the generality of other provisions of this Agreement, in the event that any aspect of Licensor's performance fails to comply with applicable law due to Licensor's negligence or breach of this Agreement, Licensor shall make all necessary corrections at no cost whatsoever to the City.

Article 7.   INDEMNIFICATION

7.1   Licensor shall indemnify, defend and hold harmless the City and its officials, employees, agents, and attorneys against any third party claims, demands, actions, arbitrations, losses and liabilities resulting from any injury, death or damage to property, caused by Licensor's employees or subcontractors in performing the obligations under this Agreement. The City agrees to promptly provide Licensor notice thereof (although a delay of notice will not relieve Licensor of its obligations except to the extent that Licensor is materially prejudiced by such delay) and to provide reasonable cooperation, information, and assistance in connection therewith. If Licensor's indemnification is provided without reservation, Licensor shall have sole control and authority to defend, settle or compromise such claim, *provided* that any settlement/compromise shall unconditionally release City of all liability by all claimants *and further* that Licensor shall nevertheless obtain City's prior written consent prior to making any admission or statement of City breach, error or negligence.

7.2   Without limiting the generality of the foregoing, Licensor shall defend, hold harmless and indemnify the City, and its officials, employees, agents and attorneys against any damages or

amounts paid in settlement, as well as any attorney fees and costs, as a result of any claim or threat of claim brought by a third party against the City alleging that: (i) the use of the Software, the documentation (including for this Article 7, technical and non-technical documentation) and/or other products, Equipment that City has licensed or otherwise received from Licensor infringes or misappropriates any patent, copyright, trademark, trade secret or other proprietary right of a third party, or (ii) the Software, documentation and/or other products, Equipment, which City has licensed or otherwise received from Licensor caused damage or injury (including death), to the extent that such damage was not caused by the City through a change in said Software, documentation and/or other products, Equipment, except as performed or authorized by Licensor. The City agrees to promptly provide Licensor notice thereof (although a delay of notice will not relieve Licensor of its obligations except to the extent that Licensor is materially prejudiced by such delay) and to provide reasonable cooperation, information, and assistance in connection therewith. If Licensor's indemnification is provided without reservation, Licensor shall have sole control and authority to defend, settle or compromise such claim, *provided* that any settlement/compromise shall unconditionally release City of all liability by all claimants *and further* that Licensor shall nevertheless obtain City's prior written consent prior to making any admission or statement of City breach, error or negligence.

7.2.1   If the City is enjoined or otherwise prevented from using Software, documentation and/or other products, Equipment for any reason not the material breach of this Agreement by the City, Licensor shall make all reasonable efforts to obtain for the City (at no additional cost) the right to continue use of such Software, Equipment, documentation and/or other products, so that the City is no longer infringing. If neither of the foregoing options is reasonably available to Licensor, then Licensor shall equitably refund any payments made for the applicable Software, Equipment, documentation and/or other products, as of the last date the City was able to normally use said Software, Equipment, documentation and/or other products, and if the City determines that the functionality of the Software is materially reduced, the City may terminate this Agreement pursuant to Section 11.1.

7.3   Any and all costs of defense (e.g., reasonable attorney's fees and costs, any award, any settlement) related to Sections 7.1 and 7.2 shall be deemed direct damages for purposes of Section 9.1 and shall not be subject to the Limitation of Liability set forth in Section 9.2.

7.4   The City shall have no obligation to indemnify the Licensor. Without limiting the generality of Section 12.12, and notwithstanding any provision to the contrary, the City shall have no obligation to indemnify any third party, whether Licensor's affiliate, partner, licensor or otherwise.

7.5   Without limiting the generality of Section 12.10, the provisions of this Section shall survive the expiration or termination of the Agreement.

Article 8.   WARRANTIES AND DISCLAIMERS

8.1   Full Term Warranties. For the full Term of this Agreement, including any extension thereof, Licensor warrants that it has the authority to enter into this Agreement and, in connection with its performance of this Agreement, shall comply with all applicable laws.

Licensor further warrants that Licensor is fully authorized by and shall not violate any agreement that Licensor has with any third-party in any manner that may cause or increase the City's risk, liability or costs, or decrease functionality or security of the Software, hardware or any Service provided by Licensor hereunder. Licensor further warrants to the City that it owns or is fully authorized to grant a license to the Software.

8.2   Licensor warrants that the Software shall perform in substantial compliance with its specifications, be free of material defects, and shall not infringe upon the intellectual property rights of any third party. In the event of a breach of this warranty, Licensor either shall promptly correct defects to the Software, or if that is not reasonable, Licensor shall refund the City's prorated license fee, provided however that if the City determines that such breach materially reduces the functionality of the Software or related Services, the City may terminate this Agreement pursuant to Section 11.1. The remedies set forth in this Article shall be in addition to those set forth elsewhere in this Agreement, including but not limited to Article 7. This warranty does not cover any material defect or infringement resulting from the City's misuse or misapplication of the Software, including that caused by the City's employees or contractors.

8.3   Licensor thereby warrants that any and all Services, including but not limited to the integration of software and the integration of hardware (as applicable) supplied by Licensor will (a) perform in accordance with the RFP and, to the extent additional functionality is offered, the Licensor's Proposal, and (b) is free from defects in material, design, and workmanship and otherwise satisfy the requirements and provide the remedies set forth in this Agreement, including but not limited to Section 6.1. Licensor shall provide such warrantee(s) at no additional cost to the City, commencing on the date of final system acceptance. Said warrantee(s) shall cover all parts, labor, and travel, and such additional costs as required by the RFP and/or offered by the Proposal (whichever is the most inclusive) related to all the hardware and software supplied under this Agreement.

8.4   EXCEPT FOR WARRANTIES SET FORTH ELSEWHERE IN THIS AGREEMENT OR REQUIRED BY THE RFP, APPLICABLE LAW, OR OFFERED BY THE PROPOSAL, LICENSOR DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR THAT ANY NETWORK-ACCESSIBLE FEATURES OF THE SOFTWARE WILL BE CONTINUALLY ACCESSIBLE OR ACCESSIBLE AT ANY TIME.

Article 9.   LIMITATIONS OF LIABILITY

9.1   IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES OF ANY NATURE, SUCH AS LOST PROFITS AND LOST OPPORTUNITY, PROVIDED HOWEVER THAT LICENSOR'S INDEMNIFICATION OBLIGATIONS SHALL BE DEEMED DIRECT DAMAGES.

9.2   TO THE FULL EXTENT PERMITTED BY LAW, AND EXCEPT WITH RESPECT TO (a) LICENSOR'S INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS AGREEMENT,

(b) THE CITY'S PAYMENT OBLIGATIONS SET FORTH IN ARTICLE 3, (c) AMOUNTS PAID FOR FINES AND PENALTIES IMPOSED BY ANY GOVERNMENTAL AUTHORITY ARISING FROM THE OTHER PARTIES' BREACH, (d) EITHER PARTY'S RECKLESS MISCONDUCT, GROSS NEGLIGENCE, WILLFUL MISCONDUCT AND/OR FRAUD, THE MAXIMUM LIABILITY OF EITHER PARTY ARISING FROM OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO TWO TIMES (2X) THE AGGREGATED SOFTWARE LICENSE FEES ACTUALLY PAID BY THE CITY TO LICENSOR (OR ITS AGENT) DURING THE IMMEDIATELY PRIOR TWELVE (12) MONTH PERIOD (OR FOR A CLAIM(S) ARISING BEFORE THE FIRST ANNIVERSARY OF THE EFFECTIVE DATE, THE AMOUNT PAID OR PAYABLE FOR THE FIRST TWELVE (12) MONTH PERIOD). NOTWITHSTANDING ANY PROVISION OF THIS SECTION 9.2 TO THE CONTRARY, THE MAXIMUM LIABILITY FOR EITHER PARTY SHALL NOT BE LESS THAN ONE HUNDRED THOUSAND DOLLARS ($100,000). SAID AMOUNT SHALL BE RESET AT THE START OF ANY EXTENDED TERM.

9.3   If Licensor experiences an actual or suspected security breach that may affect the City, Licensor shall notify the City within 72 hours (or earlier if required by law) and shall take immediate steps to limit and mitigate such security breach to the extent possible and, in any event, as required by law. Notwithstanding the foregoing sentence, if any other applicable law requires a more rapid or additional action, Licensor shall comply with the most rigorous requirements.

9.3.1   In the event of any material breach by Licensor of the security, privacy and/or confidentiality obligations set forth in this Agreement the City may, in its discretion, terminate this Agreement for cause including but not limited to the immediate termination of any and all rights Licensor may have to receive City Data or other information from the City.

9.3.2   In the event of a security breach, Licensor shall pay reasonably necessary, documented costs incurred by the City, including but not limited to: (a) costs of any reasonably required forensic investigation to determine the cause of the breach, (b) the cost of providing legally required notice of the breach to individuals affected by the unauthorized acquisition and/or misuse of the City Data; (c) providing one year (or the greater period required by law) of credit monitoring service to individuals whose personal information may have been accessed or acquired and who elect such a service, (d) operating a call center for a period of one year (or the greater period required by law) to respond to questions from individuals whose personal information may have been accessed or acquired, and (f) reasonable attorney's fees and defense costs incurred by the City with respect to such data breach and notification. Licensor shall indemnify, defend and hold City harmless for any loss, cost, damage or expense suffered by City, including but not limited to the cost of notification of affected persons, as a result of Licensor's unauthorized disclosure of education records that are subject to FERPA, or any other confidentiality/privacy provision, whether federal, state or administrative in nature. The limitation of liability set forth in Sections 9.1 and 9.2 shall not apply to Licensor's costs associated with this Section 9.3. Notwithstanding the foregoing, Licensor shall have no responsibility to pay such costs to the extent that such costs are incurred due to the reckless misconduct, gross negligence, willful misconduct or fraud of the City.

9.4   Right to Seek Injunction. Notwithstanding any provision to the contrary, either Party shall have the right to seek injunctive relief as against the other Party to enforce the provisions of this Agreement.

Article 10.   INSURANCE

10.1   Licensor shall maintain liability insurance sufficient to fulfill its obligations pursuant to this Agreement, and not less than set forth in this Article. Such insurance shall not be cancelled or reduced during the Term of this Agreement or for such additional period required below. Neither insurance amounts below nor actual coverage shall serve to limit Licensor's liability arising under this Agreement.

10.2   Licensor shall obtain and maintain professional liability/errors and omissions insurance at its sole expense, sufficient to cover any claims, damages, liabilities, costs and expenses (including attorney's fees) arising out of or in connection with Licensor's fulfillment of any of its obligations under this Agreement. Errors and omissions insurance shall cover professional errors and omissions of Licensor, its employees, and officers and professional subcontractors. Coverage under each policy will be a minimum of Five Million Dollars ($5,000,000) for each occurrence (if on a claims made basis, then with a 6 year extended coverage ("tail" coverage)); provided however that if Licensor's tech E&O, network security, data privacy and cyber liability coverage is included within such policy each shall be not less than the amount set forth for that coverage below.

10.3   Licensor shall also obtain and maintain in force at all times during the term of this Agreement, insurance coverages pertaining to Personal Injury, Property Damage, Motor Vehicle and Worker's Compensation in the following amounts:

   i.   Commercial General Liability (including property damage) - $1,000,000 per occurrence and $3,000,000 in aggregate. Commercial General Liability insurance shall be occurrence based and shall include within its coverage Licensor's indemnity obligations.
   ii. Automobile Liability/Combined Single Limit (all owned, scheduled, hired, and non-owned autos) - $1,000,000. Coverage shall be occurrence based.
   iii. Workers Compensation - MA Statutory Requirements

10.4   Licensor shall also obtain and maintain in force at all times during the term of this Agreement Excess/Umbrella Liability coverage at not less than $5,000,000 per occurrence.

10.5   Licensor shall also obtain and maintain in force at all times during the term of this Agreement tech E&O, network security, data privacy; and cyber liability (which includes internet liability and computer security and privacy liability) coverage at not less than $5,000,000 per occurrence.

10.6   A waiver of subrogation favoring the City shall be included in the policy(ies) for all coverage (except workers compensation). Licensor is solely responsible for payment of deductible or retention amounts.

10.7   Licensor shall furnish certificates of insurance evidencing that it has coverage of the types and amounts required above, to the City, prior to the execution of this Agreement in a form satisfactory to the City. The <u>City of Worcester shall be named as an additional insured</u> on all coverage and certificates, except for workers compensation and errors and omissions coverage required by Section 10.2. The <u>Certificate Holder shall be Purchasing Agent, City Hall, 455 Main Street, Worcester, Massachusetts 01608</u>. Licensor shall require its insurance company(ies) to notify the Certificate Holder of any reduction or cancellation of the insurance at least thirty (30) days prior to the effective date of such reduction or cancellation.

10.8   Licensor's required insurance coverage set forth above shall not be construed as a limitation or waiver of any potential liability or satisfaction of Licensor's indemnification obligation.

10.9   Licensor is solely responsible for payment of deductible or retention amounts relating to its insurance coverage. Licensor's insurance shall be primary and non-contributory to any coverage by the City.

10.10   The City reserves the right to self funded/self insured and shall not be required to obtain commercial insurance coverage.

Article 11.   TERMINATION OF CONTRACT

11.1   <u>Termination of Contract for Cause</u> If either Party fails to fulfill in a timely and proper manner its obligations under this Agreement for any cause, or if either Party violates any of the terms, covenants and conditions of this Agreement, then in such event the offended Party shall have the right to terminate this Agreement by giving written notice to the breaching Party of such termination and specifying the effective date thereof, said written notice to be given not less than thirty (30) days before the effective date of such termination. Unless the Party receiving such notice cures within said thirty (30) days (or such longer period as the Parties may agree in writing), termination of this Agreement shall occur on the effective date without additional notice by the offended Party. In the event of such termination, City shall be obligated to pay for such Equipment, if any, licenses and/or Services received and accepted, but no termination fees, expenses or payment for all or any portion of the remainder of the Term. Licensor shall refund the pro-rata portion of any pre-paid license fees, and Licensor shall be obligated to provide the transition Services set forth in Section 5.1.3 and 11.4. Neither Party shall be relieved of liability to the other for damages sustained as a result of negligence or breach occurring prior to the termination of this Agreement, subject to Article 9. Notwithstanding the notice period and opportunity to cure above, either party may terminate immediately if the other party ceases business, becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. The Parties may, but shall not be required to, use arbitration and/or mediation to resolve disputes.

11.2   <u>Termination for Non Appropriation</u>. The City may terminate this Agreement, without penalty or additional fee, after giving Licensor not less than thirty (30) days prior written notice, if it does not obtain sufficient funding for this Agreement after a good faith request. Notwithstanding the foregoing, City shall be obligated to pay for such Equipment and/or Services already received, but no termination expenses or payment for all or any portion of the remainder of the Term. Neither Party shall be relieved of liability to the other for damages sustained as a result of negligence or breach occurring prior to the termination of this Agreement.

11.3   <u>Termination for Convenience</u>. Either Party may terminate this Agreement at any time, without penalty or additional fee, by giving at least ninety (90) days' notice in writing to the other. In the event of such termination, City shall be obligated to pay for such Equipment, if any, licenses and/or Services received and accepted, but shall not be required to pay any termination fee, expenses or payment for all or any portion of the remainder of the Term. Licensor shall refund the pro-rata portion of any pre-paid license fees, and Licensor shall be obligated to provide the transition Services set forth in Section 5.1.3 and 11.4. Neither Party shall be relieved of liability to the other for damages sustained as a result of negligence or breach occurring prior to the termination of this Agreement.

11.4   <u>Responsibilities in the Event of Termination.</u>

11.4.1 Upon any termination of this Agreement, the City shall cease to use the Software and shall have no obligations to make any payment for any period after the date of termination, except as set forth in Section 5.1.3 regarding transition. Licensor shall, upon the City's request, provide reasonable cooperation and assistance as City may reasonably request to support an orderly transition to another provider of similar software, services, or to City's internal operations.

11.4.2 Licensor shall fully comply with any and all FERPA requirements, which shall control over the requirements in this Section 11.4.1 and Section 5.1.3, above, to the extent FERPA is more protective of data. If Licensor is requested to return City Data, Licensor shall furnish City such City Data in a form agreed to by the Parties and at a cost of not more its then market rate pursuant to an amendment to this Agreement.

Article 12.   MISCELLANEOUS

12.1   <u>Successors and Assignments.</u> The City and Licensor each bind itself, its partners, successors, legal representatives and assigns of such other Party in respect to all covenants of this Agreement.

12.2   <u>Contractors, Subcontracting, Successors & Assignments</u>

Licensor shall not engage subcontractors or consultants to perform any part of its Services or obligations specifically pursuant to this Agreement (directly or indirectly) without the prior written consent of the City. The written consent shall not in any way relieve Licensor from its obligations and duties set forth in the Agreement.

Neither Party may assign the Agreement, or any portion thereof, without the prior written consent of the other, which consent will not be unreasonably withheld or delayed. The Agreement shall be binding on each Party's permitted assignee. If Licensor assigns this Agreement to any subsidiary or affiliate, Licensor shall nevertheless retain responsibility for all liabilities and obligations set forth in this Agreement. Licensor and assignee shall provide the City written confirmation of such assignment and assignees financial capacity to meet said obligations in a form acceptable to the City. Notwithstanding the foregoing, either Party may assign this Agreement in its entirety as the result of a sale of all or substantially all of its assets without having to obtain the other Party's consent, provided that it promptly informs the City of the transfer, provides contact information for the assignee, as well as evidence reasonably acceptable to the City of the assignee's capacity to satisfy the obligations of this Agreement, and further provided that the assignee accepts in writing in a form reasonably acceptable to the City all the rights, duties and obligations of the Licensor.

12.3   Records. Licensor shall maintain records with respect to all matters covered by this Agreement for a period of six (6) years from the date of receipt of final payment under this Agreement.

12.4   Independent Contractor. Licensor is an independent contractor and not an employee of the City.

12.5   Coordination with other Contractors. Licensor may have access to information of City's consultants, contractors, license holders and the like that is marked as or may reasonably be understood to be confidential information related (whether directly or indirectly) to this Agreement. In such an event, Licensor agrees that, except as required by law, such confidential information may be used only for the purposes set forth in this Agreement and that Licensor shall protect such confidential information in the same manner that it protects its own similar confidential information, but in no event using less than a reasonable standard of care.

12.5   Discrimination Prohibited

        A. In all hiring or employment made possible by or resulting from this Agreement, there (l) will not be any discrimination against any employee or applicant for employment because of race, color, religion, sex, or national origin, and (2) affirmative action will be taken to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin.
        B. No person in the United States shall, on the ground of race, color, religion, sex or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from the contract. Licensor shall comply with all requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964.

12.6   Compliance with Laws. In the performance of this Agreement, each Party shall comply with all applicable federal, state and local laws, rules, ordinances, regulations and administrative requirements.

12.7   <u>Conflict of Interest.</u> Licensor certifies that it has complied with all provisions of law regarding the award of this Agreement and that it, or its employees, agents, officers, directors or trustees have not offered or attempted to offer anything of any value to any employee of the City in connection with this Agreement. Licensor further certifies that no employee of the city of Worcester, including unpaid members of City boards and commissions, serves as an officer, director, trustee or employee of Licensor, and that no employees of the City have or will have a direct or indirect financial interest in this Agreement. Violation of this Section shall be a material breach of this Agreement and shall be grounds for immediate termination of this Agreement by the City without regard to any enforcement activities undertaken or completed by any enforcement agency. Termination of this Agreement pursuant to this Section shall not waive any claims for damages the City may have against Licensor resulting from Licensor's violation of the terms of this Section.

12.8   <u>Certifications Required by Law</u>. Licensor, by executing this document, certifies the following:

(a) it has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Agreement;

(b) that no consultant to or subcontractor for Licensor has given, offered or agreed to give any gift, contribution or offer of employment to Licensor, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by Licensor;

(c) that no person, corporation or other entity, other than a bona fide full time employee of Licensor, has been retained or hired by Licensor to solicit for or in any way assist Licensor in obtaining this Agreement upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Agreement to Licensor; and

(d) with respect to contracts which exceed ten thousand dollars or which are for the design of a building for which the budgeted or estimated construction costs exceed one hundred thousand dollars, that Licensor has internal accounting controls as required by subsection (c) of thirty-nine R of chapter thirty of the General Laws and that Licensor has filed and will continue to file an audited financial statement as required by subsection (d) of said section thirty-nine R.

(e) that Licensor, and any consultant to or subcontractor for Licensor, represents, warrants and certifies that it has complied with all laws of the commonwealth of Massachusetts relating to taxes and all Ordinances and Orders of the city of Worcester relating to taxes, fees and charges, or is lawfully contesting the validity of the same. Licensor, and any consultant to or subcontractor for Licensor, further represents, warrants and certifies that it will remain in such compliance during the term of this Agreement, including any amendments or extensions hereto. Breach of any of these provisions shall be deemed a material breach which shall entitle the City to immediately terminate this contract pursuant to Article 11 and take any other action authorized by law to collect any amounts due the City.

12.9   <u>Applicable Law.</u> The laws of the commonwealth of Massachusetts shall govern the validity, interpretation, construction and performance of this Agreement, without giving effect to

its provisions regarding choice of laws. Any suit brought hereunder shall be brought in the state or federal courts sitting in the Worcester County, Massachusetts, the Parties hereby waiving any claim or defense that such forum is not convenient or proper. Each Party agrees that any such court shall have *in personam* jurisdiction over it and consents to service of process in any manner authorized by Massachusetts law. In no event does the City waive any of the applicable protections granted it by federal or Massachusetts law, including but not limited to G.L. c. 258.

12.10   Survivorship. Those sections that by their nature survive expiration or termination of this Agreement will survive such expiration or termination.

12.11   Notices. Any formal notices necessary under this Agreement shall be given by certified mail, return receipt requested, or by hand delivery or overnight mail by a nationally recognized carrier to the address set forth below for the Parties, and addressed to the City at the City Manager, Room 306, City Hall, Worcester, Massachusetts 01608 and addressed to Licensor at the address appearing in the first paragraph of page l of this Agreement.

12.12   No Third Party Beneficiary. This Agreement is by and between the Parties that have executed it. The Parties state that the Agreement is intended for their mutual benefit alone and is not intended to confer any express or implied benefits on any other person, including but not limited any third party identified herein.

12.13   Severability. If any provision(s) of this Agreement shall be ruled invalid by any court of competent jurisdiction or administrative agency and the determination of invalidity of such provision(s) has a materially adverse effect on a Party, then the Parties shall: promptly meet and negotiate a substitute provision(s) for such invalid portion and the remaining provisions which shall, to the greatest extent legally permissible, effect the intent of the Parties therein. Except as set forth above, the invalidity of such provision(s) shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist.

12.14   Headings. The article and section headings in this Agreement are for convenience and reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

12.15   Amendments. This Agreement may be amended or modified only by a written amendment hereto duly executed by the Parties. For clarity, no "click through" type agreement shall constitute City execution or approval. This Agreement shall not be amended by any provisions purporting to be inserted via a hyperlink.

12.16   Exhibits. The exhibits referenced herein are hereby incorporated and made a part of this Agreement.

12.17   Entire Agreement. This Agreement contains the entire understanding of the Parties and supersedes all prior agreements, representations, proposals and undertakings of the Parties. Any additional or contrary terms or conditions contained in any invoice, proposal, purchase order,

order form or other document issued by either Party shall be null and void unless expressly agreed to in an amendment to this Agreement.

[remainder of page intentionally blank – signature page to follow]

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound, have caused this Agreement to be executed as a sealed instrument by their duly authorized representatives the day and year first above written.

RECOMMENDED: [_____]

_____   _____
                                                        Name
                                                        Title

_____
Christopher Gagliastro, Purchasing Director

Approved as to Form: **CITY OF WORCESTER**

_____   _____
                                                        Eric D. Batista
Assistant City Solicitor   City Manager

I certify that funds are available in Account No. _____

_____
Budget Analyst, Department of Administration and Finance

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
FEE BREAKDOWN
(LICENSOR's PRICE PROPOSAL)

The Fee Breakdown for this project is as follows:

EXHIBIT C
SCHEDULE

Licensor shall comply with the following Project Management- Implementation and Timeline:

EXHIBIT D
Service Level Agreement

Licensor shall provide SLA service and support as follows:

CERTIFICATE OF AUTHORITY

At a duly authorized meeting of the Board of Directors of the _____ held
on _____ Directors were present or waived
(name of corporation)   (date)

notice, it was voted that _____ of this company be and hereby
                              (officer and title)

is authorized to execute contracts and bonds in the name and behalf of said company, and affix its
Corporate Seal thereto, and such execution of any contract or bond of obligation in this company's name
shall be valid and binding upon this company.

                                        A TRUE COPY,

                                                                ATTEST:

                                        _____

                                        _____
                                        Place of Business:

                                        _____

I hereby certify that I am the _____ of the _____
                                        (Title)   (Name of Corporation)
that _____ is the duly elected _____
     (Name of Officer)   (Title)
of said company, and the above vote has not been amended or rescinded and remains in full force and effect
as of the date of this contract.

                    Signature: _____

                    Name/Title: _____

                    Date: _____

                                                (Corporate Seal)

COMMONWEALTH OF MASSACHUSETTS
WORCESTER, SS.

On this _____ day of _____, 20___, before me the undersigned notary public, personally appeared
_____, who proved to me through satisfactory evidence of identification, which
was/were _____, to be the person whose name is signed on the preceding or
attached document, and acknowledged to me he/she signed it voluntarily for its stated purpose.

                              _____
                              Notary Public
                              My commission expires:

TAX CERTIFICATION

DATE:_____

Pursuant to Mass. G.L. c. 62C, Section 49A, I certify under the penalties of perjury that I, to my best knowledge and belief, have complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Signature: _____
                 Print below signature line name and title
of Individual or Corporate Officer (as applicable)

                 _____
                 Company Name

Address: _____

                 _____

                 _____

Tel No.   _____

_____
SOCIAL SECURITY NUMBER
   OR
FEDERAL IDENTIFICATION NUMBER