

**City of Seattle**  
**CONTRACT FOR PARADIGM SOFTWARE CompuWeigh™ SCALEHOUSE**  
**OPERATIONS SYSTEM**

This Contract is made and entered into by and between City of Seattle ("City"), a Washington municipal corporation; and Paradigm Software, L.L.C. ("Vendor"), a limited liability corporation of the State of Maryland, and authorized to do business in the State of Washington.

Vendor: Paradigm Software, L.L.C.  
Representative: Mr. Jackie W. Barlow, II  
Address: 10944 Beaver Dam Road, Suite C, Hunt Valley, MD 21030  
Phone: (410) 329-1300  
Fax: (410) 329-1885  
E-mail: jackieb@paradigmsoftware.com

WHEREAS, the purpose of this contract is to procure from Paradigm Software their CompuWeigh™ software and associated hardware that comprise their proposed scalehouse billing system; and

WHEREAS, Vendor was selected as a result of a Request for Proposal process initiated 9/05/2008 as required by SMC since costs are anticipated to exceed \$41,000 in value; and

WHEREAS, funds for this purpose are authorized through the City of Seattle annual budget;

**NOW, THEREFORE**, in consideration of the terms, conditions, covenants, and performance of the Statement of Work contained herein, as attached and made a part hereof, the City and Vendor mutually agree as follows:

**1. Contract Term**

This contract shall extend throughout the design, installation, delivery, testing and training of a complete and operational solid waste transfer station billing system until City has completed acceptance in accordance with Work Order #1, attached and all subsequent Work Orders, if issued. The term of the license herein granted is ten (10) years commencing with the date of acceptance of this Agreement by Vendor, unless terminated earlier as provided herein. If City is not in default under this Agreement or any other agreement with Vendor and is currently covered under a valid Paradigm Standard Support Services Agreement, the term of this license shall be automatically renewed upon the same terms and conditions, for one (1) additional ten (10) year term, unless City gives written notice of election not to renew the license at least ninety (90) days prior to the expiration of the initial term.

**2. Software Upgrades**

For the upgrade to version 6.0, City shall pay a renewal license fee in an amount equal to twenty-five percent (25%) of the applicable license fee specified on the Purchase Price Schedule plus all installation charges, including but not limited to airfare, meals, expense, and per diem of \$1,200.00 per day per person. Thereafter, City shall pay a renewal license fee in an amount equal to fifty percent (50%) of the applicable license fee specified on the Purchase Price Schedule plus any cumulative adjustments for the Consumer Price Index, which shall be due and payable immediately upon commencement of the renewal term. If City purchases a "Version Upgrade" at any time during the initial term of license, then the term shall automatically extend for one (1) additional ten (10) year term commencing with the completion date of the upgrade, provided that the Version Upgrade was purchased for an amount equal to at least fifty percent (50%) of the applicable license fee specified on the Purchase Price Schedule plus all installation charges, including but not limited to airfare,

meals, expense, and Vendor's then current per day per person charges. The cost of services may be adjusted each year in the manner described herein, in accordance with changes in the Consumer Price Index, published by the U.S. Department of Labor, Bureau of Labor Statistics [All Urban Consumers (CPI-U), U.S. City Average, All items, 1982-84=100] (the "CPI").

**3. Survivorship**

All purchase transactions and deliverables executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, prices and price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extensions thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Overpayments to Vendor, Warranties, Publicity, Section Headings, Incorporated Documents and Order of Precedence, Publicity, Review of Vendor Records, Patent and Copyright Indemnification, Disputes and Limitations of Liability, shall survive the termination of this Contract.

**4. Statement of Work**

Vendor shall provide the products services and tasks as described in the Contract attachments. The Statement of Work may also be termed "work" herein.

**5. Expansion Clause**

This contract may be expanded as mutually agreed, if such expansion is approved in writing by the Buyer from the City Purchasing Office of the Department of Executive Administration, City of Seattle. No other City employee is authorized to make such written notices. The Buyer will ensure the expansion meets the following criteria collectively: (a) it could not be separately bid, (b) the change is for a reasonable purpose, (c) the change was not reasonably known to either the City or vendors at time of bid or else was mentioned as a possibility in the bid (such as a change in environmental regulation or other law); (d) the change is not significant enough to be reasonably regarded as an independent body of work; (e) the change could not have attracted a different field of competition, and (f) the change does not vary the essential identity or main purpose of the contract. The Buyer shall make this determination, and may make exceptions for immaterial changes, emergency or sole source conditions, or for other situations as required in the opinion of the Buyer. Certain Work Orders or changes are not considered an expansion of scope, including an increase in quantities ordered, the exercise of options and alternates in the bid, change in design and specifications that does not expand the work beyond the limits provided for above, or ordering of work originally identified within the originating solicitation. If such changes are approved, changes are conducted as a written order issued by the City Purchasing Buyer in writing to the Vendor.

**6. Work Order Process**

The Vendor shall furnish all systems pursuant to work orders issued under this Contract. Each work order shall be subject to all of the terms and conditions of this Contract, and incorporated into this Contract by this reference. The Vendor shall furnish all the goods and services ("deliverables") specified in the Work Order in an aggregate, single, complete transaction and not as separate items. For each work order under this Contract, Vendor shall commence work upon issuance of a notice to proceed by the City. Work orders under this Contract may be generated by the City under the following conditions:

- (1) The Work Order is within the scope of the original solicitation and contract or is within the allowed conditions for expansions under Section 5 (Expansion Clause) above;
- (2) A post-warranty annual maintenance agreement is accepted by the City;
- (3) The City issues a request to upgrade equipment, software, or to change quantities of any deliverable;
- (4) The City orders additional custom features or interfaces for the Systems prior to or after the acceptance period; or

For any subsequent work order(s) requested by either party, the Vendor shall submit a detailed proposal for the change. The Vendor shall analyze, record, estimate and submit to the City, for its approval, the proposed scope for the changed or new work, a work schedule, and a rate or price adjustment for completion of the work to be changed or added. Once this proposal is received and approved by the City, a new work order will be issued for the changed or additional work. Upon the City's written approval and notice to proceed, the Vendor shall implement the change or additional work and invoice for the changed or additional work consistent with the City's approval notice and the terms and conditions of this Contract.

The City may, at its option, add, delete or modify any part of any work order by giving Vendor notice of such change within the time period specified in the applicable work order. Within seven (7) days after the date of such notice, the Vendor shall deliver to the City an amended work order reflecting the change in description, schedule and/or dollar amount due using the unit prices as proposed for the specific work order in Vendor's Proposal.

The City does not guarantee utilization of goods and services provided for in this Contract for which the City has not issued a work order(s). The City may itself provide these goods or services or may award contracts to other Vendors for similar goods and services. In such instances, the Vendor shall not be responsible for the operation, performance or maintenance for equipment so obtained.

#### **7. Documentation**

Unless specified otherwise in Contract attachments, Vendor will provide one (1) complete printed set of documentation, including technical and maintenance information, and, where applicable, installation information and one (1) electronic copy. Vendor shall also provide one (1) complete printed set of documentation for each updated version of Software that vendor provides and one (1) electronic copy. Vendor shall provide the documentation on or before the date Vendor delivers its respective Software. There shall be no additional charge for this documentation or the updates, in whatever form provided. Vendor's Software documentation shall be comprehensive, well structured, and indexed for each reference. If Vendor maintains its technical, maintenance and installation documentation on a web site, Vendor may fulfill the obligations set forth in this section by providing Purchaser access to its web-based documentation information.

The City reserves the right to withhold payment for a deliverable, modification or enhancement until it receives all documentation associated with the same.

#### **8. Payment Procedures**

Vendor shall only invoice upon the City's approval of the deliverable and in a manner consistent with the payment schedule attached, if any. Once the City has received and approved the invoice, the City will provide payment within thirty (30) days. City agrees to pay a finance charge equal to one and one-half percent (1 1/2%) per month on all amounts not paid within thirty (30) days from the receipt of invoice. The aggregate amount represents the full and final amount to be paid by the City for all expenses incurred and incidentals necessary to complete the work. The City shall not be obligated to pay any other compensation, fees, charges, prices or costs, nor shall Vendor charge any additional compensation for completing the work order of the Statement of Work. All costs invoiced to the City, shall be associated with an active and open work order. Invoices for hardware and software installed in City facilities and other work performed under this Contract shall be submitted, in writing to the City's Project Manager. Invoices shall include such information as prescribed in the Specifications or Statement of Work, and is necessary for the City to determine the exact nature of all expenditures and shall reference this Contract. Additional payment terms or invoice instructions may be mutually agreed upon by the City and the Vendor. Payment does not constitute whole or partial acceptance; City acceptance of the System shall only occur by formal written notice to that effect.

### 8.1. Advance Payment Prohibited

No advance payment shall be made for products or services furnished by Vendor pursuant to this Contract. Notwithstanding the above, maintenance and subscription payments, if any, may be made on a quarterly or annual basis at the beginning of each payment period, providing that the City may terminate the maintenance services with agreed-upon advance notice but in no case longer than 30 days advance notice, and receive pro-rated reimbursement back for any amounts pre-paid after the terminate becomes effective.

### 8.2. Travel

If certain travel is pre-approved by the City, the City will compensate travel expenses not to exceed actual travel costs given the following limitations. Vendor and the City shall determine the need for on-site presence and the City shall pre-approve travel. Vendor shall be entitled to reasonable expenses as defined below, not to exceed the actual amount of travel costs.

- **Airfare:** Airfare will be reimbursed at the actual cost of the airline ticket. The City will reimburse for Economy or Coach Fare only. Receipts detailing each airfare are required.
- **Meals:** Meals will be reimbursed at the Federal Per Diem daily rate for the city in which the work is performed and do not require receipts or additional documentation. The City will not reimburse for alcohol at any time.
- **Lodging:** Lodging will be reimbursed at actual cost incurred up to a maximum of the published Runzheimer Cost Index for the city in which the work was performed. Receipts detailing each day/night lodging are required. The City will reimburse at the single occupancy rate. As an alternative, lodging billed at the published Federal Per Diem daily rate for the city in which the work is performed does not require receipts or additional documentation. In this case, the invoice needs to state that "the lodging is being billed at the Federal Per Diem daily rate."
- **Vehicle mileage:** Vehicle mileage will be reimbursed at the Federal Internal Revenue Service Standard Business Mileage Rate in affect at the time the mileage expense is incurred (currently at 48.5 cents a mile).
- **Rental Car:** Rental car expenses will be reimbursed at the actual cost of the rental. Rental car receipts are required for all rental car expenses (the City will only pay for the rental of "Compact" vehicles unless three or more persons are sharing one vehicle in which case a "Mid-sized" vehicle rental is acceptable).
- **Miscellaneous Travel** (e.g. parking, gas, taxi, shuttle, tolls, ferry fees, etc.): Miscellaneous travel expenses will be reimbursed at the actual cost incurred. Receipts are required for each expense of \$10.00 or more.

The City will reimburse the Consultant at actual cost for travel expenses incurred as evidenced by copies of receipts supporting such travel expenses, and in accordance with the City of Seattle Travel Policy, details of which can be provided upon request.

### 8.3. Disputed Work

Notwithstanding all above, if the City believes in good faith that some portion of Work has not been completed satisfactorily, the City may require Vendor to correct such work prior to The City payment. In such event, the City will provide to Vendor an explanation of the concern and the remedy that the City expects. The City may withhold from any payment that is otherwise due, an amount that the City in good faith finds to be under dispute, or if the Vendor does not provide a sufficient remedy, The City may retain the amount equal to the cost to The City for otherwise correcting or remedying the work not properly completed.

### **9. Taxes, Fees and Licenses**

- a. Taxes: Where required by state statute, ordinance or regulation, Vendor shall pay for and maintain in current status all taxes that are necessary for contract performance. Unless otherwise indicated, The City agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by the Vendor shall be made for federal excise taxes and The City agrees to furnish Vendor with an exemption certificate where appropriate.
- b. Fees and Licenses: Vendor shall pay for and maintain in a current status, any license fees, assessments, permit charges, etc., which are necessary for contract performance. It is the Vendor's sole responsibility to monitor and determine any changes or the enactment of any subsequent requirements for said fees, assessments, or charges and to immediately comply with said changes during the entire term of this Contract. Vendor must pay all custom duties, brokerage or import fees where applicable as part of the contract price. Vendor shall take all necessary actions to ensure that materials or equipment purchased are expedited through customs.
- c. The City is responsible for paying any Federal, State or Local tax in conjunction with the purchase of any Software or Hardware. The Vendor will not collect and/or pay any taxes on behalf of the City.

### **10. Timely Completion**

#### **a. Time is of the Essence**

The City has an immediate need to implement the System and/or Software and equipment for the management and operation of the City. Therefore, time is of the essence in all matters relating to this Contract

### **11. License for Use**

Subject to the terms and conditions set forth in this Agreement, and effective upon acceptance, Vendor hereby grants to City, and City hereby accepts, a nonexclusive, nontransferable license to use, as herein provided, a single, executable copy an object code version of the Software and a single printed copy of Vendor's current, standard user manuals and training materials ("Documentation"). Vendor reserves all rights, privileges and interests not expressly granted to City, who shall acquire no right, title, interest or privilege with respect to the Software or the Documentation by implication.

A single, executable copy of the object code version of the Software may be used by City for testing purposes and for processing of data, but such data shall be strictly limited to data of City created or used in the connection with City. Neither the Software nor the Documentation may be used in any manner directly or indirectly related to or in connection with the operation or management of any other business including without limitation any timeshare, facilities management, data processing service or billing service. City shall not modify or sublicense the Software or the Documentation. The Software may not be used with more than the number of terminals agreed to in this Agreement. Vendor shall provide CITY with a single, back-up copy of the Software which City shall keep in a secure location reasonably approved by Vendor in advance. City shall place on all copies of the Software any notice, including, copyright notice, requested by Vendor.

### **12. Software Upgrades and Enhancements**

Vendor shall:

- a. Supply at no additional cost updates to the current version of the Software to operate on upgraded versions of operating systems, upgraded versions of firmware, or upgraded versions of hardware, and;
- b. Supply at no additional cost updates to the current version of the Software that encompass improvements, extensions, maintenance updates, error corrections, or other changes that are logical improvements or extensions of the original Software supplied to City.

### 13. Warranties

#### 13.1. Warranty of the Software

LIMITED WARRANTY. Commencing on the date that the City accepts the system, Vendor does not warrant that the Software or the Documentation is free of errors or defects; however, Vendor agrees that any errors or defects will be corrected. Vendor agrees that the Software shall operate in conformity with the performance capabilities, Statement of Work, functions and other descriptions and standards applicable thereto and as set forth in this Contract including but not limited to the Vendor's Documentation, the City's Request for Proposals; that the services shall be performed in a timely and professional manner by qualified professional personnel; and that the services, Software and Hardware shall conform to the standards generally observed in the industry for similar services. For hardware supplied by Vendor, the Vendor shall obtain in writing the manufacturer's consent to pass through all hardware warranties for the City's benefit. Vendor warrants only that the Software will perform all functions substantially as described in the current edition of the Documentation for a warranty period of one (1) year from the date of Software acceptance when operated as recommended. Vendor will design, and deliver promptly amendments or alterations to Software reasonably necessary to remedy or avoid any programming error present at the time of Software delivery. City shall allow Software access to Vendor through dedicated remote communications for this purpose. The foregoing is City's sole and exclusive remedy, and Vendor's sole and exclusive obligation, for breach of this limited warranty. This limited warranty is contingent upon City's written notice in compliance with Vendor's written reporting procedures, received not later than five (5) days after the end of the one (1) year warranty period, setting forth with particularity the nature and circumstances of any alleged breach of warranty. Vendor makes no warranty as to the Hardware or any products (including software) not manufactured by Vendor.

CITY ACKNOWLEDGES THAT NO EXPRESS WARRANTIES HAVE BEEN MADE BY VENDOR EXCEPT FOR THE LIMITED WARRANTY MADE IN THE PRECEDING PARAGRAPH. THIS LIMITED WARRANTY AND THE ASSOCIATED LIMITED REMEDY ARE PROVIDED IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES. VENDOR DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTEGRATION, MERCHANTABILITY OF A COMPUTER PROGRAM, INFORMATIONAL CONTENT AND CITY'S PURPOSE AND SYSTEM INTEGRATION. VENDOR MAKES NO WARRANTY THAT THE SOFTWARE WILL BE ERROR-FREE.

#### 13.2. Warranty of the Hardware

The Vendor warrants and represents that the Hardware provided to meet the requirements of the Statement of Work shall be in good operating order, and shall operate in conformity with the descriptions and standards as set forth in the Vendor's Proposal and the City's RFP for a period of one (1) year from and after the Acceptance Date. During the warranty period, Vendor shall promptly, be the liaison between the manufacturer and the City for any repairs or replacement of the Hardware or any part thereof that fails to function. The repair or replacement of the Hardware will be based on the manufacturer's warranty. The Work Order shall specify who will furnish, install and set up the Hardware. The terms and conditions of sale and the warranties, if any, applicable to the Hardware or any other products not manufactured by the Vendor are as provided by the applicable manufacturers, as set forth on the Manufacturer's documentation. For all Vendor supplied hardware, Vendor shall obtain in writing the manufacturer's consent to pass through all warranties for the City's benefit.

#### 13.3. Warranty Against Planned Obsolescence

The Vendor warrants that the products proposed to and acquired by the City under this Contract are new and of current manufacture, and that it has no current plans for announcing a replacement line that would be marketed by Vendor as a replacement for any of the products provided to the City under this Contract and would result in reduced support for the product line within which the System furnished to the City is contained. The Vendor further warrants that, in the event that a major change in software occurs that radically alters the design architecture of the System and makes the current

design architecture obsolete within ten (10) years after full execution of this Contract, and if the City continues its annual maintenance Contract with the Vendor, the Vendor shall provide the City with a replacement software that continues the full functionality of the systems, at no extra cost to the City.

**13.4. Limitation of Liability**

VENDOR SHALL NOT BE LIABLE TO CITY FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, REVENUE, BUSINESS OPPORTUNITY OR BUSINESS ADVANTAGE), WHETHER ARISING UNDER CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, BREACH OF STATUTORY DUTY, CONTRIBUTION, INDEMNITY OR ANY OTHER LEGAL THEORY OR CAUSE OF ACTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, VENDOR'S MONETARY LIABILITY FOR ANY CAUSE UNDER OR RELATING TO THIS AGREEMENT SHALL IN NO EVENT EXCEED THE TOTAL OF ALL AMOUNTS PAID TO VENDOR BY CITY FOR SOFTWARE LICENSE FEES PURSUANT TO THIS AGREEMENT, LESS A PRO RATA ABATEMENT OF SUCH FEES FOR EACH FULL OR PARTIAL MONTH OF THE FIRST SIXTY (60) MONTHS FOLLOWING THE EFFECTIVE DATE OF THIS AGREEMENT.

**13.5. No Surreptitious Code Warranty**

The Vendor warrants to the City that no copy of the licensed Software provided to the City contains or will contain any Self-help Code or any Unauthorized Code as defined below. This warranty is referred to in this Contract as the "No Surreptitious Code Warranty."

As used in this Contract, "Self-help Code" means any back door, time bomb, drop dead device, or other Software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the Software. The term "Self-help Code" does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

As used in this Contract, "Unauthorized Code" means any "virus," "Trojan horse," "worm" or other Software routines or Equipment components designed to permit unauthorized access to disable, erase, or otherwise harm Software, Equipment, or data or to perform any other actions. The term Unauthorized Code does not include Self-help Code.

The Vendor shall defend City against any claim, and indemnify the City against any loss or expense arising out of any breach of the No Surreptitious Code Warranty.

**13.6. Title Warranty and Warranty Against Infringement**

The Vendor warrants and represents that the Software provided under this Contract is the sole and exclusive property of the Vendor or that the Vendor is authorized to provide full use of the Software to the City as provided herein. The Vendor warrants that it has full power and authority to grant the rights granted by this Contract to the City without the consent of any other person or entity.

In the event of any claim by a third party against the City for software used in the United States asserting a patent, copyright, trade secret, or proprietary right violation involving the System acquired by the City hereunder or any portion thereof, Vendor shall defend, at its expense, and shall indemnify the City against any loss, cost, expense, or liability arising out of such claim, whether or not such claim is successful; provided that, (i) Vendor is notified by the City in writing within a reasonable time after the City first receives written notice of any such claim, action, or allegation of infringement; and (ii) Vendor will have sole control of the defense and settlement of such claim or action. In defending against such claim or action, Vendor may (i) consent, (ii) settle; (iii) procure for City the right to continue using the Software; or (iv) modify or replace the Software so that it no longer infringes as long as the modification or replacement does not materially change the operational characteristics of the Software and the same functions and performance provided by the Software remain following

such modification or replacement. If Vendor concludes, in its sole judgment, that none of the foregoing options is reasonable, then (i) Vendor will refund or credit to City the total license fee paid by City under this Agreement, (ii) City will return the original and all whole or partial copies of the Software to Vendor; and (iii) the license granted hereunder will terminate. Vendor has no liability with respect to infringement arising out of the modifications of the Software or use of the Software in combination with other software or equipment not specified in the documentation accompanying the software or on a schedule hereto. This paragraph states the entire obligation of Vendor regarding infringement of intellectual property rights, and will survive the termination of this Agreement. City shall indemnify, defend, and hold harmless Vendor from and against any and all claims, suits or causes brought by persons not a party hereto arising out of or in any way connected with the use of or inability to use the Hardware or the Software. As of the date hereof, Vendor represents and warrants that there are no legal or other proceedings pending or outstanding, or to the best knowledge of Vendor, threatened against or involving Vendor or the Software.

In no event shall the City be liable to Vendor for any lease, rental, or maintenance payments after the date, if any, that the City is no longer legally permitted to use the System because of such actual or claimed infringement. In the event removal or replacement of the System is required pursuant to this paragraph, Vendor shall use reasonable care in the removal or modification thereof and shall, at its own expense, restore the City's premises as nearly to their condition immediately prior to the installation of the System as is reasonably possible.

No settlement that prevents the City from continuing to use the Software, other products or Software documentation as provided in this Contract shall be made without the City's prior written consent. In all events, the City shall have the right to participate at its own expense in the defense of any such suit or proceeding through counsel of its own choosing.

The indemnification obligation set forth in this section shall survive the expiration or earlier termination of this Contract.

**13.7. No Liens**

The Vendor warrants that the Software is the sole and exclusive property of the Vendor and that the Vendor is authorized to provide full use of the Software to the City as provided herein and that such Software is not subject to any lien, claim or encumbrance inconsistent with any of the City's rights under this Contract and that the City is entitled to and shall be able to enjoy quiet possession and use of the Software without interruption by Vendor or any other person making a claim under or through the Vendor or by right of paramount title.

**13.8. Maintenance Services Warranty**

The Vendor warrants that, in performing the services under the Standard Support Services Agreement appended as Attachment 3. The Vendor shall strictly comply with the descriptions and representations as to the services, including performance capabilities, accuracy, completeness, characteristics, Statement of Work, configurations, standards, function and requirements, which appear in this Contract and in the Vendor's response to the City's Request for Proposal. Its products shall be uniform in appearance and clean and presentable in accordance with generally applicable standards in the industry. Errors or omissions committed by the Vendor in the course of providing Services shall be remedied by the Vendor at its own expense.

**13.9. Warranty of Compliance with Applicable Law**

The Vendor warrants that the System, and the manufacture and production thereof, are in compliance with any and all applicable laws, rules, and regulations

**14. Title to Equipment**

Upon successful completion of Acceptance Testing and receipt of City's letter of Acceptance, Vendor shall convey to City good title to the Equipment free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

#### **15. Title and Ownership of Deliverables**

Except for the licensed System Software and its related documentation, all data produced under this Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. 101 et seq, and shall be owned by the City. Vendor reserves a security interest, for the amount of all outstanding payments due to Vendor hereunder, in each item of Hardware, and shall have all of the rights of a secured creditor under the Uniform Commercial Code with respect thereto. Such a security interest shall be retained and may be enforced by Software disablement until City's payment obligations for all Hardware and Software are fully discharged. City hereby appoints Vendor as its attorney-in-fact for the purpose of executing and filing financing statements to perfect its security interest, and Vendor shall, at the request of City, execute a termination statement evidencing the discharge of such obligations in the event a financing statement is filed.

Vendor is and shall be the exclusive owner or sublicensor, as appropriate, of the Software, the Documentation and all associated materials provided to City, all modifications, additions, derivatives and enhancements thereof, all copies thereof, and all rights, therein. All additions, modifications, derivatives and enhancements to the Software shall be considered a part of the Software, and all additions, modifications, derivatives and enhancements to the Documentation shall be considered a part of the Documentation. Physical copies of Software and Documentation are provided by Vendor on loan during the term of the license granted pursuant to this Agreement. City shall keep the Software, the Documentation, and all copies thereof free and clear of all claims, liens and encumbrances, and any act of City purporting to create such a claim, lien or encumbrance shall be void and shall be a breach of this Agreement. City hereby assigns to Vendor all of its right, title and interest in and to any changes, additions, derivatives and enhancements made to the Software, the Documentation or other materials provided by Vendor, and shall execute all documents and instruments reasonably requested by Vendor to effectuate such assignment. City agrees that the Software, Documentation and related materials, techniques and procedures furnished by Vendor to City hereunder embody exceptionally valuable trade secrets, and they are, and shall remain, the sole property of Vendor or its supplier(s), as appropriate. City shall not create or attempt to create, by decompilation, disassembly, reverse engineering or otherwise, the source programs for the Software, from the object programs or other information made available by Vendor. Unless Vendor agrees otherwise, City shall not disclose, divulge or communicate to any person (including contractors and consultants), except to City's employees (but then only to the extent necessary for operation of the Software) the Software or Documentation.

##### **15.1. Proprietary Rights**

Any programs, works, manuals, changes, additions, alterations, amendments or enhancements in the form of new or partial programs, Software, Source Code or Documentation ("IP") as may be provided by VENDOR under this Agreement or the System Implementation Agreement, and all copies thereof, shall be and remain the sole and exclusive property of VENDOR and shall be available for use by CITY under and subject to the license granted in the System Implementation Agreement, the terms and conditions of which are incorporated herein. As between the parties, VENDOR retains all right, title and interest in and to the IP, including, but not limited to, copyrights, trademarks, service marks, patents and other proprietary rights, and no such rights are conveyed to CUSTOMER by virtue of this Agreement.

#### **16. Risk of Loss, Freight, Overages or Underages**

Regardless of FOB point, Vendor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein which occur prior to delivery. Such loss, injury, or destruction shall not release Vendor from any obligations. Prices include freight prepaid and allowed. Vendor assumes the risk of every increase, and receives the benefit of every decrease, in delivery rates and charges. Shipments shall match the Work Order; any unauthorized advance or excess shipment is returnable at Vendor's expense. Good and merchantable title and risk of loss in and to the Hardware shall pass to City upon delivery of each respective Hardware item.

## **17. Protection of Persons and Property**

### **17.1. Person**

The Vendor and the City shall each take reasonable precautions for the safety of employees of the other, and shall each comply with all applicable provisions of federal, state, and local laws, codes and regulations to prevent or avoid any accident or injury to a person on, about or adjacent to any premises where work under this Contract is being performed.

### **17.2. Property**

The Vendor shall take reasonable steps to protect the City's property from injury or loss arising in connection with the Vendor's performance or failure of performance under this Contract.

### **17.3. No Smoking**

The Vendor shall not allow any employee of the Vendor or any subcontractor or agent thereof to smoke inside any City facility.

### **17.4. OSHA/WISHA**

The Vendor certifies that products are designed and manufactured to meet the current federal and state safety and health regulations, including Federal Occupational Safety and Health Act of 1970 (OSHA), the Washington Industrial Safety and Health act of 1973 (WISHA). Vendor shall indemnify, defend, and hold the City harmless from all damages assessed against the City as a result of the failure of the products furnished under this Contract to so comply.

### **17.5. Workers Right to Know**

"Right to Know" legislation required the Department of Labor and Industries to establish a program to make employers and employees more aware of the hazardous substances in their work environment. WAC 296-62-054 requires among other things that all manufacturers/distributors of hazardous substances, including any of the items listed on this ITB, RFP or contract bid and subsequent award, must include with each delivery completed Material Safety Data Sheets (MSDS) for each hazardous material. Additionally, each container of hazardous material must be appropriately labeled with: the identity of the hazardous material, appropriate hazardous warnings, and the Name and Address of the chemical manufacturer, improper, or other responsible party.

Labor and Industries may levy appropriate fines against employers for noncompliance and agencies may withhold payment pending receipt of a legible copy of the MSDS. OSHA Form 20 is not acceptable in lieu of this requirement unless it is modified to include appropriate information relative to "carcinogenic ingredients: and "routes of entry" of the product(s) in question.

## **18. Contract Notices, Deliverable Materials and Invoices Delivery**

Official Contract notices shall be delivered to the following address:

Michael Mears  
City of Seattle Purchasing Services  
PO Box 94687  
Seattle, WA 98124-4687

Phone: 206-684-4570  
Fax: 206-233-5155  
E-Mail: [michael.mears@seattle.gov](mailto:michael.mears@seattle.gov)

Project work and communications shall be delivered to SPU Project Manager:

Seattle Public Utilities  
Attn: Jennifer Xiang, Project Management  
700 5<sup>th</sup> Ave Ste 4800  
Seattle, WA 98104

Phone: 206-684-5059  
E-Mail: [Jennifer.xiang@seattle.gov](mailto:Jennifer.xiang@seattle.gov)

For invoices, send to:

Seattle Public Utilities  
Attn: Accounts Payable  
P.O. Box 34018  
Seattle, WA 98124-4018

**To Vendor if delivered by any means, it must be addressed to:**

Mr. Jackie W. Barlow, II  
Paradigm Software, L.L.C.  
10944 Beaver Dam Road, Suite C  
Hunt Valley, MD 21030-2255

Phone: (410) 329-1300  
Fax: (410) 329-1885  
E-Mail: [jackieb@paradigmsoftware.com](mailto:jackieb@paradigmsoftware.com)

**19 Representations**

Vendor represents and warrants that it has the requisite training, skill and experience necessary to provide Work and is appropriately accredited and licensed by all applicable agencies and governmental entities.

**20 Inspection**

Work shall be subject, at all times, to inspection by and with approval of the City, but the making (or failure or delay in making) such inspection or approval shall not relieve Vendor of responsibility for performance of the Work in accordance with this Contract, notwithstanding the City's knowledge of defective or noncomplying performance, its substantiality or the ease of its discovery. Vendor shall provide sufficient, safe, and proper facilities and equipment for such inspection and free access to such facilities.

**21 Affirmative Efforts for Utilization of Women and Minority Subcontracting, Non-Discrimination**

- a. During the performance of this contract, Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. 1201 et seq; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination.
- b. Fair Contracting Practices Ordinance: Vendor shall comply with the Fair Contracting Practices Ordinance of The City of Seattle (Ordinance 119601), as amended. Conduct made unlawful by that ordinance constitutes a breach of contract. Engaging in an unfair contracting practice may also result in the imposition of a civil fine or forfeiture under the Seattle Criminal Code as well as various civil remedies.
- c. In accordance with Seattle Municipal Code Chapter 20.42, Vendor shall actively solicit the employment and subcontracting of women and minority group members when necessary and

commercially useful for purposes of fulfilling the Statement of Work required for this Contract. Vendors shall actively solicit subcontracting bids from sub as needed to perform the work of this contract, from qualified, available and capable women and minority businesses. Vendors shall consider the grant of subcontracts to women and minority bidders on the basis of substantially equal proposes in the light most favorable to women and minority businesses. At the request of The City, Vendor shall promptly furnish evidence of the Vendor's compliance with these requirements.

- d. If upon investigation, the Director of Executive Administration finds probable cause to believe that the Vendor has failed to comply with the requirements of this Section, the Vendor shall notified in writing. The Director of Executive Administration shall give Vendor an opportunity to be heard, after ten calendar days' notice. If, after the Vendor's opportunity to be heard, the Director of Executive Administration still finds probable cause, s/he may suspend the Contract and/or withhold any funds due or to become due to the Vendor, pending compliance by the Vendor with the requirements of this Section.
- e. Any violation of the mandatory requirements of this Section, or a violation of Seattle Municipal Code Chapter 14.04 (Fair Employment Practices), Chapter 14.10 (Fair Contracting Practices), Chapter 20.45 (City Contracts – Non-Discrimination in Benefits), or other local, state, or federal non-discrimination laws, shall be a material of contract for which the Vendor may be subject to damages and sanctions provided for by the Vendor Contract and by applicable law. In the event the Vendor is in violation of this Section shall be subject to debarment from City contracting activities in accordance with Seattle Municipal Code Section 20.70 (Debarment).

## 22 Equal Benefits

- a. Compliance with SMC Ch. 20.45: The Vendor shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Vendor is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as the Vendor provides to its employees with spouses. At The City's request, the Vendor shall provide complete information and verification of the Vendor's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. (For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules call (206) 684-0430 or review information at <http://cityofseattle.net/contract/equalbenefits/>.)
- b. Remedies for Violations of SMC Ch. 20.45: Any violation of this Section shall be a material breach of Contract for which the City may:
  - o Require the Vendor to pay actual damages for each day that the Vendor is in violation of SMC Ch. 20.45 during the term of the Contract; or
  - o Terminate the Contract; or
  - o Disqualify the Vendor from bidding on or being awarded a City contract for a period of up to five (5) years; or
  - o Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder.

## 23 General Legal Requirements

- a. General Requirement: Vendor, at no expense to The City, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, the Vendor shall specifically comply with the following requirements of this section.
- b. Licenses and Similar Authorizations: Vendor, at no expense to The City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.

- c. Performance Standard. All duties by Vendor or designees shall be performed in a manner consistent with accepted practices for other similar Work.

#### 24 Indemnification

Vendor shall defend, indemnify, and save City harmless from and against all claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful, or negligent acts or omissions of Vendor, its officers, employees, or agents, or Subcontractors, their officers, employees or agents. Vendor's obligation to defend, indemnify, and save City harmless shall not be eliminated or reduced by any alleged concurrent City negligence.

#### 25 Insurance

Except as specified otherwise, Vendor shall obtain at time of award and maintain in force, minimum coverages and limits of liability of insurance specified below. If the Vendor fails to obtain or maintain these coverages, the City may withdraw its intent to award. All costs are borne by the Vendor.

1. MINIMUM COVERAGES AND LIMITS OF LIABILITY. Vendor shall at all times during the term of this Agreement maintain continuously, at its own expense, minimum insurance coverages and limits of liability as specified below:
  - A. Commercial General Liability (CGL) insurance, including:
    - Premises/Operations
    - Products/Completed Operations
    - Personal/Advertising Injury
    - Contractual
  - Independent Contractors
  - Stop Gap/Employers Liability
    - with minimum limits of liability of \$1,000,000 each occurrence combined single limit bodily injury and property damage ("CSL"), except:
    - \$1,000,000 Personal/Advertising Injury
    - \$1,000,000 each accident/disease/employee Stop Gap/Employer's Liability
  - B. Automobile Liability insurance, including coverage for owned, non-owned, leased or hired vehicles with a minimum limit of liability of \$1,000,000 CSL.
  - C. Worker's Compensation for industrial injury to Vendor's employees in accordance with the provisions of Title 51 of the Revised Code of Washington.
2. CITY AS ADDITIONAL INSURED. The City of Seattle shall be included as an additional insured under CGL and Automobile Liability insurance for primary and non-contributory limits of liability.
3. NO LIMITATION OF LIABILITY. The limits of liability specified herein in subparagraph 1.A. are minimum limits of liability only and shall not be deemed to limit the liability of Vendor or any Vendor insurer except as respects the stated limit of liability of each policy. Where required to be an additional insured, the City of Seattle shall be so for the full limits of liability maintained by Vendor, whether such limits are primary, excess, contingent or otherwise.
4. MINIMUM SECURITY REQUIREMENT. All insurers must be rated A- VII or higher in the current A.M. Best's Key Rating Guide and licensed to do business in the State of Washington unless coverage is issued as surplus lines by a Washington Surplus lines broker.
5. SELF-INSURANCE. Any self-insured retention not fronted by an insurer must be disclosed. Any defense costs or claim payments falling within a self-insured retention shall be the responsibility of Vendor.

6. **EVIDENCE OF COVERAGE.** Prior to performance of any scope of work under paragraph 5., Vendor shall provide certification of insurance acceptable to the City evidencing the minimum coverages and limits of liability and other requirements specified herein. Such certification must include a copy of the policy provision documenting that the City of Seattle is an additional insured for commercial general liability insurance on a primary and non-contributory basis. Certification should be issued to The City of Seattle, Risk Management Division, Seattle, WA and shall be delivered in electronic form either as an email attachment to [riskmanagement@seattle.gov](mailto:riskmanagement@seattle.gov) or faxed to (206) 470-1270.

## **26 Review of Vendor Records**

Vendor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to protection and use of City's Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Vendor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for six (6) years from the date of expiration or termination of this Contract whichever is later.

All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying or audit by personnel so authorized by the City's Contract Administration and/or the Office of the Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the City. During this Contract's term, Vendor shall provide access to these items within King County. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor or any of its Subcontractors.

Vendor shall incorporate in its subcontracts this section's records retention and review requirements.

It is agreed that books, records, documents and other evidence of accounting procedures and practices related to Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from City's review unless the cost or any material issue under this Contract is calculated or derived from these factors.

## **27 Independent Contractor**

The relationship of Vendor to The City by reason of this Contract shall be that of an independent Vendor. This Contract does not authorize Vendor to act as the agent or legal representative of the City for any purpose whatsoever. Vendor is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of The City or to bind The City in any manner or thing whatsoever.

It is the intention and understanding of the Parties that Vendor shall be an independent Vendor and that the City shall be neither liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of employment. The Vendor shall pay all income and other taxes as due. Industrial or other insurance that is purchased for the benefit of the Vendor shall not be deemed to convert this Contract to any employment contract. It is recognized that Vendor may or will be performing professional Work during the term for other parties and that The City is not the exclusive user of the Work that Vendor will provide.

## **28 Assignment and Subcontracting**

Vendor or City shall not assign or subcontract any of its obligations under this Contract without the other parties written consent. Any subcontract made by Vendor or City shall incorporate by reference all the terms of this Contract except for Equal Benefit provisions. Vendor or City shall ensure that all subcontractors comply with the obligations and requirements of the subcontract, except for Equal Benefit provisions. Either parties consent to any assignment or subcontract shall not release the Vendor or City from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.

**29 Subcontracting**

Any subcontract made by Vendor shall incorporate by reference all the terms of this Contract. Vendor shall ensure that all subcontractors comply with the obligations and requirements of the subcontract. City's consent to any assignment or subcontract shall not release the Vendor from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment or subcontract.

**30 Involvement of Former City Employees**

Vendor shall promptly notify the city in writing of any person who is expected to perform any of the Work and who, during the twelve (12) months immediately prior to the expected commencement date of such work or sub subcontract, was a City officer or employee. Vendor shall ensure that no Work or matter related to the Work is performed by any person (employee, sub, or otherwise) who was a City officer or employee within the past twelve (12) months; and as such was officially involved in, participated in, or acted upon any matter related to the Work, or is otherwise prohibited from such performance by SMC 4.16.075.

**31 No Conflict of Interest**

Vendor confirms that Vendor does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Vendor selection, negotiation, drafting, signing, administration, or evaluating the Vendor's performance.

**32 Gratuities**

Vendor shall not directly or indirectly give, pay, deliver, or perform, or agree to arrange to give, pay, deliver or perform, any gratuity, gift, bonus, donation or discount of any kind, in the form of goods, services, or any other thing of value for any purpose, at any time, to any person employed by the City that is intended, or that reasonably may be seen to be intended, to benefit the Vendor by way of award, administration, or in any other way to influence the contract or any future contract. Any violation of this provision may result in termination of this Contract. Nothing in this Contract prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.

**33 Errors & Omissions: Correction**

Vendor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, Statement of Work, and other services furnished by or on the behalf of the Vendor under this Contract. The Vendor, without additional compensation, shall correct or revise any errors or omissions in the designs, drawings, Statement of Work, and/or other Vendor services immediately upon notification by The City. The obligation provided for in this section with respect to any acts or omissions during the term of this Contract shall survive any termination or expiration of this Contract and shall be in addition to all other obligations and liabilities of the Vendor.

**34 Intellectual Property Rights**

Patent: Vendor hereby assigns to The City all rights in any invention, improvement, or discovery, together with all related information, including but not limited to, designs, Statement of Work, data, patent rights and findings developed in connection with the performance of Contract or any subcontract hereunder. Notwithstanding the above, the Vendor does not convey to The City, nor does The City obtain, any right to any document or material utilized by Vendor that was created or produced separate from this Contract or was preexisting material (not already owned by The City), provided that the Vendor has clearly identified in writing such material as preexisting prior to commencement of the Work. To the extent that preexisting materials are incorporated into the Work, the Vendor grants The City an irrevocable, non-exclusive, fully-paid, royalty-free right and/or license to use, execute, reproduce, display, and transfer the preexisting material, but only as an inseparable part of the Work.

Copyright: All materials and documents prepared by Vendor in connection with the Contract and Vendor shall retain the copyright (including the right of reuse) whether or not the Contract Statement

of Work is completed. Vendor grants to The City a non-exclusive, irrevocable, unlimited, fully-paid, royalty-free license to use every document and all other materials prepared by the Vendor for The City under this Contract. If requested by The City, a copy of all drawing, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs and other storage facilities), software programs or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials which are developed solely for, and paid for by, The City in connection with the performance of the Work, shall be promptly delivered to The City.

The City may make and retain copies of such documents for its information and reference in connection with their use on the project. The Vendor does not represent or warrant that such documents are suitable for reuse by The City, or others, on extensions of the project, or on any other project. Vendor represents and warrants that it has all necessary legal authority to make the assignments and grant the licenses required by this Section.

### **35 Confidentiality**

The parties agree that they will not permit the duplication or disclosure of any information designated in advance by the other party as "Confidential and Proprietary" to any person (other than its own employee, agent, or representative who must have such information for the performance of that party's obligations hereunder) unless such duplication, use or disclosure is specifically authorized in writing by the other party or is required by law. "Confidential and Proprietary" information does not include ideas, concepts, know-how or techniques related to information that, at the time of disclosure, is in the public domain unless the entry of that information into the public domain is a result of any breach of this Contract. Likewise, "Confidential and Proprietary" information does not apply to information that is independently developed, already possessed without obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality.

#### Vendor's Understanding and Obligations

1. Vendor understands that any records (including but not limited to bid or proposal submittals, the Contract, and any other contract materials) it submits to the City, or that are used by The City even if the Vendor possesses the records, are public records under Washington State law, RCW Chapter 42.56. Public records must be promptly disclosed upon request unless a statute exempts them from disclosure. Vendor also understands that even if part of a record is exempt from disclosure, the rest of that record generally must be disclosed.
2. Vendor must separate and clearly mark as "proprietary information" all records related to this Contract or the performance of this Contract that the Vendor believes are exempt from disclosure. Vendor is to be familiar with potentially-applicable public-disclosure exemptions and the limits of those exemptions, and will mark as "proprietary only information" that the Vendor believes legitimately fits within an exemption, and will state the statutory exemption upon which it is relying.
3. If the City notifies the Vendor of a public disclosure request, and the Vendor believes records are exempt from disclosure, it is the Vendor responsibility to make its own determination and pursue a lawsuit under RCW 42.56 to enjoin disclosure. The Vendor must obtain the injunction and serve it on the City before the close of business on the tenth business day after the City sent notification to the Vendor. It is the Vendor's discretionary decision whether to file the lawsuit.
4. If Vendor does not timely obtain and serve an injunction, the Vendor is deemed to have authorized releasing the record.
5. Notwithstanding the above, the Vendor must not take any action that would affect (a) the City's ability to use goods and services provided under this Contract or (b) the Vendor's obligations under this Contract.

6. Vendor will fully cooperate with the City in identifying and assembling records in case of any public disclosure request.
7. Vendor shall be responsible for timely installation of the System and the configuration of any related Hardware. Vendor shall provide standard training in the use of the Hardware and Software according to the Purchase Price Schedule section of this Agreement. Such training will be provided at a mutually agreeable location.

#### The City's Obligations

1. The City will disclose those parts of records the Vendor has marked as "proprietary information" only to authorized persons unless:
  - (a) The City receives a public disclosure request, in which case steps 2 and 3 below are exercised before release of the information; or
  - (b) The Vendor has given The City express advance written permission to disclose the records.

"Authorized persons" means those City officers, employees, Vendors and consultants for whom the proprietary information is necessary to perform their duties or obligations to The City. The term "proprietary information" does not include ideas, concepts, know-how or techniques related to any information that, at the time of disclosure, is in the public domain, unless the entry of that information into the public domain is a result of a breach of this Contract.

2. If the City receives a public disclosure request for records that Vendor has marked as "proprietary information," the City promptly notifies the Vendor of the request. The City will postpone disclosing these records for ten business days after it has sent notification to the Vendor, in order to allow the Vendor to file a lawsuit under RCW 42.56 to enjoin disclosure. It is the Vendor's discretionary decision whether to file the lawsuit.

3. If the City has notified Vendor of a public disclosure request, and the Vendor has not obtained an injunction and served the City with that injunction by the close of business on the tenth business day after the City sent notice, the City may disclose the record.

4. The City has no other obligations concerning records the Vendor has marked as "proprietary information" under this Contract. The City has no obligation to claim any exemption from disclosure. The City is not obligated or liable to the Vendor for any records that the City releases in compliance with this Section or in compliance with the order of a court of competent jurisdiction.

5. City shall be responsible for timely site preparation including, but not limited to, adequate electrical power for computer operation, remote System access and installation of all cabling. City shall make available qualified personnel to be trained by Vendor in the use, operation, and management of the Hardware and Software, and shall provide and adequately manage the resources necessary to implement and operate the Hardware and Software, including without limitation completion of Vendor start-up questionnaires, timely selection among options and parameters, and construction of data dictionaries. City shall comply with laws, use proper audit controls and operating methods, adequately back-up data and programs, and establish and maintain security and accuracy of data.

#### **36 Publicity**

No news release, advertisement, promotional material, tour, or demonstration related to the City's purchase or use of the Vendor's product or any work performed pursuant to this Contract shall be produced, distributed or take place without the prior, specific approval of the City's Project Manager or his/her designee.

#### **37 Interlocal Agreement Act**

RCW Chapter 39.34 allows cooperative purchasing between public agencies, non profits and other political subdivisions. Public agencies that file an Intergovernmental Cooperative Purchasing Agreement with the City of Seattle may purchase from Contracts established by the City. The seller agrees to sell additional items at the bid prices, terms and conditions, to other eligible governmental agencies that have such agreements with the City. The City of Seattle accepts no responsibility for the payment of the purchase price by other governmental agencies. Should the Vendor require additional pricing for such purchases, the Vendor is to name such additional pricing upon Offer to the City.

**38 Extra Work**

If the City requires the Vendor to perform work, render services in connection with this project other than that expressly provided for in the "Statement of Work" section of this Contract, or to extend the duration of the contract beyond that originally stated, this will be considered extra work, supplemental to this Contract and the Vendor shall not proceed unless authorized by an amendment. Such extra work shall be in compliance with Section 4 (Expansion Clause) and shall be authorized only by the City Purchasing Buyer, Department of Executive Administration, by written order. Any costs incurred due to the performance of extra work prior to execution of an amendment will not be reimbursed under this Contract or an amendment. Notwithstanding the foregoing, the City may make reasonable changes in this Contract, including place of delivery, installation or inspection, the method of shipment or packing, labeling and identification, and ancillary matters that Vendor may accommodate without substantial additional expense to The City.

**39 Key Persons**

Vendor shall not transfer or reassign any individual designated in this Contract as essential to the Work, without the express written consent of The City, which consent shall not be unreasonably withheld. If, during the term of this Contract, any such individual leaves the Vendor's employment, the Vendor shall present to The City one or more individual(s) with greater or equal qualifications as a replacement, subject to The City's approval, which shall not be unreasonably withheld. The City's approval or disapproval shall not be construed to release the Vendor from its obligations under this Contract.

**40 Dispute Resolution**

The parties shall endeavor to resolve any dispute or misunderstanding that may arise under this Contract concerning Vendor's performance, if mutually agreed to be appropriate, through negotiations between the Vendor's Project Manager and The City's Project Manager, or if mutually agreed, referred to the City's named representative and the Vendor's senior executive(s). Either party may discontinue such discussions and may then pursue other means to resolve such disputes, or may by mutual agreement pursue other dispute alternatives such as alternate dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights, if any, of either party to terminate the contract for cause or convenience.

**41 Termination**

- a. For Cause: The City or Vendor may terminate this Contract if the other party is in material breach of any of the terms of this Contract, and such breach has not been corrected to the other party's reasonable satisfaction within thirty (30) days. Upon termination, City shall cease using the Software and shall return to Vendor, or, at Vendor's option, destroy, the original and all copies of the Software, the Documentation and any other materials provided by Vendor, the obligations of City set forth in the paragraphs or subparagraphs entitled "Scope," "Title and Ownership of Deliverables" and "Confidentiality" shall survive termination. Vendor's rights of repossession may be enforced by Software disablement.
- b. For City's Convenience: The City may terminate this Contract at any time, without cause and for any reason including The City's convenience, upon written notice to the Vendor.
- c. Nonappropriation of Funds: The City may terminate this Contract at any time without notice due to nonappropriation of funds, whether such funds are local, state or federal grants, and no such

- notice shall be required notwithstanding any notice requirements that may be agreed upon for other causes of termination.
- d. Acts of Insolvency: The City may terminate this Contract by written notice to Vendor if the Vendor becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or is wound up or liquidated, voluntarily or otherwise.
  - e. Termination for Gratuities and/or Conflict of Interest: The City may terminate this Contract by written notice to Vendor if The City finds that a conflict of interest exists in violation of the city Ethics Code, or that any gratuity in the form of entertainment, a gift, or otherwise, was offered to or given by the Vendor or any agent therefore to any City official, officer or employee.
  - f. Notice: The City is not required to provide advance notice of termination. Notwithstanding, the RFP Coordinator may issue a termination notice with an effective date later than the termination notice itself. In such case, the Vendor shall continue to provide products and services as required by the RFP Coordinator until the effective date provided in the termination notice.
  - g. Actions Upon Termination: In the event of termination not the fault of the Vendor, the following shall apply:
    1. Vendor shall be paid for all products and services that have been ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted by the RFP Coordinator, together with any reimbursable expenses then due.
    2. For System development projects, Vendor shall be paid for progress performed that has been accepted by the City on or prior to the effective termination date, but in no event shall such compensation exceed the maximum compensation to be paid under the Contract.
    3. Vendor agrees that such payment shall fully and adequately compensate Vendor and all subs for all profits, costs, expenses, losses, liabilities, damages, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to the termination of this Contract.
    4. Upon termination for any reason, Vendor shall provide The City with the most current design documents, contract documents, writings and other product it has completed to the date of termination, along with copies of all project-related correspondence and similar items. The City shall have the same rights to use these materials as if termination had not occurred.
    5. In the event this Contract expires or is terminated for any reason, the City shall retain its rights in all Products, services and system progress that is in transit or delivered prior to the effective termination date.

#### **42 Force Majeure– Suspension and Termination**

This section applies in the event that either party is unable to perform the obligations of this contract because of a Force Majeure event as defined herein, to the extent that the Contract obligations must be suspended in full. A Force Majeure event is an event that prohibits performance and is beyond the control of the party. Such events may include natural or man-made disasters, or an action or decree of a superior governmental body, which prevents performance.

Force Majeure under this Section shall only apply in the event that performance is rendered not possible by either party or its agents. Should it be possible to provide partial performance that is acceptable to the City under Section #2 (Emergencies or Disasters), Section #2 below shall instead be in force.

Should either party suffer from a Force Majeure event and is unable to provide performance, such party shall give notice to the remaining party as soon as practical and shall do everything possible to resume performance.

Upon receipt of such notice, the party shall be excused from such performance as is affected by the Force Majeure Event for the period of such Event. If such Event affects the delivery date or warranty provisions of this Agreement, such date or warranty period shall automatically be extended for a period equal to the duration of such Event.

#### **43 Major Emergencies or Disasters:**

The City may undergo an emergency or disaster that may require the Vendor to either increase or decrease quantities from normal deliveries, or that may disrupt the Vendor's ability to provide normal performance. Such events may include, but are not limited to, a storm, high wind, earthquake, flood, hazardous material release, transportation mishap, loss of any utility service, fire, terrorist activity or any combination of the above. In such events, the following shall apply.

- a. The City shall notify the Vendor that the City is experiencing an emergency or disaster, and will request emergency and priority services from the Vendor.
- b. Upon such notice by the City, the Vendor shall provide to the City goods and/or services in the quantities and schedule specified by the City, following the conditions named in this Section.
- c. The City of Seattle shall be the customer of first priority for the Vendor. The Vendor shall provide its best and priority efforts to provide the requested goods and/or services to the City of The City in as complete and timely manner as possible. Such efforts by the Vendor are not to be diminished as a result of Vendor providing service to other Cities.
- d. If the Vendor is unable to respond in the time and/or quantities requested by the City, the Vendor shall make delivery as soon as practical. The Vendor shall immediately assist the City to the extent reasonable, to gain access to such goods and/or services. This may include:
  - o Coordinating with other distributors or subsidiaries beyond those in the local region to fulfill order requests;
  - o Offering the City substitutions provided the Vendor obtains prior approval from the City for such substitution.
- e. The Vendor shall charge the City the price determined in this Contract for the goods and services provided, and if no price has been determined, it shall charge the City a price that is normally charged for such goods and/or services (such as listed prices for items in stock). However, in the event that the City's request results in the Vendor incurring unavoidable additional costs and causes the Vendor to increase prices in order to obtain a fair rate of return, the Vendor shall charge the City a price not to exceed the cost/profit formula found in this Contract.

#### **44 Debarment**

In accordance with SMC Ch. 20.70, the Director of Executive Administration or designee may debar a Vendor from entering into a Contract with the City or from acting as a sub on any Contract with the City for up to five years after determining that any of the following reasons exist:

- a. Vendor has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.
- b. Vendor failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, prevailing wage requirements, equal benefits, or apprentice utilization.
- c. Vendor abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.
- d. Vendor failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.
- e. Vendor submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.
- f. Vendor colluded with another Vendor to restrain competition.
- g. Vendor committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.
- h. Vendor failed to cooperate in a City debarment investigation.
- i. Vendor failed to comply with SMC 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

The Director may issue an Order of Debarment following the procedures specified in SMC 20.70.050. The rights and remedies of the City under these provisions are in addition to any other rights and remedies provided by law or under the Contract.

**45 Recycle Products Requirements**

As required by Seattle Municipal Code 20.60, whenever practicable, Vendor shall use reusable products, recyclable products and recycled-content products including recycled content paper on all documents submitted to the City.

Vendors are to duplex all materials that are prepared for the City under this Contract, whether such materials are printed or copied, except when impracticable to do so due to the nature of the product being produced. Vendors are to use 100% post consumer recycled content, chlorine-free paper in such products that are produced for the City, whenever practicable, and to use other paper-saving and recycling measures in business they conduct with and for the City. This directive is executed under the Mayor's Executive Order, issued February 13, 2005.

**46 Section Headings, Incorporated Documents and Order of Precedence**

**46.1** The headings used herein are inserted for convenience only and do not define or limit the contents.

**46.2** No verbal agreement or conversation between any officer, agent, associate or employee of The City and any officer, agency, employee or associate of the Vendor prior to the execution of this Contract shall affect or modify any of the terms or obligations contained in this Contract.

**46.3** The following documents are incorporated. Where there is conflict or gap between or among these documents, the controlling document will be resolved in the following order of precedence (first listed being the precedent):

- a. Applicable federal, state and local statutes, laws and regulations;
- b. Sections of this Contract
- c. All Attachments to this Contract, including Pricing, Management, and Technical Specification Agreements
- d. Licensing and Maintenance Agreements
- e. RFP issued by the City
- f. Vendor Proposal Response
- g. City Purchase Order documents issued, if any; and
- h. Vendor or manufacturer publications or written materials Vendor made available to City and used to effect the sale.

**47 Entire Agreement**

This Contract is the entire agreement and understanding between the parties with respect to the subject matter, and as such this Contract supersedes all prior and contemporaneous agreements, negotiations, representations and proposals, written and oral, relating to the subject matter. City expressly acknowledges, agrees and represents to Vendor that there are no understandings or agreements with respect to the subject matter other than as expressly set forth in this Contract. City agrees that no contrary terms and conditions of any subsequent City purchase order, no course of dealing, trade custom or usage of trade, and no warranty made during the course of performance, will apply, unless expressly agreed to by Vendor in writing.

**48 Authority for Modifications and Amendments**

The Parties hereto reserve the right to make amendments or modifications to this Contract by written agreement, signed by an authorized representative of each party. No modification, amendment, alteration, or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by the City RFP Coordinator and Vendor Contracting Officer. Only the City RFP Coordinator shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract on behalf of the City.

**49 Severability**

If any term or provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

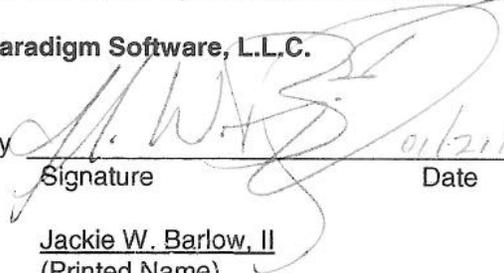
**50 Miscellaneous Provisions**

- a. **Binding Contract:** This Contract shall not be binding until signed by both parties. The provisions, covenants and conditions in this Contract shall bind the parties, their legal heirs, representatives, successors, and assigns.
- b. **Applicable Law/Venue:** This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.
- c. **Remedies Cumulative:** Rights under this Contract are cumulative and nonexclusive of any other remedy at law or in equity.
- d. **Waiver:** No term or condition or breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. Any waiver of the breach of any term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither acceptance by The City of Vendor performance nor payment to Vendor for any portion of Work shall constitute a waiver by The City of the breach or default of any term or condition unless expressly agreed to by The City in writing.
- e. **Negotiated Contract:** The parties acknowledge that this is a negotiated Contract, that they have had the opportunity to have this Contract reviewed by their respective legal counsel, and that the terms and conditions of this Contract are not to be construed against any party on the basis of such party's draftsmanship thereof.
- f. **Attorneys' Fees:** Subject to the indemnification provisions set forth in this Contract, if any action or suit is brought with respect to a matter or matters covered by this Contract, each party shall be responsible for all its own costs and expenses incident to such proceedings, including reasonable attorneys' fees.
- g. **Authority:** Each party represents that it has full power and authority to enter into and perform this Contract, and the person signing this Contract on behalf of each party has been properly authorized and empowered to enter into this Contract. Each party further acknowledges that it has read this Contract, understands it, and shall be bound by it.

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Contract by having their authorized representatives affix their signatures below.

**Paradigm Software, L.L.C.**

By

  
Signature

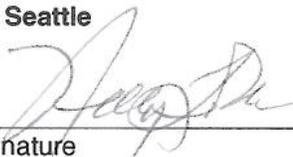
01/21/09  
Date

Jackie W. Barlow, II  
(Printed Name)

Vice President  
(Title)

**City of Seattle**

By

  
Signature

4/29/9  
Date

Nancy Locke  
(Printed Name)

PURCHASING DIRECTOR  
(Title)

**Work Order #1**

**PARADIGM SOFTWARE CompuWeigh™ SCALEHOUSE OPERATIONS SYSTEM**

The Paradigm Software L.L.C. (Vendor) shall be responsible for the design, testing, implementation, training, and provision of a complete and operational, integrated Transfer Station Billing system according to the functional descriptions prescribed within Request for Proposal (RFP) #SPU-160 and Vendor's response to the RFP. Any and all incidental components or parts not specifically called out in this document, but required for the function of the technology system, shall be provided by the Vendor without additional cost to the City of Seattle (City) NOTE: Vendor is not responsible for mounting, bollards, poles, electrical, conduit, installation, etc. of the enclosures. Vendor will be responsible for configuring the enclosures with the software.

Deliverables comprising the CompuWeigh Scalehouse Operation System are listed below and who is responsible for furnishing each.

Future Work Order is defined as FWO in this document.

**1. Deliverables:**

1.1 Hardware

| <u>Qty</u> | <u>UM</u> | <u>Description</u>   | <u>Unit Price</u> | <u>Extended Price</u> | <u>Who to Purchase</u> |
|------------|-----------|--|-------------------|-----------------------|------------------------|
|            |           | <b>Transfer Stations hardware</b>  |                   |                       |                        |
| 4          | Each      | Hardware Key (1 per WeighStation computer)   | \$150.00          | \$600.00              | Vendor                 |
| 4          | Lane      | Magnetic Credit Card Swipe Reader (USB)*   |                   |                       | City                   |
| 4          | Lane      | Laser Barcode Card Reader* (Inside) (USB)  |                   |                       | City                   |
| 4          | Each      | Indoor Thermal Receipt Printers (USB)  |                   |                       | City                   |
| 2          | Each      | 2-port Serial-Ethernet Server (Requires a static IP address to be assigned to the device.) |                   |                       | City                   |
| 4          | Each      | PC   |                   |                       | City                   |
| 4          | Each      | 4-port Serial Adapter  |                   |                       | City                   |
| 2          | Each      | Server   |                   |                       | City                   |
| 4          | Each      | Cash Drawer  |                   |                       | City                   |
| 4          | Each      | Touch Screen Monitor*  |                   |                       | FWO                    |
| 4          | Each      | Driver's License Scanner*  |                   |                       | FWO                    |

**Unattended System**

|                            |      |  |            |                 |        |
|----------------------------|------|--|------------|-----------------|--------|
| 4                          | Each | Unattended Enclosure (includes heater, fan, exhaust, and thermostat)   | \$2,500.00 | \$10,000.00     | Vendor |
| 4                          | Each | LCD Display*   | \$1,900.00 | \$7,600.00      | Vendor |
| 4                          | Each | Qwerty Keyboard*   | \$500.00   | \$2,000.00      | Vendor |
| 4                          | Each | Thermal Receipt Printer*   | \$700.00   | \$2,800.00      | Vendor |
| 4                          | Each | Case of Paper  | \$150.00   | \$600.00        | Vendor |
| 4                          | Each | 4-port Serial to Ethernet Device (mounted in enclosure) Device needs to go to a switch on the network to be assigned a static IP Address. There will need to be a network switch installed in the scale house if one is not there currently. | \$600.00   | \$2,400.00      | Vendor |
| 4                          | Each | Quick Disconnect Cable (Maximum distance is 75 feet and requires a 3/4" conduit from the enclosure to the scale house) (If distance is greater than 75' an Ethernet to VGA device may be required)   | \$400.00   | \$1,600.00      | Vendor |
| 4                          | Each | VGA to USB Adapter   | \$100.00   | \$400.00        | Vendor |
| 2                          | Each | OPTO-22 Board (To control gates and lights)  | \$1,500.00 | \$3,000.00      | Vendor |
| 2                          | Each | Intercom Device - Call Master  | \$560.00   | \$1,120.00      | Vendor |
| 4                          | Each | Remote Horn/Speaker & Call Button  | \$75.00    | \$300.00        | Vendor |
| 4                          | Each | RF Reader - eGo Reader *   | \$5,200.00 | \$20,800.00     | Vendor |
| 180                        | Each | RF External Tags   | \$40.00    | \$7,200.00      | Vendor |
| 4                          | Each | RF Junction Box  | \$650.00   | \$2,600.00      | Vendor |
| 2                          | Each | 2 License Plate OCR Camera and System*   |            |                 | FWO    |
| <b>Hardware Sub Total:</b> |      |  |            | <b>\$63,020</b> |        |

Vendor will purchase the hardware listed as identified above. The hardware will be shipped to their office, and tested before delivering to the City.

1.2 Software and optional modules:

| Qty | UM       | Description   | Unit Price  | Extended Price | Who to Purchase |
|-----|----------|---|-------------|----------------|-----------------|
| 1   | Each     | CompuWeigh™ System Software Main Office or System Wide 10-user CompuWeigh™ Program concurrent license (SQL Database)* (Does not include Microsoft SQL Server License or CALs) | \$15,000.00 | \$15,000.00    | Vendor          |
| 1   | Flat Fee | MSMQ Module*  | \$5,000.00  | \$5,000.00     | Vendor          |

|                                   |          |   |             |                  |        |
|-----------------------------------|----------|---|-------------|------------------|--------|
| 1                                 | Flat Fee | Accounts Receivable and Aging Module*   | \$20,000.00 | \$20,000.00      | Vendor |
| 1                                 | Flat Fee | Scale Monitoring Module*  | \$5,000     | \$5,000          | Vendor |
| <b>Transfer Station 1 and 2</b>   |          |   |             |                  |        |
| 4                                 | Lane     | WeighStation Program license attached to a scale (MSDE or SQL Database)*<br>(Does not include Microsoft SQL Server License or CALs)<br>Credit Card Processing Module* (includes ICVerify multi-user software) | \$5,500.00  | \$22,000.00      | Vendor |
| 4                                 | Lane     | Video Module*   | \$1,795.00  | \$7,180.00       | Vendor |
| 4                                 | Lane     | Light Module*   | \$1,500.00  | \$6,000.00       | Vendor |
| 4                                 | Lane     | Gate Module*  | \$1,000.00  | \$4,000.00       | Vendor |
| 4                                 | Lane     | Touch Screen Module*  |             |                  | WO #2  |
| 4                                 | Lane     | Driver's License Scan Module*   |             |                  | WO #2  |
| 1                                 | Flat Fee | Insufficient Funds/Split Payments Module*   |             | \$5,000.00       | Vendor |
| 1                                 | Flat Fee | Rules Module*   |             |                  | FWO    |
| 1                                 | Flat Fee | Alerts Module*  |             |                  | FWO    |
| 1                                 | Flat Fee | Web Reporting Module*   |             |                  | FWO    |
| 1                                 | Flat Fee | Signature Capture Module*   |             |                  | FWO    |
| 4                                 | Each     | Signature Capture Device with Credit Card Swipe*  |             |                  | FWO    |
| 1                                 | Flat Fee | Check Verification Module*  |             |                  | FWO    |
| 1                                 | Each     | Check Image/Reader*   |             |                  | FWO    |
| <b>Sub Total:</b>                 |          |   |             | <b>\$89,180</b>  |        |
| <b>Software Discount (10%):</b>   |          |   |             | <b>(\$8,918)</b> |        |
| <b>Vendor Software Sub Total:</b> |          |   |             | <b>\$80,262</b>  |        |

### 1.3 Documentation

Complete set of documentation that listed on RFP Section 5.3 Project Documentation.

### 1.4 Configuration and Customization

Configure the software and hardware to meet the requirements in RFP Technical Response sheet, customization includes but not limit the following:

| Qty | UM   | Description   | Unit Price | Extended Price |
|-----|------|---|------------|----------------|
| 40  | Hour | Software Customization - Ability to write transactional data to video system provided by the City. Assumes the City's video system allows this functionality.*                                  | \$150.00   | \$6,000.00     |
| 8   | Hour | Software Customization - FNC-170 - System shall update the Account Status field based on Aging Criteria:<br>-Status to be set to Open when the account is current or made current by a payment. | \$150.00   | \$1,200.00     |

|    |      |   |          |                 |
|----|------|---|----------|-----------------|
|    |      | -Status to be set to Delinquent when the account is 31+ days past   |          |                 |
|    |      | -Status to be set to Cash Only when 61 days past due which will prevent the customer from charging at the transfer station. The Account Status field should be customizable.*   |          |                 |
| 40 | Hour | Software Customization - FNC-410 - The System shall provide a built-in safe guard function on the daily distribution/posting payment process that provides an error message for accounts out of balance.*   | \$150.00 | \$6,000.00      |
| 3  | Hour | Software Customization - FNC-710 - The system will allow selected users to define the fields that are contained in the main screen that retains all of the customer's demographic information. For example we would like to include the customer contact information. For example we would like to include the customer contact information, the start and close date of the account and the type of business etc. as defined by the City.* | \$150.00 | \$450.00        |
| 3  | Hour | Software Customization - STD-780 - Notes to an account cannot be changed or deleted.*   | \$150.00 | \$450.00        |
| 40 | Hour | Software Customization - Historical Data Conversion - Note: The City of Seattle has 72 months of data to convert. (Not to exceed limit).  | \$150.00 | \$6,000.00      |
| 40 | Hour | Software Customization - Hours included in the price to be used to develop reports that may not be included with the system and to be used at the City's discretion.  | \$150.00 | \$6,000.00      |
| 80 | Hour | Software Customization - Ability to interface with Metavante payment system for credit card processing. (Not to exceed limit)   | \$150.00 | \$12,000.00     |
|    |      | <b>Sub Total:</b>   |          | <b>\$38,100</b> |

1.5 Project Management, Installation, Testing, and Training

Vendor anticipates 3 trips on site:

- Facility survey/project management – 1 person for 10 days
- Installation and training – 3 persons for 7 days
- Production roll out – 2 persons for 5 days

Additional trainings, if required, will be requested by the City at the rate of \$150/hour.

| Qty | UM  | Description   | Unit Price | Extended Price  |
|-----|-----|---|------------|-----------------|
| 10  | Day | Project Management Days (\$1,200.00 per technician per day based on 8 hours) (Additional Installation/Training days available at a rate of \$150.00/hr)             | \$1,200    | \$12,000        |
| 7   | Day | Installation, Testing, and Training (\$1,200.00 per technician per day based on 8 hours) (Additional Installation/Training days available at a rate of \$150.00/hr) | \$3,600    | \$25,200        |
| 5   | Day | Production Roll-Out / Go Live (\$1,200.00 per technician per day based on 8 hours) (Additional Installation/Training days available at a rate of \$150.00/hr)       | \$2,400    | \$12,000        |
|     |     | <b>Sub Total:</b>   |            | <b>\$49,200</b> |

1.6 Travel and Expenses

| Qty               | UM   | Description                       | Unit Price | Extended Price  |
|-------------------|------|-----------------------------------|------------|-----------------|
| 2                 | Each | Airfare/Airport Associated Fees** | \$1,000    | \$2,000         |
| 11                | Day  | Daily On-Site Travel Expenses     | \$250      | \$2,750         |
| 3                 | Each | Airfare/Airport Associated Fees** | \$1,000    | \$3,000         |
| 8                 | Day  | Daily On-Site Travel Expenses     | \$750      | \$6,000         |
| 2                 | Each | Airfare/Airport Associated Fees** | \$1,000    | \$2,000         |
| 6                 | Day  | Daily On-Site Travel Expenses     | \$500      | \$3,000         |
| <b>Sub Total:</b> |      |                                   |            | <b>\$18,750</b> |

\*\*Airfare/Airport Associated Fees are estimates only. Will be billed at actual cost, not to exceed City Standard.

1.7 Shipping and Handling

| Qty               | UM   | Description                    | Unit Price | Extended Price |
|-------------------|------|--------------------------------|------------|----------------|
| 1                 | Each | Shipping and Handling (Ground) | \$5,000    | \$5,000        |
| <b>Sub Total:</b> |      |                                |            | <b>\$5,000</b> |

2. Payment Schedule:

| Description                                     | Deliverable | Payment             |
|---|-------------|---------------------|
| Due Upon Receipt (Hardware) – 50%               | D-1         | \$31,510.00         |
| Due Upon Installation in Test Environment – 40% | D-2         | \$76,524.80         |
| Due Upon Go-Live (Hardware) – 50%               | D-3         | \$31,510.00         |
| Due Upon Go-Live – 40%                          | D-4         | \$76,524.80         |
| Due Upon Customer Acceptance – 20%              | D-5         | \$38,262.40         |
| <b>Project Total</b>                            |             | <b>\$254,332.00</b> |

Attachment #2, Work Order #1  
 Paradigm Software, L.L.C.  
 Vendor Contract #2382

3. Schedule:

| ID | Task Name   | Resource | Start   | Finish  | Work      | Predecessors | Duration    |
|----|---|----------|---------|---------|-----------|--------------|-------------|
| 1  | RFP   |          | 12/4/08 | 1/16/09 | 232 hrs   |              | 28 days?    |
| 2  | Contract Award  | SPL      | 12/4/08 | 12/5/08 | 16 hrs    |              | 2 days      |
| 3  | Contract Finalizations  | Both     | 12/8/08 | 1/16/09 | 208 hrs   | 2            | 26 days     |
| 4  | Deliver a draft project plan  | PSLLC    | 1/16/09 | 1/16/09 | 8 hrs     | 3FF          | 1 day       |
| 5  | Acquisition   |          | 1/20/09 | 3/24/09 | 1,152 hrs |              | 45 days?    |
| 6  | Hardware Acquisition for Attended terminals - SPU                     | SPL      | 1/20/09 | 3/3/09  | 240 hrs   | 4            | 30 days     |
| 7  | Hardware Acquisition for Attended Terminals - PSLLC                   | PSLLC    | 1/20/09 | 3/3/09  | 240 hrs   | 3            | 30 days     |
| 8  | Hardware Acquisition - Unattended terminals                           | PSLLC    | 1/20/09 | 3/24/09 | 360 hrs   | 3            | 45 days     |
| 9  | Complete Facility Survey  | SPL      | 1/20/09 | 2/6/09  | 112 hrs   | 3            | 14 days     |
| 10 | Review and Finalize Functional Specifications                         | SPL      | 2/9/09  | 2/27/09 | 112 hrs   | 9            | 14 days     |
| 11 | Deliver and review final project plan                                 | PSLLC    | 3/2/09  | 3/2/09  | 8 hrs     | 10           | 1 day       |
| 12 | Permit Acquisition if need  | SPL      | 3/3/09  | 3/16/09 | 80 hrs    | 11           | 10 days     |
| 13 | Development and Remote test   |          | 3/2/09  | 4/14/09 | 376 hrs   |              | 32 days?    |
| 14 | Physical work - wiring, conduit, pole                                 | Both     | 3/17/09 | 4/6/09  | 120 hrs   | 12           | 15 days     |
| 15 | Develop Database  | PSLLC    | 3/2/09  | 3/19/09 | 112 hrs   | 10           | 14 days     |
| 16 | Design and Development of Customizations                              | PSLLC    | 3/20/09 | 4/2/09  | 80 hrs    | 15           | 10 days     |
| 17 | Convert Accts, trucks, balance, etc. - develop and test               | PSLLC    | 4/3/09  | 4/6/09  | 16 hrs    | 16           | 2 days      |
| 18 | Convert Historical transaction data - dev and test                    | PSLLC    | 4/7/09  | 4/9/09  | 24 hrs    | 17           | 3 days      |
| 19 | Deliver data conversion plan, gap analysis, issue logs and resolution | PSLLC    | 4/10/09 | 4/10/09 | 8 hrs     | 18           | 1 day       |
| 20 | Deliver Fit test plan   | PSLLC    | 4/13/09 | 4/13/09 | 8 hrs     | 19           | 1 day       |
| 21 | Remote test   | PSLLC    | 4/14/09 | 4/14/09 | 8 hrs     | 20           | 1 day       |
| 22 | Installation, On-Site Testing and Training                            |          | 3/4/09  | 5/5/09  | 436 hrs   |              | 45 days?    |
| 23 | Install OS on Attended Terminal HW (PC, Server, etc)                  | SPL      | 3/4/09  | 3/4/09  | 8 hrs     | 6            | 1 day       |
| 24 | Install RFID Tags on collection Trucks                                | SPL      | 3/25/09 | 5/5/09  | 240 hrs   | 8            | 30 days     |
| 25 | No activity   | SPL      | 3/30/09 | 4/3/09  | 40 hrs    |              | 5 days      |
| 26 | Install Paradigm Software on HW                                       | PSLLC    | 4/13/09 | 4/13/09 | 8 hrs     | 23,16,17,18  | 1 day       |
| 27 | Install Unattended Terminal HW and Traffic Light Controls             | PSLLC    | 4/14/09 | 4/14/09 | 8 hrs     | 14,8,26      | 1 day       |
| 28 | On-Site Fit Test, bug fixes and result review                         | Both     | 4/14/09 | 4/16/09 | 24 hrs    | 26,20        | 3 days      |
| 29 | Deliver Final On-Site Fit Test Results                                | PSLLC    | 4/17/09 | 4/17/09 | 4 hrs     | 28           | 0.5 days    |
| 30 | Deliver database models and related documentations                    | PSLLC    | 4/17/09 | 4/20/09 | 8 hrs     | 29           | 1 day       |
| 31 | Deliver system diagram, configuration, capacity document              | PSLLC    | 4/20/09 | 4/21/09 | 8 hrs     | 30           | 1 day       |
| 32 | Training  |          | 3/30/09 | 4/28/09 | 88 hrs    |              | 21.5 days?  |
| 33 | Get ready for training, prep material                                 | Both     | 3/30/09 | 4/3/09  | 40 hrs    |              | 5 days      |
| 34 | Deliver training plan and training material                           | PSLLC    | 4/6/09  | 4/6/09  | 8 hrs     | 33           | 1 day       |
| 35 | Overview  | Both     | 4/21/09 | 4/21/09 | 2 hrs     | 29,30,31     | 0.25 days   |
| 36 | Training - Transfer Station staff                                     | Both     | 4/21/09 | 4/23/09 | 16 hrs    | 35           | 2 days      |
| 37 | Training - Finance staff  | Both     | 4/23/09 | 4/24/09 | 8 hrs     | 36           | 1 day       |
| 38 | Training - SPU IT   | Both     | 4/24/09 | 4/27/09 | 6 hrs     | 37           | 0.75 days   |
| 39 | Training - Reports  | Both     | 4/27/09 | 4/28/09 | 8 hrs     | 38           | 1 day       |
| 40 | User Acceptance Testing   | SPU      | 4/15/09 | 5/4/09  | 206 hrs   |              | 13.75 days? |
| 41 | UAT Plan  | SPL      | 4/15/09 | 4/15/09 | 8 hrs     |              | 1 day       |
| 42 | Transfer Station UAT  | SPL      | 4/23/09 | 4/27/09 | 16 hrs    | 41,36        | 2 days      |
| 43 | Finance UAT   | SPL      | 4/27/09 | 4/29/09 | 16 hrs    | 42           | 2 days      |
| 44 | IT UAT  | SPL      | 4/29/09 | 4/30/09 | 8 hrs     | 43           | 1 day       |
| 45 | ES UAT  | SPL      | 4/30/09 | 5/1/09  | 8 hrs     | 44           | 1 day       |
| 46 | UAT result review and bug fixes                                       | Both     | 4/27/09 | 5/4/09  | 40 hrs    | 42           | 5 days      |
| 47 | Production Roll-Out   | Both     | 5/4/09  | 5/11/09 | 40 hrs    | 25,40        | 5 days      |
| 48 | GO LIVE   | PSLLC    | 5/11/09 | 5/18/09 | 40 hrs    | 47           | 5 days      |
| 49 | Historical transaction conversion                                     | PSLLC    | 5/18/09 | 5/22/09 | 32 hrs    | 48           | 4 days      |
| 50 | Deliver System user manual  | PSLLC    | 5/22/09 | 5/26/09 | 8 hrs     | 49           | 1 day       |
| 51 | Deliver hardware documentation and warranty info                      | PSLLC    | 5/26/09 | 5/27/09 | 8 hrs     | 50           | 1 day       |
| 52 | Complete all deliverables   | PSLLC    | 5/27/09 | 5/28/09 | 8 hrs     | 51           | 1 day       |
| 53 | Stabilization (include a month-end closing)                           | Both     | 5/28/09 | 6/9/09  | 60 hrs    | 8,52         | 7.5 days    |
| 54 | SPU Sign Off and Start Warranty                                       | SPL      | 6/9/09  | 6/15/09 | 32 hrs    | 53,52        | 4 days      |
| 55 | Year 1 Annual Maintenance   | SPL      | 6/15/09 | 6/15/09 | 0 hrs     | 54           | 0 days      |
| 56 | Upgrade to version 6  | PSLLC    | 12/1/09 | 12/1/09 | 8 hrs     |              | 1 day       |

PARADIGM SOFTWARE, L.L.C.  
10944 Beaver Dam Road, Suite C  
Hunt Valley, MD 21030-2255  
(410) 329-1300

STANDARD SUPPORT SERVICES AGREEMENT

PARADIGM SOFTWARE, L.L.C. ("PARADIGM"), by its acceptance of this Standard Support Services Agreement (this "Agreement") agrees to sell and provide, and the undersigned customer ("CUSTOMER") agrees to purchase and accept, in accordance with the terms and conditions set forth below, Paradigm Standard Support Services as defined herein for the computer programs licensed to CUSTOMER pursuant to a separate agreement entered into prior to or simultaneously herewith (the "Contract") and identified in Schedule A hereto, all in accordance with the TERMS AND CONDITIONS included in this agreement, each of which is incorporated herein.

THIS AGREEMENT, INCLUDING ALL OF ITS TERMS AND CONDITIONS IS THE ENTIRE AGREEMENT FOR "STANDARD SUPPORT SERVICES" AND CANNOT BE MODIFIED EXCEPT BY WRITING SIGNED BY THE DULY AUTHORIZED REPRESENTATIVES OF BOTH PARTIES. CUSTOMER UNDERSTANDS THAT THE FEES CHARGED BY PARADIGM IN THIS AGREEMENT REFLECT THE ALLOCATION OF RISKS EXPRESSED BY THE LIMITED WARRANTY, THE EXCLUSIVE REMEDY FOR BREACH OF THAT LIMITED WARRANTY, AND THE LIMITATIONS OF LIABILITY AND DAMAGES WHICH ARE SET FORTH ON THE REVERSE SIDE OF THIS PAGE. BY SIGNING WHERE INDICATED BELOW, CUSTOMER ACCEPTS THESE TERMS AND AFFIRMS IT UNDERSTANDS THAT TO CHANGE THEM WOULD AFFECT THE ECONOMIC BARGAIN EXPRESSED IN THIS CONTRACT.

READ, UNDERSTOOD AND EXECUTED on the date(s) indicated below.

Customer:

Accepted by:

CITY OF SEATTLE, WA:

PARADIGM SOFTWARE, L.L.C.:

700 5<sup>th</sup> Avenue, #4112  
Seattle, WA 98104-5042

10944 Beaver Dam Road, Suite C  
Hunt Valley, MD 21030-2255

By: *[Signature]*

By: *[Signature]*

*Nancy Locke*  
(Type or Print Name)

Jackie W. Barlow, II  
Vice President

*PURCHASING DIRECTOR*  
(Title)

Date: *01/21/09*

Date: *1/29/08*

Approved as to form:

By: \_\_\_\_\_

\_\_\_\_\_  
(Type or Print Name)

\_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

\* Commencing ninety (90) days after installation.

STANDARD SUPPORT SERVICES AGREEMENT

TERMS AND CONDITIONS

1. CHARGES AND PAYMENT. Customer shall pay the annual fee for Standard Support Services is as set forth on the Software Support Schedule to this Agreement. The fee is payable annually in advance to be made prior to the first day of renewal term. CUSTOMER will pay a late charge of one and one half percent (1 1/2%) of the amount not paid within thirty (30) days of the due date or date of invoice, whichever is later. In the Year 2019, the 11<sup>th</sup> year after system implementation and at its sole discretion, PARADIGM may increase its annual charges for maintenance and support annually by giving CUSTOMER notice of any such increase sixty (60) days prior to the anniversary date of the contract.. Any increases shall not exceed changes in the Consumer Price Index, published by the U.S. Department of Labor, Bureau of Labor Statistics [All Urban Consumers (CPI-U), U.S. City Average, All items, 1982-84=100] (the "CPI").

CUSTOMER shall pay or reimburse PARADIGM for all out-of-pocket expenses incurred in connection with Standard Support Services, such as media, telephone, delivery and travel costs. Prices and fees are exclusive of all current or future excise, sales, use, occupational, or like taxes, and CUSTOMER agrees to pay any such tax PARADIGM may be required to collect or pay (including interest and penalties imposed by any governmental authority) which are imposed upon the sale or delivery of items purchased or licensed or any services rendered hereunder. Exemption from such taxes, if any, shall be the responsibility of CUSTOMER to pursue.

2. CUSTOMER RESPONSIBILITIES. CUSTOMER agrees to test, and if operable, accept and use all updates, amendments and alterations to the Software furnished to CUSTOMER hereunder and to install and maintain for the duration of this Agreement a modem and associated dialup telephone line. CUSTOMER shall allow PARADIGM continuous access to the Software via this connection for the purpose of providing Standard Support Services and will pay all telephone line use charges. CUSTOMER will provide PARADIGM with dumps as requested, and with sufficient support and test time on CUSTOMER's computer system to duplicate any conditions or problems identified by CUSTOMER or PARADIGM.

3. COVERAGE. The computer programs and software eligible for Standard Support Services (as defined below) are those programs described on the Software Support Schedule or attached hereto, as updated with all current amendments, alterations, enhancements, improvements and updates furnished to CUSTOMER under warranty (the "Software"). Standard Support Services shall be rendered only to the currently supported version of Software running with the applicable operating system version supported by PARADIGM.

4. TERM AND RENEWAL. Provided payment has been made as required hereunder, the term of this Agreement commences on the date specified on the Software Support Schedule and continues for one (1) year. Thereafter, the term will automatically renew for successive one (1) year periods, unless either PARADIGM or CUSTOMER gives written notice to the other of an intention not to renew at least 60 days prior to the commencement of any renewal term. The cost of services may be adjusted each year in the manner described herein, in accordance with changes in the Consumer Price Index, published by the U.S. Department of Labor, Bureau of Labor Statistics [All Urban Consumers (CPI-U), U.S. City Average, All items, 1982-84=100] (the "CPI").

5. STANDARD SUPPORT SERVICES. During the term of this Agreement, PARADIGM will provide to CUSTOMER its Standard Support Services described in this paragraph. Subject to the license granted to CUSTOMER under the Contract, PARADIGM will provide technical services to design, code, check out and deliver amendments or alterations of the Software necessary to correct or solve any programming error attributable to PARADIGM which caused the Software not to perform substantially as described in the current, standard editions of manuals delivered to CUSTOMER by PARADIGM pertaining to the use of the Software (the "Documentation"). Such services will be provided within four hours or less after CUSTOMER has identified and notified PARADIGM of any such error in accordance with PARADIGM's reasonable reporting procedures as in effect from time to time. PARADIGM will also provide reasonable telephone consultation in the use and operation of the Software during the hours of 4:30 a.m. through 3:00 p.m. Pacific Time on weekdays. After hour support, including weekends and holidays, is available for emergencies. Current PARADIGM holidays are New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. Such consultation will be available to key contacts or alternates, designated by CUSTOMER in advance in writing from time to time. Services provided in response to requests from someone other than these designees will be billed by PARADIGM on a time and materials basis. In addition, if PARADIGM elects to include them under its Standard Support Services program and does not market them separately to Standard Support Services customers generally, PARADIGM will deliver updates of the Software to CUSTOMER from time to time, without any charge other than as specified on the Software Support Schedule.

6. OTHER SERVICES. CUSTOMER agrees to pay PARADIGM's charges for services not included in Standard Support Services, computed at PARADIGM's regularly scheduled rates, together with all costs incurred in connection therewith. Investigation and research for CUSTOMER identified conditions determined by PARADIGM not to be attributed to PARADIGM programming errors are billable to CUSTOMER as such other services.

7. PROPRIETARY RIGHTS. Any programs, works, manuals, changes, additions, alterations, amendments or enhancements in the form of new or partial programs, Software, Source Code or Documentation ("IP") as may be provided by PARADIGM under this Agreement or the Contract, and all copies thereof, shall be and remain the sole and exclusive property of PARADIGM and shall be available for use by CUSTOMER under and subject to the license granted in the Contract, the terms and conditions of which are incorporated herein. As between the parties, PARADIGM retains all right, title and interest in and to the IP, including, but not limited to, copyrights, trademarks, service marks, patents and other proprietary rights, and no such rights are conveyed to CUSTOMER by virtue of this Agreement.

8. TERMINATION. In the event of a termination of CUSTOMER's license to use the Software due to CUSTOMER's default, this Agreement shall terminate immediately. PARADIGM may terminate this Agreement in the event of default by CUSTOMER, including failure to pay the annual charge for Standard Support Services within thirty (30) days notice that the same is thirty (30) days or more delinquent. CUSTOMER may terminate its obligations under this agreement at any time, with or without cause, upon providing thirty (30) days' written notice to PARADIGM.

9. NO WARRANTIES. CUSTOMER ACKNOWLEDGES THAT NO EXPRESS WARRANTIES HAVE BEEN MADE BY PARADIGM WITH RESPECT TO STANDARD SUPPORT SERVICES OR SOFTWARE DELIVERED HEREUNDER. PARADIGM DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE WARRANTY, IF ANY, AVAILABLE FOR THE SOFTWARE IS AS SET FORTH IN THE CONTRACT.

10. LIMITATION OF LIABILITY. PARADIGM SHALL NOT BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, REVENUE, BUSINESS OPPORTUNITY OR BUSINESS ADVANTAGE), WHETHER ARISING UNDER CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, BREACH OF STATUTORY DUTY, CONTRIBUTION, INDEMNITY OR ANY OTHER LEGAL THEORY OR CAUSE OF ACTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, PARADIGM'S MONETARY LIABILITY FOR ANY CAUSE UNDER OR RELATING TO THIS AGREEMENT SHALL IN NO EVENT EXCEED THE TOTAL OF ALL AMOUNTS PAID TO PARADIGM BY CUSTOMER FOR STANDARD SUPPORT SERVICES DURING THE ONE (1) YEAR PERIOD PRIOR TO THE DATE ON WHICH ANY CLAIM IS MADE.

11. MISCELLANEOUS.

Complete Understanding. This Standard Support Services Agreement is the entire agreement and understanding between the parties with respect to the subject matter, and as such this Standard Support Services Agreement supersedes all prior and contemporaneous agreements, negotiations, representations and proposals, written and oral, relating to the subject matter. CUSTOMER expressly acknowledges, agrees and represents to PARADIGM that there are no understandings or agreements with respect to the subject matter other than as expressly set forth in this Standard Support Services Agreement. CUSTOMER agrees that no contrary terms and conditions of any subsequent CUSTOMER purchase order, no course of dealing, trade custom or usage of trade, and no warranty made during the course of performance, will apply, unless expressly agreed to by PARADIGM in writing.

Notice. Any notice or communication provided or permitted hereunder shall expressly describe its purpose and scope, and shall be in writing and shall be deemed duly given or made if delivered in person or sent by U.S. certified mail, return receipt requested, postage prepaid, addressed to the party for which it is intended at the address set forth in this Agreement or at any other address specified by a party in writing.

Invalidity. In the event any provision hereof shall be deemed invalid or unenforceable by any court or governmental agency, such provision shall be deemed severed from this Standard Support Services Agreement and replaced by a valid provision which approximates as closely as possible the intent of the parties. All remaining provisions shall be afforded full force and effect.

**Effective Date.** This Agreement shall become effective and shall be binding only upon acceptance by PARADIGM at its offices in Hunt Valley, Maryland. This Agreement, shall be deemed to have been formed in the State of Maryland, U.S.A. and shall be governed by, subject to, and interpreted in accordance with, the laws of that State BUT WITHOUT APPLICATION OF THE MARYLAND UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT (Md. Code Ann., Comm. Law §§22-101 et seq.) or "MUCITA". The parties consent to venue in Harford County, Maryland.

**Non-Solicitation.** During the term of this Agreement and for twelve (12) months thereafter, neither PARADIGM nor CUSTOMER may employ or solicit to employ persons employed by the other.

**Force Majeure.** Except as expressly provided to the contrary in this Agreement, the dates and times by which CUSTOMER or PARADIGM is required to render delivery or performance (but not to make payment) under this Agreement shall be automatically postponed to the extent, and for the period of time, that CUSTOMER or PARADIGM, as the case may be is prevented from meeting such dates and times by reason of causes beyond its reasonable control.

**Inconsistency.** Unless specified to the contrary in any schedule, supplement or other attachment, in the event of any conflict or inconsistency between such items and the provisions of this Agreement, the provisions of this Agreement shall prevail and govern the interpretation thereof. No inference shall be drawn against, and no construction shall be adverse to, the party responsible for drafting or preparing this Agreement or any of its parts, or any addendum hereto, by virtue of such drafting or preparation.

**Limitations.** Any cause or action against PARADIGM arising out of or in connection with this Agreement or any schedule or other agreement executed in connection herewith shall be instituted and served upon PARADIGM not later than eighteen (18) months following the occurrence of the first event giving rise thereto.

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PARADIGM SOFTWARE, L.L.C.  
 10944 Beaver Dam Road, Suite C  
 Hunt Valley, MD 21030-2255

STANDARD SUPPORT SERVICES AGREEMENT  
SCHEDULE "A"

| Qty | UM       | Description  | Unit Price  | Extended Price | Annual Service Charge |
|-----|----------|--|-------------|----------------|-----------------------|
| 4   | Each     | LCD Display  | \$1,900.00  | \$7,600.00     | \$1,140.00            |
| 4   | Each     | Qwerty Keyboard  | \$500.00    | \$2,000.00     | \$300.00              |
| 4   | Each     | Thermal Receipt Printer  | \$700.00    | \$2,800.00     | \$420.00              |
| 4   | Each     | RF Reader eGo Reader   | \$5,200.00  | \$20,800.00    | \$3,120.00            |
| 1   | Each     | 10-user CompuWeigh™ Program concurrent license (SQL Database)  | \$15,000.00 | \$15,000.00    | \$2,250.00            |
| 1   | Flat Fee | MSMQ Module  | \$5,000.00  | \$5,000.00     | \$750.00              |
| 1   | Flat Fee | Accounts Receivable and Aging Module   | \$20,000.00 | \$20,000.00    | \$3,000.00            |
| 1   | Flat Fee | Scale Monitoring Module  | \$5,000.00  | \$5,000.00     | \$750.00              |
| 4   | Each     | WeighStation Program license attached to a scale (MSDE or SQL Database)  | \$5,500.00  | \$22,000.00    | \$3,300.00            |
| 4   | Lane     | Credit Card Processing Module  | \$1,795.00  | \$7,180.00     | \$1,077.00            |
| 4   | Lane     | Video Module   | \$1,500.00  | \$6,000.00     | \$900.00              |
| 4   | Lane     | Light Module   | \$1,000.00  | \$4,000.00     | \$600.00              |
| 1   | Flat Fee | Insufficient Funds/Split Payments Module   | \$5,000.00  | \$5,000.00     | \$750.00              |
| 40  | Hour     | Software Customization – Ability to write transactional data to video system provided by the City. Assumes the City's video system allows this functionality.  | \$150.00    | \$6,000.00     | \$900.00              |
| 8   | Hour     | Software Customization - FNC-170 - System shall update the Account Status field based on Aging Criteria:<br>-Status to be set to Open when the account is current or made current by a payment.<br>-Status to be set to Delinquent when the account is 31+ days past<br>-Status to be set to Cash Only when 61 days past due which will prevent the customer from charging at the transfer station. The Account Status field should be customizable. | \$150.00    | \$1,200.00     | \$180.00              |
| 40  | Hour     | Software Customization - FNC-410 - The System shall provide a built-in safe guard function on the daily distribution/posting payment process that provides an error message for accounts out of balance.   | \$150.00    | \$6,000.00     | \$900.00              |
| 3   | Hour     | Software Customization - FNC-710 - The system will allow selected users to define the fields that are contained in the main screen that retains all of the customer's demographic information. For example we would like to include the customer contact information. For example we would like to include the customer contact information, the start and close date of the account and the type of business etc. as defined by the City.           | \$150.00    | \$450.00       | \$67.50               |
| 3   | Hour     | Software Customization - STD-780 - Notes to an account cannot be changed or deleted.   | \$150.00    | \$450.00       | \$67.50               |

**Annual Service Charge:** **\$20,472.00 / Year**

**Commencing ninety (90) days after installation.**

PARADIGM SOFTWARE, L.L.C.  
10944 Beaver Dam Road, Suite C  
Hunt Valley, MD 21030-2255  
(410) 329-1300

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Agreement") is made by and among Paradigm Software, L.L.C., a Maryland limited liability company ("PARADIGM"), Gessner, Snee, Mahoney & Lutche, P.A., a Maryland corporation (the "ESCROW AGENT") and the undersigned Customer ("CUSTOMER").

This Agreement governs the custody and release of source code to be held by ESCROW AGENT for certain computer software licensed to the CUSTOMER by PARADIGM. The Agreement is effective as of the date of acceptance by PARADIGM at its offices in Hunt Valley, Maryland. The Agreement includes and is subject to all of the Terms and Conditions attached hereto, each of which is incorporated herein.

READ, UNDERSTOOD AND EXECUTED on the date(s) indicated below.

**PARADIGM SOFTWARE, L.L.C.:**

10944 Beaver Dam Road, Suite C  
Hunt Valley, MD 21030-2255

By: [Signature]  
Jackie W. Barlow, II  
Vice President

Date: 01/21/09

**GESSNER, SNEE, MAHONEY & LUTCHE, P.A.**

11 South Main Street  
Bel Air, Maryland 21014

By: [Signature]  
John J. Gessner  
President

Date: Feb. 6, 2009

**CUSTOMER:**

**CITY OF SEATTLE, WA:**

700 5<sup>th</sup> Avenue, #4112  
Seattle, WA 98104-5042

By: [Signature]  
Nancy Locke  
(Type or Print Name)

PURCHASING DIRECTOR  
(Title)

Date: 1/29/9

## TERMS AND CONDITIONS

### 1. Deposits

ESCROW AGENT has accepted and currently holds on deposit a single copy of the source code for certain computer programs ("Source Code") that have been licensed to CUSTOMER pursuant to a written license agreement (the "License Agreement"). PARADIGM shall deposit updated copies of the Source Code upon each general release, and each updated copy shall upon deposit be deemed the Source Code under this Agreement. The copy of the Source Code held by ESCROW AGENT shall be and remain the exclusive property of PARADIGM, and ESCROW AGENT will hold the Source Code as specifically provided in this Agreement. ESCROW AGENT will hold the copy of the Source Code in safekeeping at its offices and may deliver a copy of the Source Code to CUSTOMER, but only under the conditions specified below. Upon reasonable request, and at CUSTOMER's cost, CUSTOMER may examine the copy of the Source Code to verify compliance with the terms hereof. Such examination shall be conducted on a computer to be made available by PARADIGM at its premises in Hunt Valley, Maryland.

### 2. Conditions for Release

CUSTOMER shall be entitled to receive from ESCROW AGENT and to make limited use as herein provided of a single copy of the Source Code, if (i) PARADIGM releases the Source Code to other licensees as a matter of general policy; (ii) refuses to offer CUSTOMER error correction services or changes required to comply with federal regulations at PARADIGM's standard rates and on its standard terms and conditions; (iii) PARADIGM becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or has voluntarily wound up or liquidated its business (or that segment of its business pertinent to the License Agreement); or (iv) PARADIGM as a debtor-in possession or a trustee-in-bankruptcy in a case under the United States Bankruptcy Code rejects the License Agreement. Any of the foregoing events is referred to below as a "Release Condition."

Upon the happening of any Release Condition, CUSTOMER may at its option give ESCROW AGENT written notice (the "Notice") requesting a copy of the Source Code. The Notice shall (i) be labeled "Notice Under Escrow Agreement Dated \_\_\_\_\_," (ii) specify the Release Condition with reference to the applicable section of this Agreement; (iii) identify (by application name, version number and release date, and any other pertinent information) the computer programs for which Source Code is on deposit and which CUSTOMER desires to have released; and (iv) be given within sixty (60) days of CUSTOMER's knowledge of happening of the applicable Release Condition.

Upon receipt of the Notice, ESCROW AGENT shall send a copy to PARADIGM by certified or registered mail, postage prepaid, return receipt requested. If PARADIGM denies or disputes an alleged Release Condition, PARADIGM shall, within fifteen (15) days after the receipt of the copy of the Notice from ESCROW AGENT, deliver to the ESCROW AGENT a statement (the "Statement") identifying its dispute. ESCROW AGENT shall send a copy of the Statement to CUSTOMER by certified or registered mail, return receipt requested, and ESCROW AGENT shall continue to hold the Source Code in accordance with this Escrow Agreement. If ESCROW AGENT does not receive the Statement within the applicable time period, or if ESCROW AGENT is informed in the Statement that PARADIGM's denial of statements in CUSTOMER's Notice does not apply to certain applications or modules, ESCROW AGENT is authorized and directed to deliver a copy of the applicable Source Code to CUSTOMER. Upon delivery to CUSTOMER under any circumstances, the Source Code shall become a part of the licensed software (as defined in the License Agreement) and shall be subject to all of the license and confidentiality provisions and obligations set forth in the License Agreement.

In the event that PARADIGM delivers the Statement to ESCROW AGENT in the manner and within the time period set forth above, ESCROW AGENT shall not release a copy of the Source Code or any part thereof, to CUSTOMER unless (i) required to do so by order of a court of competent jurisdiction, or (ii) ESCROW AGENT has received written instructions with authorized signatures of both PARADIGM and CUSTOMER requesting release to CUSTOMER. The ESCROW AGENT may withhold release of the Source Code to the CUSTOMER if fees or costs owed by the CUSTOMER to the ESCROW AGENT are unpaid.

**3. Payments and Fees**

CUSTOMER shall pay to PARADIGM \$200.00 upon the execution of this Agreement for the establishment of an account plus \$100.00 for the initial deposit. Thereafter, CUSTOMER shall pay to PARADIGM \$100.00 per calendar year for maintenance of the account.

CUSTOMER shall pay to PARADIGM and PARADIGM shall pay the ESCROW AGENT \$300.00 as an Acceptance Fee for the establishment of the account plus \$100.00 for the initial deposit. Thereafter, CUSTOMER shall pay to PARADIGM and PARADIGM shall pay the ESCROW AGENT an annual fee for maintenance of the account according to the ESCROW AGENT's Schedule of Fees in effect from time to time, which amount is currently \$100.00 per calendar year. CUSTOMER shall pay the Acceptance Fee at the time the ESCROW AGENT signs the Escrow Agreement. CUSTOMER shall further reimburse ESCROW AGENT for all out of pocket costs in connection with its performance of services hereunder, including without limitation the cost of media, copies, delivery charges, long distance charges, postage, shipping, handling and insurance.

**4. Termination**

It is the responsibility of the CUSTOMER to forward the annual Escrow Fee to the ESCROW AGENT. Failure of CUSTOMER to pay the ESCROW AGENT the applicable fees, within 30 days written notice of payment due, shall result in the termination of the Escrow Agreement and ESCROW AGENT's obligations under the terms thereof, in which case ESCROW AGENT shall return the Source Code to PARADIGM.

This Agreement shall terminate upon delivery of a copy of the Source Code to CUSTOMER in accordance with the terms of this Agreement or the termination of the License Agreement, whichever occurs first. The delivery of a copy of the Source Code to CUSTOMER hereunder shall act as a termination of all of PARADIGM's responsibilities, all of PARADIGM's warranties, and all of PARADIGM's software maintenance obligations under the License Agreement and all other agreements.

**5. Limitation on ESCROW AGENT's Responsibility and Liability**

As a fiduciary, conservator, receiver or guardian of the computer disc that it receives, ESCROW AGENT's obligation is solely one of safekeeping. ESCROW AGENT shall not be obligated or required to examine or inspect the Source Code. The ESCROW AGENT cannot and does not warrant the content of the computer disc that it receives from PARADIGM, which purports to contain the Source Code. ESCROW AGENT's obligation for safekeeping shall be limited to providing the same degree of care for the Source Code as it maintains for its valuable documents and those of its CUSTOMERS at the same location. However, ESCROW AGENT shall not be responsible for any loss or damage to the Source Code due to changes in atmospheric conditions (including, but not limited to, failure of the air conditioning system), unless such changes are proximately caused by the gross negligence or malfeasance of ESCROW AGENT. ESCROW AGENT shall be protected in acting upon any written notice, request, waiver, consent, receipt or other paper or document furnished to it, not only in assuming its due execution and the validity and effectiveness of its provisions but also as to the truth and acceptability of any information therein contained, which it in good faith believes to be genuine and what it purports to be.

In no event shall ESCROW AGENT be liable for any act or failure to act under the provisions of this Escrow Agreement except where its acts are the result of its gross negligence or malfeasance. ESCROW AGENT shall not have duties except those which are expressly set forth herein, and it shall not be bound by any notice of a claim, or demand with respect thereto, or any waiver, modification, amendment, termination or rescission of this Escrow Agreement, unless such notice is in writing and actually received, and, if its duties herein are affected, unless it shall have given its prior written consent thereto.

PARADIGM and CUSTOMER shall jointly and severally indemnify ESCROW AGENT against any loss, liability, or damage (other than any caused by the gross negligence or malfeasance of ESCROW AGENT), including reasonable costs of litigation and counsel fees, arising from and in connection with the performance of its duties under this Agreement.

Attachment #4, Escrow Agreement  
Vendor Contract #00002382

PARADIGM and CUSTOMER acknowledge that ESCROW AGENT has previously represented and represents PARADIGM regarding other transactions, but nonetheless enter into this agreement, consent to the representation by ESCROW AGENT of PARADIGM, and waive any conflict created hereby, whether actual or potential, real or perceived. Each party has been advised to seek legal representation prior to executing this agreement. PARADIGM and CUSTOMER acknowledge that neither this Agreement nor their waiver of any potential conflict created hereby will materially limit the ability of the ESCROW AGENT to perform hereunder or to represent PARADIGM as to matters unrelated hereto.

**6. Bankruptcy**

PARADIGM acknowledges that this Escrow Agreement is an "agreement supplementary" to the License Agreement as provided in Section 365(n) of Title 11, United States Bankruptcy Code (the "Code"). PARADIGM acknowledges that if a Trustee in a case under the Code rejects the License Agreement or this Escrow Agreement, CUSTOMER may elect to retain its rights under the License Agreement and this Escrow Agreement as provided in Section 365(n) of the Code. After the commencement of a case under the Code by or against PARADIGM, and unless and until the License Agreement is rejected upon written request of CUSTOMER to the Trustee, Trustee (a) shall not interfere with the rights of CUSTOMER as provided in the License Agreement and this Escrow Agreement, including the right to obtain the Source Code from the ESCROW AGENT. If the Trustee rejects the License Agreement or this Escrow Agreement and CUSTOMER elects to retain its rights hereunder and upon written request of CUSTOMER to the Trustee, the Trustee shall provide the Source Code to the CUSTOMER.

**7. Resignation**

The ESCROW AGENT may resign by delivery of a 30 day written notice to both PARADIGM and the CUSTOMER. The ESCROW AGENT will deliver the Source Code upon the joint written direction of PARADIGM and the CUSTOMER received within 30 days of the date on the ESCROW AGENT's notice of resignation. If no joint direction is received within the time period outlined, the Source Code will be delivered to Heyl Oats Vogel Insurance Agency, Attention Mr. Roddy Heyl, 5420 Klee Mill Road S, Sykesville, MD 21784-9230 to serve as acting trustee, until the parties mutually agree on a successor escrow agent.

**8. Miscellaneous**

**Complete Understanding.** This Escrow Agreement is the entire agreement and understanding between the parties with respect to the subject matter, and as such this Escrow Agreement supersedes all prior and contemporaneous agreements, negotiations, representations and proposals, written and oral, relating to the subject matter. CUSTOMER expressly acknowledges, agrees and represents to PARADIGM that there are no understandings or agreements with respect to the subject matter other than as expressly set forth in this Escrow Agreement. CUSTOMER agrees that no contrary terms and conditions of any subsequent CUSTOMER purchase order, no course of dealing, trade custom or usage of trade, and no warranty made during the course of performance, will apply, unless expressly agreed to by PARADIGM in writing.

**Notice.** Any notice or communication provided or permitted hereunder shall expressly describe its purpose and scope, shall be in writing and shall be deemed duly given or made if delivered in person or sent by U.S. certified mail, return receipt requested, postage prepaid, addressed to the party for which it is intended at the address set forth in this Agreement or at any other address specified by a party in writing.

**Invalidity.** In the event any provision hereof shall be deemed invalid or unenforceable by any court or governmental agency, such provision shall be deemed severed from this Escrow Agreement and replaced by a valid provision which approximates as closely as possible the intent of the parties. All remaining provisions shall be afforded full force and effect.

**Effective Date.** This Agreement shall become effective and shall be binding only upon acceptance by PARADIGM at its offices in Hunt Valley, Maryland, and it shall be governed by, subject to, and interpreted in accordance with, the laws of the State of Maryland.

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