

**CONTRACT FOR INFORMATION TECHNOLOGY (IT)
GENERAL ELECTRIC PROFICY iFIX SOFTWARE LICENSING and
ASSOCIATED SERVICES FOR SECURITY SYSTEM INTEGRATION BY M.C. DEAN, INC.**

THIS CONTRACT is being entered into this _____ day of _____, 2009, by and between the CITY OF LAS VEGAS (hereinafter the "City"), a municipal corporation within the State of Nevada having its principal office at 400 Stewart Avenue, Las Vegas, Nevada 89101, and MC DEAN, INC. (hereinafter the "Company") having its principal office located at 1045-B South High Street, Harrisburg, Virginia, 22801.

SECTION A – Contract Form

The subject matter of this Contract is to provide the Software license and services, which include project planning, data collection, application development, testing, integration, acceptance testing, installation, final acceptance, implementation, training, and Support and Maintenance for General Electric Proficy iFIX Software and Security System Integration services provided by M.C. Dean, Inc.

SECTION B – Basic Terms

B-1 Definitions

The following definitions apply to this Contract:

- (a) "Acceptance or Accepted" means written notification by the City to the Company that the Deliverables received in their current form are satisfactory to the City according to the terms of the Contract.
- (b) "Acceptance Testing Period" means the 90 days following completion of the installation and, if required, customization of the Software during which the City will formally test the Software to determine whether it performs according to the functional requirements.
- (c) "Award Date" means the date that a Contract becomes effective. It is the date that is entered into the first paragraph of a Contract upon execution by an authorized representative of the City.
- (d) "City" means the employees, agents, consultants, or contractors of the City of Las Vegas, or Facilities Managers, and Persons who need to use the Licensed Product(s) in the performance of their duties for the City and who are authorized and enabled by an Affiliate to access and utilize the Licensed Product(s).
- (e) "City Council" means the governing body of the City of Las Vegas.
- (f) "Company" means the individual, partnership, or corporation responsible for the performance of services under this Contract.
- (g) "Company Representative" means the individual authorized to act on behalf of the Company regarding routine matters arising under or relating to this Contract.
- (h) "Concurrent User" means number of users allowed to simultaneously access a system.
- (i) "Contract" means this document, consisting of Sections A through F, which is binding and effective only upon execution by the City.
- (j) "Defect" means (a) any bug error, contaminate, malfunction, omission or other defect in the Software caused by, arising from or emanating from the Software within reasonable control of the Company which produces results or actions other than those described in the Specifications and would otherwise render the Software in violation of the Contract; or (b) the media on which the Licensed Product(s) is delivered is damaged such that the software does not load properly, or (c) the Documentation contains gaps and/or erroneous information with regard to the Licensed Product(s).

- (k) "*Deliverable*" means any report, Software, hardware, data, Documentation, or other tangible item that the Company is required to provide to the City under the terms of the Contract.
- (l) "*Development Services*" means the professional services required to design and develop a Software or integration solution for the City.
- (m) "*Disaster*" means an unplanned interruption (a) in the City's processing services or (b) in telecommunications to or from one or more of the City's facilities due to a cause beyond the control of the City and which at the time of occurrence can be reasonably projected to last over four hours.
- (n) "*Disaster Recovery Computer(s)*" means one or more computers which are not Licensed Computers and which the City has a right to use in the event of a Disaster.
- (o) "*Documentation*" means explanatory information or materials concerning the Licensed Product, in printed or electronic format, which the Company will provide to the City in connection with the use of the Licensed Product, including, without limitation, specifications, manuals, descriptions, user and/or installation instructions, diagrams, printouts, listings, flowcharts and training materials, contained on visual media such as paper or photographic film, or on other physical storage media in machine-readable form.
- (p) "*Enterprise*" means the entire organization of the City and is inclusive of all systems and users. The City's Enterprise networking infrastructure involves a myriad of interfaces that integrate disparate computing and communications systems.
- (q) "*Escrow Agent*" means the person or company with whom the Escrow Materials will be deposited and maintained.
- (r) "*Escrow Materials*" means a current copy of the source code and all documentation for the Licensed Product(s) (including the deposit of each Update within thirty (30) days after release).
- (s) "*Facilities Manager*" means one or more of any person in the business of providing computer facilities management and/or outsourcing services.
- (t) "*Firm-Fixed Price*" means a firm price that is not subject to any adjustment on the basis of the company's cost experience in performing the Contract.
- (u) "*Hardware*" means any central processing unit and/or the data processing equipment utilized by the City.
- (v) "*Installation Costs*" means all costs including engineering, hardware, panel fabrication, installation and testing.
- (w) "*Intellectual Property Rights*" means trade secret, copyright, patent, and all other intellectual property rights of the Company.
- (x) "*License Fee(s)*" means the fee(s) charged by the Company to the City for the Licensed Product(s) and Documentation.
- (y) "*Licensed Computer(s)*" means one or more of the computers located at any facility of the City.
- (z) "*Licensed Product(s)*" means all computer programs or other electronically readable product, in machine readable, or object code, all documentation, all Software modifications, and all technical information provided to the City or created for the City pursuant to this Contract now or in the future, and regardless of the language, medium or format in which they may be stored, recorded or delivered.
- (aa) "*Licensed Site(s)*" means the City of Las Vegas, Las Vegas, Nevada site as designated by the City.

- (bb) *"New Release(s)"* means an update of Licensed Product issued as a "New Release", which includes all Program Temporary Fixes (PTF), together with such other corrective updates and improvements to Licensed Product which the company may, in its discretion, develop and deem ready for distribution. A New Release is licensed to City's Licensed Site only under the same terms as the old release. A New Release will have a new number to the right of the decimal point in the product number. For example: a change of the product numbering from Version 2.2 to Version 2.3 would evidence a New Release.
- (cc) *"New Version(s)"* means Software with an enhanced feature or performance characteristic that is identified by the numeral(s) to the left of the first decimal point, with the newer version having the larger numeral.
- (dd) *"Non-exclusive Contract"* means a Contract under which the City agrees to obtain some, but not necessarily all, of the City's requirements for a particular service.
- (ee) *"Person(s)"* means one or more natural persons and/or legal entities.
- (ff) *"Processing Services"* means the data processing services necessary for the City to conduct its business in the ordinary course. These data processing services include but are not limited to allowing the City and third parties (a) to use the Licensed Product(s), (b) to have access to the Licensed Product(s), and/or (c) benefit from the Licensed Product(s).
- (gg) *"Program Temporary Fixes (PTF's)"* means a patch or corrective update of the Licensed Product which the company prepares on an interim basis to correct programming errors which prevent or obstruct normal operation of the Licensed Product in accordance with the applicable then-current Documentation. PTFs are licensed to City under the same terms as Licensed Product.
- (hh) *"Project Manager (PM)"* means the City representative who is responsible for the coordination of the Contract between the City and the Company.
- (ii) *"Proprietary Information"* means the Licensed Product and Documentation, any modifications, updates or enhancements, and the Company's written technical, business, financial or marketing information relating to inventions or products, research and development, production, manufacturing or engineering processes, costs, profit, or margin information, employee skills and salaries, finances, the City's marketing and production, know-how and data, whether written, oral or graphical, which may have been provided or may be provided by either party, (including any analysis, materials, product or conclusions drawn or derived therefrom) or which may be derived from or related to any visits by either party's personnel to the other party's locations or may be otherwise known to either party through its visits or contacts with the other party, and future business plans which are clearly marked as proprietary or confidential.
- (jj) *"Software"* means the programs, routines, and symbolic languages that control the functioning of the Hardware and direct its operation, including, without limitation, computer software programs, Source Code, object code, executable code, or other program or code format whatsoever, whether now known or hereafter developed, existing on any storage media whether machine executable or human readable, printed or imprinted form, including, without limitation, modifications, enhancements, translations, updates and upgrades thereto.
- (kk) *"Software Maintenance Fee"* means the cost of maintenance per user license.
- (ll) *"Source Code"* means a series of machine instructions in human readable form from which an object code may be generated.
- (mm) *"Source Code Escrow"* means an arrangement whereby certain content (including without limitation, the Source Code) is held in escrow by an escrow agent in accordance with certain provisions, including, without limitation, that such content shall be released to the City under the conditions set forth in the escrow agreement.

- (nn) "*Specifications*" means the information which fully describes the capacity and functionality of the Licensed Product(s) as set forth in the Documentation, written proposals, if any, and any additional specifications as set forth in the Licensed Product schedule.
- (oo) "*Support and Maintenance Program*" means the services addressing the repair and upkeep for continued optimum performance and functionality of the Software including, without limitation, the Company providing the City with all Updates, telephone support, and membership in the user groups for Licensed Products.
- (pp) "*Training Services*" means those services provided by the Company at no charge that consists of instruction on functionality, utilization and operation of the Software.
- (qq) "*Training Workbook*" means a workbook that provides a step-by-step guide to the material covered in training with picture examples of all screens and selection items.
- (rr) "*Travel Expenses*" means authorized expenses associated with activities and duties required to provide services, such as air fare and per diem.
- (ss) "*Updates*" means all updates, enhancements, modifications, alternations, improvements, corrections, revisions, releases, Program Temporary Fixes, upgrades, and New Versions issued and other changes to the Licensed Product(s) therefore, including but not limited to Updates made after the Award Date, which the Company generally makes available for the Licensed Product(s) at no additional license fee, provided the City has ordered technical support for such Licensed Product(s) for the relevant time period.
- (tt) "*User*" means either (a) a natural Person, or (b) a computer application or process; either of which is authorized to access, use, and receive the benefit of the Licensed Product(s) pursuant to this Contract under the terms authorized in the Licensed Product(s) Schedule specified in Paragraph B-3 (Prices/Costs).
- (uu) "*Version*" means the distribution of the Licensed Product(s) by the Company such that ongoing changes made to such Product are designated usually in the form of Updates.
- (vv) "*Virus(es)*" means viruses, worms, Trojan horse, built-in, or use-driven destruction mechanisms and any injurious or damaging formulas, instructions or other materials.

B-2 Contract Type

The Contract type provides for the payment of a Firm-Fixed Price for Software and associated services. This is a Non-exclusive Contract.

B-3 Prices/Costs

- (a) The City will pay the Company the amounts listed below.

<u>Item No.</u>	<u>Description</u>	<u>Amount</u>
1	Installation Cost	\$261,223
2	SCADA Software	\$ 59,634
	Total	\$320,857

- (b) **ANNUAL SOFTWARE SUPPORT AND MAINTENANCE PROGRAM (AS FURTHER DESCRIBED IN ATTACHMENT 2):** The Company shall provide the Support and Maintenance Program at no charge to the City during Software Acceptance Testing Period and the training and implementation period for each Licensed Product licensed hereunder. After Acceptance, the Company shall provide the Support and Maintenance Program for each Licensed Product during the initial 12 months at no additional charge. Following the no cost period, the City will pay the Company an annual amount of

\$18,200.00 for annual Software Support and Maintenance Program (Attachment 1) for the licenses purchased in this Contract for as long as the City Project Manager deems necessary. This fee will be invoiced annually, approximately 45 days prior to the due date, beginning one year after Software Acceptance Testing Period, but limits the escalation of said fees to no more than 3% per year, or the most appropriate CPI/PPI index, whichever is less. Any escalation in fees must be requested in writing by the Company 60 days prior to the date the annual fees are due. This fee includes, but is not limited to telephone support, membership in the Company's user group, Program Temporary Fixes, New Releases and New Versions.

- (h) **TRAVEL EXPENSES:** If travel is required in performance of services under this Contract, reasonable travel expenses will be paid when services are performed in Las Vegas. Reimbursement is subject to certain limitations. The City will reimburse airfare up to the cost of a coach fare, with 7-day advance purchase. Reimbursement for all other expenses including, but not limited to, lodging, meals, transportation, parking, and incidental expenses, will be paid at a per diem rate of \$180.00 per day. This per diem rate will start concurrently with the first day of work performed on-site at the City and end with the last day of scheduled on-site work at the City. The Company must complete a minimum of six (6) hours of work for every day a per diem is paid. The Company shall coordinate all travel in advance with the City's Project Manager. The City's Project Manager must approve any deviations to these procedures.

B-4 Performance Period

This Contract commences from Award Date through December 31, 2010. The Support and Maintenance Program provisions of this Contract remain in effect for 24 hours per day, 7 days per week until the City terminates such services through written notification. Should the City later elect to reinstate the Support and Maintenance Program, the City may do so by paying the Company's then current reinstatement fees in effect at the time of the reinstatement. In no event will Support and Maintenance Program be a condition of any license granted hereunder and the availability of Support and Maintenance Program on each Licensed Product licensed hereunder shall be independent of the same services for any other Licensed Product.

B-5 Invoices

- (a) The Company shall submit an invoice to the City in accordance with the payment schedule set forth in Paragraph B-3 (Prices/Costs). All invoices should identify the following items:
- (i) the date of the invoice;
 - (ii) the Contract Item against which charges are made;
 - (iii) performance dates covered,
 - (iv) Receipts for airline tickets, and
 - (v) the associated purchase order number.
- (b) Upon reconciliation of all errors, corrections, credits, and disputes, payment to the Company will be made in full within 30 calendar days. **Invoices received without a valid purchase order number will be returned unpaid.** The Company shall submit an original invoice to:

Department of Finance and Business Services
ATTN: Accounts Payable
City of Las Vegas
400 Stewart Ave.
Las Vegas, NV 89101 – 2986

- (c) A representative of the Company shall sign and certify the invoice in the following manner: "I hereby certify, under penalty of perjury, that the above invoice is just and correct and that reimbursement for such expenses listed on this invoice has not been previously received from the City of Las Vegas or any other source."

- (d) The Company shall forward a copy of the original invoice to the City's Project Manager identified in Paragraph D-2 (Project Manager/Company Representative).

SECTION C – Statement of Work

C-1 Scope of Services

- (a) The Company shall provide systems wiring and low-voltage cabling to interface the replacement SCADA servers and clients with the existing field devices and security networks located at the City of Las Vegas Detention Center.
- (b) The Company shall provide, install and program the following systems per Manufacturer's guidelines and codes described in these specifications:
 - (i) Door Control System: The 8 existing Rauland-Borg SecurePlex door control systems shall have TCP/IP -> RS-485 serial communication protocol converters installed to connect with the security system network switch located in the same room with each SecurePlex system.
 - (ii) Security System Integration Software: The 14 existing integration client workstations (OASIS) will be replaced with two (2) new City supplied, Dell servers and twelve (12) new City-supplied Dell workstations that shall have the Company's specified security system integration software installed. The new server and client workstations shall be configured for maximum system performance and shall have Microsoft Windows XP Professional as the installed operating system. The Company shall install Six (6) new RS-422 serial servers or converters to interface the existing Pelco 9760 CCTV system. The specified security system integration software shall be capable of all integration and control functions that are supported by the current system (OASIS). The new security integration software clients will be installed in parallel with the existing integration system (OASIS) while being programmed and tested. Once the new security system integration software is fully programmed and tested, existing security sub-system control shall be transferred to the new security system integration clients. Once the new system is fully operational, the existing system (OASIS) shall be removed and returned to the City.
 - (iii) Interface the existing Pelco 9760 CCTV system, the existing TOA Electronics IC-100 intercom system, the existing Rauland-Borg SecurePlex door control systems and the existing security system Ethernet network. Utilize existing raceways and 120VAC power systems as required.
- (c) The Company shall be responsible for the removal of the existing OASIS security system integration system. System shall be removed after all the existing and upgraded sub-systems are transferred and connected to the new security integration software system. Removal shall follow a phased transfer plan prepared by the Company and approved by the City. All removed items shall be returned to the City.
- (d) The Company shall be responsible for all cutting, patching and painting, restoration of finishes to match existing finishes, patching holes and other damages to walls/ceilings caused as a result of installation of new equipment or demolition of existing equipment.
- (e) The Company shall ensure that all equipment, systems and materials furnished and installed under this section shall be installed in accordance with the following standards:
 - (i) National Fire Protection Association (NFPA)
 - (ii) Uniform Building Code
 - (iii) National Electric Code
 - (iv) Americans with Disabilities Act (ADA)

- (v) Applicable EIA/TIA premise cabling codes.
 - (vi) All applicable State of Nevada codes.
- (f) The Company shall provide the following hardware:
- (i) RS-422 & RS-485 serial servers or converters: Company shall select hardware that introduces the least amount of latency to the security command and control functions of the system.
- (g) The Company shall provide hardware that meets the following functional specifications: The security system integration software shall be capable of communication with and / or control of the following sub-systems:
- (i) Multi-mode 62.5µ Fiber-optic Campus Network Backbone with ST Terminations: This backbone provides for an independent security network that is connected to gigabit Ethernet switches in each security equipment room.
 - (ii) Symmetricom SyncServer 300 Network Time Server: NTP server provides legally traceable time for systems on the security network. The NTP server is located in the UPS room of the Visitation building and is connected to the local Netgear security network switch.
 - (iii) TOA Electronics IC-100 Intercom System: This system is comprised of 5 IC-100 intercom "exchanges" that are hard wired together by copper twisted pair cables between the facility buildings. All intercom substations, master stations and paging amplifiers are connected to the 5 exchanges. The existing security system integration software (OASIS) interfaces with the IC-100 via RS-232 connection to exchange #5 through a single computer located in the UPS room of the Visitation building.
 - (iv) Pelco 9760 CCTV Matrix System: All facility CCTV cameras are connected to the Pelco matrix located in the UPS room of the Visitation building, either directly or via fiber optic media conversion. All cameras loop out from the matrix bays to Pelco DX8016 digital video recorders in the same location. The existing security system integration software (OASIS) interfaces with the 9760 matrix with 6 individual virtual keyboards via RS-422 serial protocol. The installation currently uses 3 different methods to achieve serial conversion; 2 workstations utilize a hardwired serial converter, 2 workstations use a USB to serial conversion and the other 2 workstation communicate by Lantronix network serial device servers. RS-422 devices utilized by the security system integration clients shall be standardized under this contract.
 - (v) Rauland-Borg SecurePlex Door Control System: There are 8 SecurePlex systems at the Detention facility, 1 system for each housing unit (1 through 7) and 1 additional system located in the Visitation building electric room. The SecurePlex systems control all of the facilities electrically operated doors, gates and alarm points. Current communication is via hardwired RS-485 serial converters connected to individual integration system workstations (OASIS), 1 in each housing unit (1 through 7) and 1 workstation in the Control Center. The Company shall upgrade all 8 SecurePlex units to Ethernet communications under this contract.
 - (vi) OASIS Security Integration Software and Workstations: There are 14 OASIS workstations, 1 in each housing unit (1 through 7), 5 in the Control Center (WS-2 through WS-6), 1 in the VDF rack located in the UPS room of the Visitation building and 1 located in building "F" for maintenance use. All workstations are connected to Netgear gigabit Ethernet switches located in the same building as each workstation. These 14 workstations shall be replaced by new City-supplied servers / workstations and returned to the City as specified under this Contract.

- (h) The Company shall provide hardware that meets the following functional requirements:
- (i) Each security integration Software workstation located in the housing units (1 through 7) shall only be capable of controlling the doors and lights inside of that unit. There shall be no functions programmed that would allow control of exterior doors or devices. There shall be no functions programmed for control of any part of the CCTV or intercom systems. Each workstation in the housing units shall have the capability of becoming totally disabled on command from any workstation located in the Control Center.
 - (ii) The security integration Software workstations located in the Control Center and Building "F" shall be capable of operating all devices programmed into the system including doors, gates, alarm points, intercoms and CCTV cameras. These workstations each have an existing CCTV "alarm" monitor and an intercom master station. System programming shall associate devices with CCTV cameras so that device state changes are observed on each "alarm" monitor (i.e. intercom substation call-in commands the CCTV switcher to display camera at gate on monitor). Associative programming of cameras shall be used for all doors, gates, intercoms and alarm points that have CCTV coverage.
 - (iii) Each electrified door, automatic gate, alarm sensor, CCTV camera and intercom shall be designated as a separate control point on the security system integration Software floor plan maps with a text descriptor. Each point shall change color when the state of that device changes. Locks shall be displayed in red when activated and change to a dark red if left unsecured. Alarm points shall be displayed in red and flash when activated and change to dark red when acknowledged. Privilege buttons and controls shall be displayed in yellow when the locks are in access mode (i.e. the privilege button is enabled and pushing the button will unlock the door) and in green when they are excluded. CCTV cameras shall be displayed in orange when a camera is selected either manually or by alarm. Intercom stations shall be displayed in blue when selected manually and shall flash when call in is received (alarm state). The status of every device on a given map or floor plan shall be indicated dynamically and refreshed instantaneously (locked / unlocked / alarmed / call-in / privilege on-off-excluded).
 - (iv) Locks shall be controlled (locked & unlocked) individually or in pre-programmed logical groups. Group access and group release functions shall be provided.
 - (v) An emergency override release function shall be provide to unlock doors in a programmed escape sequence from the Control Center in case of fire or other life safety emergencies.
 - (vi) The system shall be capable of logically interlocking doors (mantrap) at vestibules and sally ports through Software programming. The system shall also provide the capability of overriding interlocks on command from the Control Center workstations.
 - (vii) Individual cell doors have push buttons on each side of the door. These push buttons serve two purposes: first, when the privilege control (at the officer station) associated with that particular push button is not activated, the push button serves as a "call-in" button. When the privilege control is activated, the push button when pressed releases the door lock. The privilege function is controllable in separate groups of entry and exit (in & out) buttons, and also segregated by floors. Individual doors may be excluded from participation in the group functions, and individual doors may be granted privilege access without activating any group functions.
 - (viii) The security system integration Software shall be fail secure, such that no workstation or Software failure shall cause a secure device to change state.
 - (j) The Company shall supply cable Tags or markers: Self-adhering, machine printed vinyl tape markers as produced by Dymo or Brady or City approved equivalent. The cable markers shall be provided at the following: (i) a point within 6 inches upon entry at any panel, termination or splicing box and (ii) all wire leads within 2 inches from any terminal block.

- (k) The Company will install all equipment and materials in accordance with the current recommendations of the manufacturer. The installation shall be accomplished by technicians skilled in this type of work. The drawings shall indicate the extent and the general location and arrangement of equipment, conduit, and wiring so it will be properly located and readily accessible for maintenance and operation. Work shall be performed in accordance with applicable requirements of facility wiring guidelines of National Electric Code.
- (l) The Company shall be responsible for all programming of the security system integration Software, including system passwords, network configuration, operator levels and other general system management parameters. The Company shall coordinate programming issues with the City.
- (m) The Company shall be responsible for the Acceptance Test Plan. The Acceptance Test Plan shall be prepared by the Company and approved by the City prior to commencement of acceptance testing. Acceptance testing shall be performed when the system is fully installed and operational. Tests shall be conducted in the presence of the City. The Company shall provide all personnel and equipment necessary to accomplish the test program. Upon successful completion of acceptance testing of the system, the Company and City shall sign the acceptance test form signifying system acceptance.
- (n) The Company shall provide the training in the complete operation of the system. Training in the operation and maintenance of the security system integration software shall be provided by the Software manufacturer's trainer / engineer. All training sessions shall be conducted on site at the Detention facility. Training schedules shall be coordinated with the City. All training materials are to be provided by the Company. Training shall be provided as follows:
 - (i) A minimum of three (3) City employees shall be trained in the complete installation, programming, operation, and maintenance and servicing of the installed systems. All system features, capabilities and diagnostic tools shall be covered in this session. This session shall consist of a minimum of twenty-four (24) hours of on-site training immediately prior to the installation start date. This session shall provide the knowledge required for the City's selected representative to work closely with the Company during the installation of the Software to customize the system to suit the City's needs.
 - (ii) When the new system is operational in the Control Center a minimum of two (2) and a maximum of four (4) Control Center Supervisors shall be trained, 1 or 2 at a time, during two (2) different shifts (day and swing). These training sessions shall include operator set-up and extensive explanations about system features, capabilities, operation and maintenance of the system. A minimum of two (2) and a maximum of four (4) sessions will be provided in a maximum 4-hour block of instruction, per session.
 - (iii) The Company shall provide two (2) group training sessions, four (4) hour maximum, to train all available Public Safety Technicians, Detention Sergeants and selected trainers on the new security system integration software. These training sessions shall include extensive explanations about system features, capabilities operation and maintenance of the system. These sessions shall cover essentially the same topics covered during the Control Center Supervisor training, excluding the operator set-up and maintenance topics.

C-2 Cities Responsibilities

- (a) The City will provide the electrical requirements. The majority of the raceway system and electrical power requirements are currently-existing; including uninterrupted power supply (UPS) conditioned 120VAC power. The City shall provide additional raceway and power requirements for this project, if required. The City shall coordinate with the Company for the timing of their installation.
- (b) The City shall provide technical Support: The City will provide a full-time project representative during all on-site phases of the installation.
- (c) The City will provide two (2) new servers and fourteen (14) new workstations with required peripherals, configured with the Microsoft Windows XP operating system as required.

C-3 Deliverables.

- (a) The Company shall provide the City the following to review and approve according to the following schedule:
- (i) Drawings: Shop drawings including point-to-point diagrams of all systems within twenty eight (28) days of contract award.
 - (ii) Project Schedule: The Company shall prepare and submit to the City a Project Schedule within fourteen (14) days of Contract Award. This plan is to detail the Company's intended schedule for work in each location on the site and is to identify each phase of the work as described in the following paragraphs. The Company shall coordinate with the City and revise the schedule as requested.
 - (iii) Record As-built drawings: Design drawings will be provided to the Company after award of Contract, on CD-R, in AutoCAD 2007 format. Upon completion of installation, the Company shall prepare as-built drawings of the system in AutoCAD 2007 format and submit them on CD-R diskette for approval prior to the system acceptance "walk through". These "as-built" drawings shall include floor plans with device locations, cable routing and quantities of each cable type installed, wire numbers as tagged, and updated point-to-point system wiring diagram of the system including actual device connections. These drawings shall also indicate any deviations from the original design document to indicate true "as-built" conditions.
 - (iv). Operations and Maintenance Manuals: Four (4) sets of manuals shall be provided explaining the programming, operation and maintenance of the systems. They must include sections explaining system.

SECTION D – Special Clauses

D-1 Legal Notice [CAO-7/24/08]

- (a) All legal notices required pursuant to the terms and conditions of this Contract shall be in writing, unless an emergency situation dictates otherwise. Any notice required to be given under the terms of this Contract shall be deemed to have been given when:
- (i) received by the party to whom it is directed by hand delivery or personal service;
 - (ii) transmitted by facsimile with confirmation of transmission, or
 - (iii) sent by U.S. mail via certified mail-return receipt requested at the following addresses:

FOR THE CITY: City of Las Vegas
 Manager, Purchasing and Contracts
 City Hall, First Floor
 400 Stewart Avenue
 Las Vegas, Nevada 89101-2986
 Fax: (702) 384-9964

FOR THE COMPANY: M. C. Dean, Inc.
 Robert A. Link
 1045-B South High Street
 Harrisonburg, Virginia 22801
 Fax: (540) 442-1689

- (b) The parties shall provide written notification of any change in the information stated above.

- (c) An original signed copy, via U. S. Mail, shall follow facsimile transmissions.
- (d) For purposes of this Contract, legal notice shall be required for all matters involving potential termination actions, litigation, indemnification, change orders over \$50,000, and unresolved disputes. This does not preclude legal notice for any other actions having a material impact on the Contract.
- (e) Routine correspondence should be directed to the Project Manager or the Company Representative, as appropriate.

D-2 Project Manager/Company Representative [CAO-7/24/08]

- (a) The City designates Ray Christensen as the Project Manager for this Contract. The City will provide written notice to the Company, should there be a subsequent Project Manager change. The Project Manager will be the Company's principal point of contact at the City regarding any matters relating to this Contract, will provide all general direction to the Company regarding Contract performance, and will provide guidance regarding the City's goals and policies. The Project Manager is not authorized to waive or change any material terms of the Contract.
- (b) The Company designates Robert Link as the Company Representative for this Contract. The Company will provide written notice to the City, should there be a subsequent Company Representative change. The City has the right to assume that the Company Representative has full authority to act for the Company on all matters arising under or relating to this Contract.

D-3 Licenses/Registrations [CAO-7/24/08]

During the entire performance period of this Contract, the Company shall maintain all federal, state, and local licenses, certifications and registrations applicable to the work performed under this Contract. All companies conducting business with the City must have a City of Las Vegas Business License.

D-4 Representations and Warranties

- (a) *General Warranty.* The Company covenants, represents and warrants:
 - (i) that it has the authority to enter into this Contract and that it is not bound by any agreement, obligation or restriction, and will not assume any obligation or restriction or enter into any agreement, which would interfere with its obligations hereunder or the rights granted to the City hereunder;
 - (ii) that there are no rights outstanding which would diminish, encumber or impair the enjoyment or exercise of the rights granted to the City hereunder;
 - (iii) that each Licensed Product (including Updates made after the Award Date) shall operate in accordance with the Specification(s) published by the Manufacturer;
 - (iv) that the Company will procure all Licensed Product(s) in the name of the City;
 - (v) that there are no pending actions or proceedings in law or equity and no claims asserted in arbitration, in any other tribunal or otherwise that the Company believes will affect any right, title or interest granted to the City hereunder and that the Company is not aware of any unasserted claims of any third party affecting the same;
 - (vi) that the Licensed Product(s) does not infringe or otherwise violate any Intellectual Property Right or other right of any third party; and
 - (vii) that in developing and licensing the Updates and providing the Support and Maintenance Program, the Company will not infringe, misappropriate or otherwise violate any Intellectual Property Right or other right of any third party.

- (b) *Operate According to Documentation.* The Company warrants and represents to the City that the Manufacturer Licensed Product(s) shall operate in accordance with the Documentation for the Performance Period, as specified in Paragraph B-4, and for all periods that the City is current with Support and Maintenance Program for all Licensed Sites which implement the Licensed Product.
- (c) *Workmanship.* The Company represents and warrants all services performed under this Contract will be performed in a good and workmanlike manner.
- (d) *Prior Installations.* The Company represents and warrants that the Licensed Product (in unmodified form) has been installed in a production capacity at other user sites.
- (e) *Financial Capability.* The Company represents and warrants that it is financially capable of fulfilling all requirements of this Contract. The Company further represents and warrants that there are no legal proceedings against it that are likely to threaten performance of this contract, and that the Company is a validly organized entity with the ability to enter into the contract. Further, the Company is not aware, after diligent inquiry, of any prohibition contained in any Company loan, contract, financing arrangement, etc. from entering into this Contract.
- (f) *Virus Free.* The Company covenants, agrees represents and warrants, to the best of its information, knowledge and belief, that when shipped to the City, the Licensed Product(s) and any Updates will be free of Viruses, and that it will test each element of the Updates prior to delivery to the City to endure to the best of its information, knowledge and belief that it is free of any Viruses. In the event the City notifies the Company that they have been informed of or have reason to believe that a Licensed Product has been affected by a Virus, the Company will promptly assist them in remedying the situation and will work continuously with them until the remedy is effectuated (The foregoing is referred to as "Virus Services").
- (g) *Illicit (Harmful) Code.* The Company does not have access to the Licensed Product(s) source code; it believes that the Licensed Product(s):
 - (i) contains no hidden files;
 - (ii) does not replicate, transmit, or activate itself without control of a person operating computing equipment on which it resides;
 - (iii) does not alter, damage, or erase any data or computer programs without control of a person operating the computing equipment on which it resides; and
 - (iv) does not contain programs, subroutines, code, instructions, data, key, node lock, time-out, "back door", "trap door", "booby trap", "drop dead device", "data scrambling device", "worms", "date bombs", "time bombs" or other function, whether implemented by electronic, mechanical or other means, which is intended to cause the Licensed Product(s) to cease operating, or to damage, interrupt, interfere with, restrict use or access to any Licensed Product(s) under this Contract or any other software or data on such system or any other system with which it is capable of communicating or otherwise permit the unauthorized access to the City's systems or data (hereinafter "Illicit Code").
- (h) For the avoidance of doubt, the provisions of this paragraph, shall apply to each delivery of the Licensed Product(s), in whole or in part, to the City including each error correction, patch, update, workaround or other similar interim or partial delivery form of the Licensed Product. Provided and to the extent any Licensed Product has any of the foregoing attributes that were intentionally written into the Licensed Product(s), and notwithstanding anything elsewhere in this Contract to the contrary, the Company shall be in default of this Contract, and no cure period will apply. The Company agrees, in order to protect the City from damages which may be intentionally or unintentionally caused by the introduction of Illicit Code to the City's computer network, no software will be installed, executed, or copied on the City's equipment without the express approval of the City. The Company also acknowledges that it does not have any right to electronically repossess the Licensed Product(s). This provision does not relate to Viruses.

- (i) *Illicit Code in Updates.* The Company does not have access to the Licensed Product(s) source code; to the best of its ability, it represents and warrants that if Illicit Code is installed in any Update, the Company will immediately provide the City with written notice of the installation of such Illicit Code. The Company represents and warrants that even if Illicit code is installed in any Update, the Company will never utilize the Illicit Code.

D-5 Grant of Rights

- (a) *License(s).* The Company will procure all Licensed Product(s) in the name of the City. Each License provided will allow the installation on one (1) server or workstation and will fully detail the City's intellectual rights and ability to install, execute, use, have access to benefit from, copy, test, display and perform the Licensed Product(s) on any Hardware at the Licensed Site(s) and to make back-up and archival copies of the Licensed Product(s) to perform the Processing Services, in its normal course of business.
- (b) *Processing Services.* The City, upon notice to the Company, can utilize a Facilities Manager to perform the Processing Services. No payment shall be due to Company in order to permit any Facilities Manager to perform the Processing Services for or on behalf of the City. Each Facilities Manager shall also have the right at no additional charge to perform the Processing Services on behalf of City on computers at its own facility under the rights to use granted in this Contract, provided that such Facilities Manager shall first have executed a nondisclosure and restricted usage agreement with the City consistent with the terms of this Contract.
- (c) *Third Party Service Provider Access.* Notwithstanding the confidentiality, non-disclosure and restriction of usage provisions contained in this Contract, the City may provide access to any Licensed Product(s) by its authorized consultants, agents, auditors, contractors, counsel and other representatives for the purpose of providing assistance (whether that be assistance be in the form of using, benefiting from and/or accessing the Licensed Product[s]) to the City in the ordinary course of the City's operations of the Licensed Product(s), provided that any such third party shall first have executed a nondisclosure and restricted usage agreement with the City consistent with the terms of this Contract, and no such third party shall be engaged in the business of providing data processing services under a facilities management, service bureau, outsourcing or similar arrangement.
- (d) *Copy.* The Licensed Product(s) must not be copied or used, except as specified in the license terms obtained from the Manufacturer. The City agrees not to cause or permit the reverse engineering, disassembly or decompilation of the Licensed Product(s), except to the extent required to obtain interoperability with other software utilized by the City. The City shall not acquire any rights, express or implied, in the Licensed Product(s) other than those obtained from the Manufacturer.
- (e) *Merge.* The City shall have the right to merge the Licensed Product(s) with, and to use it in conjunction with, other software, programs, routines and subroutines developed or acquired by the City. The Company shall have no ownership interest in any other software, program, routine or subroutine owned or developed by the City or acquired by the City from a third party by virtue of its having been merged with or used in conjunction with any Licensed Product hereunder.
- (f) *Use in the Normal Course of Business.* Any documents, forms, and/or spreadsheets that are generated from the utilization of the functionality of the Licensed Product(s) can be used by the City in its normal course of business, including but not limited to the City sharing such documents with its business partners and other third parties.

D-6 Delivery Method

- (a) The City can elect one of the following acceptable delivery methods for each Licensed Product, which is specified in the applicable Licensed Product Schedule, as attached in Attachment 1:
 - (i) *Tangible Copy.* The Company shall provide the City with a tangible copy of each Licensed Product and a minimum of two copies per installation of the Documentation. The Company shall deliver the Licensed Product by the delivery date and method specified in the applicable

Licensed Product Schedule in Attachment 1. Failure to deliver the Licensed Product(s) by such date shall give the City the right to immediately terminate this Contract as to such Licensed Product(s), and to receive a complete refund of any and all fees paid to the Company, effective upon notice to the Company and without any right to cure. The Company also agrees to supply the City with a replacement copy of the Licensed Product(s) at no charge in the event of loss or damage to the copy originally delivered hereunder.

- (ii) *Electronic Delivery.* The Company shall transfer electronically to the City copies of each Licensed Product and the Documentation, no later than the delivery date specified and in strict accordance with the delivery instructions set forth in the applicable Product Schedule in Attachment 1. Failure to electronically deliver the Licensed Product(s) by such date or in strict accordance with the delivery instructions will give the City the right to immediately terminate this Contract as to such Licensed Product(s). The Company understands that it will not leave tangible copies of the Licensed Product(s) or Documentation at the installation location, but will arrange for the electronic downloading of those items. The City may make multiple copies of the Licensed Product(s) or Documentation up to the number specified in the Product Schedule. The Company also agrees to replace the Licensed Product(s) as originally delivered hereunder, at no charge, in the event of loss or damage to the Licensed Product(s). If the Licensed Product(s) are delivered by this method, the Company and the City will execute a Certificate of Delivery and Installation after the delivery has been completed.

D-7 Acceptance of Software

- (a) *Acceptance Testing Period.* Following the installation of each Licensed Product and completion of training of the City's personnel, the Company will have a 90 day Acceptance Testing Period to test the Licensed Product to determine its conformance to the applicable Specifications, and is capable of running on a repetitive basis on a variety of the City's actual data without Software failure.

- (i) *Non-Acceptance.* At any time during the Acceptance Testing Period, the City may, at its option, give the Company notice of non-acceptance and thereafter return the Licensed Product(s) and Documentation to the Company, whereupon this Contract will terminate as to such Licensed Product(s) and the Company shall refund to the City all fees, if any, paid for such Licensed Product(s).

- (ii) *Failures of Software.* Also during the Acceptance Testing Period, the City will notify the Company of any failure of the Software to operate as specified in the Documentation, or this Contract with respect to any material operational or functional capability or feature. When such notice is given, the Company shall have a maximum of 30 days, unless otherwise agreed to in writing, to correct the reported nonconformities, and the Software shall not be deemed Accepted unless and until the City states in writing that all such nonconformities have been corrected. If the Company has not corrected all such nonconformities within 45 days after the date the City first notified the Company of such nonconformity, the City shall have the right to terminate this Contract without further liability.

- (iii) *Extension of Acceptance Testing Period.* In the event the Company agrees, at the City's request, to revise the Licensed Product(s) to correct a problem or deficiency identified by the City during the Acceptance Testing Period, the Company shall do so promptly, whereupon the City will have a additional, subsequent 30 day Acceptance Testing Period within which to test the Licensed Product(s).

- (iv) *Use.* In no event shall any use of the Software during the Acceptance Testing Period constitute acceptance of the Software.

- (b) *Acceptance.* At the end of the Acceptance Testing Period the City will notify the Company if the Software is Accepted.

D-8 Documentation

The Company shall provide to the City user manuals and installation manuals sufficient to allow the City to utilize fully the Licensed Product(s) in accordance with the descriptions on the capacity and functionality (Specifications) set forth in Documentation. This Documentation will include but not be limited to overview descriptions of all major functions, plus detailed step-by-step operating procedures for each screen and activity. This is in addition to any on-line help which is part of the Licensed Product(s) user interface. The Company shall deliver to the City upon execution of this Contract a hard copy of the Documentation and a CD Rom version, and shall revise such documentation as necessary to reflect any modifications made by the Company to the Licensed Product(s). The City can make copies of the hard Documentation and have unlimited use of the CD Rom. The City may incorporate the Documentation in works prepared for the City's business endeavors so long as the City includes all copyright, trademark and other notices of the Company in the same form as they appear on or in the Documentation. The Company warrants and represents that the Documentation and all modifications or amendments thereto and any other documentation which the Company is required to provide pursuant to this Contract shall be in accordance with the Documentation standards in the present Documentation. If any user manual or portion thereof is the Proprietary Information or Intellectual Property of any other party, the Company shall convey to the City the right (to the extent possible under law) to make whatever copies and use of the material the City deems necessary.

D-9 Advance Notification

The Company will provide the City with at least 30 days advance written notification of all new products, programs, releases, versions and/or Updates.

D-10 Support and Maintenance Program

The Company shall provide the technical support and maintenance for the Licensed Product(s) as further described in attached Attachment 2 'Support and Maintenance Program', unless the City declines the Support and Maintenance Program in writing and/or does not pay the annual Support and Maintenance Program fee.

D-11 Testing and Disaster Recovery

The City shall have the right to make copies of and install, execute, use, copy, test, display and perform any of the Licensed Product(s) on disaster recovery computer:

- (a) for the duration of a disaster, and
- (b) for the purpose of conducting testing of their disaster recovery plan procedures and effectiveness for a reasonable period. The Person that provides the testing and disaster recovery services shall first have executed a nondisclosure and restricted usage agreement with the City consistent with the terms of this Contract.

D-12 Other Licenses [CAO-7/24/08]

The parties hereto acknowledge and agree on behalf of themselves and their successors and assigns that all license agreements relating to the Licensed Product(s) between the Company and/or its predecessors on the one hand and the City on the other hand shall be superseded by this Contract.

D-13 Survival

The following paragraphs of the Contract will survive termination or expiration of the License Agreement, no matter how the License Agreement is terminated:

- D-1 Notices
- D-4 Representations and Warranties
- D-5(c) Third Party Service Provider Access
- D-7 Source Code
- D-10 Support and Maintenance Program
- D-11 Testing and Disaster Recovery

- D-13 Survival
- E-3 Termination for Convenience
- E-4 Termination for Cause
- E-6 Indemnification
- E-7 Assignment
- E-9 Taxes/Compliance with Laws

D-15 Order of Precedence

In the event of a conflict between the specific language set forth in Sections B through E of this Contract and any Attachment or Exhibit set forth in Section F, the specific language in Sections B through E shall prevail. Any exception to this order of precedence will be addressed through specific language elsewhere in Sections B through E.

SECTION E – General Clauses

E-1 Disputes [CAO-7/25/08]

- (a) For each claim or dispute arising between the parties under this Contract, the parties shall attempt to resolve the matter through escalating levels of management. In the event the matter cannot be successfully resolved in this manner, the City is granted the right, regardless of which party is asserting the claim or dispute, to determine between arbitration or litigation as the forum in which the party desiring to proceed further shall file to resolve the claim or dispute. For any and all claims or disputes asserted by the Company, the Company shall notify the City of its intent to proceed further with the claim or dispute, and in response thereto, the City shall notify the Company as to its selected forum for resolution. For any and all claims or disputes asserted by the City, the City shall notify the Company in the notice of its intent to proceed with further resolution and in the same notice as to whether it has selected arbitration or litigation as the forum to resolve the claim or dispute. In the event arbitration is the designated forum, such arbitration shall be binding on the parties.
- (b) If arbitration is selected by the City as the forum for further resolution, the claim or dispute shall be filed with the Nevada Arbitration Association or the American Arbitration Association under its then current Commercial Arbitration Rules, Expedited Procedures, regardless of the amount of the claim or dispute.
- (c) The laws of the State of Nevada shall govern this Contract and the venue for purposes of such litigation or arbitration shall be in the City.

E-2 Notice of Delay [CAO-7/24/08]

- (a) Should the timely performance of this Contract be jeopardized by the non-availability of City provided personnel, data, or equipment, the Company immediately shall notify the City in writing of the facts and circumstances that are contributing to such delay. Upon receipt of this notification, the City will advise the Company in writing of the action which will be taken to remedy the situation.
- (b) The Company shall advise the City in writing of an impending failure to meet established milestones or delivery dates based on the Company's failure to perform. Notice shall be provided as soon as the Company is aware of the situation; however, such notice shall not relieve the Company from any existing obligations regarding performance or delivery.

E-3 Termination for Convenience [CAO-7/24/08]

The City shall have the right at any time to terminate further performance of this Contract, in whole or in part, for any reason whatsoever (including no reason). Such termination shall be effected by written notice from the City to the Company, specifying the extent and effective date of the termination. On the effective date of the termination, the Company shall terminate all work and take all reasonable actions to mitigate expenses. The Company shall submit a written request for incurred costs for services performed through the date of termination, and shall provide any substantiating documentation requested by the City. In the event of such termination, the City agrees to pay the Company within 30 days after receipt of

a correct, adequately documented written request. The City's sole liability under this Paragraph is for payment of the costs for the services requested by the City and actually performed by the Company.

E-4 Termination for Default [CAO-7/24/08] R

- (a) The City may, by written notice of default to the Company, terminate this Contract in whole or in part if the Company fails to:
 - (i) Perform the services under Section C (Statement of Work), including, if applicable, delivering any required software, goods, or documentation within the time specified in this Contract or any extension;
 - (ii) Make progress, so as to endanger performance of this Contract; or
 - (iii) Perform any of the other provisions of this Contract.
- (b) The City's right to terminate this Contract under (a)(ii) and (a)(iii) above, may be exercised if the Company does not cure such failure within thirty (30) calendar days (or more if authorized by the City) after notice, specifying the failure, is provided pursuant to the Paragraph D-1 (Legal Notice) of this Contract.
- (c) If the City terminates this Contract for default in whole or in part, it may acquire, under reasonable terms and in the manner the City considers appropriate, services or goods similar to those terminated, and the Company shall be liable to the City for any excess costs for those services or goods. However, the Company shall continue the work not terminated.
- (d) The Company shall not be liable for any excess costs if the failure to perform the Contract arises from circumstances beyond the control and without the fault or negligence of the Company. These circumstances are limited to such causes as (1) acts of God or of the public enemy, (2) acts of governmental bodies, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) labor strikes, (8) freight embargoes, or (9) unusually severe weather. The time of performance of the Company's obligations under this Contract shall be extended by such period of enforced delay; provided, however, that such reasonably extended time period shall not exceed 60 days. If the foregoing circumstances result in a delay greater than 60 days, the City may terminate the affected portion of the Contract pursuant to the terms of Paragraph E-3 (Termination for Convenience).
- (e) Either party may terminate this Contract, in whole or in part, if the other party becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or if a receiver or trustee in bankruptcy is appointed for the other party, or if any proceeding in bankruptcy, receivership, or liquidation is instituted against the other party and is not dismissed within 30 days following commencement thereof.
- (f) The City retains the right to terminate for default immediately should the Company fail to maintain the required levels of insurance, fail to comply with applicable local, state, and Federal statutes governing performance of these services, or fail to comply with statutes involving health or safety.
- (g) Termination of this Contract shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve the City's obligation to pay any fees that may be owed. The Company shall return to the City all payments previously received by it with respect to such Licensed Product. Upon termination, the City shall cease using, and shall upon Company's request, return at Company's expense or destroy, all copies of the applicable Licensed Product(s), except that the City may retain a single copy of the Licensed Product and User Documentation for archival purposes. Upon Company's request, purge all copies of the applicable Licensed Product or any portion thereof from all computer systems and from any computer storage medium or device on which the City has placed or permitted others to place the Licensed Product, other than as necessary to retain a single copy of the Licensed Product and user Documentation for archival purposes. Notwithstanding the foregoing, the City shall not be obligated to retrieve any copy of the Licensed Product that resides on any backup media unless the retention period of such media is greater than 60 days and no attempt has been made to recover such copy therefrom for any purpose.

- (h) If the Company terminates the license for any Licensed Product, the City will have a reasonable period from the receipt of Company's notice of termination to migrate from the Licensed Product to the software of another licensor. During this migration period, the City may continue using such Licensed Product and user Documentation subject to the terms and conditions of this Contract as necessary for migration.

E-5 Insurance[CAO-1/12/09] R

- (a) The Company shall procure and maintain, at its own expense, during the entire term of the Contract, the following coverage(s):
 - (i) Industrial/Workers' Compensation Insurance protecting the Company and the City from potential Company employee claims based upon job-related sickness, injury, or accident, during performance of this Contract, and must submit proof of such insurance to the City on a certificate of insurance issued by an insurer qualified to underwrite workers' compensation insurance in the State of Nevada, in accordance with NRS 616A-616D, inclusive. If Company is a sole proprietor, it will be required to submit an affidavit indicating that the company has elected not to be included in the terms, conditions and provisions of NRS 616A-616D, inclusive, and is otherwise in compliance with those terms, conditions and provisions.
 - (ii) Commercial General Liability Insurance (bodily injury, property damage) with respect to the Company's agents assigned to the activities performed under this Contract in a policy limit of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, for bodily injury (including death), personal injury and property damages. Such coverage shall be on an "occurrence" basis and not on a "claims made" basis, and be provided on either a Commercial General Liability or a Broad Form Comprehensive General Liability (including a Broad form CGL endorsement) insurance form. The form must be written on an ISO Form CG 00 01 10 01, or an equivalent form.
 - (iii) Automobile Liability Insurance of limits no less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage to include, but not be limited to, coverage against all insurance claims for injuries to persons or damages to property which may arise from services rendered by Company and any auto used to the performance of services under this Contract. The policy must insure all vehicles **owned** by the Company and include coverage for **hired** and **non-owned** vehicles. If the services requested do not require the use of vehicle to perform, Automobile Liability Insurance requirements, as described in (iii) above, do not apply.
 - (iv) Professional Liability Insurance (only if the contract is for professional services) of limits no less than \$1,000,000, combined single limit and in the aggregate. If coverage is on a "claims made" basis, then it must continue for a period of two years beyond the completion or termination of this Contract. Any retroactive coverage must coincide with or predate the beginning of this Contract and may not be changed without the consent of the City.
- (b) The Company shall deliver certificate(s) of insurance in ACORD form, and endorsements indicating that such coverage required by this Contract is in effect shall be delivered to the City within three days after the Award Date of this Contract, or before work commences, whichever is earliest. All policy certificates and endorsements are required to be an agent authorized by that insurer and who is licensed by the State of Nevada. All required aggregate limits must be disclosed and amounts entered on the certificate(s) of insurance. The certificates must identify the Contract number and the Contract description. The Company shall maintain coverage for the duration of this Contract, and any renewal periods, if applicable. The Company shall annually provide the City with a certificate of insurance as evidence that all insurance requirements have been met. The Company and/or insurance carrier shall provide the City with a 30 day advance notice of policy modification, cancellation or erosion of insurance limits, sent by certified mail "return receipt requested". Any exclusion to the effect that the insurance carrier will "endeavor to inform" must be stricken from the certificate of insurance.

- (c) The City, its officers and employees shall be named as additional insureds and such notation shall appear on the certificate of insurance furnished by the Company's insurance carrier. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of Nevada. Each insurance carrier's rating as shown in the latest Best's Key Rating Guide shall be fully disclosed and entered on the required certificate of insurance. The City requires insurance carriers to maintain a Best's Key rating of A VII, or higher. The adequacy of the insurance supplied by the Company, including the rating and financial health of each insurance carrier providing coverage, is subject to the approval of the City.
- (d) All deductibles and self-insurance retentions shall be fully disclosed in the certificate of insurance. No deductible or self-insured retention may exceed \$10,000.00 without the prior written approval of the City.
- (e) If the Company fails to carry the required insurance, the City may (i) order the Company to stop further performance hereunder, declare the Company in breach, pursuant to Paragraph E-4, terminate the Contract if the breach is not remedied and, if permitted, assess liquidated damages, or (ii) purchase replacement insurance and withhold the costs or premium payments made from the payments due to the Company or charge the replacement insurance costs back to the Company.
- (f) Any subcontractor or subconsultant approved by the City shall be required to procure, maintain and submit proof of insurance to the City of the same insurance requirements as specified above, and as required in this paragraph.
- (g) The Company is encouraged to purchase any additional insurance as it deems necessary.
- (h) The Company is required to remedy all injuries to persons and damage or loss to any property of the City, caused in whole or in part by the Company, its subcontractors or anyone employed, directed or supervised by the Company.
- (i) The policies required in E-5 (a) i-iii shall have a Waiver of Subrogation provision endorsement in favor of the City of Las Vegas.

E-6 Indemnification [CAO-7/24/08] R

- (a) In addition to the insurance requirements set forth in Paragraph E-5 (Insurance), the Company shall protect, indemnify and hold harmless the City, its officers, employees, agents, and consultants (collectively herein the "City") harmless from any and all claims, liabilities, damages, losses, suits, actions, decrees, and judgments including, attorney's fees, court costs or other expenses of any and every kind or character (collectively herein the "Liabilities") which may be recovered from or sought against the City, as a result of, by reason of, or as a consequence of, any act or omission, negligent or otherwise, on the part of the Company, its officers, employees, or agents in the performance of the terms, conditions and covenants of the Contract.
- (b) If a third party claim against the City for negligent performance by the Company is within the limits of its liability insurance and the insurance company has accepted the City's tender of defense, then the City will pay the Company what is due and owing to them, within the payment method specified in this Contract. However, if the claim is greater than the coverage amount, the City, for its protection, may retain any money due and owing the Company under this Contract, until the claim has been resolved. In the event no money is due and owing, the surety, if required, of the Company, may be held until all of the Liabilities have been settled and suitable evidence to that effect furnished to the City.
- (c) It is expressly agreed that the Company shall defend the City, against the Liabilities and in the event that the Company fails to do so, the City shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs, including attorney's fees and court costs, to the Company.

E-7 Assignment [CAO-7/24/08]

Neither party may assign their rights nor delegate their duties under this Contract without the written consent of the other party. Such consent shall not be withheld unreasonably. Any assignment or delegation shall not relieve any party of its obligations under this Contract.

E-8 Waiver [CAO-7/24/08]

Waiver of any of the terms of this Contract shall not be valid unless it is in writing signed by each party. The failure of the City to enforce any of the provisions of this Contract, or to require performance of any of the provisions herein, shall not in any way be construed as a waiver of such provisions or to affect the validity of any part of this Contract, or to affect the right of the City to thereafter enforce each and every provision of this Contract. Waiver of any breach of this Contract shall not be held to be a waiver of any other or subsequent breach of this Contract.

E-9 Taxes/Compliance with Laws [CAO-7/24/08]

- (a) The City is exempt from paying Sales and Use Taxes under the provisions of Nevada Revised Statutes 372.325(4), and Federal Excise Tax, under Registry Number 88-87-0003k. The Company shall pay all taxes, levies, duties and assessments of every nature and kind, which may be applicable to any work under this Contract. The Company shall make any and all payroll deductions required by law. The Company agrees to indemnify and hold the City harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.
- (b) The Company in the performance of the obligations of this Contract shall comply with all applicable laws, rules and regulations of all governmental authorities having jurisdiction over the performance of this Contract including, but not limited to, the Federal Occupational Health and Safety Act, and all state and federal laws prohibiting and/or relating to discrimination by reason of race, sex, age, religion or national origin.

E-10 Audit of Records [CAO-8/5/08]

- (a) The Company agrees to maintain the financial books and records (including supporting documentation) pertaining to the performance of this Contract according to standard accounting principles and procedures. The books and records shall be maintained for a period of three (3) years after completion of this Contract, except that books and records which are the subject of an audit finding shall be retained for three (3) years after such finding has been resolved. If the Company goes out of business, the Company shall forward the books and records to the City to be retained by the City for the period of time required herein.
- (b) The City, or its designated representative(s), shall have the right to inspect and audit (including the right to copy and/or transcribe) the books and records of the Company pertaining to the performance of this Contract during normal business hours. The City will provide prior written notice to the Company of the audit and inspection. If the books and records are not located within Clark County, the Company agrees to deliver them to the City, or to the address, designated by the City, within Clark County. In lieu of such delivery, the Company may elect to reimburse the City for the cost of travel (including transportation, lodging, meals and other related expenses) to inspect and audit the books and records at the Company's office. If the books and records provided to the City are incomplete, the Company agrees to remedy the deficiency after written notice thereof from the City, and to reimburse the City for any additional costs associated therewith including, without limitation, having to revisit the Company's office. The Company's failure to remedy the deficiency shall constitute a material breach of this Agreement. The City shall be entitled to its costs and reasonable attorney fees in enforcing the provisions of this Paragraph
- (c) If, at any time during the term of this Contract, or at any time after the expiration or termination of the Contract, the City or the City's designated representative(s) finds the dollar liability is less than payments made by the City to the Company, the Company agrees that the difference shall be either: (a) repaid immediately by the Company to the City or (b) at the City's option, credited against any future billings due the Company.

E-11 Independent Contractor [CAO-7/24/08]

In the performance of services under this Contract, the Company and any other person employed by it shall be deemed to be an independent contractor and not an agent or employee of the City. The Company shall be liable for the actions of any person, organization or corporations with which it subcontracts to fulfill this Contract. The City shall hold the Company as the sole responsible party for the performance of this Contract. The Company shall maintain complete control over its employees and all of its subcontractors. Nothing contained in this contract or any subcontract awarded by the Company shall create a partnership, joint venture or agency with the City. Neither party shall have the right to obligate or bind the other party in any manner to any third party.

E-12 Severability [CAO-7/24/08]

The invalidity, illegality, or unenforceability of any provision of this Contract or the occurrence of any event rendering any portion or provision of this Contract void shall in no way affect the validity or enforceability of any other portion or provision of this Contract. Any void provision shall be deemed severed from this Contract, and the balance of this Contract shall be construed and enforced as if this Contract did not contain the particular portion or provision held to be void. The parties further agree to amend this Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this clause shall not prevent this entire Contract from being void should a provision which is of the essence of this Contract be determined void.

E-13 Conforming Services [CAO-7/24/08]

The services performed under this Contract shall conform in all respects with the requirements set forth in this Contract. The Company shall furnish the City with sufficient data and information needed to determine if the services performed conform to all the requirements of this Contract.

E-14 Modification/Amendment [CAO-7/24/08]

This Contract shall not be modified or amended except by the express written agreement of the parties, signed by a duly authorized representative for each party. Any other attempt to modify or amend this Contract shall be null and void, and may not be relied upon by either party.

E-15 Entire Agreement, Section and Paragraph Headings [CAO-7/24/08]

- (a) This Contract represents the entire and integrated agreement between the City and the Company. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Contract.
- (b) The section and paragraph headings appearing in this Contract are inserted for the purpose of convenience and ready reference. They do not purport to define, limit or extend the scope or intent of the language of the sections and paragraphs to which they pertain.

E-16 Conflict of Interest (City Officials) [CAO-7/24/08] R

- (a) An official of the City, who is authorized in such capacity and on behalf of the City to negotiate, make, accept or approve, or take part in negotiating, making, accepting, or approving this Contract, payments under this Contract, or work under this Contract, shall not be directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of, or for the City, who is authorized in such capacity and on behalf of the City to exercise any legislative, executive, supervisory or other similar functions in connection with this Contract, shall become directly or indirectly interested personally in this Contract or in any part hereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to this Contract.
- (b) Each party represents that it is unaware of any financial or economic interest of any public officer or employee of the City relating to this Contract. Notwithstanding any other provision of this Contract, if such interest becomes known, the City may immediately terminate this Contract for default or convenience, based on the culpability of the parties.

E-17 Public Records [CAO-7/24/08]

The City is a public agency as defined by state law. As such, it is subject to the Nevada Public Records Law (Chapter 239 of the Nevada Revised Statutes). The City's Records are public records, which are subject to inspection and copying by any person (unless declared by law to be confidential). This Contract, all supporting documents, and proposals submitted under the original Request for Proposal are deemed to be public records.

E-18 Confidentiality – City Information [CAO-7/24/08]

- (a) All information, including but not limited to, oral statements, computer files, databases, and other material or data supplied to the Company is confidential and privileged. The Company shall not disclose this information, nor allow to be disclosed to any person or entity without the express prior written consent of the City. The Company shall have the right to use any such confidential information only for the purpose of providing the services under this Contract, unless the express prior, written consent of the City is obtained. Upon request by the City, The Company shall promptly return to the City all confidential information supplied by the City, together with all copies and extracts.
- (b) The confidentiality requirements shall not apply where (i) the information is, at the time of disclosure by the City, then in the public domain; (ii) the information is known to the Company prior to obtaining the same from the City; (iii) the information is obtained by the Company from a third party who did not receive the same directly or indirectly from the City; or (iv) the information is subpoenaed by court order or other legal process, but in such event, the Company shall notify the City. In such event the City, in its sole discretion, may seek to quash such demand.
- (c) The obligations of confidentiality shall survive the termination of this Contract.

E-19 Marketing Restrictions [CAO-7/24/08]

The Company may not publish or sell any information from or about this Contract without the prior written consent of the City. This restriction does not apply to the use of the City's name in a general list of customers, so long as the list does not represent an express or implied endorsement of the Company or its services.

E-20 Limitation of Funding [CAO-7/24/08]

The City reserves the right to reduce estimated or actual quantities, in whatever amount necessary, without prejudice or liability to the City, if funding is not available or if legal restrictions are placed upon the expenditure of monies for the services required under this Contract.

E-21 Changes – Fixed-Price Services [CAO-7/24/08]

- (a) The City may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Contract in any one or more of the following:
 - (i) Description of services to be performed.
 - (ii) Time of performance (i.e., hours of the day, days of the week, etc.).
 - (iii) Place of performance of the services.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, the City shall make an equitable adjustment in the Contract price, the delivery schedule, or both, and shall modify the Contract.
- (c) The Company must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order; however, if the City decides that the facts justify, the City may receive and act upon a proposal submitted before final payment of the Contract.
- (d) If the Company's proposal includes the cost of property made obsolete or excess by the change, the City shall have the right to prescribe the manner of the disposition of the property.

- (e) Failure to agree to any adjustment shall be a dispute under Paragraph E-1 (Disputes); however, nothing in this clause shall excuse the Company from proceeding with the Contract as changed.

The Company shall provide current, complete, and accurate documentation to the City in support of any equitable adjustment. Failure to provide adequate documentation, within a reasonable time after a request from the City, will be deemed a waiver of the Company's right to dispute the equitable adjustment proposed by the City, where such equitable adjustment has a reasonable basis at the time it is determined by the City.

E-22 Counterpart Signatures [CAO-9/24/08]

This Contract may be executed in counterparts, all such counterparts will constitute the same contract and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

SECTION F – List of Attachments/Exhibits

The following attachments are hereby incorporated into this contract:

<u>Identifier</u>	<u>Title/Text Reference</u>	<u>Date</u>	<u>Pages</u>
Attachment 1	Licensed Product Schedule		1
Attachment 2	Support and Maintenance Agreement		4

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized representatives.

CITY OF LAS VEGAS

KATHLEEN C. RAINEY, Manager
Purchasing and Contracts

"City"

ATTEST:

BEVERLY K. BRIDGES, CMC
City Clerk

APPROVED AS TO FORM:

John S. Ridilla 1/15/10
Deputy City Attorney
Date

M.C. DEAN, INC.

ROBERT A. LINK, Division Manager

"Company"

ATTACHMENT 1 - LICENSED PRODUCT SCHEDULE

Licensed Product name, version and description	General Electric Proficy iFIX, version 3.5 or above Configurable Off-the-Shelf Graphical User Interface software – this software is configured by the Company to provide the system-specific functions described herein
Specified environment (i.e. NT, Windows, Unix, version no., etc.)	Operating System: Windows Hardware Platform: Dell
License type and number of licenses (i.e. server-based, CPU, site, user/seat-based, named, concurrent, etc.)	Type: Two (2) Redundant Server Licenses, Two (2) Redundancy Manager licenses, twelve (12) client station licenses
Product deliverable form	Executable Code: Included Source Code: NOT AVAILABLE
Installation date	TBA
Support and Maintenance Services (Acceptance Testing Period, Training and Implementation)	Included in initial price
Support and Maintenance Services (Initial Year)	Included in initial price
Support and Maintenance Services (Subsequent Years)	\$ 2,000 per License per year
Delivery method	Tangible

ATTACHMENT 2 - SUPPORT AND MAINTENANCE PROGRAM

Support and Maintenance Program

- (a) *City's option.* Support and Maintenance Program shall never be structured in a way that links usage or license rights granted herein to Support and Maintenance Program. Support and Maintenance Program is an option, to be acquired at sole option of the City. The City shall have the right to cancel Support and Maintenance Program at any time, at its option, during the term of the Contract. Cancellation of Support and Maintenance Program by the City will not in any way affect this Contract and the rights granted herein (including but not limited to its perpetual license right). The Company shall hereafter provide full Support and Maintenance Program to the City in connection with the Processing Services at the City's request, at the prices specified in B-3 (Prices/Costs).
- (b) *Errors.* Among the Technical Support Services to be provided, the Company will employ its best efforts to cure any error which causes a Licensed Product to fail to operate in accordance with the response times identified below.
- (c) *Support and Maintenance Program.* The Company shall provide Support and Maintenance Program to the City (including but not limited to response times, telephone support, e-mail support and speed of delivery, testing and installation of Updates) in the form of advice and counsel on the City's use of the Licensed Product(s). The Company shall provide telephone assistance as necessary to cause the Licensed Product(s) to (a) perform in accordance with its current Specifications. The Company shall employ its best efforts to correct or replace Licensed Product(s) and/or provide services necessary, and (b) to remedy any Defect which can be attributed to the Company and which affects use of the Licensed Product(s). Such correction, replacement or services shall be promptly accomplished after the City has identified and notified the Company by telephone of any such Defect. Telephone support will be provided from 9:00 a.m. to 5:00 p.m. (PT), exclusive of those holidays observed by the Company.
- (i) Support will be provided to the City's support organization by role rather than by named individuals. Such support individuals ("Support Representatives") shall be reasonably competent in the use and operation of the product.
- (ii) The Support Representatives will act as primary interface to the Company for support purposes. The Company will make all commercially reasonable efforts to address the problem identified by the Support Representative.
- (iii) The City's Support Representatives shall report errors and Defects to the Company Representative or his/her support specialist designee(s). For Severity Level 1 errors or Defects, City's Support Representatives shall, in addition to any notification by any other means, notify the Company by telephoning a support specialist. In the event the City cannot make contact with a the Company support specialist, the City shall continue its efforts to personally notify the Company by calling the following Company representatives in the order listed until a Company representative is contacted in person:
- Support Manager
 - Consulting Project Manager
 - Business Unit Manager
 - Associate Legal Counsel
 - Chief Financial Officer
 - Chief Executive Officer

- (iv) The City will make an initial nonbinding classification of each Defect in the Licensed Product(s) or associated Documentation and will report such error or Defect to the Company based on the criteria set forth below. In the event there is a dispute between the City and the Company regarding the classification of a Defect, which is not resolved within 24 hours after the report from the City, such dispute will be referred to each party's Director-level management for resolution. In the event such Directors cannot resolve the dispute within 24 hours from the referral of the dispute to them, the Company's Director shall escalate the dispute to the Company's Vice President with responsibility over the operations. In the event the Company's Vice President cannot resolve the dispute within 24 hours, the dispute will ultimately be resolved by the Company's Chief Executive Officer.
- (v) Electronic Access. The City agrees to provide the Company with "dumps" as requested and with reasonable support and test time on remote access to the City's computer system to duplicate the problem, certify that the problem is indeed with. The City authorizes the Company to certify that the problem has indeed been fixed.
- (vi) The Company shall respond to the City's-initiated problems in accordance with the following – the City shall identify a problem as one of the following Severity Levels:

SEVERITY LEVEL CLASSIFICATION CRITERIA

Error Severity Level	Determination Criteria
Severity Level 1	<i>Fatal:</i> Errors that meet the following criteria: -Error that prevent all useful work from being done; -Material errors in essential functions for which no work around exists; -Errors that cause a loss of data; or -Any error that permits unauthorized access to personal information or any loss thereof.
Severity Level 2	<i>Severe Impact:</i> Errors that meet the following criteria: -Errors that disable essential functions but for which a work around exists; or -Errors that violate material Specifications.
Severity Level 3	<i>Non-critical:</i> Errors that disable only nonessential functions identified in the Documentation.
Severity Level 4	<i>Minimal Impact:</i> Non-critical problems generally categorized as an enhancement to be prioritized for inclusion in the next version of the Licensed Product.

The Company shall return calls within the time specified in the Licensed Product Maintenance Response Schedule below. Response time will be measured from the time the City requests support by one of the means set forth below.

LICENSED PRODUCT(S) MAINTENANCE RESPONSE SCHEDULE

Error Classification	1 st Level Response	2 nd Level Response	3 rd Level Response
Severity Level 1	3 business hours	1 business day	Next Upgrade
Severity Level 2	8 business hours	3 business day	Next Upgrade
Severity Level 3	2 business days	To be scheduled	As appropriate
Severity Level 4	7 business days	To be scheduled	As appropriate

The Company shall respond according to the following level identification:

LEVEL IDENTIFICATION

Level Identification	Response
1 st Level Response	Acknowledge receipt of Defect report.
2 nd Level Response	Provision of patch, work around, temporary fix, or other temporary resolution of the Defect and documentation of corrections.
3 rd Level Response	Official object code fix incorporated in the Upgrade of the Licensed Product or a code based work around (supported by maintenance) and reflected in the updated Documentation.
Severity Level 1 Error	Within the response time, the Company agrees to assign sufficient support personnel on a 16-hour per day basis to work on the Defect.
Severity Level 2 Error	Within the response time, the Company agrees to assign sufficient support personnel on an eight-hour per day basis to work on the Defect.
To be scheduled	Company should, combined with the City, address the Defect at the next scheduled project review meeting and in good faith agree on a suitable 2nd Level Response period.
As Appropriate	The Company and City will respond to Defect at the project review meetings.

- (vii) The City should supply the Company with reproducible errors in order for the Response Schedule to apply. The manner in which the City reasonably presents to the Company the method or means to reproduce such a reported error shall be determined by the City. For non-reproducible errors, the Company will use reasonable efforts to investigate the error, but will not be bound by the above Licensed Product(s) Response Schedule. The City agrees to furnish the Company with all information and materials requested by the Company that are available and reasonably required for use in replicating, diagnosing and correcting a Licensed Product's problem reported by the City.
- (viii) The Company will provide on-site support upon request from the City when 2nd Level Response times have been exceeded.
- (d) *Updates.* The Company shall provide commercially available Updates to the Licensed Product(s) if and as required to cause it to operate under New Versions or New Releases of the City's operation system(s) as long as such Updates are technically feasible. In the event the City identifies a problem with a Licensed Product and the Company has corrected said problem in a later release of a Licensed Product, City agrees to install the newer release as a resolution to said problem, rather than asking the Company to retrofit the "fix" to an older release of the Licensed Product. The Company shall make available to the City any Updates that include equivalent or derivative version(s) of Licensed Product(s) if the Company develops and markets equivalent or derivative software products.
- (e) *Alternative Support and Maintenance Program Levels.* In the event the Company generally offers alternative Support and Maintenance Program levels for Licensed Product(s) subject to this Contract, the City may, at no conversion charge, convert to an alternative Support and Maintenance Program level, at the City's option. The Company shall notify the City that alternative Support and Maintenance Program levels are available within 90 days of such new alternative. Any credit accruing to the City as a result of converting to an alternate Support and Maintenance Program plan will be applied against future payments due and owing for Support and Maintenance Program.
- (f) *Version for another Operating System.* In the event the Company makes commercially available a version of the Licensed Product(s) that operates under an operating system different than the one originally purchased by the City, the City will have the right at any time to obtain a copy of such version on a 90 day trial basis. At the end of the trial period, the City may;

- (i) retain and continue to use the Version of the Licensed Product licensed hereunder and return the trial Version to the Company, or
 - (ii) retain and use the trial Version in the same manner and to the same extent as the Version originally licensed hereunder, at no additional charge, provided the City returns the originally licensed Version to the Company, or
 - (iii) retain and use both Versions of the Licensed Product, provided the City pays the Company the applicable License Fee for the for the trial Version of the Licensed Product.
- (g) *Other Software.* The Company will not be obligated to provide Support and Maintenance Program for any software other than the Licensed Product(s) delivered to the City. The Company will have no obligation to provide Support and Maintenance Program for Licensed Product(s) that have been customized for the City by any party other than the Company unless the City has obtained prior written acknowledgment from the Company of such modification. Notwithstanding the foregoing, Defect corrections will be provided for modified Licensed Product(s) in the event that the reported error is reproducible in the unmodified Version. In such event, the Company shall correct the Defect(s) in the unmodified Version and the City shall be responsible for the integration of the Defect correction(s) into the modified Version.
- (h) *Suspension of Support and Maintenance Program Fees.* All Support and Maintenance Program fees shall be suspended if a nonconformance with applicable Specifications in a Licensed Product causes a delay of more than 30 days in the City's ability to use the Licensed Product in accordance with the Specifications or User Documentation. If the Support and Maintenance Program fees are paid in advance, then any period of suspension shall be result in an extension of the then applicable Support and Maintenance Program period, thereby extending the term thereof.
- (i) *Non-Conformance to Representations and Warranties.* If the Licensed Product does not conform to the representations and warranties made by the Company in this Contract, or is otherwise defective, the Company shall correct the errors or nonconformities within ten days of notice from the City. If the Company does not remedy any and all Defects in a Licensed Product within such period, the City may elect to terminate this Contract as to such Licensed Product and any other Licensed Products dependent thereon, and the City will be entitled to return of the License Fees for all such Licensed Product(s). Upon return of the License Fee, the City shall return or destroy the Licensed Product(s) and this Contract will terminate as to such Licensed Product(s).
- (j) *No Suspension of Support and Maintenance Program.* The City will hereafter upon its request, be absolutely entitled to receive Support and Maintenance Program from the Company, and Company shall hereafter be obligated to provide such Support and Maintenance Program until this Contract is terminated pursuant to Paragraph E-3 (Termination for Convenience) and E-4 (Termination for Cause) and/or until the dispute resolution procedure in Paragraph E-1 (Disputes) has been completed, notwithstanding any failure or alleged failure of the City to make payments due for support and Maintenance Program, or any breach or claimed breach by the City of any of its obligations under this Contract.