

LICENSE AGREEMENT
BETWEEN PCI AND
CITY OF CORPUS
CHRISTI

Version 1.0

Table of Contents

1.	SCOPE OF WORK.....	2
1.1	Software Licenses	2
1.1.1	Products Schedule	2
1.1.2	License.....	2
1.1.3	Termination of Software License by PCI	3
1.1.4	Major Releases / Upgrades.....	3
1.1.5	Solution Longevity.....	3
1.1.6	Successor Software Products.....	3
1.2	Source Code	3
1.2.1	Possession.....	4
1.3	Maintenance and Support Services.....	4
1.3.1	Software and Help Desk Support Services.....	4
1.3.2	Annual System Assessment.....	4
1.4	New Services and Products.....	5
1.5	Cooperation with ERP Vendor	5
1.6	<i>Change Orders</i>	5
2.	TERM	6
2.1	Term of Software License.....	6
2.1.1	Granting of License.....	6
2.1.2	Terminating Software License.....	6
2.1.3	Material Breaches of Agreement.....	6
2.1.4	Termination and Other Remedies.....	6
2.1.5	License Revoked Upon Termination.....	6
2.2	Term of Implementation Services.....	7
2.3	Term of Maintenance and Support Services	7
2.4	Survival.....	7
3.	TEST CRITERIA.....	7
3.1	Failure of Testing.....	7
4.	PERFORMANCE STANDARD.....	7
4.1	Response Time Standard	8
5.	ACCEPTANCE	8
5.1	Acceptance Test Plan	8
5.2	Software Component Conditional Acceptance.....	8
5.3	Software Component Acceptance.....	9
5.4	System Acceptance	9
5.5	System Acceptance Checkpoint.....	9
5.6	Correction of Errors during Live Testing.....	9
5.7	Acceptance of Non-Software Deliverables.....	10
6.	PERSONNEL	11
6.1	Project Mangers	11
6.2	Client Review of Resumes.....	11
6.3	Background Checks	11
6.4	Drug-Free Workplace	11
6.5	PCI Personnel Permanency.....	12
7.	INDEMNIFICATION.....	12
7.1	Infringement.....	12
7.2	Injury, Property, or Other Damage	13

7.3	Third-Party Services	13
7.4	Technology	13
8.	OWNERSHIP OF WORK PRODUCT.....	13
9.	LIMITATION OF LIABILITY AND DISCLAIMERS	14
10.	WARRANTY	15
10.1	Performed Services	15
10.2	Operate in Substantial Conformity with Product Specifications	15
10.3	Meet Requirements Include Exhibits	15
10.4	Free of Programming Errors	15
10.5	PCI Testing.....	15
10.6	Computer Hardware Environment	15
10.7	Performance Standards.....	15
10.8	Correction of Nonconformity or Defect.....	15
10.9	Fixes, Feature Release and Version Releases	16
10.10	Initial Warranty	16
10.11	Warranty Extensions	16
10.12	System Functionality Warranty.....	16
10.13	Payment Card Industry Standards Warranty	16
10.14	Warranty Disclaimer	16
10.15	Warranty Remedy	16
11.	TERMS OF PAYMENT	17
11.1	Introduction	17
11.2	Pricing	17
11.3	Payment.....	17
11.4	Invoicing.....	17
12.	TERMINATION.....	18
12.1	Disentanglement	19
13.	SURVIVAL	19
14.	INSURANCE.....	19
14.1	Worker’s Compensation Insurance and Employer’s Liability Insurance	19
14.2	Public Liability Insurance	20
14.3	Subcontractor’s Insurance	20
14.4	Certificate of Insurance	20
14.5	Insurance Company and Agent	20
15	PROTECTION AND SECURITY OF CONFIDENTIAL INFORMATION.....	21
15.1	Responsibility of Each Party	21
15.2	Disclosure of Confidential Information	21
15.3	General Security	21
15.4	Clients System Data.....	22
16.	ASSIGNMENT	23
17.	NOTICES.....	23
18.	DISPUTE RESOLUTION	24
18.1	Left blank.	24
18.2	Project Managers Resolution	24
18.3	No Termination or Suspension of Services	24
19.	FORCE MAJEURE	25
20.	INDEPENDENT CONTRACTOR.....	25
21.	SOLICITATION OF EMPLOYEES PROHIBITED	25

22.	PRIME VENDOR RESPONSIBILITIES	25
23.	NON-APPROPRIATION	25
24	GENERAL	26
24.1	Applicable Law and Venue.....	26
24.2	Severability.....	26
24.3	Waiver	26
24.4	Changes	26
24.5	Taxes	26
25.	DEFINITIONS.....	26
	Exhibit A – Pricing Proposal.....	30
	Exhibit B – Recommended Cashiering Hardware and Pricing Options.....	31
	Exhibit C – Maintenance and Support Services	33
	Exhibit D - Recommended Hardware and Software Requirements	39
	Exhibit E – PCI’s Response to relevant functional requirements of the City	40

**AGREEMENT BETWEEN PCI LLC
AND
CITY OF CORPUS CHRISTI**

This Agreement is effective as of this ____ day of _____, 2013 between **PCI LLC**, a limited liability company having its principal place of business at 4893 West Waters Avenue, Suite E, Tampa, Florida 33634 (hereinafter referred to as "PCI") and **City of Corpus Christi**, Texas, (hereinafter referred to as "City") a Texas municipal corporation having its principal office at 1201 Leopard St., Corpus Christi, TX 78401-2825.

WHEREAS, the City of Corpus Christi desires to procure a Centralized Revenue Collections System, also known as RCS or myRevenueCollector, (hereinafter referred to as the "System") and as such has reviewed the Infor Software Government ERP Solution proposal for myRevenueCollector module provided by PCI.

WHEREAS, PCI submitted a proposal to the City on 15th of October, 2012 (hereinafter referred to as the "Proposal") to furnish the City with software for the System, which was determined by the City to be most advantageous to the City.

WHEREAS, the City has requested PCI and PCI agrees to furnish a System.

WITNESSETH:

The City and PCI agree to the following terms and conditions in consideration of the mutual promises stated in this Agreement, including the following Exhibits, which are attached hereto and incorporated herein:

1. Exhibit A is the Pricing Proposal
2. Exhibit B is the Recommended Cashiering Hardware and Pricing Options
3. Exhibit C is the Maintenance and Support Services
4. Exhibit D is the Recommended Hardware and Software Requirements
5. Exhibit E is PCI's response to relevant functional requirements of the City

In the event of any inconsistency between the documents comprising this Agreement, the order of precedence shall be as follows:

1. The Agreement
2. Exhibits to the Agreement

1. SCOPE OF WORK

As part of this Agreement, PCI agrees to provide to the City Services and Products as described herein. In addition, PCI will provide certain professional services under a separate statement of work (SOW) with Infor whereby PCI will perform these professional services as a subcontractor to Infor.

1.1 Software Licenses

As used herein, "Products" shall mean Software and Hardware required for the successful implementation of the System according to the prices set forth in Proposal (Exhibit A). "Software" means any one of the computer software programs which is identified in Exhibit A. PCI agrees to provide the Products, and City agrees to compensate PCI for its Products, in accordance with the terms of this Agreement and the Exhibits hereto.

If requested by the City in writing, the parties may substitute the Products that are described in Exhibit A for new Products that are reasonably and substantially equivalent to those Products being substituted, and any such substitution shall not result in any adjustment to the Fees, unless otherwise mutually agreed to by the parties.

"Documentation" shall mean the then current PCI-provided operating and technical documentation relating to the features, functions and operation of the Software.

1.1.1 Products Schedule

PCI will provide the City the following software, hardware, and support components set forth in Exhibit A:

- PCI Software for the Revenue Collection System known as myRevenueCollector or RCS.
- Hardware as defined in the Proposal (Exhibit A)
- 3rd party maintenance
- Product warranty on hardware

1.1.2 License

PCI-developed Software is licensed to the City pursuant to the provisions set forth in this paragraph.

- 1.1.2.1 PCI grants the City a perpetual, non-exclusive, nontransferable license to use the Software and Documentation contracted for under this Agreement, for internal operations of the City, its associated agencies, and Affiliates that the City supports or with whom it shares resources for the term of this Agreement.
- 1.1.2.2 The City may make copies of the Software and Documentation for use of the City its associated agencies, and Affiliates, provided that all copyright notices are reproduced and the City does not exceed the number of licenses purchased. The City will not make available the Software or Documentation, or portions thereof, to any other persons or entities without prior written approval of PCI. PCI shall maintain, and make available to the City, the Documentation in an electronic format in a timely manner at no additional cost.
- 1.1.2.3 The City shall have the right to use the Software, or any portion thereof, so long as the number of users does not exceed the number licensed, or on one or more backup computer nodes. No other use is licensed.

- 1.1.2.4 The City will not copy the Software or Documentation except as necessary for use under this Agreement. The City will not decrypt without authorization, reverse compile or disassemble the Software. The City will not export or re-export the Software or documentation without the appropriate United States and foreign government licenses. Furthermore, the City agrees to abide by all applicable Federal and State Trademark and Copyright laws.
- 1.1.2.5 The Software and Documentation is and shall remain the sole property of PCI, regardless of whether the City, or its employees, may have contributed to the conception of such work.

1.1.3 Termination of Software License by PCI

In the event the City fails to: (i) adhere to its obligations of the software license set forth in this Section 1; or (ii) pay license fees due to PCI (payments for Warranty Extensions notwithstanding), within sixty (60) days after receipt of a valid invoice therefore as set forth in Section 12 PCI shall have the right to terminate the license granted hereunder forty-five (45) days after the City receives written notice from PCI of such default, which specifies the reasons for the default. If the City fails to correct the default within this forty-five (45)-day period, PCI shall send the City a written Notice of Termination of License and within ten (10) days after receipt of such written Notice of Termination of License, the City shall return to PCI all Software and all encrypted software purchased under this Agreement.

1.1.4 Major Releases / Upgrades

City shall be entitled to future releases and upgrades whether of a "minor" or major" nature, of PCI Software for no additional cost beyond the Support and Maintenance fees delineated in Exhibit A.

1.1.5 Solution Longevity

PCI certifies the System prescribed herein will remain available and supported for a minimum of five (5) years from the time the contract is signed and that any material changes to PCI's company or products will not affect the City's implementation or support.

1.1.6 Successor Software Products

In the event PCI makes available successor PCI software products (e.g., software products based on a new technical architecture) ("Successor Products") with substantially similar functionality to the PCI Software licensed by City within ten (10) years of contract signing, City may transfer the Software to the Successor Products, for no additional PCI license fees. In such event, City shall pay the then-current Software Support and Maintenance fees for the Successor Products, in addition to any services and/or third party fees associated with the Successor Products.

1.2 Source Code

PCI shall secure all PCI source code for Software described herein, including fixes releases, features release and version releases (collectively, the "Source Code"), within its safety deposit box at the corporate bank. The Source Code will be made available to the City should PCI become unable to, or otherwise fail to maintain the Software during the Warranty period, any extension thereof, or if PCI decides to stop support of the System in whole or part, or PCI becomes bankrupt. All updated code will be delivered to the bank or escrow agency in a timely manner with any releases and enhancements. PCI agrees to provide the source code to an escrow agency, at the City's expense, if desired, at the City's option at any time.

1.2.1 Possession

PCI will release the Source Code to the City from storage in the event PCI becomes unable to, or otherwise fails to maintain the Software during the Warranty period, any extension thereof, or if PCI decides to stop support of the System in whole or part, or PCI becomes bankrupt. In the event PCI releases the Source Code to the City:

- 1.2.1.1 The City accepts full and total responsibility for the safe keeping of the Source Code. The City agrees that such Source Code shall be subject to the restrictions of transfer, sale, and reproduction placed on the Software in Sub-paragraph 1.2.2.
- 1.2.1.2 The City agrees to only use the PCI Source Code related to applications licensed to the City by this Agreement.
- 1.2.1.3 No license under any trademark, patent, copyright, or any other intellectual property right, is either granted or implied by the disclosure of the Source Code to the City. PCI's disclosure of the Source Code to the City shall not constitute any additional representation, warranty, assurance, guarantee, or inducement by PCI to the City of any kind.
- 1.2.1.4 PCI will not be responsible for maintaining the Source Code. PCI will not be liable for any consequences related to the use of Source Code modified by the City except to the extent PCI would otherwise be liable for any consequence related to the use of the Software under this Agreement. PCI will, however, provide all system documentation and a list of all tools required for the City to make productive use of the Source Code.
- 1.2.1.5 The City agrees that any unauthorized release of the Source Code will cause irreparable harm to PCI. Therefore, the City agrees to take adequate precautions to protect against the mishandling, misuse, or theft of the Source Code by the City, its employees, former employees, agents, and third-party associates.

1.3 Maintenance and Support Services

1.3.1 Software and Help Desk Support Services

PCI shall provide PCI software and Help Desk support services necessary to keep the System in compliance with the Warranty and subsequent Warranty Extensions as described in the Maintenance and Support Services (Exhibit C). The City will be charged for the initial period of Maintenance and Support Services as described in Exhibit A and Exhibit B. The cost for Maintenance and Support Services shall not be increased during the first three years of the Agreement. Thereafter, **annual cost increases for Maintenance and Support Services, if any, from the previous year shall be capped at a rate equal to no more than 3% or the CPI-W for the South region, whichever is less, for as long as annual Maintenance and Support Services are provided by PCI and the license agreement between the City and PCI is in effect. The City shall be billed for annual Maintenance and Support Services beginning on the date of final execution of this License Agreement.**

1.3.2 Annual System Assessment

The City, with the assistance of PCI staff, shall conduct an assessment of the System at a mutually agreeable time, to determine if upgrades are required to maintain the Performance Standard (Annual Review).

1.4 New Services and Products

From the effective date of this Agreement the City may elect to have PCI perform services that are not specifically described in this Section or in Exhibit A hereto or in the City of Corpus Christi-Infor Statement of Work but that are related to the Services (the "New Services"), in which event PCI shall perform such New Services at the then current PCI billing rate for such services. PCI shall commence performing the applicable New Services promptly upon receipt of written notice from the City Project Manager.

1.5 Cooperation with ERP Vendor

PCI hereby acknowledges that the City is planning on implementing an ERP system and that the System must work in conjunction with the ERP system. The parties acknowledge that there are significant interrelationships between the System and the ERP system and that close coordination will be necessary between the City, PCI, and the City's ERP contractors in order to provide the necessary integration between the ERP system and the System. PCI shall cooperate fully with the City and its ERP contractors to achieve the aforementioned integration, including but not limited to participating in joint planning meetings, conducting technical assessments of integration points, and implementing interfaces.

PCI hereby acknowledges that the City intends to enter into an agreement with Infor, an ERP system provider, for a new ERP system. As such, PCI shall cooperate fully with the City and Infor in providing professional services in connection with the System as a subcontractor to Infor. Specifically, PCI must be available to Infor to answer questions and provide installation and guidance during the initial setup phase.

The System will be hosted by Infor. As such, PCI agrees to cooperate with Infor in implementing hosting services to ensure the interoperability between System and the ERP.

1.6 Change Orders

Additional Products and Services will be treated as Changes to this Agreement. PCI shall provide New Services and Products at the then current rate and in accordance with Terms of Payment and, New Services Sections below..

If the City requires the performance of Services (other than New Services) that are not then being performed, or requires a change to the existing Services, the City's Project Manager shall deliver to PCI's Project Manager a Change Order specifying the proposed work with sufficient detail to enable PCI to evaluate it. PCI shall, within ten (10) business days, or longer as may be mutually agreed between the parties, following the date of receipt of such Change Order, provide the City with an evaluation of the Change Order and a written proposal containing the following: a detailed description of Services being provided; specifications (if applicable); implementation plans, with an implementation schedule which will be mutually agreed between PCI and the City; the timeframe for performance; acceptance criteria; and for New Services, the estimated price for such performance based on the applicable charges set forth in this Agreement.

All Change Orders shall be governed by the terms and conditions of this Agreement, including the hourly rates for consulting services, unless mutually agreed otherwise. Within the reasonable timeframe specified in PCI's proposal, which timeframe shall not be less than ten (10) business days from the Project Manager's receipt of such Change Order (the "Response Period"), the City's Purchasing Agent

shall notify PCI in writing if the City elects to proceed with the Change Order (the "Proceed Order"). If, within the Response Period, the City gives notice to PCI not to proceed, or fails to give any notice to PCI, the Change Order shall be deemed withdrawn and PCI shall take no further action with respect to it.

If the Change Order does not impact the total fees payable under this Agreement or change the terms and conditions of this Agreement, PCI shall commence performing the Services described in the Change Order upon receipt of the Proceed Order. If the Change Order does impact the total fees payable under this Agreement or change the terms and conditions of this Agreement, PCI shall promptly commence performing the Services described in the Change Order upon: (i) the City delivering to PCI a Proceed Order during the Response Period, and (ii) the City Project Manager's approval of the applicable Change Order and such Change Order being executed by the authorized representatives of the parties as an amendment to this Agreement. A Change Order shall not become binding upon the City and the City shall not be obligated to pay PCI for any Services performed pursuant to a Change Order, unless and until the Change Order related to such Proceed Order is approved by the City in accordance with the procedures outlined by this paragraph.

2. TERM

2.1 *Term of Software License*

2.1.1 Granting of License

The license granted under this Agreement shall remain in effect perpetually unless otherwise terminated under this Section.

2.1.2 Terminating Software License

The City may terminate the Software license at any time upon thirty (30) days written notice to PCI, subject to subsection 2.1.4 and 2.1.5 below. The City may terminate any Services or Maintenance and Support services that are incorporated into this Agreement without terminating the Software license under this Agreement.

2.1.3 Material Breaches of Agreement

If either party materially breaches this Agreement, the other party may give written notice of its desire to terminate and the specific grounds for termination and, if such default is capable of cure and the party in default fails to cure the default within thirty (30) days of the notice, the other party may terminate this Agreement. If such default is incapable of cure, the other party may terminate this Agreement immediately upon written notice of its desire to terminate.

2.1.4 Termination and Other Remedies

Termination of this Agreement, or any portion of it, shall not limit either party from pursuing other remedies available to it, including injunctive relief.

2.1.5 License Revoked Upon Termination

Upon termination, the license to use the Software shall be immediately revoked and all licensed Software Products and supporting materials will be returned to PCI within thirty (30) days or destroyed and an affidavit supplied to PCI certifying destruction.

2.2 Term of Implementation Services

This Agreement shall commence on the date of its execution and shall continue and be in full force and effect until terminated in accordance with the provisions of this Agreement. The exact nature and expected duration of specific Implementation Services rendered will be described in a Statement of Work agreed to by the parties and incorporated into this Agreement.

2.3 Term of Maintenance and Support Services

Maintenance and Support shall be effective as of the date of execution of this Agreement and shall extend throughout the Initial Warranty period and subsequent Warranty Extensions, unless terminated as provided for herein.

2.4 Survival

Upon termination of this Agreement, the provisions hereof, which by their express terms survive termination, including those set forth in Section 13, Survival, shall remain in full force and effect.

3. TEST CRITERIA

Unless otherwise specifically provided in any documentation provided to the City, the test for each Software component of the System shall include testing to the City's reasonable satisfaction of the following: (a) unit testing (i.e., individual testing of each field, screen, screen-related action, and module/program); (b) System testing (i.e., testing of the System as a whole and its integration with other the City systems); and (c) volume/stress testing (i.e., testing of the System under peak conditions to measure response time and System reaction to load).

3.1 Failure of Testing

If after testing the Software components or the System, the Software components or the System do not function in a manner that is consistent with the standards identified in the Acceptance Test Plan, Functional Specifications or other written documentation provided to the City by PCI that describes the anticipated performance of the System, the City shall have the option, upon notice to PCI to:

- Terminate this Agreement, in accordance with the provisions of Section 12; or
- Accept the System at its then level of performance; or
- Permit the Live Testing to be further extended for such period as mutually agreed upon by the Parties in writing; or
- Accept those portions of the System which pass the acceptance criteria and require PCI to correct the remaining portions, in which event the City shall not be liable for any payments associated with the implementation of such remaining portions until they have been accepted; or
- Pursue such remedies as may be available to the City at law or in equity.

Final Acceptance of the System by the City will not release PCI from complying with the warranties and maintenance requirements set forth herein.

4. PERFORMANCE STANDARD

The Performance Standard and the Response Time Standard set forth below shall apply to the System and any subsequent Fixes Releases, Features Releases, and Version Releases. For purpose of determining whether the System meets the Performance Standard and the Response Time Standard, the performance of the System shall be judged on the basis of the following assumptions: (a) no more than ten (10) concurrent users will use the System at a given time, (b) scheduled downtime,

external interface failures, hardware failures and network outages not caused by the System will not be taken into account, (c) the System will be installed using the hardware in accordance with PCI's recommended hardware configuration, and (d) such hardware will run the System and will operate in a production network environment, using industry standard network traffic monitoring devices/tools, for the purposes of determining the System's compliance with the Response Time Standard and Performance Standard.

In the case that the System does not meet the Performance Standard and the Response Time Standard, the parties shall then move the System to an environment where in the hardware (provided by the City in accordance with PCI's recommended hardware configuration) shall run only the System and shall operate in a stand-alone network environment. The parties shall then use this isolated environment to make a final determination as to the System's compliance with the Performance Standard and the Response Time Standard. In the case that the System continues to not meet the Performance Standard and the Response Time Standard, PCI will revise its recommended hardware configuration and procure any additional hardware and software required to meet the recommended hardware configuration at PCI's expense.

4.1 Response Time Standard

The System shall be fully operational and available for use by the City ninety-nine and nine tenths percent (99.9%) of the time. Response Time Standard

- a. Add and Update Performance Criteria—The System shall perform in a three (3) second or less response time, on add or update of a single database record, ninety percent (90%) of the time or better.
- b. Search Performance Criteria—The System shall perform within five (5) seconds or less response time, on key search items as set forth in the Acceptance Test Plan, ninety percent (90%) of the time or better. The performance of batch and or background processes, maintenance and the installation of an additional module shall not adversely affect the System performance.

5. ACCEPTANCE

5.1 Acceptance Test Plan

PCI, with input from the City, shall develop an Acceptance Test Plan ("ATP") for the System.

5.2 Software Component Conditional Acceptance

Upon PCI's notification to the City that PCI has completed the installation of a Software Component(s) and that such Software Component(s) are ready for testing, the City shall begin testing such Software Component(s) in a non-production environment using the test procedures and standards contained in the ATP, or such other standards as are mutually agreed upon in writing ("Acceptance Test Procedures"), to determine whether each Software Component meets in all material respects, the applicable Specifications and acceptance criteria set forth in the Agreement, the Exhibits, or such other criteria as are mutually agreed upon in writing ("User Acceptance Testing"). After the City has completed the User Acceptance Testing for a Software Component and has operated such Software Component for up to ten (10) calendar days in accordance with the Specifications, the City shall notify PCI in writing that "Conditional Acceptance" of such Software Component (or the entire System, as the case may be) has occurred. If the City determines that a Software Component, or the System as a whole, does not perform as provided for in this Agreement, the City shall deliver to PCI a report describing the discrepancies. PCI shall correct the errors or defects within fifteen (15) calendar days after receiving such report, and the City may re-test the Software Components and the System for an additional test period of up to ten (10) calendar days, at the end of which the process

described above in this Section shall be repeated. This procedure shall continue until Conditional Acceptance of the Software Components, or Acceptance of the System, as the case may be.

5.3 Software Component Acceptance

Once Conditional Acceptance of the Software Component(s) necessary to begin Productive Use of the System, the City shall begin using the Software Components for Productive Use. Once the City has used the Software Components in a production environment for a sufficient time to test all functions of the Software Components in an integrated environment ("Live Testing"), which period of time for Live Testing shall be no more than thirty (30) consecutive calendar days after the Go Live Date of the Software Component (as described in Exhibit A), and has determined that: (i) there have been no material errors, (ii) the Software Component performs as warranted in this Agreement, and (iii) all training Services required hereunder, and other Services described in Exhibit A, have been completed, the City shall notify PCI in writing of its "Software Component Acceptance" of the relevant Software Component. In no event shall any other action or inaction by the City, including the City's use of the System, in a live, operational environment, constitute "Acceptance" of any portion of the System. Notwithstanding anything to the contrary contained herein, in no event shall Software Component Acceptance be deemed a waiver of any right or remedy available to the City, under this Agreement, at law, or in equity as a result of any defect in a component or deliverable not discovered by the City during the User Acceptance Testing or Live Testing periods.

5.4 System Acceptance

Once Conditional Acceptance of all Software Components of the System has occurred, the City shall begin using the System for Productive Use. Once the City has used the System in a production environment for a sufficient time to Live Test all functions of the System in an integrated environment, which period of time for Live Testing shall be no more than thirty (30) consecutive calendar days after the mutually agreed upon Go Live Date of the System, and has determined that: (i) there have been no material errors, (ii) the System performs as warranted in this Agreement, and (iii) all training Services required hereunder and other Services described in Exhibit A have been completed, the City shall notify PCI in writing of its "System Acceptance" of the System. In no event shall any other action or inaction by the City, including the City's use of the System, or any portion thereof, in a live, operational environment, constitute "Acceptance" of any portion of the System. Notwithstanding anything to the contrary contained herein, in no event shall System Acceptance be deemed a waiver of any right or remedy available to the City, under this Agreement, at law, or in equity as a result of any defect in a component or deliverable not discovered by the City, during the User Acceptance Testing or Live Testing periods.

5.5 System Acceptance Checkpoint

If after 30 days of Live Testing for the purpose of establishing System Acceptance, the City has determined that the System is meeting the criteria of a successful Live Test, as established in Section 6.4, the "System Acceptance Checkpoint" shall have been reached. The City shall notify PCI of attainment of the "System Acceptance Checkpoint" in writing.

5.6 Correction of Errors during Live Testing

In the event that the System does not meet the Performance Standard or Specifications during the Live Testing period, PCI shall have fifteen (15) calendar days in which to correct, modify or improve the System to meet the applicable criteria. Thereafter, the performance period shall be extended by fifteen (15) calendar days. If the Performance Standard and/or Specifications are not attained during the Live

Testing Period, after a maximum of one hundred and eighty (180) calendar days, the City may pursue remedies as set forth in this Agreement.

5.7 Acceptance of Non-Software Deliverables

The City will review, approve and provide written sign-off for all Non-Software Deliverables (e.g., plans, documents) in the following way:

The PCI Project Manager will review "drafts" of each Deliverable with the City Project Manager or designee prior to formal submittal of each Deliverable.

The City resource will identify in writing any required changes, deficiencies, and/or additions necessary within seven (7) business days of receipt of each draft Deliverable. For the purposes of this section, business days do not include City holidays. A period greater than seven (7) business days will be allowed upon mutual agreement of the parties.

PCI will revise each Deliverable based on feedback from the City and submit a final version of the Deliverable for review and sign-off from the City Project Manager. The City Project Manager will identify in writing any required changes, deficiencies, and/or additions necessary within five (5) business days of receipt of the final version of each Deliverable. A period greater than five (5) business days will be allowed upon mutual agreement of the parties.

Upon acceptance of the final Deliverable, the City Project Manager will sign a Deliverable Acceptance form and shall return it to the PCI Project Manager. For final Deliverables that are rejected by the City PCI shall re-perform the Services and resubmit the Deliverable for review in accordance with the procedures outlined in this section (including the 5 day review period).

Notification of the lack of action on the acceptance of a Deliverable (no signed acceptance or no notification of required changes, deficiencies, and/or additions) will be reported in writing to the City Project Manager by the PCI Project Manager at the end of the review period following delivery. The period may then be extended for two business days at the City Project Manager's request. In the event that the PCI Project Manager does not receive written comments or a signed Deliverable Acceptance form within the extended period, the Deliverable will be considered accepted.

6. PERSONNEL**6.1 *Project Mangers***

Each party will endeavor in good faith to maintain one person in the Project Manager capacity during the term of this Agreement. Each party will also endeavor in good faith to maintain the same Key Personnel during the term of this Agreement. For the purposes of this Agreement, PCI's Key Personnel include the Project Manager, Project Consultant, Business Analyst/Designer, and RCS Lead. PCI's Project Manager will have the overall responsibility for the Services until the completion of Services as provided for under the Statement of Work, and will be the City's primary contact person. If the City determines in good faith that PCI's Project Manager or any other Key Personnel are not qualified to fulfill the responsibilities of his or her position, as defined in the Statement of Work, PCI shall substitute such individual with a qualified replacement subject to the City's approval. PCI will not reassign or replace its Project Manager or any Key Personnel, except for extenuating circumstances. Should PCI's Project Manager or any PCI Key Personnel leave the employ of the party during the term of this Agreement, PCI will make a good faith effort to present to the other party an individual with equal or greater qualifications as a replacement subject to the other party's approval, which will not unreasonably be withheld.

6.2 *Client Review of Resumes*

The City has the right to inspect the resume of and interview any PCI proposed Key Personnel prior to that key personnel's participation on the project. If the City determines, in good faith, that any of the proposed PCI Key Personnel are not qualified then PCI shall submit a different candidate for consideration.

6.3 *Background Checks*

PCI expressly agrees that all PCI personnel assigned to the Project may be subject to a background investigation conducted by the City prior to such staff reporting for work at the City's sites. Any PCI personnel having been convicted of a Felony or Class I or II Misdemeanor shall be denied access to the sites and to the City's information.

6.4 *Drug-Free Workplace*

The City is a drug-free workplace and as a condition of continued service on the Agreement, the City may require any PCI personnel doing work at the City's site to submit to an alcohol and drug test at any time.

6.5 PCI Personnel Permanency

The City considers a suitable working relationship to be a product of several factors, not the least of which is the presumption of permanency of PCI personnel for the duration of the work effort. It is anticipated that PCI will provide a stable work force and limit disruptive personnel changes. PCI's Key Personnel should not be removed from the project except for circumstances beyond PCI control or as otherwise requested by the City. Replacement personnel shall be identified using the same guidelines established for the initial PCI Project personnel as described above and must be approved by the City. PCI agrees to provide turnover and knowledge transfer from one person to the other in the event of the removal of personnel and to make no charge to the City for the time associated with such turnover and knowledge transfer (up to an 80 hour transition period for the Project Manager, and up to 40 hours for other Key Personnel). PCI shall keep the City advised on a current basis as to the availability of personnel to perform work.

7. INDEMNIFICATION**7.1 Infringement**

PCI shall defend and hold harmless the City and its officers, agents and employees from any claim or proceedings brought against the City and from any costs, damages and expenses which arise as a result of any claim that is based on an assertion that the City's use of the work products under this Agreement constitutes an infringement of any United States or foreign patent, copyright or trademark provided that the City notifies PCI promptly of any such claim or proceeding and gives PCI full and complete authority, information and assistance to defend such claim or proceeding and further provided that PCI shall have sole control of the defense of any claim or proceeding and all negotiations for its compromise or settlement provided that PCI shall consult with the City regarding such defense. In the event that the work products are finally held to be infringing and its use by the City is enjoined, PCI shall, at City's election: (1) procure for the City the right to continue use of the work products; (2) modify or replace the work products so that they become non-infringing; or (3) if procurement of the right to use or modify or replace cannot be completed by PCI, refund to the City one (1.0) times the fees paid for the work product. If the City modified the work products in any manner without the prior written consent of PCI and such modification is determined by a court of competent jurisdiction to be a contributing cause of the infringement, the City will share proportionately in the cost of the defense and damages. In the event PCI updates the work products and the City does not have a current Maintenance Agreement with PCI, PCI shall provide the Modified Work Products to the City at no charge. PCI shall have no liability hereunder if the infringement would have been avoided by the City's use of either: i) the most current revision of the work products or ii) the Modified Work Products, provided that PCI provided the City, with adequate notice that such use was required to avoid an infringement claim and provided access to such products. The foregoing states PCI's entire liability and the City's exclusive remedy with respect to any claims of infringement of any copyright, patent, trademark, or any property interest rights by the work products, any part thereof, or use thereof.

7.2 Injury, Property, or Other Damage

PCI shall indemnify, defend, at its expense, and hold harmless the City from and against any and all claims, demands, judgments, awards, liabilities, losses, damages, and expenses, including reasonable attorneys' fees, arising out of or relating to bodily injury or death of any person, or to damage to tangible personal or real property, arising out of or relating to the negligence or willful misconduct of PCI, its officers, agents and employees in their performance under this Agreement, unless such injury is caused by the sole negligence or concurrent active negligence of the City, its officers, employees, or agents. If PCI's negligence combines with the City's active negligence to cause injury, the parties agree that liability will be apportioned as determined by a court of competent jurisdiction.

7.3 Third-Party Services

PCI shall indemnify and defend, at its expense, and hold the City harmless from and against any and all claims, demands, judgments, awards, liabilities, losses, damages, and expenses, including reasonable attorneys' fees, based on allegations, of non-payment, from PCI's subcontractors arising out of or related to services performed or products provided by them hereunder.

7.4 Technology

PCI shall indemnify, defend, and hold the City harmless from and against any and all claims, demands, judgments, awards, liabilities, losses, damages, and expenses, including reasonable attorneys' fees, arising out of PCI's failure to observe and follow any written requirements or specifications issued by manufacturers, vendors, or lessors of equipment, software, and other products furnished by the City, for use by PCI under this Agreement; provided however that (i) the City shall be responsible for obtaining any consents required or necessary for PCI to use such equipment, software or other products provided by the City; and (ii) unless such requirements or specifications are already in PCI's possession, the City shall provide PCI with written copies thereof.

8. OWNERSHIP OF WORK PRODUCT

All inventions, discoveries, Deliverables, intellectual property, technical communications and records originated or prepared by PCI pursuant to this Agreement including papers, charts, computer programs, and other Documentation or improvements thereto to the extent that such materials are described in or required by the Statement of Work (collectively, the "Work Product") shall be PCI's or the third party supplier's exclusive property. PCI hereby grants the City unlimited, irrevocable, world-wide, perpetual, royalty-free non-exclusive rights and licenses to use, modify, reproduce, perform, release, display create derivative products from and disclose the Work Product, subject to the confidentiality provisions contained in Section 17 of this Agreement.

9. LIMITATION OF LIABILITY AND DISCLAIMERS

Subject to the express provisions and limitations of this Section, the parties intend that each party shall be liable to the other party for all actual, direct damages incurred as a result of the breaching party's failure to perform its obligations.

(a) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED BELOW, THE AGGREGATE CUMULATIVE LIABILITY OF THE CITY HEREUNDER FOR ALL CLAIMS ARISING UNDER OR RELATING TO THIS AGREEMENT, NOTWITHSTANDING THE FORM (e.g., CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE) IN WHICH ANY ACTION IS BROUGHT, SHALL BE LIMITED TO THE AMOUNT OF CHARGES OWED AND UNPAID FOR SERVICES RENDERED.

(b) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS SECTION, THE AGGREGATE CUMULATIVE LIABILITY OF PCI HEREUNDER FOR ALL DAMAGES ARISING UNDER OR RELATING TO THIS AGREEMENT, NOTWITHSTANDING THE FORM (e.g., CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE) IN WHICH ANY ACTION IS BROUGHT, SHALL BE LIMITED TO 1.5 TIMES THE CONTRACT VALUE. THE FOREGOING LIMITATION UPON THE AMOUNTS OF PCI'S LIABILITY SHALL NOT APPLY TO: (A) PCI'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT); (B) PCI'S CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT); (C) CLAIMS BASED UPON PCI'S FAILURE OR REFUSAL TO CONTINUE SERVICES IN VIOLATION OF SECTION 20; OR (D) ANY DAMAGES FOR BODILY INJURY (INCLUDING DEATH) AND DAMAGE TO REAL PROPERTY AND TANGIBLE PERSONAL PROPERTY. THIS LIMIT ALSO APPLIES TO SUBCONTRACTORS OF PCI.

(c) NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF FORESEEABLE OR IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE FORM IN WHICH ANY ACTION IS BROUGHT (E.G., CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION AND IN THE CASE OF LIABILITIES BASED UPON: (1) CLAIMS FOR INDEMNIFICATION); OR (2) CLAIMS WITH RESPECT TO A BREACH OF CONFIDENTIALITY.

(d) NOTWITHSTANDING THE FOREGOING, PCI ACKNOWLEDGES AND AGREES THAT, SUBJECT TO THE ABOVE LIMITATION ON ACTUAL DAMAGES, THE TYPES OF DAMAGES THAT THE CITY MAY RECOVER FROM PCI SHALL IN ALL EVENTS INCLUDE ALL ACTUAL DIRECT COSTS AND EXPENSES PAID OR INCURRED BY THE CITY AS A DIRECT RESULT OF ANY FAILURE BY PCI TO PERFORM ITS OBLIGATIONS HEREUNDER, INCLUDING ANY ADDITIONAL COSTS INCURRED BY THE CITY TO OBTAIN REPLACEMENT SERVICES COMPLYING WITH THE TERMS HEREOF AND TO ADDRESS, AND TO MINIMIZE OR AVOID THE CONSEQUENCES OF, THE BREACH AND THE ADDITIONAL AMOUNT THE CITY ACTUALLY HAS TO PAY FOR REPLACEMENT SERVICES.

10. WARRANTY**10.1 Performed Services**

PCI warrants that its Services will be performed consistent with generally accepted industry standards. PCI further warrants that the modules have been configured as agreed to by the City and PCI to comply with requirements as set forth in Exhibit E, as may be modified by mutual agreement of the parties during the pre-implementation project review stage ("Gap Analysis").

10.2 Operate in Substantial Conformity with Product Specifications

PCI products are warranted to operate in substantial conformity with product specifications upon System configuration and certification, during the Initial Warranty period and for any Warranty Extensions that may be purchased thereafter. In addition, PCI products will materially and substantially include the functionality listed in the Infor Functional and Technical Requirements designated as a "T" response for PCI products. Infor Functional Specifications are incorporated by reference and included as Exhibit E to this agreement. PCI warrants that Services and Products shall be provided in a timely and professional manner by qualified personnel and that PCI has the right to license the System provided under this Agreement and that the System does not infringe upon any rights of third parties.

10.3 Meet Requirements Include Exhibits

PCI warrants that the System shall meet the requirements of this Agreement including Exhibits.

10.4 Free of Programming Errors

PCI warrants that the System shall be substantially free from programming errors, viruses, and defects.

10.5 PCI Testing

PCI warrants that the System shall be thoroughly tested by PCI. PCI also warrants that the System will be compliant with Americans with Disabilities Act.

10.6 Computer Hardware Environment

PCI warrants that the System shall operate on the computer hardware in accordance with PCI's recommended hardware configuration.

10.7 Performance Standards

PCI warrants that the System shall meet the Performance Standard and the Response Time Standard as set forth in Exhibit C of this Agreement for five (5) years from the date of Cutover. After Cutover, the Performance Standard and the Response Time Standard requirement shall be effective only in the event that the City makes necessary upgrades based upon the Annual Review of the System.

10.8 Correction of Nonconformity or Defect

PCI shall not be obligated to correct or otherwise remedy any nonconformity or defect in the System if the City has made any application software changes to the System without the approval of PCI or if the City has not reported to PCI the existence and nature of such nonconformity or defect promptly upon discovery thereof.

10.9 Fixes, Feature Release and Version Releases

All Fixes Releases, Features Releases, and Versions Releases, applied to, or installed on, the System shall be incorporated into the Warranty.

10.10 Initial Warranty

The Initial Warranty shall become effective upon the System being put into production use by the City, and continue as long as Client pays support and maintenance.

10.11 Warranty Extensions

Warranty Extensions shall include Maintenance and Support Services. Annual renewals will be automatic, for one-year from the expiration of the initial warranty, unless cancelled by written notice from the City. PCI agrees that pricing regarding Warranty Extensions will remain valid, prorated, and invoiced in advance, to an annual billing cycle.

10.12 System Functionality Warranty

PCI represents and warrants that all PCI-provided System Software configurations, modifications, customizations, data conversions and interfaces (i) shall function properly and in accordance with the design document, separately and as a fully integrated system, and (ii) when operated together will not cause any material delays, defects, or problems with the City and Infor System Software, subject to any capacity constraints of the City's communications network environment. PCI further warrants that the System Software functionality that is identified in Exhibit A as "Fully 'Out of the Box'," will be delivered to the City by PCI, to the maximum extent possible, without modifications to the System Software or the source code, bolt-on programs, or extensive workarounds. In addition, PCI warrants that the modifications to the System Software performed by PCI hereunder will not detract from or otherwise interfere with the full functionality of the System Software as described in the Specifications and Acceptance Criteria.

10.13 Payment Card Industry Standards Warranty

PCI represents and warrants that the Payment Card Industry Standards do not apply to the Software and Services being provided under this License Agreement.

10.14 Warranty Disclaimer

PCI DISCLAIMS (TO THE EXTENT PERMITTED BY LAW) ALL WARRANTIES ON PRODUCTS FURNISHED HEREUNDER, EXCEPT THOSE SPECIFICALLY STATED ABOVE, INCLUDING ALL WARRANTIES OF MERCHANTABILITY. THE ABOVE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, AND REPRESENTS THE FULL AND TOTAL OBLIGATION AND/OR LIABILITY OF PCI.

10.15 Warranty Remedy

For a violation of any of the forgoing warranties, the issue shall be escalated through the PCI help desk escalation procedures as described in Exhibit C. If the issue cannot be remedied after completion of the escalation procedures in Exhibit C, then Licensee may pursue any legal remedies available.

11. TERMS OF PAYMENT

11.1 Introduction

Exhibit A sets forth the charges with respect to the Services, which charges the City, shall pay to PCI subject to PCI's performance of its obligations under this Agreement and the limitations set forth in the Agreement. The sole consideration for all of the Services and other matters provided by PCI under this Agreement is set forth in this Exhibit A.

11.2 Pricing

The ERP Implementation Services to be provided by PCI as described in the City of Corpus Christi – Infor Statement of Work ("Infor Statement of Work") will be charged to the City by Infor, on a fixed fee basis, which includes all PCI travel and all PCI Reimbursable Expenses. "Fixed fee" means that PCI will perform under the Infor Statement of Work (as may be modified by agreement of the parties) even if PCI is required to expend more than the number of hours used to determine the cost set forth in the Infor Statement of Work and will not charge the City for such excess hours or expenses unless otherwise permitted under this Agreement. Any duly authorized change orders to the Infor Statement of Work related to the services to be provided by PCI shall be billed at the same rates in effect at the time of execution of this License Agreement.

In no event will the cost to the City of the Products, including travel and reimbursable expenses and excluding third party software, exceed the price as set forth in Exhibit A, unless agreed upon in advance in writing signed by authorized representatives of the parties through the Change Order process outlined in Section 2 of this Agreement.

Services to be provided by PCI after completion of ERP Implementation Services under a duly authorized separate statement of work between the City and PCI will be provided at then current PCI rates in effect .

11.3 Payment

PCI will submit invoices for Products delivered to the City upon execution of the License Agreement

The City will not be billed or be liable for any charges other than those described and authorized in this Agreement. The City will pay Infor for Implementation Services actually performed by PCI and for Reimbursable Expenses actually incurred, which were provided in accordance with the Statement of Work between City and Infor, for amounts not to exceed fixed fees identified in the Infor Statement of Work.. Documentation of expense items will be made available to the City upon request.

11.4 Invoicing

PCI shall issue itemized invoices that reflect delivery of Products. Invoices shall be sent to the City at P.O. Box 9277, Corpus Christi, Texas 78469-9277. PCI shall submit such invoices and detail: (a) the Services performed (e.g., each activity, task, and/or milestone); and (b) with respect to the New Services, if being billed on a time and materials basis, the number of hours and corresponding fees attributable to each such person's performance of such Services, and shall be in the format agreed upon by the parties. The City shall pay all undisputed invoices properly issued within its normal payment cycle (thirty (30) days from receipt of invoice).

12. TERMINATION

The Services to be provided under this Agreement may be terminated in whole or in part, by the City in accordance with this Section whenever the City determines that such termination is in the best interest of the City, which termination shall be effective at 11:59 p.m. on the intended date of termination (the "Termination Date"). Any such termination shall require a minimum of thirty (30) days' written notice and shall be effected by delivery to PCI of a notice specifying the extent to which provision of services under the Agreement are terminated, and the date upon which such termination will become effective (the "Termination Notice"). In the event the City elects to terminate any category of Service (but not all Services in the aggregate) pursuant to the terms hereof, PCI shall perform its Disentanglement obligations hereunder to the extent applicable to the Service or Services being terminated. In the event of all or any partial termination of the Services, PCI shall be entitled to the unpaid Fees for Services actually rendered up to and including the applicable Termination Date, on a time and materials basis, at the then current PCI hourly rate for each of the PCI Personnel assigned to perform such unpaid Services in connection with the undelivered Deliverables that were to be provided or the tasks to be performed under Exhibit A. In the event of such early termination, the City and PCI shall negotiate an equitable additional payment to PCI, which shall take into account PCI's cost of termination of third-party software licenses, and for leases of equipment and real property, entered into for and on behalf of the City in connection with this Agreement. The City shall also return any retainages of the Fees for services in connection with previously delivered Deliverables or completed milestones and PCI shall be entitled to retain any software license fees paid the City. In the case of any such software license fees being retained by PCI, the City shall continue to enjoy the right to use the software; provided, however, that PCI shall not be obligated to maintain or support the software. If within sixty (60) days following the Termination Date, the parties have not agreed upon the amount of Services rendered as of the Termination Date or the amount of such additional payments, the issue will be treated as a dispute under this Agreement.

Upon termination, PCI will provide the City with working documents, notes, and data assembled prior to PCI's receipt of notice, and the City will pay PCI for professional services completed prior to said notice. PCI will refund software license fees that have been paid to date by the City, provided that termination is for cause.

12.1 Disentanglement

In connection with any expiration or termination of the Term of this Agreement or of the provision of any of the Services provided hereunder, PCI shall take all actions necessary to accomplish a complete and timely transition from PCI to the City, or to any replacement providers (collectively, the "New Consultant" or "NC") designated by the City, of the Services being terminated (a "Disentanglement"), without material impact on the Services or any other Services provided by third parties. PCI shall cooperate with the City and the NC and otherwise take all steps reasonably required to assist the City in effecting a complete and timely Disentanglement. PCI shall provide the City and the NC with all information regarding the Services or as is otherwise needed for Disentanglement, subject to NC agreeing to maintain the confidentiality of PCI confidential information. PCI shall provide for the prompt and orderly conclusion of all work, as the City may direct, including completion or partial completion of projects, Documentation of work in process, and other measures to assure an orderly transition to the City or the City's NC. PCI shall provide any additional Disentanglement Services as City reasonably requests for a period of up to one (1) year, on a time and materials basis, at the then current PCI hourly rate for each PCI Person that is reasonably required to perform such Disentanglement Services as requested by City.

13. SURVIVAL

The terms of Section 8, Indemnification, Section 1.2 Software License, Section 17, Protection and Security of Confidential Data, and Section 27, General shall survive the termination of this Agreement.

14. INSURANCE

PCI shall procure and maintain, during the performance of this Agreement, Comprehensive General Liability insurance and Worker's Compensation and Disability coverage for PCI employees where services are to be performed, and such other insurance coverage insuring against loss or damages to the City's property and/or personnel caused by PCI activities. PCI shall not commence work under this Agreement until PCI has obtained all insurance required under this Paragraph and the City has approved such insurance, nor shall PCI allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been so obtained and approved. The City will be named on all liability policies as "Additional Named Insured" for the proposed work. All liability policies will be written in an "occurrence" form unless otherwise specifically approved by the City.

14.1 Worker's Compensation Insurance and Employer's Liability Insurance

PCI shall take out and maintain during the life of this Agreement the applicable statutory Workers' Compensation Insurance with an insurance company authorized to write such insurance in all states covering all its employees, and in the case of any work sublet, PCI shall require its subcontractors similarly to provide statutory Workers' Compensation Insurance for the latter's employees. PCI shall take out and maintain during the life of this Agreement, Employer's Liability Insurance with a limit of \$1,000,000 per accident/injury by an insurance company authorized to write such insurance in all states where PCI will have employees located in the performance of this Agreement and PCI shall require each of its subcontractors similarly to maintain Employer's Liability Insurance on its employees.

14.2 Public Liability Insurance

14.2.1 PCI shall maintain during the life of this Agreement such Public Liability Insurance as shall protect it against claims for damages resulting from bodily injury, including wrongful death, and property damage, which may arise from operations under this Agreement whether such operations be by itself or by any subcontractor or anyone directly or indirectly employed by either of them. The minimum acceptable limits of liability to be provided by such Public Liability Insurance shall be as follows:

a. Bodily Injury Limits:

\$1,000,000 Each Person
\$2,000,000 Each Occurrence

b. Property Damage Limits:

\$ 500,000 Each Occurrence
\$1,000,000 Aggregate

14.2.2 The Public Liability Insurance required by the preceding Sub-paragraph 14.2.1 shall include the following extensions of coverage: the coverage shall be provided under a Commercial General Liability form of policy or similar thereto.

14.3 Subcontractor's Insurance

PCI shall require each of its subcontractors to take out and maintain during the life of its subcontract the same insurance coverage required of PCI under Sub-paragraphs 14.1 and 14.2, including the extensions of coverage required under Sub-paragraph 14.2. Each subcontractor shall furnish to PCI two (2) copies of a Certificate of Insurance and such Certificate shall contain the same information required in Sub-paragraph 14.4. PCI shall furnish one (1) copy of the Certificate to the City .

14.4 Certificate of Insurance

PCI shall furnish the City with a copy of a Certificate of Insurance evidencing policies required in Sub-paragraphs 14.1, 14.2, and 14.3. Such Certificate of Insurance shall specifically indicate that the Public Liability Insurance includes all extensions of coverage required in Sub-paragraph 14.2.2. Such Certificate of Insurance shall specifically state that the insurance company or companies issuing such insurance policies shall endeavor to give the City at least thirty (30) days written notice in the event of cancellation of, or material change in, any of the policies. If coverage on said Certificate(s) is shown to expire prior to completion of all terms of this Agreement, PCI shall furnish a Certificate of Insurance evidencing renewal of such coverage to the City.

14.5 Insurance Company and Agent

All insurance policies herein required of PCI shall be written by a company duly authorized by Federal or State law and licensed to do business in the State of and be executed by some agent thereof duly licensed as an agent in said state.

15 PROTECTION AND SECURITY OF CONFIDENTIAL INFORMATION**15.1 Responsibility of Each Party**

Each party shall:

- (a) Maintain the confidentiality of the Confidential Information of the other party subject to compliance with Texas Public Information Act;
- (b) take steps to minimize the dissemination or copying of the Confidential Information of the other party except to the extent necessary and appropriate to perform its obligations under this Agreement;
- (c) use the same care to prevent disclosure of the Confidential Information of the other party to third parties as it employs to avoid disclosure, publication, or dissemination of its own information of a similar nature, but in no event less than a reasonable standard of care;
- (d) use the Confidential Information of the other party solely for the purpose of performing its obligations under this Agreement;
- (e) not acquire any express or implied right or license under any patent, copyright, trade secret, or other right or assert any lien against Confidential Information of the other party;
- (f) promptly return, or provide a copy of, as the requesting party directs, Confidential Information upon the request of the other party (provided that PCI may retain such Confidential Information as it requires in order to perform the Services for so long as it is required to perform such Services); and
- (g) use commercially reasonable efforts to inform its employees, agents, and subcontractors who perform duties with respect to this Agreement about these restrictions.

15.2 Disclosure of Confidential Information

Each party may disclose Confidential Information of the other party to its employees, agents, and subcontractors who have: (i) a need to know such Confidential Information in order to perform their duties; and (ii) a legal duty to protect the Confidential Information. A party receiving Confidential Information of the other party assumes full responsibility for the acts or omissions of its subcontractors and employees with respect to such Confidential Information. Notwithstanding the foregoing, in no event shall PCI disclose or otherwise reveal any portion of the City's Confidential Information to any Affiliate of PCI without the City's prior written consent.

15.3 General Security

PCI shall follow all security practices, policies and procedures set forth by the City and will make every effort to ensure the security of the City's network, systems, and software while performing the contracted services and work identified in this Agreement.

The connection of any electronic device and/or equipment (including, but not limited to, computers, personal digital assistants ("PDA's"), "BlackBerry" devices, smart phones, cellular phones, routers, and switches) to any device on the City's network infrastructure is prohibited without prior authorization and must be (where applicable) scanned for viruses, malicious code, worms, etc. by the City.

All PCI personnel working on-site for any period of time that require the use of their own personal electronic devices shall have the latest operating system security updates and a generally accepted anti-virus software installed (where applicable) with the latest updates and virus definitions on these devices.

The use of any software (e.g., password decoders, network sniffers, ports or security scanners) is prohibited without prior authorization by the City.

The use of any software (e.g., password decoders, network sniffers, ports or security scanners) is prohibited without prior authorization by the City.

A City issued user-id and password is required for PCI's employee requiring access to the City's network and systems. A City issued building access card is required for PCI's employees to access City office spaces. Under no circumstances shall City user-ids and passwords be revealed, released, or otherwise disseminated to anyone other than those to whom they are assigned. Under no circumstances shall City building access cards be shared or otherwise disseminated to anyone other than those to whom they are assigned. PCI will be required to sign the City's security and access policies.

15.4 Clients System Data

PCI agrees to protect the confidentiality of the information maintained by the City and further warrants that any PCI staff assigned to the Project will not, beyond that necessary for this Agreement, release, disseminate, copy or otherwise utilize, for any purpose, any other information of the City without the City's prior written authorization.

16. ASSIGNMENT

Neither party shall assign or transfer this Agreement nor any rights or obligations hereunder.

17. NOTICES

All notices given between parties shall be in writing and shall be considered properly sent by postage prepaid United States Mail or Country of Origin Mail to the persons identified below:

For: PCI, LLC.

Alastair Main, President
4893 W Waters Ave, Suite E
Tampa, Florida 33634

Additional Information:

Telephone: (813) 885-7974
Fax: (813) 882-4577
E-mail: alastair.main@pciusa.com

For: City

Name: Director of Municipal Information Systems
City of Corpus Christi, 1201 Leopard St
Corpus Christi, TX 78401-2825

Additional Information:

Telephone: (361) 826-2489
Fax:
E-mail:

18. DISPUTE RESOLUTION**18.1 *Left blank.*****18.2 *Project Managers Resolution***

In the event of any dispute or disagreement between the parties which does not require immediate legal relief, whether with respect to the interpretation of any provision of the Agreement, or with respect to the performance of either party hereto each of the parties will have their respective Project Managers meet for the purpose of endeavoring to resolve such dispute or negotiate for an adjustment to such provision. If a resolution to such dispute does not occur during such meeting or within five (5) business days thereafter, the parties agree to elevate the dispute to a meeting of the Project Steering Committee. If a resolution to such dispute does not occur during such meeting or within five (5) business days thereafter, the parties agree to elevate the dispute to the Vice President level of PCI and the Director level of the City. .

18.3 *No Termination or Suspension of Services*

Notwithstanding anything to the contrary contained herein, and even if any problem or other dispute arises between the parties and regardless of whether or not it requires at any time the use of the dispute resolution procedures described above, in no event nor for any reason shall PCI interrupt or suspend or terminate the provision of Services to the City or perform any action that prevents, impedes, or reduces in any way the provision of Services or the City's ability to conduct its activities, unless: (i) authority to do so is granted by the City or conferred by a court of competent jurisdiction; or (ii) the Term of this Agreement has been terminated and PCI has performed its obligations with respect to a Disentanglement; or (iii) or the City has failed to pay PCI undisputed invoices that are past due in excess of sixty (60) days after receiving notice from PCI of such delinquency. In the event that the City fails to make such full payment within said 60-day period, PCI shall grant to the City an additional thirty (30) days to render full payment provided that the City requests such additional thirty (30) days.

19. FORCE MAJEURE

Neither party shall be deemed to be in default of any provision of this Agreement or be liable for any delay, failure in performance, or interruption of service resulting from act of war, act of God, act of civil or military authority, civil disturbance, or any other cause beyond its reasonable control.

20. INDEPENDENT CONTRACTOR

PCI shall at all times act as an independent contractor in the performance of this Agreement. Neither PCI nor its employees or agents shall represent themselves to be or be deemed to be employees of the City.

21. SOLICITATION OF EMPLOYEES PROHIBITED

Unless the other party consents, neither party will solicit, entice, hire, or otherwise interfere with the employment relationship of the other as a result of work under this Agreement for a period of six (6) months after final payment for acceptance of the System. Advertising in publications of general circulation or advertising or solicitation through other public media shall not constitute such prohibited solicitation.

22. PRIME VENDOR RESPONSIBILITIES

PCI may provide third party software and hardware, which they are authorized to offer, provided it meets the terms of this Agreement. PCI shall act as the prime vendor for any software or hardware provided by other suppliers, and shall assume full responsibility for the procurement, warranty, maintenance, and support of such items. Any such third party software and/or hardware shall be deemed part of the System. In such case, PCI shall be considered the sole point of contact with regard to all stipulations, including payment of all charges and the meeting of all terms of this Agreement.

23. NON-APPROPRIATION

It is understood and agreed between the parties that the City shall be bound hereunder only to the extent that the funds are appropriated and budgeted for the purpose of this Agreement. In the event no funds or insufficient funds are appropriated and budgeted in any fiscal year for payments due under this Agreement, the City will immediately notify PCI of such occurrence and this Agreement will terminate on the last day of the fiscal period for which appropriations were received.

24 GENERAL**24.1 Applicable Law and Venue**

This Agreement is made in and shall be governed by the laws of the State of Texas. In the event of litigation, venue shall be in the Circuit Court of the City. This provision shall not be construed to prevent a party from instituting and a party is authorized to institute formal proceedings to avoid the expiration of any applicable limitation periods.

24.2 Severability

If any provisions of this Agreement are held to be unenforceable, this Agreement shall be construed without such provisions.

24.3 Waiver

The failure by a party to exercise any right hereunder shall not operate as a waiver of such party's right to exercise such right or any other right in the future.

24.4 Changes

This Agreement may be amended only by a written document executed by a duly authorized representative of each of the parties.

24.5 Taxes

PCI stipulates any taxes, whether specifically identified in this Agreement or not, which are imposed currently or in the future, by any authority with the power of taxation in connection with the sale of licensed software, hardware, services and/or maintenance shall be paid by the City. The City represents it is exempt from federal excise and local taxes and shall provide certificates of exemption to PCI upon request.

25. DEFINITIONS

"Acceptance" shall have the meaning described in Section 6 of this Agreement. Acceptance may be further defined as "Conditional Acceptance," "System Acceptance," or "Software Component Acceptance" as is further described in Section 6.

"Annual Review" shall have the meaning described in Section 1.4.2

"Change" means a change to the scope of the Services.

"Change Order" means a document describing potential or actual changes to the scope of the Services, as further defined in Section 2 of this Agreement.

"City Project Manager" means the representative of the City designated to oversee the provision of the Services by PCI on a day-to-day basis.

"Deliverables" means the items identified as "Deliverables" or a "Deliverable Material".

“Design Document” means a document detailing the changes to be implemented into the System.

“Documentation” means publications relating to the System, such as reference, user, installation, system administrator, and technical guides.

“Fees” means the fees payable by the City to PCI hereunder in consideration of PCI’s provision of the Services.

“Features Release” means a major release of Software containing significant product enhancements and improvements including Fixes Releases since the last Features Release.

“Fixes Release” means a minor release of Software containing primarily error corrections. A Fixes Release may also contain limited improvements that do not affect the overall structure of the Software.

“Go-Live Date” means the date on which a Software Component or the entire System, as the case may be, have entered Productive Use

“Initial Warranty” means the initial period of time during which PCI warrants the System and Deliverables, as is further described in Section 11.

“Live Testing” shall have the meaning described in section 6.

“Maintenance and Support” means various services provided by PCI to the City in support of the City’s on-going use of the System.

“PCI Personnel” means the PCI Project Manager, the Key Personnel, and all employees of PCI, and all employees of subcontractors of PCI, who are providing the Services at any time during course of this Agreement. An individual within such description is a “PCI Person.” PCI shall make available the number of PCI Personnel necessary to properly perform PCI’s obligations under this Agreement. At any time, upon the request of the City, PCI shall provide the City with a list of all persons who at such time are PCI Personnel, which list shall include the positions occupied by each such person.

“PCI Project Manager” means the PCI Person designated to manage the day-to-day provision of the Services.

“Products” means, collectively, the Hardware, Software, and Third Party Software provided by PCI and required for implementation of the System.

“Productive Use” means use of the System to run the business of the City.

“Project” means the Services and Products to successfully implement the System in accordance with the Project Plan.

“Reimbursable Expenses” are reasonable travel, lodging, and meal costs incurred by PCI. The following points describe Reimbursable Expenses and limitations thereon in more detail:

- Airfare will be based on the lowest coach fare available for the date and time of travel, including change fees if necessary, provided that such airline travel schedule does not create undue inconvenience to PCI personnel travel schedules, i.e. weekend travel, etc., or extended layovers. Defining such “inconvenience” for the purposes of expense reimbursement shall rely on the reasonable, mutual agreement of the parties.
- Travel by vehicle based on the rate set forth in the City Travel Policy.
- Rental car will be based on the lowest rate available, at the arriving airport, for a vehicle that meets the needs of the person(s) traveling, including fuel. In most cases, a mid-size or smaller car will be used. However, a larger vehicle may be required based on the number of people traveling and the equipment that is being carried.
- Lodging will be based on the best available rate for a hotel which provides appropriate facilities for the person(s) traveling to perform any necessary business related tasks and is readily accessible to the project's location.
- Meals, i.e. breakfast, lunch and dinner, will be based on normally acceptable costs for residents of the City and it will exclude alcohol.
- Reasonable parking fees for parking while at the City.
- Reasonable parking fees for parking at the departure airport or transportation fees for travel to the departure airport.

“Services” means the installation, implementation, integration, configuration, and other services with respect to the System that PCI is engaged to perform pursuant to this Agreement

“Software” means the licensed programs myRevenueCollector (Revenue Collection System or RCS) identified in this Agreement.

“Software Component” means a portion of System which will be tested and accepted in accordance with the procedures described in Section 6 of this Agreement

“Source Code” means the human-readable program instructions in their original form, for the Software.

“System Acceptance” shall have the meaning described by Section 6.4

“System” means the myRevenueCollector (“Revenue Collection System” or “RCS”) System described in the Documentation. The System includes the Software, Third-Party Software, modifications, configurations, and any custom programming as well as all revisions and customizations to any or all of the above software which may be required to implement the system.

“Warranty Extension” means an extension of the Initial Warranty Period. The City will be considered to have a Warranty Extension as long as it receives Maintenance and Support from PCI.

“Work Product” shall have the meaning described in Section 9.1

WHEREFORE, the parties hereto execute this Agreement by their duly authorized representative or officer.

City of Corpus Christi

By: _____

Title: _____

Date: _____

PCI LLC

By: ADW Meier

Title: President

Date: April 9th 2013

Exhibit A - Pricing Proposal

CORPUS CHRISTI, TEXAS myRevenueCollector from PCI LLC -- INFOR Partner Quote

Prices effective through July 31st, 2013

Software, Annual Support, Upgrades & Maintenance and Recommended Hardware and Software *	Price per Unit	Quantity	Total
myRevenueCollector.com (RCS) Centralized Cashiering Software	\$ 6,000	Ten (10) seat licenses	\$ 60,000
myRevenueCollector.com (RCS) Interface with INFOR Financials G/L and A/P Interfaces, additional Interface Software, - Estimate Minimum Interfaces with Other City Systems - Estimated as one, but any number can be arranged.	\$ 3,000	Two (2) Interfaces	\$ 6,000
SOFTWARE SUBTOTAL	\$ 12,000	None (0) Quoted	\$ - 0 -
RECOMMENDED CASHIERING HARDWARE AND SOFTWARE		SOFTWARE	\$ 66,000
Check21 Software	\$ 15,000		\$ 15,000
Cashiering Hardware	\$ 1,929		\$ 19,290
RECOMMENDED CASHIERING HARDWARE AND SOFTWARE SUBTOTAL			\$ 34,290
TOTAL REQUIRED AND RECOMMENDED HARDWARE, SOFTWARE, PROFESSIONAL SERVICES AND TRAVEL			\$ 100,290
ANNUAL SUPPORT, UPGRADES & MAINTENANCE FOR REQUIRED AND RECOMMENDED SOFTWARE		ANNUAL	\$ 17,520





Note #1: Sales Taxes and/or any other taxes, if applicable, are extra.

Note #2: If recommended Check21 software is not selected, Annual Support will be reduced \$3,000

*Professional Services are being provided by PCI in accordance with the City of Corpus Christi - Infor Statement of Work.

Exhibit B – Recommended Cashiering Hardware and Pricing Options

City of Corpus Christi Standard Cashiering Investment Schedule

	<p>MagTek Magnetic Stripe Reader:</p> <ul style="list-style-type: none"> ▪ USB 2.0 Interface ▪ Off White or Black 	<p>\$ 110.00 each</p>
	<p>Epson TM-H6000IVwith Validation:</p> <ul style="list-style-type: none"> ▪ USB 2.0 Interface ▪ With MICR ▪ Off White or Charcoal 	<p>\$ 795.00 Each</p>
	<p>Canon CR-50 Check Scanner:</p> <ul style="list-style-type: none"> • USB 2.0 • 50 checks\minute • 100 images\minute • OCR reader 	<p>\$ 695.00 Each</p>
	<p>Epson EP-127 Cash Drawer</p> <ul style="list-style-type: none"> • Epson Interface • Incl. Insert Tray • Lockable Lid • Under Counter Bracket • Off White or Black 	<p>\$ 329.00 Each</p>

Hardware Configuration		
Hardware		
Magnetic Stripe Readers	<u>10</u> @ \$ 110.00 each	\$ 1,100.00
Epson TM-H6000IV Thermal Receipt Printers	<u>10</u> @ \$ 795.00 each	\$ 7,950.00
Canon CR-50 Check Scanner	<u>10</u> @ \$ 695.00 each	\$ 6,950.00
Epson Cash Drawers	<u>10</u> @ \$ 329.00 each	\$ 3,290.00
	Hardware Sub Total	\$ 19,290.00
Hardware Installation & Training		
Included		\$ 0.00
	Total Hardware	\$ 19,290.00
Reimburse Freight Charges	Freight invoiced at actual cost.	\$TBD

Hardware Notes:

1. Hardware is quoted in a fashion that identifies complete hardware workstations for all users. Of course, hardware will be purchased to reflect the actual needs of the workstations as ultimately configured.
2. Proposed hardware is covered with a one-year parts and labor warranty serviced by mail, unless stated otherwise. Extended warranty and hardware maintenance pricing options can be submitted separately.

Check Imaging:

PCI currently supports check imaging via the use of the PCI myRevenueCollector Check Imaging Module which is included in the Standard Cashiering Investment Schedule and uses the Canon CR-50 desktop check scanner with a cost of \$ 695.00 per unit.

Check 21 (optional or future addition):

Check21 which will perform all of the standard imaging functions and also create an ICL (Image Cash Letter) file creation. In simplest terms, it creates a folder at the end of a cashiering cycle that the Jurisdiction picks up (electronically of course) and forwards to the bank (also electronically) thus reducing the Jurisdiction's need to manually prepare a deposit slip for checks received. For more information on the benefits of Check21 please visit this site:

<http://www.federalreserve.gov/paymentsystems/regcc-faq-check21.htm#1>.

There is a charge associated with Check21 – \$15,000 software license fee (one time) and an ongoing \$3,000 annual maintenance fee.

Check21 requires the use of a Canon CR-50 desktop check scanner with a cost of \$ 695.00 per unit.

Payment Terms:

This estimate is valid for 90 days.

100% upon receipt of the hardware order by the City.

Delivery Schedule:

PCI and Client will agree on a mutually acceptable project schedule.

Return Policy:

Should a product outlined above be defective in performance and inoperable, Jurisdiction will receive full refund of amount paid for such product provided written notice has been given to PCI no later than thirty (30) days after delivery and that a solution cannot be provided within fifteen (15) business days after certified receipt of such notice. Returns for reasons other than product defects shall be subject to a 15% restocking fee.

Exhibit C – Maintenance and Support Services

Terms

Terms used in this Agreement will have the meanings given below:

- A) “Documentation” means the documentation provided by PCI for the Software pursuant to the License Agreement, and includes Exhibit E to the License Agreement.
- B) “Enhancements” means changes or additions to the Software which PCI develops and makes available at no additional charge to all licensees of the Software who are under then-current maintenance agreements.
- C) “Software incident” means a material deviation of the Software from the Documentation.
- D) “License Agreement” means the license agreements specified in the License Agreement pursuant to which PCI licensed the Software to the City.
- E) “Maintenance and Support Period” means the initial term of this Agreement or any subsequent renewal period. The initial term and each renewal period is a separate Maintenance Period. The initial Maintenance Period is specified in the Main Contract. Each renewal Maintenance Period, if any, will be a period of twelve (12) months.
- F) “Software” means the software specified in the Main Contract.

System Service Level Agreement (System SLA)

The myRevenueSystem shall be fully operational and available for use by the City users ninety-nine and nine-tenths (99.9%) of the time. The following identifies the myRevenueSystem response time standards that will be maintained.

- A) Add and Update Performance Criteria
The system shall perform in a three (3) second or less response time, on add or update of a single data record, ninety percent (90%) of the time or better.
- B) Search Performance Criteria
The System shall perform within five (5) seconds or less response time, on unique key search items such as account number or real estate PIN, ninety percent (90%) of the time or better.

Maintenance and Support

- A) PCI Standard Maintenance and Support Services provide the City with new functional or technical enhancements to the then current installed version of the myRevenueSystem and the then current myRevenueSystem users.
- B) PCI Standard Maintenance and Support Services provide the City with access to the PCI help desk as outlined in the following points:
 - a. The PCI support services are provided as a remote service to the City from our PCI offices.

- b. The PCI help desk is available Monday through Friday, excluding PCI observed holidays, from 7:30 am EST to 7:00 pm EST, with ongoing support via cell phone until 8:00 pm EST.
 - c. The PCI support services can be accessed using any of the following methods of communication:
 - i. Toll-free telephone support at 866.328.8584.
 - ii. Email support at support @pciusa.com
 - iii. Customer support web access at <http://support.pciusa.com> using login credentials provided by PCI to the City.
- C) PCI Standard Maintenance and Support Services provide the City with:
- a. Software incident corrections to the Software.
 - b. Software releases periodically to address technical and functional compatibility with system software and changes to business practices. Documentation updates are provided as part of each release. Additional Software incident corrections will be included in releases, as dictated by testing requirements and the magnitude of the required change.
 - c. Enhancements to the then current installed version of the myRevenueSystem and the then current installed myRevenueSystem optional modules may be provided in new releases of the myRevenueSystem solution and the myRevenueSystem optional modules.

D) All issues and software incidents will be prioritized according to the following schedule:

Severity

- | | |
|--------------|---|
| 4 – Minor | <ul style="list-style-type: none"> • Defined as a very minor problem or question that does not affect the application's function, e.g. the text of a message is worded poorly or misspelled. • Response time to acknowledge issue no more than 8 business hours after notice from the City. • Provide resolution within next two releases, includes major releases, minor releases and patches, of the software and not more than 120 business days after notice from the City, unless otherwise agreed in writing between PCI and the City. |
| 3 – Standard | <ul style="list-style-type: none"> • Defined as minor problem that exists with the application but the majority of the functions are still usable and some circumvention may be required to provide service, e.g. an infrequently used subcommand gives an incorrect response. • Response time to acknowledge issue no more than 8 business hours after notice from the City. • Provide resolution within next release, includes major releases, minor releases and patches, of the software and not more than 60 business days after notice from the City, unless otherwise agreed in writing between PCI and the City. |
| 2 – Priority | <ul style="list-style-type: none"> • Defined as an urgent software system component that has significant outages and/or failure precluding its successful operation, and possibly endangering the City's environment. • The application may operate but is several restricted, e.g. a frequently used user exit gives an incorrect response. • Response time to acknowledge issue no more than 4 business hours after notice from the City. • Resolution without software fix required within 5 business days after notice from the City, unless otherwise agreed in writing between PCI and the City. • Resolution with software fix required within 15 business days after notice from the City unless otherwise agreed in writing between PCI and the City. • Provision of a non-software fix does not relieve PCI of obligation to provide a software fix. • Defined as a critical situation, when the City's production system is down and the agency is unable to use the application. • Response time to acknowledge issue within 2 business hours after notice from the City. |
| 1 – Critical | <ul style="list-style-type: none"> • Reproduce and document software defect to development within 4 business hours after notice from the City. • Resolution without software fix required within 1 business day after notice from the City, unless otherwise agreed in writing between PCI and the City. |

- PCI solutions depend on 3rd party software applications, i.e. operating systems, database engines, integration points, etc. in order to function correctly. Therefore, should one of the 3rd party software components be party software components be part or all of the cause of the reported issue, the 5 business days turn around will no longer be in effect. In these situations, PCI will:
 - Work closely with all 3rd party vendors to remedy the situation in a timely manner.
 - Work with the City to agree the steps necessary to remedy the situation when 3rd party vendors are involved.
 - Provision of a non-software fix does not relieve PCI of obligation to provide a software fix.
- E) The PCI help desk will investigate and correct suspect issues and software incidents at the PCI offices. During the course of investigating and correcting the suspected issues or software incidents, the PCI help desk will use the following escalation procedures with all issues and software incidents:
- a. Any incident that cannot be resolved within 8 PCI help desk business hours from the date and time of initial receipt of the incident will be escalated to the second line support team. PCI help desk business hours are defined in Maintenance and Support section B.b
 - b. Any incident that cannot be resolved by the second line support team within 16 PCI help desk business hours from the date and time of receiving the issue or software incident from the first line support team will be escalated to the PCI development team.
 - c. Any incident that cannot be resolved by the development team within 8 PCI help desk business hours from the date and time of receiving the issue or software incident from the second line support team will be escalated to PCI's senior management for analysis and determination of resolution.
 - d. If within 48 PCI help desk business hours of mutually determining between PCI and the City that all available remote support methods are unable to assist in resolving the issue or software incident, PCI, at the City's request, will send a support technician onsite to assist in resolving the reported issue or software incident. All costs, excluding reasonable travel and other out-of-pocket expenses, for the support technician are included in the annual software and support agreement cost. All reasonable travel and out-of-pocket expenses will be billed directly to the City.
- F) The City will be charged on an hourly rate at PCI's then-current hourly rates for any issue or software incident that is attributable to a cause other than the Software as delivered by PCI.
- G) If the Software module containing the issue or software incident has been modified by non-PCI personnel, the City will be charged on a time-and-materials basis at PCI's then-current hourly rates for analyzing and fixing the software incident in the City's version, and for any Installation assistance the City of Fairfax requires.

- H) The maintenance and support period will automatically renew at the expiration of the previous maintenance and support period. PCI will issue the annual maintenance and support renewal invoice at least thirty (30) calendar days from the expiration of the then-current maintenance and support period.
- I) Annual maintenance and support is available to the City if (i) the City has paid the maintenance and support fee for all prior Maintenance and Support periods; and (ii) the City incorporates in the Software all releases, corrections, and Enhancements to the Software that PCI has made available to the City, no less than two minor software releases prior to current release.
- J) All Enhancements and corrections to the Software and Documentation provided by PCI pursuant to this Agreement will become a part of the Software and Documentation for the purposes of the License Agreement at the time they are provided to the City and are hereby licensed to the City as part of the Software and Documentation pursuant to all of the terms and conditions of the License Agreement.

Payment Terms

- A) The City will pay the maintenance fees for the initial Maintenance and Support Period. PCI will provide the City with an invoice for the maintenance and support fees for each subsequent Maintenance and Support Period at least thirty (30) calendar days prior to the expiration of the then-current Maintenance and Support Period. PCI will not be obligated to provide maintenance and support services in any maintenance and Support Period (including the initial maintenance and Support Period) unless the maintenance and support fees for the Maintenance and Support Period have been paid in full.
- B) All fees and expenses are to be paid to PCI in United States Dollars, by wire transfer of funds to an account designated by PCI or by check sent to PCI at 4893 W. Waters Avenue, Suite E, Tampa, FL 33634. PCI's invoices are due and payable in full within thirty (30) calendar days from the date the City receives a proper invoice. If the City does not pay an invoice within thirty (30) calendar days after receipt, PCI may add an interest charge of one percent (1%) per month, if invoice is not in dispute, this interest will begin to accrue on the thirty-first (31st) day after the City's receipt of PCI's proper invoice and will accumulate on the outstanding balance on non-disputed invoices on a daily basis until paid in full.

Limitation of Liability

- A) If the City should become entitled to claim damages from PCI (including without limitation, for breach of contract, breach of warranty, negligence or other tort claim), PCI will be liable only for the amount of the City's actual direct damages, not to exceed (in the aggregate for all claims) the amounts paid by the City to PCI for the Maintenance and Support Period with respect to which the claims arise. It is the maximum liability for which PCI and its licensors are collectively responsible.
- B) In no event will PCI or any person or entity involved in the creation, manufacture or distribution of any Software, services or other materials provided under this Agreement be liable for: (1) any damages caused by the failure of the City or its affiliates or suppliers to perform their

- responsibilities; or (2)) any consequential, special, incidental, indirect, exemplary or punitive damages, even if PCI has been advised of the possibility of such damages.
- C) The foregoing limitations do not apply to the payment of settlements, costs, damages and legal fees. The limitations of liability set forth in this Section will survive and apply notwithstanding the failure of any limited or exclusive remedy for breach of warranty set forth in this Agreement. The parties agree that the foregoing limitations will not be deemed to limit any liability to an extent that would not be permitted under applicable law.
 - D) The foregoing limitations apply to this Annual Maintenance and Support Agreement.

Law and Disputes

Both PCI and the City agree to comply fully with all relevant export laws and regulations of the United States to ensure that no information or technical data provided pursuant to this Agreement is exported or re-exported directly or indirectly in violation of law.

General

- A) The provisions of this Agreement will be deemed severable, and the unenforceability of any one or more provisions will not affect the enforceability of any other provisions. In addition, if any provision of this Agreement, for any reason, is declared to be unenforceable, the parties will substitute an enforceable provision that, to the maximum extent possible in accordance with applicable law, preserves the original intentions and economic positions of the parties.
- B) No failure or delay by either party in exercising any right, power or remedy will operate as a waiver of such right, power or remedy, and no waiver will be effective unless it is in writing and signed by the waiving party. If either party waives any right, power or remedy, such waiver will not waive any successive or other right, power or remedy the party may have under this Agreement.

Exhibit D - Recommended Hardware and Software Requirements

Recommended Hardware and Software Requirements							
Production Environment – myRevenueCollector							
Description	Hardware	Processor	RAM	Disk	OS	.NET Framework	Notes
Standard Workstations	Desktop	Core i3 2.66 GHz 3 rd Generation or Higher ¹	8 GB or Higher	50 GB or Higher	Windows XP SP 3 or Windows 7 (32 bit or 64 bit)	.NET Framework 2.0 SP2 .NET Framework 3.5 SP1	MS Word 2002 or Higher
Register Workstations	Desktop	Core i3 2.66 GHz 3 rd Generation or Higher	16 GB or Higher	50 GB or Higher	Windows XP SP 3 or Windows 7 (32 bit or 64 bit)	.NET Framework 2.0 SP2 .NET Framework 3.5 SP1	MS Word 2002 or Higher MS SQL Express 2005, 2008 or 2008 R2
Application Server	Physical Server or Virtualized Server	Single Core 2.4 GHz or Higher	4 GB or Higher	100 GB or Higher	Windows Server 2008 Standard	.NET Framework 2.0 SP2 .NET Framework	
Database Server	Physical Server or Virtualized Server	Single 1Core 2.2 GHz or Higher	16 GB or Higher	100 GB or Higher	Windows Server 2008 R2 Standard	.NET Framework 2.0 SP2 .NET Framework	MS SQL Server 2005, 2008 or 2008 R2
Additional Environments - myRevenueCollector							
Description	Hardware	Processor	RAM	Disk	OS	.NET Framework	Notes
User Test Application Server	Physical Server or Virtualized Server	Single Core 2.4 GHz or Higher	4 GB or Higher	100 GB or Higher	Windows Server 2008 Standard	.NET Framework 2.0 SP2 .NET Framework 3.5 SP1	
User Test Database Server	Physical Server or Virtualized Server	Single 8-Core 2.4 GHz or Higher	8 GB or Higher	100 GB or Higher	Windows Server 2008 R2 Standard	.NET Framework 2.0 SP2 .NET Framework 3.5 SP1	MS SQL Server 2005, 2008 or 2008 R2

¹ If using AMD processors then AMD Phenom II X4 3.5 GHz or higher. The use of Celeron or Sempron processor based PCs is strongly discouraged.