



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/8/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh Canada Limited 120 Bremner Blvd., Suite 800 Toronto, ON M5J 0A8	CONTACT NAME: <b>Mark Warren</b>
	PHONE (A/C, No, Ext): 1-844-990-2378      FAX (A/C, No):
	EMAIL ADDRESS: CertificateRequestsCanada@marsh.com
<b>INSURER(S) AFFORDING COVERAGE</b>	
INSURER A: Federal Insurance Company	NAIC # 20281
INSURER B:	
INSURER C: Chubb Insurance Company of Canada	
INSURER D:	
INSURER E:	
INSURER F:	


**COVERAGES**      **CERTIFICATE NUMBER: 20/21-095**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			9950-48-39	09/27/2020	09/27/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ 25,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000 TENANTS LEGAL LIABILITY \$ 1,000,000 COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS			73600397	09/27/2020	09/27/2021	BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED      RETENTION \$			78183369	09/27/2020	09/27/2021	EACH OCCURRENCE \$ 14,000,000 AGGREGATE \$ 14,000,000 \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N NO	N/A	7176-4342	09/27/2020	09/27/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	<b>PROFESSIONAL LIABILITY AND TECHNOLOGY E&amp;O</b>			9950-48-39	09/27/2020	09/27/2021	PER CLAIM AND IN THE AGGREGATE \$ 5,000,000 SELF INSURED RETENTION \$ 1,000,000

**APPROVED**  
By Snohomish County Risk Mngt (S.Barker) at 9:11 am, Mar 18, 2021

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 SNOHOMISH COUNTY, ITS OFFICERS, ELECTED OFFICIALS, AGENTS AND EMPLOYEES IS ADDED AS ADDITIONAL INSURED WITH RESPECT TO THE COMMERCIAL GENERAL LIABILITY POLICY, BUT ONLY WITH RESPECT TO LIABILITY ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED.  
 THE US COMMERCIAL GENERAL LIABILITY POLICY, US AUTOMOBILE POLICY, US WORKER'S COMPENSATION & EMPLOYER'S LIABILITY, AND TECHNOLOGY E&O LIABILITY POLICY HAVE BEEN PLACED BY SERVICE OF MARSH USA INC. MARSH CANADA LIMITED HAS ONLY ACTED IN THE ROLE OF A CONSULTANT TO THE CLIENT WITH RESPECT TO THESE PLACEMENTS WHICH ARE INDICATED HERE FOR YOUR CONVENIENCE.

<b>CERTIFICATE HOLDER</b> SNOHOMISH COUNTY 157 POPLAR AVE 3000 ROCKEFELLER AVENUE EVERETT, WA 98201	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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**From:** [Wendling, Rebecca](#)  
**To:** [White, Dee](#)  
**Subject:** Sympro Amendment No. 3  
**Date:** Wednesday, March 17, 2021 4:15:19 PM  
**Attachments:** [Sympro Amendment 3 2020 REW Final.docx](#)  
[Sympro Amendment 3 2020 REW Final.pdf](#)

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This e-mail serves as my approval as to form of the attached pdf.

Rebecca Wendling  
Deputy Prosecuting Attorney, Civil Division Snohomish County Prosecutor's Office  
3000 Rockefeller Avenue, M/S 504  
Everett, WA 98201  
Tel: (425) 388-6370  
Fax: (425) 388-6333  
CONFIDENTIALITY STATEMENT

This message may contain information that is protected by the attorney-client and/or work product privilege. If this message was sent to you in error, any use, disclosure, or distribution of its contents is prohibited. If you receive this message in error, please contact me at the telephone number or e-mail address listed above and delete this message without printing, copying, or forwarding it. Thank you.

NOTICE: All emails, and attachments, sent to and from Snohomish County are public records and may be subject to disclosure pursuant to the Public Records Act (RCW 42.56)

**AMENDMENT 2 TO THE INVESTMENT AND DEBT MANAGEMENT SYSTEM AGREEMENT**

This Amendment 2 to the Investment and Debt Management System Master Contract (“Amendment No. 2”), is entered into as of this 5<sup>th</sup> day of August, 2020, by and between Snohomish County, a political subdivision of the State of Washington (the "County") and Sympro, Inc., incorporated under the laws of California, and duly registered and authorized to conduct business in Washington State (the "Contractor" or “SYMPRO, INC.”)

RECITALS

- A. The County and Sympro, Inc. are the parties to that certain Investment and Debt Management System Master Contract (the “Original Agreement”) executed on December 15, 2008; and
- B. The County and SYMPRO, INC., subsequently entered into Amendment 1 on August 27, 2014; and
- C. The County now desires to continue receiving the software maintenance and support from the Contractor for additional one (1) year, under the terms and conditions described in this Amendment 2.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual benefits conferred on both parties, the parties agree the as follows:

- 1. Article 5 of the Original Agreement as amended by Amendment No. 1, entitled, Term of Agreement, Sub Article 5.1, entitled, “Term of Agreement” is amended as follows:

Term of Agreement. The term of the Agreement shall commence upon execution and continue to July 31, 2021.

- 2. Article 7 of the Original Agreement as amended by Amendment No. 1, entitled, “Price and Payment”, sub article 7.1 is amended to include a second paragraph as follows:

Annual recurring charges for Support and Maintenance Services shall be in pre-tax amounts:

<b>Annual Maintenance and Support Fee:</b>	<b>\$18,376</b>
<b>(8/01/2020– 7/31/2021)</b>	

3. All other terms and conditions of the Original Agreement, as amended by Amendment No. 1, shall remain in full force and effect except as expressly modified by this Amendment No. 2.


IN WITNESS WHEREOF, the parties hereto have caused this Amendment 2 to be duly executed as of the date set forth above.

**SNOHOMISH COUNTY**

**KEN KLEIN**  
Executive Director

By:   
Snohomish County Executive  
Date: 8/5/2020

**SYMPRO INC.**

By:   
President, Sympro  
Date: Jul 14, 2020

RECOMMENDED FOR APPROVAL

By: \_\_\_\_\_  
Director, Department of Information  
Technology  
Date: \_\_\_\_\_

APPROVED AS TO FORM ONLY

By: \_\_\_\_\_  
Deputy Prosecuting Attorney  
Date: \_\_\_\_\_






# Sympro Amendment 2

Final Audit Report

2020-07-14

Created:	2020-07-14
By:	Andreu Szempruch (ASzempruch@aquilasw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAatlx0-U1eooPRmo97UqKdCUZ3_tna_so

## "Sympro Amendment 2" History

-  Document created by Andreu Szempruch (ASzempruch@aquilasw.com)  
2020-07-14 - 8:47:06 PM GMT- IP address: 170.55.164.157
-  Document emailed to Ken Reimer (kreimer@altairsw.com) for signature  
2020-07-14 - 8:47:28 PM GMT
-  Email viewed by Ken Reimer (kreimer@altairsw.com)  
2020-07-14 - 11:09:32 PM GMT- IP address: 83.135.66.20
-  Document e-signed by Ken Reimer (kreimer@altairsw.com)  
Signature Date: 2020-07-14 - 11:10:45 PM GMT - Time Source: server- IP address: 83.135.66.20
-  Signed document emailed to Andreu Szempruch (ASzempruch@aquilasw.com), Joseph DeMarco (jdemarco@emphasys-software.com) and Ken Reimer (kreimer@altairsw.com)  
2020-07-14 - 11:10:45 PM GMT



Adobe Sign

**AMENDMENT NO. 1 TO THE INVESTMENT AND DEBT MANAGEMENT  
SYSTEM MASTER CONTRACT**

THIS AMENDMENT NO. 1 TO THE INVESTMENT/ AND DEBT MANAGEMENT SYSTEM MASTER CONTRACT ("Amendment No. 1") is entered into as of this 27<sup>th</sup> day of August, 2014, by and between Snohomish County, a political subdivision of the State of Washington (the "County"), and Sympro, Inc., a California-based firm, incorporated under the laws of the State of California, duly registered and authorized to conduct business in Washington State ("SYMPRO, INC.").

**RECITALS**

- A. Whereas, the County and Sympro, Inc. are the parties to that certain Investment and Debt Management System Master Contract (the "Agreement") executed on December 15, 2008; and
- B. Whereas, the County desires to continue receiving software maintenance and support from Sympro, Inc. for the next five (5) years, under the terms and conditions described in this Amendment No. 1.

**AGREEMENT**

NOW, THEREFORE, in consideration of the covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and Sympro, Inc. agree as follows:

- 1. Article 5, Term of Agreement, Sub Article 5.1, Term of Agreement, is amended to read as follows:**

**Term of Agreement.** The initial term of the Agreement shall commence upon execution and continue for one (1) year(s) from the date of Acceptance of the System, and may be extended by the County for five (5) additional one (1) year option terms by providing written notice, and one additional five (5) year term, subject to termination as provided in this Agreement.

- 2. Article 7, Price and Payment, Sub Article 7.1 is amended to read as follows:**

The County shall pay the Contractor One Hundred Forty Three Thousand and Forty Dollars (\$143,040) for the Deliverables required to be provided by the Contractor through the end of the Warranty Period as stated in the schedule of payments described in Exhibit A. Annual recurring charges for Support and Maintenance Services in years one (1) through three (3) shall remain "Firm Fixed" and not exceed Fifteen Thousand Eight Hundred Forty Dollars (\$15,840), or 18% of the software costs, per year for a total of Forty Seven Thousand Five Hundred Twenty Dollars (\$47,520). Annual recurring charges for Support and

Maintenance Services in years seven (7) through eleven (11) shall be according to Schedule A to Amendment No. 1.

**3. A new Sub Article, 19.1 Non-Discrimination is added to Article 19, Compliance With Laws, as Follows:**

**19.1 Non-discrimination.**

**County Non-discrimination.** It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.


**Federal Non-discrimination.** Snohomish County assures that no persons shall on the grounds of race, color, national origin, or sex as provided by Title VI of the Civil Rights Act of 1964 (Pub. L. No. 88-352), as amended, and the Civil Rights Restoration Act of 1987 (Pub. L. No. 100-259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any County sponsored program or activity. Snohomish County further assures that every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

**4. Master Agreement**

Except as expressly provided in this Amendment No. 1, all of the terms and conditions of the Master Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to be duly executed as of the date set forth above.

**SYMPRO, INC.**

By:   
Printed Name: Michael Byrne  
Title: CEO  
Date: 7-7-14

**SNOHOMISH COUNTY**

By: *[Signature]*  
Snohomish County Executive  
Date: 8/27/14

**RECOMMENDED FOR APPROVAL**

By: \_\_\_\_\_  
Director, Department of Information Services  
Date: \_\_\_\_\_

**APPROVED AS TO FORM ONLY:**

By: *Rebecca Wendling*  
Deputy Prosecuting Attorney  
Date: 6/19/2014

**RECOMMENDED FOR APPROVAL**

By: \_\_\_\_\_  
Risk Management  
Date: \_\_\_\_\_

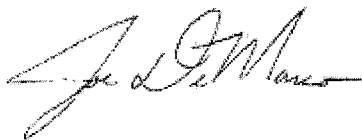
<p><b>COUNCIL USE ONLY</b> Approved: <u>8-20-14</u> Docfile: <u>D-9</u></p>
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**Amendment 1 - Schedule A**  
**SymPro Treasury Management Software**  
**Maintenance and Support Fees 2014 through 2019**

**Investment Portfolio Management Software:**

		Tax -9.2%	Annual Total
<b>Annual Maintenance and Support Fee:</b>	<b>\$17,057</b>	<b>\$1,569.24</b>	<b>\$18,626.24</b>
<b>(8/01/2014 – 7/31/2015)</b>			
<b>Annual Maintenance and Support Fee:</b>	<b>\$17,313</b>	<b>\$1,592.80</b>	<b>\$18,805.80</b>
<b>(8/01/2015 – 7/31/2016)</b>			
<b>Annual Maintenance and Support Fee:</b>	<b>\$17,573</b>	<b>\$1,616.72</b>	<b>\$19,189.72</b>
<b>(8/01/2016 – 7/31/2017)</b>			
<b>Annual Maintenance and Support Fee:</b>	<b>\$17,836</b>	<b>\$1,640.91</b>	<b>\$19,476.91</b>
<b>(8/01/2017 – 7/31/2018)</b>			
<b>Annual Maintenance and Support Fee:</b>	<b><u>\$18,104</u></b>	<b><u>\$1,665.57</u></b>	<b><u>\$19,769.57</u></b>
<b>(8/01/2018 – 7/31/2019)</b>			
<b>Totals:</b>	<b>\$87,883</b>	<b>\$8,085.24</b>	<b>\$95,968.24</b>



Date: 6/17/2014

Joe DeMarco  
 Regional Sales Manager  
 SymPro, Inc.  
 510-655-0900 x2224

# INVESTMENT AND DEBT MANAGEMENT SYSTEM MASTER CONTRACT

## SOFTWARE LICENSE AND SERVICES AGREEMENT BETWEEN SNOHOMISH COUNTY AND SYMPRO, INC.

**THIS SOFTWARE LICENSE AND SERVICES AGREEMENT** is made this 15<sup>th</sup> day of November, 2008, by and between Snohomish County, a home rule charter county and a political subdivision of the State of Washington (the "County") and Sympro, Inc. a California-based firm, incorporated under the laws of the State of California, and duly licensed to conduct business in Washington State (the "Contractor").

### 1. Recitals

Whereas,

1.1 The County Treasurer Department has a need to purchase an automated investment and debt management system to allow Junior Taxing Districts entry into the Snohomish County Investment Pool, and to provide timely accurate accounting and reporting of investments.

1.2 The Contractor has developed and owns certain proprietary software for use in providing the County Treasurer an automated system for investment and debt management. The County desires to obtain a license to use such software and have the Contractor develop certain minor modifications and enhancements for the County and provide ongoing support and maintenance services. The Contractor desires to license such software to the County and perform the services on the terms and conditions set forth herein.

Now therefore, in consideration of the mutual covenants and agreements herein, the parties agree as follows:

### 2. Definitions

2.1 **Acceptance** of the System shall occur only when: (a) the Contractor has provided to the County all Deliverables required to be provided to the County; (b) the Contractor provides to the applicable County Project Manager a written notice stating that all Material Defects have been corrected; and (c) the County notifies the Contractor in writing that all acceptance testing for the System has been completed successfully in accordance with the Software Acceptance Plan and the terms of this Agreement. Nothing else, including payment for any portion of the System or the County's use of the System, or any portion thereof, in

a live, operational environment, shall constitute Acceptance (under contract law or the Uniform Commercial Code of the State of Washington) of any portion of the System.

2.2 **Critical Defect** means any Defect that (a) severely impacts the County's ability to use the Software or the System or the Contractor's ability to provide Services, or (b) has a significant financial impact on the County.

2.3 **Custom Software** means those Deliverables that are classified in Exhibit A, attached hereto and incorporated herein, as Custom Software, as well as the documentation related thereto.

2.4 **Defect** means (1) any failure of the Software to operate in accordance with the Documentation, Functional Specifications, or Performance Standards; and/or (2) any failure of the Contractor to perform the Services in accordance with the Service Level Standards.

2.5 **Deliverable** means the Software, Documentation, and Services to be delivered under this Agreement.

2.6 **Documentation** means collectively: (a) all of the written, printed, electronic, or other format materials published or otherwise made available by the Contractor that relate to the functional, operational, and/or performance capabilities of the System and/or any Software; (b) all user, operator, system administration, technical, support, and other manuals and all other written, printed, electronic, or other format materials published or otherwise made available by the Contractor that describe the functional, operational, and/or performance capabilities of the System and/or any Software, including but not limited to the Functional Specifications and Software Acceptance Plan; and (c) any other Deliverable that is not Hardware or Software. Documentation shall not include Source Code.

2.7 **Functional Specifications** shall mean those specifications to which the Software and the System shall conform as set forth in Exhibit A, and RFP-10-08, Forms 8 through 12.

2.8 **Hardware** is not applicable to this purchase from the Contractor.

2.9 **License(s)** shall mean any license or licenses granted by the Contractor to the County under this Agreement.

2.10 **Material Defect** means Critical Defect and/or Medium Defects.

- 2.11 **Medium Defect** means any Defect that adversely affects the County's ability to use the Software or the System or the Contractor's ability to provide services, even if an alternative temporary solution or workaround acceptable to County may be accomplished.
- 2.12 **Object Code** shall mean the binary machine-readable version of the Software.
- 2.13 **Performance Standards** means, collectively the warranties and performance standards set forth in Section 1.3, Exhibit A, and RFP-10-08.
- 2.14 **Regulatory Requirements** are not applicable to this contract.
- 2.15 **Services** means, individually or collectively, all installation, implementation, integration, testing, development, conversion, training, consulting, Support and Maintenance Services, and any other professional or other services that may be provided by the Contractor to the County under this Agreement.
- 2.16 **Service Level Standards** means the service level standards set forth in Section 11.4, Exhibit A, and RFP-10-08 document.
- 2.17 **Site** shall mean the County's facilities in Snohomish County, Washington.
- 2.18 **Software** means the aggregate of the Standard Software and the Custom Software; all upgrades, maintenance releases, bug fixes or patches, and other modifications or additional provided under this Agreement.
- 2.19 **Software Acceptance Plan** shall mean that plan set forth in Exhibit A.
- 2.20 **"Source Code"** means computer software in the form of source statements for the Software (excluding all Third Party Software) including, without limitation, all software in the form of electronic and printed human-readable, mnemonic or English-like program listings, including printed and on-line descriptions of the design of such software including, without limitation, data definition models, indices, structure tables, system flow charts, program flow charts, defined terms, file layouts, program narratives, global documentation (including global variables) and program listings.
- 2.21 **Standard Software** means those Deliverables that are classified, in Exhibit A and RFP-10-08 as Standard Software, as well as the documentation furnished therewith by the Contractor or its subcontractors

in the normal course of business; an exhaustive list of the Standard Software is set forth in Exhibit A and RFP-10-08.

**2.22 System** means the Deliverables to be installed and integrated so as to be operational at the County Site.

**2.23 Warranty Period** means the period commencing upon system installation and continuing for 180 days.

**2.24 Work Product** means all products, devices, computer programs, techniques, know-how, algorithms, procedures, discoveries or inventions, and all materials, texts, drawings, specifications, source code and other recorded information, in preliminary or final form and on any media whatsoever, that are conceived, reduced to practice, developed, discovered, authored, designed, programmed, invented or otherwise created or made by Contractor (whether solely or jointly with others) in connection with or as a result of its performance of the Services.

**2.25 Prime Contractor** means the firm executing this agreement or its' assignees with respect to all services, and the Contractor's Investment and Debt Management application software set forth in Vendor's Response to RFP-10-08, dated July 9, 2008.

It is understood that the Prime Contractor will warrant and maintain all services subcontracted by the Prime Contractor. The Prime Contractor shall remain solely responsible for all performance under this Agreement with respect to all services, products, and the Investment and Debt Management application software set forth in the Vendor's RFP-10-08 response and Exhibit A.

### **3. Scope of This Agreement.**

**3.1 Scope.** This Agreement defines the terms and conditions under which the Contractor will design, develop, integrate, deliver, install, train, and support the Software and other Deliverables.

**3.2 Turn-key Basis.** The parties acknowledge that the performance by the Contractor of its obligations under this Agreement is to be done on a "turn-key" basis." This expression is understood to mean that the Contractor is fully responsible, pursuant to the terms and conditions of this Agreement, for the delivery of the Deliverables in full conformity with the terms and conditions hereof, and that the Deliverables shall function in conformity with the performance criteria stipulated herein upon delivery, upon Acceptance of the System, throughout the Warranty Period, and throughout the term of the ongoing Support and Maintenance Services.

#### 4. **Software and Services.**

4.1 **License Grant.** Subject to the terms of this Agreement, Contractor hereby grants to the County, and the County accepts, a non-transferable, non-exclusive, and perpetual license to use the Licensed Products and documentation solely for Licensee's own internal business purposes and solely on the Designated Equipment located at the Site by the number of Authorized Users stated in the attached Exhibit A or such Authorized Users added during the Term. The County shall be permitted to make one copy of the Software for backup and archival purposes only. Each copy must reproduce all copyright and other proprietary notices.

#### 4.2 **Work Product.**

4.2.1 **Ownership.** The County will be the exclusive owner of all Work Product. To the extent permitted under the U.S. Copyright Act (17 USC §101 et seq., and any successor statute thereto), Work Product will constitute "works made for hire," and the ownership of such Work Product will vest in the County at the time they are created. In any event, Contractor hereby assigns and transfers to the County, without separate compensation, all right, title and interest that the Contractor may now or hereafter have in the Work Product, including, without limitation, all copyright, trademark, trade secret, patent and other intellectual property and proprietary rights (collectively, "Intellectual Property Rights") therein. To the maximum extent allowed, the Contractor hereby irrevocably and unconditionally waives, in perpetuity, any rights it may have with respect to the Work Product under any law relating to "the moral rights of authors" or any similar law throughout the world. The Contractor will promptly disclose to the County all Work Product.

4.2.2 **Non-Employees.** If any individual or entity who is not a direct employee of Contractor performs or otherwise participates in any Services, Contractor will obtain from such non-employee a legally binding, written assignment sufficient to transfer to the County all of the non-employee's rights, title and interest in and to the Work Product. Upon the County's request, Contractor will provide the County with copies of all such assignments.

4.2.3 **Further Acts.** Contractor, its employees, agents, subcontractors and affiliates, will take such action as the County reasonably may request to evidence, transfer, vest

act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may terminate the Agreement if the Contractor has not cured following a thirty (30) day written notice to the Contractor sent certified mail, return receipt requested. If the Agreement is terminated for default, the County may obtain performance of the work elsewhere, and the Contractor shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. The Contractor shall only be paid for work delivered and accepted, or work performed in accordance with the manner of performance set forth in the Agreement. The termination of this Agreement for default shall in no way relieve the Contractor from any of its obligations under this Agreement. If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued as a Termination for Convenience.

**5.2.2 Termination for Convenience.** The County for its convenience may terminate this Agreement, in whole or in part, at any time by providing written notice sent certified mail, return receipt requested, to the Contractor. After receipt of a Notice of Termination, and except as directed by the County, the Contractor shall immediately stop work as directed in the notice, and comply with all other requirements in the notice. Whenever the Agreement is terminated for convenience, the Contractor shall be entitled to payment for actual work satisfactorily performed up to the date of termination at unit contract prices for completed items of work and an equitable portion thereof for partially completed items, but shall not be entitled to payment for loss of anticipated profit on deleted or uncompleted work. The Contractor shall promptly submit its request for the termination payment, together with detailed supporting documentation. If the Contractor has any property in its possession belonging to the County, the Contractor shall account for the same and dispose of it in the manner the County directs. All termination payment requests may be subject to determine reasonableness and compliance with the Agreement, applicable laws and regulations.

**5.2.3 Termination for Non-Appropriation.** In the event that sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the County

or confirm the County's right, title and interest in the Work Product.

4.2.4 **Use.** Except as required for Contractor's performance of the Services or as authorized in writing by the County, Contractor will not use, disclose, publish or distribute any Work Product. Contractor will hold all Work Product in trust for the County and will deliver them to the County upon request and in any event upon the expiration or termination of this Agreement.

4.3 **Reverse Engineering.** Except as expressly provided in this Agreement, the County shall not translate, reverse engineer, decompile, recompile, update, or modify all or any part of the Software or merge the Software into any other software.

4.4 **Service Level Standards.** The Contractor shall provide the Software and Services according to the performance criteria and Service Level Standards set forth in Exhibit A, RFP-10-08, and Exhibit C, attached hereto and incorporated herein.

## 5. **Term of Agreement**

5.1 **Term of Agreement.** The initial term of the Agreement shall commence upon execution and continue for one (1) year(s) from the date of Acceptance of the System, and may be extended by the County for ten (10) additional one (1) year option terms by providing written notice, subject to termination as provided in this Agreement.

5.1.1 The Warranty Period begins at software installation for a period of one hundred and eighty days (180) days and thereafter ongoing Support and Maintenance Services shall continue throughout the term of the Agreement.

5.1.2 The maximum term for this Agreement, consisting of the initial term and all option term(s), is eleven (11) years from Acceptance unless extended by written agreement signed by all parties.

5.1.3 Notwithstanding termination of this Agreement for any reason, the Software License granted in this Agreement shall be perpetual.

## 5.2 **Termination.**

5.2.1 **Termination for Default.** If the Contractor defaults by failing to perform any of the obligations of the Agreement or becomes insolvent or is declared bankrupt or commits any



may terminate this contract as a matter of public convenience as provided herein. The County will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period, provided the County provides the Contractor written notice prior to the end of the current fiscal period that non-allocation of funds is probable and provides a Notice of Termination within 14 days after the end of the fiscal period.

**5.2.4 Effect of Termination.** The termination of this Agreement shall not affect the accrued rights of the County under any other section or paragraph of this Agreement or limit the rights and remedies of the County hereunder in any manner.

**6. Acceptance Testing.**

6.1 Within ten (10) business days of the Contractor providing notice to the County that the System has been installed and County personnel have been trained in accordance with the Agreement, the County shall begin the acceptance testing process at the County Site according to the Software Acceptance Plan.

6.2 The acceptance testing shall include thirty (30) days of continuous operation of the System without Material Defect in accordance with all Functional Specifications, Performance Standards, and Documentation in the County's fully implemented production environment.

6.3 If the County Accepts the Work, the County will send a notice of Acceptance to the Contractor.

6.4 If County determines that the Work is not acceptable, the County shall notify the Contractor in writing, describing the deficiencies.

6.5 The Contractor shall either provide a detailed, written plan to achieve Acceptance or to make corrections or replacements within a mutually agreed upon time with no charge to the County. The parties shall mutually agree on a start date for beginning another Acceptance testing period.

6.6 Another thirty (30) Day successful operation period shall follow any corrections or replacements. A third or additional Acceptance testing period may occur if mutually agreed to by the parties.

6.7 If the County Accepts the System following a second or subsequent Acceptance testing period, the County will send a notice of Acceptance to the Contractor.

6.8 If the Contractor does not correct or replace the unacceptable aspects of the System, the County may declare a breach of the Agreement.

7. **Price and Payment.**

7.1 The County shall pay the Contractor One Hundred Forty Three Thousand and Forty Dollars (\$143,040) for the Deliverables required to be provided by the Contractor through the end of the Warranty Period as stated in the schedule of payments described in Exhibit A. Annual recurring charges for Support and Maintenance Services in years one (1) through three (3) shall remain "Firm Fixed" and not exceed Fifteen Thousand Eight Hundred Forty Dollars (\$15,840), or 18% of the software costs, per year for a total of Forty Seven Thousand Five Hundred Twenty Dollars (\$47,520). After year three, costs for annual maintenance and support shall not increase more than the greater of CPI or 3% from the previous year.

7.2 Where the Contractor requires payments by Snohomish County, payment shall be based upon billings, supported by documentation of units of work actually performed and amounts earned, including where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested. Unless specifically stated in Exhibit A, or approved in writing in advance by the official executing this Agreement for Snohomish County, (hereinafter referred to as the "Contracting Officer"), the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract.

7.3 The County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly in arrears, through the County voucher system for the Contractor's service and Software pursuant to the fee schedule set forth in Exhibit A. Payment shall be made on a Net Thirty (30) Day basis. This is a "Fixed-Price" contract based upon the Deliverables identified in Exhibit A and RFP-10-08.

7.4 **Dispute.** Should the County dispute any of the charges on its monthly invoice, it shall notify Contractor of such disputed charges in writing. The notice shall set forth all details concerning the disputed charges and reasons for the dispute. The Contractor and the County shall attempt in good faith to resolve any objection to the invoiced amount prior to the payment due date. If agreement cannot be resolved prior to the payment due date, the County shall pay the invoiced amount minus the disputed amount on the due date of original invoice. If the dispute is subsequently resolved in favor of the Contractor, the Contractor shall re-invoice the disputed amount owed then, including interest at the rate of

one percent (1%) from the original due date, and the County shall pay all amounts agreed or found to be owing to the Contractor within thirty (30) days of the date of the reissued invoice.

**8. Support Services.**

8.1 Training Services. As defined in Exhibit A.

8.2 Installation Services. As defined in Exhibit A.

8.3 Software Support and Maintenance Services. As defined in Exhibit C.

**9. Confidentiality and Public Disclosure.**

9.1 **Confidential Data.** The Contractor acknowledges that it may be provided access to confidential data of the County that is not subject to public disclosure pursuant to Washington State RCW Chapter 42.56 (the Public Disclosure Act). The Contractor shall use its best efforts: (1) not to, at any time, disclose or disseminate confidential data provided by the County to the Contractor to any other person, firm, organization, or employee who does not need to obtain access thereto consistent with the Contractor's obligations under this Agreement; (2) not to disclose or disseminate such confidential data to any third party not affiliated with this Agreement or for any purpose not required by the Agreement; and (3) to ensure that all persons working for the Contractor, or provided access to the County's data for any reason, protect the County's confidential data against unauthorized use, dissemination, or disclosure. The Contractor's obligations under this section shall not apply to any information that is or becomes available without restriction to the general public by acts attributable to the County or its employees.

9.2 **Public Disclosure.** In the event that the County receives a request pursuant to the Public Records Act to disclose the Contractor's proprietary software, software documentation, or other information identified by the Contractor in writing as confidential, the County's sole obligations shall be to: 1) notify the Contractor within five (5) business days and 2) refrain from disclosing such records for a period of up to ten business days to provide the Contractor an opportunity to seek legal protection against disclosure from a court of competent jurisdiction. The County will not withhold requested records beyond the ten business days unless it may do so based on good faith reliance upon an exception to disclosure under the Public Records Act. The County may but shall not be required to join in any legal proceedings relating to the requested disclosure unless required to do so by the court. In the event that the Contractor initiates legal proceedings, or the County initiates legal proceedings or withholds

requested records at the Contractor's request, the Contractor shall indemnify and hold the County harmless against all loss, cost, and expense, including reasonable attorney's fees, relating to the proceedings and/or withholding of the records. The County shall not be liable to the Contractor for any loss, cost or expense relating to disclosure of requested records if the Contractor fails to obtain legal protection against disclosure and the County releases the records in good faith.

9.3 Contractor shall indemnify and hold harmless the County, its officials, agents and employees from all loss or expense, including, but not limited to settlements, judgments, set-offs, attorneys' fees and costs resulting from Contractor's breach of this provision.

## **10. Reproduction of Documentation and Object Code**

10.1 **Documentation.** The County shall have the right, at no additional charge, to reproduce solely for its own internal use, all Documentation furnished by the Contractor pursuant to this Agreement regardless of whether such Documentation is copyrighted by the Contractor. All copies of Documentation made by the County shall include any proprietary notice or stamp that has been affixed by the Contractor. Contractor shall furnish for each license purchased by the County, and at no additional charge to Customer, one (1) copy of the documentation sufficient to enable the County to operate the Software. All documentation shall be in the English language.

10.2 **Object Code.** The County may reproduce one copy of the Object Code, at no additional charge, solely for back-up or archival purposes.

**11. Warranty Provisions.** Unless otherwise extended or limited, the warranties and commitments contained in this Section shall remain in full force and effect throughout the term of this Agreement.

11.1 **General Warranties.** Contractor warrants that it owns all rights, title, and interest in and to the Software, or that in the case of any third party software that it has the right to grant a sublicense to use such third party software, that all Software shall conform to the Functional Specifications and Documentation, and that the Software and Services shall be free from material defects in workmanship and materials. This warranty coverage shall include any modifications made to the Software by the Contractor and shall survive the expiration or termination of this Agreement.

11.2 **System.** The Contractor represents and warrants to the County that the System shall function without Defect in accordance with the applicable Specifications, Performance Standards, and Documentation.

**11.3 Software Performance.** Contractor represents and warrants to the County that the Software or System, as applicable, shall meet the Performance Standards set forth in Exhibit A, B, and RFP-10-08, including the maximum response times and availability. The Contractor shall correct any failure of the applicable Software and/or System to operate in accordance with the performance warranties set forth in this Section, and in accordance with Exhibit C, by providing all additional software, equipment, and/or services to the County at no additional cost to the County, if necessary. In the event that the Contractor is unable to correct such failure within the timelines indicated in Exhibit C, an event of "Default" shall be deemed to have occurred.

**11.4 Services.** The Contractor represents a "Prime Contractor" relationship and warrants to the County that it, or its subcontractors, shall perform the Services and provide the Deliverables required by this Agreement in a workmanlike manner, in accordance with the standards of care and diligence and the level of skill, knowledge, and judgment normally practiced by nationally recognized information technology services firms in performing services of a similar nature, provided, however, that where this Agreement specifies a particular standard or criteria for performance, this warranty is not intended to and does not diminish that standard or criteria for performance. Further, the Contractor represents, warrants, and covenants that it shall provide the Services or create any Deliverables using only proven current technology or methods unless otherwise mutually agreed by the parties in writing.

**11.5 Documentation.** The Contractor represents and warrants to the County that it has provided to the County all Documentation for the Software and the System and that such Documentation is detailed and complete and accurately describes the functional and operational characteristics of the Software and the System. The Contractor further represents and warrants that it will provide to the County updated versions of all such Documentation when it provides updates and other required Maintenance Services and that all such updated Documentation will be complete and accurate and will be at least as detailed as the Documentation issued to the County with the initial version of the Software and the System. The warranty and commitments contained in this Section shall remain in full force and effect for as long as Company continues to receive Support and Maintenance Services from the Contractor.

**11.6 Compatibility.** Contractor warrants that the Software will be compatible with the County's technical environment, including hardware, operating system(s), third party software application(s) if applicable, CPU's, and networks specified by the County in the applicable Request for Proposal, RFP-10-08.

**11.7 Future Compatibility.** Contractor warrants that all updates, upgrades, and revisions to the Software furnished hereunder will be implemented in such a manner as to maintain backward compatibility with the previous version or release of the Software furnished under the Agreement, so that such previous versions or releases shall continue to be operable with the Software as updated, upgraded, or revised, in materially the same manner and with materially equivalent performance. Without limiting the foregoing, Contractor further warrants that future Support, Maintenance and other Services will not degrade the Software, cause a breach of any other warranty, or require the County to purchase new or additional hardware or software for continued operation of the Software or the System.

**11.8 Software Obsolescence.** The Contractor acknowledges that the County is making a significant resource commitment in order to acquire the Software and that the County does not want to move involuntarily to a new system. Having acknowledged the foregoing, the Contractor represents and warrants to the County that it will continue to support the Software as long as the County continues to receive Maintenance and Support Services from the Contractor.

**11.9 Latest Versions.** Contractor warrants that all Software as delivered will be the most current release or version that the Contractor has made commercially available to its customers, unless the County, after being advised by the Contractor of the availability of a newer release or version, expressly elects to acquire and deploy an older one.

**11.10 Virus Warranty.** The Contractor warrants that the Software does not contain any malicious code, program, or other internal component (e.g., computer virus, computer worm, computer time bomb, or similar component), that could damage, destroy, or alter any computer program, firmware, or hardware or which could, in any manner, reveal, damage, destroy, or alter any data or other information accessed through or processed by the Software in any manner. The Contractor shall immediately advise the County, in writing, upon reasonable suspicion or actual knowledge that the Software may result in the harm described above. The Contractor shall indemnify and hold the County harmless from any damage resulting from the harm described above. This warranty shall survive the expiration or termination of this Agreement.

**11.11 Disabling or Restrictive Code.** Without limiting any other provision to the Agreement, the Contractor warrants that the Software does not contain and the Contractor will not introduce any code, date block, time-bomb, Trojan horse, encrypted software keys, back door, or remote disabling function that may restrict the County's use of or access

to the Software or the System or related data or equipment. The Contractor understands and agrees that the County's inability to use the Software or System or its related data or equipment will cause substantial injury or harm to the public health or safety or grave harm to the public interest substantially affecting third persons. No limitation of liability, whether contractual or statutory, shall apply to a breach of this warranty. This warranty shall survive the expiration or termination of this Agreement.

**11.12 Media.** Contractor warrants that through the period ending 90 days from the date of Acceptance that the media used to store and deliver the Software to the Customer shall be free from defects in manufacture and material. Should the media fail to be free of defects in manufacture or material during the warranty period, the Contractor shall replace the defective media. Defective media shipped to the Contractor with a shipping date within the warranty period will be replaced at no charge including shipping.

**11.13 Intellectual Property.** The Contractor represents and warrants to the County that the County's use of the Software does not and shall not infringe upon any United States or Canadian patent, trademark, copyright, trade secret or other intellectual property, or proprietary right of any third party, and there is currently no actual or threatened suit against the Contractor by any third party based on an alleged violation of such right. This warranty shall survive the expiration or termination of this Agreement.

**11.14 Third Party Warranties and Indemnities.** For any third party Software provided by the Contractor to the County, Contractor hereby assigns to the County all end-user warranties and indemnities relating to such third party Software. To the extent that the Contractor is not permitted to assign any of such end-user warranties and indemnities through to the County, the Contractor shall enforce such warranties and indemnities on behalf of the County to the extent the Contractor is permitted to do so under the terms of the applicable third party agreements. This warranty shall survive the expiration or termination of this Agreement.

**11.15 Authority.** Each party represents and warrants to the other that it has the right to enter into this Agreement. Contractor further represents and warrants that there are no outstanding assignments, grants, licenses, encumbrances, obligations, or agreements (whether written oral or implied) that are inconsistent with this Agreement and the rights granted or transferred herein. This warranty shall survive the expiration or termination of this Agreement.

**11.16 Privacy.** Contractor acknowledges that the County data may contain personal data, health data, and/or medical records data, the use of

which data is subject to various Privacy Laws, including all state, federal, and international laws and regulations and state, federal, and national government agency orders and decrees to which the County may be subject ("Privacy Laws"), as well as certain restrictions imposed on the County data by the data subjects or other third party data providers. The Contractor agrees to strictly abide by all such restrictions pertaining to the County data, as they are promulgated and applied, currently and in the future. Furthermore, Contractor shall in good faith execute any and all agreements that the County is required to have the Contractor execute in order that the County may comply with any Privacy Laws. If the Contractor's use (whether directly or indirectly) of the County data is contrary to any Privacy Law, or contrary to any of the restrictions set forth in this Agreement, the County shall have the right to: i) terminate this Agreement for cause if such breach has not been cured within five (5) days of receipt by the Contractor of written notice, and ii) pursue any other legal and equitable remedies.

## 12. **Indemnification.**

**12.1 General Indemnification.** The Contractor shall hold harmless, indemnify, and defend the County, its elected and appointed officials, employees, and agents, from and against all claims, losses, suits, actions, costs, counsel fees, litigation costs, expenses, damages, judgments, or decrees by reason of damage to any property of any person or party and/or any death, injury or disability to or of any person or party, including any employee, arising out of or suffered, directly or indirectly, by reason of the performance of this Agreement or any act, error or omission of the Contractor, Contractor's employees, agents, or subcontractors, whether by negligence or otherwise; provided, that if the claims for damages arise out of bodily injury to persons or damage to property and caused by or result from the sole negligence of the County or the concurrent negligence of: (a) the County and its elected or appointed officials, employees, or agents, and (b) the Contractor and its agents, employees, or subcontractors, the hold harmless and indemnity provisions of this Agreement shall be valid and enforceable only to the extent of the negligence of the Contractor, its agents, employees, or subcontractors. The Contractor's obligation shall include, but not be limited to, investigating, adjusting, and defending all claims alleging loss from action, error, or omission or breach of any common law, statutory or other delegated duty by the Contractor, Contractor's employees, agents, or subcontractors.

With respect to the performance of this Agreement and as to claims against the County, its officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, and any similar law of any other



jurisdiction, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties to this Agreement.

**12.2 Patent and Other Proprietary Rights Indemnification.**

**12.2.1 Indemnification.** Contractor will indemnify and hold the County harmless from and against any and all claims, losses, liability, damages, costs, and expenses (including attorney's fees, expert witness fees, and court costs) directly or indirectly arising from or related to any actual or alleged infringement (including contributory infringement), misappropriation, or violation of any third party's patents, copyrights, trade secret rights, trademarks, or other intellectual property or proprietary rights of any nature in any jurisdiction in the world, resulting from the use of the Software by the County. If the County's continued use of the Software is restricted or prohibited as a result of any such infringement, misappropriation, or violation of third party rights, the Contractor shall, at the County's option and at no charge to the County, and in addition to the County's other rights and remedies, (a) secure for the County the right to continue using the Software as allowed under this Agreement, (b) modify or replace the infringing components of the Software so that they are non-infringing with no loss or degradation of features, functionality, or performance, or (c) refund to the County all amounts paid by the County for the Software.

**12.2.2 Exclusions.** Notwithstanding the foregoing, the Contractor will not be obligated to indemnify the County to the extent that an infringement or misappropriation claim is based upon (i) use of the Software in breach of this Agreement, if such infringement or misappropriation would not have occurred but for such breach; (ii) use of the Software in combination with other products not supplied or recommended by the Contractor or specified by the Contractor as being compatible with the Software, if such infringement or misappropriation would not have occurred but for such combined use; (iii) use of any release of the Software other than the most current release made available to the County, if the most current release was furnished to the County specifically to avoid such infringement or misappropriation and if such infringement or misappropriation would have been avoided by use of the most current release; or (iv) any modification of the Software made by the County (other than

at the Contractor's direction), if such infringement or misappropriation would not have occurred but for such modification.

13. **Insurance.**

13.1 **No Limitation.** Contractor's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Contractor to the coverage provided by insurance or to limit the County's recourse to any remedy available at law or in equity, except to the extent of actual defense, indemnification, and payment to the County under the terms of a required insurance policy.

13.2 **Minimum Scope of Insurance and Limits.** The Contractor shall obtain and maintain continuously and for the duration of the Agreement, and for three years following termination, the following insurance:

13.2.1 *Commercial General Liability Insurance* with a minimum limit of \$1,000,000 per occurrence, \$2,000,000 general aggregate, and endorsed to include Snohomish County, its officers, elected officials, agents, and employees as an additional insured with respect to the work performed for the County. Insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent coverage.

13.2.2 *Workers' Compensation Coverage* as required by the Industrial Insurance laws of the State of Washington. The Contractor's obligation shall extend to itself and any subcontractors working on behalf of the Contractor and must be obtained before performing any work under the Agreement. The County will not be responsible for payment of workers' compensation premiums or for any other claim or benefit for the Contractor, its employees, consultants, or subcontractor that might arise under the Washington State Industrial Insurance laws.

13.2.3 *Professional Technical Liability* insurance appropriate to the Contractor's profession with limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. The policy shall have a retroactive date prior to or coincident with the date of the Agreement, and the Contractor shall maintain coverage for the duration of the Agreement and for three years following termination of the Agreement.

13.3 **Other Insurance Provisions.** The required Commercial General Liability Insurance and Professional Technical Liability policies shall meet the following requirements:

13.3.1 The Contractor's insurance coverage shall be placed with insurance carriers licensed to do business in the state of

Washington with a current A.M. Best rating of not less than A:VII.

- 13.3.2 The Contractor's insurance coverage shall be primary insurance with respect to the County. Any insurance or self-insurance coverage maintained by the County shall be excess of the Contractor's insurance and shall not contribute with it.
- 13.3.3 The Contractor's insurance shall be endorsed to state that the insurer shall provide at least thirty days prior written notice by certified mail, return receipt requested, of any impending cancellation, non-renewal, expiration, or reduction in coverage.
- 13.3.4 Contractor shall furnish the County with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the work. The County reserves the right to receive a certified copy of required insurance policies

14. **Obligations that Survive Termination.** In addition to any other specific provisions that so state, the parties recognize and agree that their obligations under Sections 7 (Price and Payment), 9 (Confidentiality and Public Disclosure), 12 (Indemnification), 16 (Assignment and Transfer), 17 (Independent Contractor), 19 (Compliance with Laws), 21 (Governing Law and Venue), 22 (Applicability of Uniform Commercial Code), 23 (No Waiver), 25 (Covenant of Good Faith), 26 (Third Party Beneficiaries), 27 (No Construction Against Drafter), and 29 (Access to Books and Records) of this Agreement survive the cancellation, termination, or expiration of this Agreement.

15. **Amendments.** This Agreement may be modified or amended in writing, if the writing is duly executed by authorized representatives of both parties.

16. **Assignment and Transfer.** No party may assign, delegate, or otherwise transfer of any rights or obligations under this Agreement without the prior written consent of the other party, which may be granted or withheld in the other party's sole discretion. In the event that Contractor assigns, or otherwise transfers this Agreement, or any part hereof, or delegates any of its duties hereunder to any Third Party or Affiliate and, within eighteen (18) months after such transfer, the County, in its sole discretion, is not satisfied with the level of service provided under this Agreement, the County shall have the right to terminate this Agreement for convenience and transition to a new vendor. All Services provided by Contractor's transferee during the Transition Period shall be provided at no cost.

17. **Independent Contractor.** All work performed by the Contractor in connection with the Software and/or Services described in this Agreement shall be performed by the Contractor as an independent contractor and not as the agent or employee of the County. All persons furnished by the Contractor shall be for all purposes solely Contractor's employees or agents and shall not be deemed to be employees of the County for any purpose whatsoever. The Contractor shall furnish, employ, and have exclusive control of all persons to be engaged in performing Services under this Agreement and shall prescribe and control the means and methods of performing such Services by providing adequate and proper supervision. The Contractor shall be solely responsible for compliance with all rules, laws, and regulations relating to employment of labor, hours of labor, working conditions, payment of wages and payment of taxes, such as employment, Social Security, and other payroll taxes including applicable contributions from such persons when required by law.

18. **Acceptance and Removal of Contractor Personnel and Subcontractors.** All Contractor personnel, representatives, agents and subcontractors assigned to perform Services hereunder will be subject to acceptance by the County in the County's sole discretion. Services will be performed at a location specified by the County. The County in its discretion may request removal of any Contractor personnel, representative, agents or subcontractor providing Services hereunder, and Contractor will remove said personnel or subcontractor in accordance with each such request. The County may immediately remove any Contractor personnel, representative, agents or subcontractor in the County's sole discretion. Contractor will manage the transition of replacement personnel or subcontractor to minimize impact on any given project. Contractor may not subcontract the Services or any portion of the Services under this Agreement to any third party (including any independent contractor) without the prior written consent of the County, which consent may be withheld in the County's sole discretion. If the County consents to the use of a subcontractor, then (a) Contractor guarantees the subcontractor's performance, (b) Contractor remains obligated under this Agreement for the performance of the subcontracted Services, (c) Contractor must enter into a written agreement with the subcontractor obligating the subcontractor to comply with Contractor's obligations under this Agreement, and (d) the County has no obligations under this Agreement to the subcontractor and the subcontractor has no rights or remedies against the County under this Agreement or otherwise. Contractor may not impose on the County a surcharge for any subcontractor fees

19. **Compliance with Laws.** The Contractor each shall with all applicable federal, state, county and local laws, ordinances, regulations, and codes including, but not limited to, it's obligations as an employer with regard to the health, safety, and payment of its employees, and identification and procurement of required permits, certificates, approvals, and inspections in the Contractor's performance of this Agreement.

20. **Security, Access, and Safety Requirements.** The Contractor shall instruct its employees, agents, and subcontractors that they shall comply with the County's security, access, and safety requirements for the protection of the County's facilities and employees while on the County's premises.

21. **Governing Law and Venue.** The validity, construction, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the domestic laws of the State of Washington, except as to its principals of conflicts of laws, and the parties hereto irrevocably submit to the exclusive venue of the Superior Court, Snohomish County, Washington to resolve any disputes arising hereunder or related hereto, except that the County may waive the exclusive venue provision and submit a dispute to any state superior court or federal district court of competent jurisdiction in the State of Washington.

22. **Applicability of Uniform Commercial Code.** To the extent this Agreement entails the delivery of Software or Software Products, such Software or Software Products, shall be deemed "goods" within the meaning of Article 2 of the Uniform Commercial Code, Title 62A RCW, except when deeming services as "goods" would cause an unreasonable result. This Agreement shall control where there is a conflict with the UCC.

23. **No Waiver.** No action or failure to act by the County shall constitute a waiver of any right or duty afforded to the County under the Agreement, nor shall any such action or failure to act by the County constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically provided in writing and signed by an authorized representative of the County..

24. **Force Majeure.** Neither party shall be responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay or failure is caused by fire, flood, explosion, war, embargo, civil or military authority, act of God, or other similar causes beyond its control. If any party is rendered unable, wholly or in part, by such a force majeure event to perform or comply with any obligation or condition of this Agreement, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the County shall be entitled to exercise any remedies otherwise provided for in this Agreement, including Termination for Default. Whenever a force majeure event causes the Contractor to allocate limited resources between or among the Contractor's customers, the County shall receive no less priority in respect to such allocation than any of the Contractor's other customers.

25. **Covenant of Good Faith.** Each party agrees that, in its respective dealings with the other party under or in connection with this Agreement, it shall act in good faith.

26. **Third Party Beneficiaries.** This Agreement is entered into solely for the benefit of the County and the Contractor. No third party shall have the right to make any claim or assert any right under it, and no third party shall be deemed a beneficiary of this Agreement.

27. **No Construction against Drafter.** The parties agree that any principle of construction or rule of law that provides that an agreement shall be construed against the drafter of the agreement in the event of any inconsistency or ambiguity in such agreement shall not apply to the terms and conditions of this Agreement.

28. **Notices.** All notices, demands, or other communications herein provided to be given or that may be given by any party to the other under this Agreement shall be deemed to have been duly given when made in writing and delivered in person or upon the date of recorded receipt if deposited in the United States mail, postage prepaid, certified mail, return receipt requested, as follows:

Snohomish County:  
c/o Pat Scattaregia, TCA  
3000 Rockefeller Ave., M/S 709  
Everett, WA 98201-4046  
Ph: (425) 388-3103  
Fax: (425) 388-3999

Contractor:  
Christine Johnson  
2200 Powell St, Suite 1170  
Emeryville, CA 94109  
Ph: (510) 655-0900  
Fax: (510) 655-4064

or to such address as the parties may provide by notice to each other from time to time.

29. **Access to Books and Records.** The Contractor agrees that an authorized representative of the County shall, upon reasonable notice, have access to and the right to examine any pertinent books and records of the Contractor related to the performance of this Agreement. The Contractor shall maintain such books and records for this purpose for no less than six (6) years after the termination or expiration of this Agreement.

30. **Source Code Escrow.** Contractor agrees to place current copies of its Source Code, including all relevant commentary, explanations and other documentation, as well as instructions to compile the source code, plus all revisions to the software source code encompassing all corrections, changes, modifications and enhancements made to the Software by the Contractor (the "Escrowed Material") into an escrow account with an escrow agent, subject to the terms of a software escrow Agreement that must first be approved by the County. The Contractor shall update these copies every 180 days with new versions of

the Software. The Contractor will provide the Escrowed Material as required herein before Acceptance. The County may access the Escrowed Material upon the occurrence of any one of the following instances of default:

- 30.1 Contractor ceases its ongoing business operations;
- 30.2 Contractor suffers any act of insolvency or bankruptcy;
- 30.3 Contractor fails to maintain technical staff for providing ongoing Support and Maintenance Services;
- 30.4 Contractor ceases maintenance support of the software module in question.

Any escrowed material furnished under this provision shall be considered licensed under this Agreement.


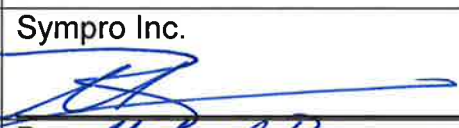
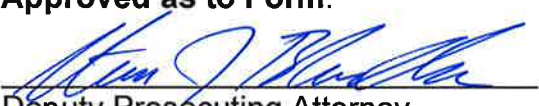
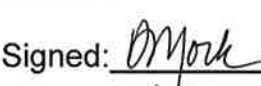
31. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid and enforceable and have the intent and economic effect as close as possible to the invalid, illegal and unenforceable provision. If it is not possible to modify the provision to render it legal, valid and enforceable, then the provision shall be severed from the rest of this Agreement. The invalidity, illegality or unenforceability of any provision shall not affect the validity, legality or enforceability of any other provision of this Agreement, which shall remain valid and binding.

32. **Incorporation of Exhibits.** Exhibits A, B, and C and RFP-10-08 referred to in this Agreement and attached hereto are integral parts of this Agreement and are incorporated herein by this reference.

33. **Entire Agreement and Order of Precedence.** This written Agreement and its corresponding Exhibits constitutes the entire agreement between the parties with respect to the subject matter contained herein, superseding all previous agreements, statements or understandings pertaining to such subject matter. In the event of any conflict between this Master Document and any of the attached Exhibits, the precedence of documents shall be as follows:

- a) This Master Contract Instrument
- b) Request for Proposal, RFP-10-08
- c) Exhibit A, Investment/ Debt Management Statement of Work
- d) Exhibit B, Sympro Software License Agreement
- e) Exhibit C, County Software Maintenance and Support Agreement

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

<b>COUNTY OF SNOHOMISH:</b>	<b>CONTRACTOR:</b>
 MARK SOINE Deputy Executive for By: Aaron Reardon Snohomish County Executive 12/15/08	Sympro Inc.  By: Michael Byron Title: CEO
<b>Approved as to Form:</b>  Deputy Prosecuting Attorney	
<b>Reviewed by Risk Management:</b> APPROVED <input checked="" type="checkbox"/> OTHER <input type="checkbox"/> Explain.  Signed:  Date: 12/1/08	

<b>COUNCIL USE ONLY</b>	
Approved:	12.8.08
Docfile:	D-11



Snohomish County

“PROPRIETARY” (SINGLE SOURCE) PURCHASE JUSTIFICATION FORM (SCC Section 3.04.180)

Requisition No.:		Department:	Information Technology/Treasurer
Recommended Vendor(s), if any: Sympro, Inc.	Date:	07/14/2020	
	Estimated Cost/Price:	\$95,788	
	Contact Person:	Joanie Fadden	
<input checked="" type="checkbox"/> Ongoing Purchase/Replacement <input checked="" type="checkbox"/> Perpetual		<input type="checkbox"/> New Purchase	
If an Ongoing/Replacement Purchase, what was the prior year expenditure? 2020: <u>\$18,927</u>			

Please submit “Proprietary” (Single Source) requests directly to the Purchasing Division:  
 Routing location: MS# 507 / Email: [purchasing@snoco.org](mailto:purchasing@snoco.org) / Fax: 425-388-3931

Completion of this form is required in advance of all “Proprietary” purchases in excess of \$5,000.

Check one of the following that best describes the proposed purchase (both if applicable):

- Only one vendor reasonably exists for the required product/service (“single source”).
- For standardization (“compatibility”) of equipment or systems.

1. In ‘layman’s terms’, describe the purpose or function of the requested product or service.

Sympro is Snohomish County’s investment software system, and the software licenses have been owned by Snohomish County since 2008. It is software used to allow the Junior Taxing Districts entry into the Snohomish County Investment Pool and to provide accurate accounting and reporting of investments. The debt management system provides accountability for the bonded indebtedness for the County and districts, according to RCW 36.29.010(7). The requested service is maintenance for the software licenses, to apply software patches to update features and functionality and fix “bugs” as they develop. The maintenance services also include end user support for system use.

2. If the particular product or service was not available or could not be purchased, how would the department proceed with its work?

The Treasurer does not have a means to continue operations should this software be rendered unusable due to maintenance being discontinued at this time.

“Single Source” (if applicable):

3a. Explain why the product or service requested can only be reasonably obtained from one vendor (a “single source”) to meet your requirements and why alternative vendors are unacceptable. Be specific with regard to any unique features, characteristics, requirements or capabilities.

Snohomish County completed RFP-10-08 in 2008 and Sympro was awarded a contract as the highest scoring responsive vendor. The licenses were purchased as a part of that initial contract, and maintenance has continued annually since system acceptance in August 2009. The original purchase was a significant investment into a debt management system, and the annual maintenance keeps the software operational. No other vendor offers the proprietary Sympro software updates, patches or version upgrades other than the developer/manufacturer of the software. This service can only be purchased directly from this vendor.

3b. Explain (i) how the requested purchase will produce meaningful standardization/compatibility of equipment or systems, and (ii) why the proposed standardization/compatibility will be beneficial for your operations and the County.

The software maintenance services purchased must be compatible with the licenses owned by the County. The County owns Sympro licenses and the Sympro maintenance is the only service that aligns with the product.

Snohomish County

“PROPRIETARY” (SINGLE SOURCE) PURCHASE JUSTIFICATION FORM (SCC Section 3.04.180)

- 4. Explain why this vendor is the only source reasonably available (in the case of “Single Source”), or the best source (in the case of “Compatibility”), from which to obtain this product or service.

Sympro is the only vendor that provides proprietary software updates, patches or version upgrades because they are the developer/manufacturer of the software. As the product developer, they can choose to offer products and services through a reseller. Sympro only provides maintenance services directly. This service can only be purchased directly from this vendor.

- 5. Describe the market research that was conducted and the results, if any, or why a market survey was not conducted.

Through some market research, there is more than one potential provider of an investment and debt management system. In 2008 Snohomish County published RFP-10-08, and Sympro was selected by the Evaluation Committee as the highest-ranking proposer to provide the software.

- 6. Will this purchase obligate the County to a particular product or vendor in the future, either for maintenance, continuity or other follow-up? Please explain.

The original RFP selection dictated that to use the licenses purchased into the future, the County was obligated to continue using the provider for software maintenance. There is a cancellation for convenience clause in the agreement. If the Treasurer’s Office chooses to invest capital into a new software system, they have the option to do so, should resources permit. The Treasurer’s Office has requested that IT support their continued maintenance services for Sympro since the Treasurer does not desire to change their investment and debt management software platform at this time.

- 7. Explain why the price for this product or service is considered to be fair and reasonable.

Pricing deemed fair and reasonable because of the vendor selection through competition. In the negotiated contract, the rates remained firm fixed until 08/01/2014, where there was a capped allowance for a 1.5% increase per year. With a 5-year term renewal, the pricing for years 1, 2 and 3 will include a 3% cap but pricing will remain fixed for years 4 and 5 making the overall price increase for the 5-year term approximately 2%. Additionally, maintenance fees are less than 12% of the original purchase of licenses, making it fall well within the normally accepted range of 10-15% for software maintenance costs.

- 8. Describe the negotiation efforts, if any, which have been made to this point with the vendor to obtain the best possible price

Sympro is willing to extend the contract for one-year terms at a 3% price increase. By agreeing to another five-year term, while honoring all the terms and conditions listed in the original agreement we are able to reduce the annual cost increase to an average of only 2% per year.

- 9. If this request is on the basis of “single source” (as opposed to “compatibility”/standardization), describe the actions your Department will take, if feasible, to introduce or increase the opportunity for vendor competition prior to any future or follow-up purchase of this product or service.

This question is not applicable because this service is related to the product already owned by Snohomish County and is available from only one source. Snohomish County cannot influence the developer’s distribution strategy.

Name and signature of the person in the requesting Department who prepared this request and justification.

Name: Joanie Fadden Position: IT Admin Services Manager

Department: Information Technology Date: July 14 2020

I hereby certify that the above request and Justification is accurate and complete to the best of my knowledge and belief.

Joanie Fadden

July 14 2020

Signature

Date

Snohomish County

“PROPRIETARY” (SINGLE SOURCE) PURCHASE JUSTIFICATION FORM (SCC Section 3.04.180)

Name and signature of the Department or Division Director (from the requesting Department) who has reviewed and endorsed this request and justification:			
Name:	Viggo Forde	Position:	IT Director
Department:	Information Technology	Date:	July 14 2020
<b>Review/Endorse:</b> I have reviewed and hereby endorse the above request and justification.			
<i>Viggo Forde</i>		14. July 2020	
Signature		Date	

**Purchasing Department:**

Posted to Website? Yes  No  Dates 10/2/2020 to 10/15/2020

Ad Posted in Newspaper? Yes  No  Dates 10/2/2020 to \_\_\_\_\_

Results of Posting: No interest or objections received. Purchasing Manager Approval: **Bramby A Tollen**

Approved \_\_\_\_\_ Not Approved \_\_\_\_\_

\_\_\_\_\_  
Purchasing Manager Executive

\_\_\_\_\_  
Date

Digitally signed by Bramby A Tollen  
Date: 2020.10.16 10:54:05 -07'00'

**Endorsement**

<i>Policy Period</i>	SEPTEMBER 27, 2020 TO SEPTEMBER 27, 2021
<i>Effective Date</i>	SEPTEMBER 27, 2020
<i>Policy Number</i>	9950-48-39 EUC
<i>Insured</i>	CONSTELLATION SOFTWARE, INC.
<i>Name of Company</i>	FEDERAL INSURANCE COMPANY
<i>Date Issued</i>	OCTOBER 22, 2020

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This Endorsement applies to the following forms:

## GENERAL LIABILITY

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Under Who Is An Insured, the following provision is added.

**Who Is An Insured****Additional Insured -  
Scheduled Person  
Or Organization**

Persons or organizations shown in the Schedule are **insureds**; but they are **insureds** only if you are obligated pursuant to a contract or agreement to provide them with such insurance as is afforded by this policy.

However, the person or organization is an **insured** only:

- if and then only to the extent the person or organization is described in the Schedule;
- to the extent such contract or agreement requires the person or organization to be afforded status as an **insured**;
- for activities that did not occur, in whole or in part, before the execution of the contract or agreement; and
- with respect to damages, loss, cost or expense for injury or damage to which this insurance applies.

No person or organization is an **insured** under this provision:

- that is more specifically identified under any other provision of the Who Is An Insured section (regardless of any limitation applicable thereto).
  - with respect to any assumption of liability (of another person or organization) by them in a contract or agreement. This limitation does not apply to the liability for damages, loss, cost or expense for injury or damage, to which this insurance applies, that the person or organization would have in the absence of such contract or agreement.
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**Liability Endorsement**  
*(continued)*

Under Conditions, the following provision is added to the condition titled Other Insurance.

**Conditions**

**Other Insurance –  
Primary, Noncontributory  
Insurance – Scheduled  
Person Or Organization**

If you are obligated, pursuant to a contract or agreement, to provide the person or organization shown in the Schedule with primary insurance such as is afforded by this policy, then in such case this insurance is primary and we will not seek contribution from insurance available to such person or organization.

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**Schedule**

Persons or organizations that you are obligated, pursuant to a contract or agreement, to provide with such insurance as is afforded by this policy.

All other terms and conditions remain unchanged.

**Authorized Representative**

