

City of College Station

PRODUCT AGREEMENT

DynaSource, Inc., a United States based corporation with corporate headquarters located at 975 Interstate 10 North, Beaumont, TX (“SELLER”), authorized to do business in the State of Texas, agrees to supply Software and Services to the City of College Station, a Texas home-rule municipal corporation (“Purchaser”) and to make available the manufacturer’s System Maintenance services (“Laserfiche Software Assurance Plan”) to Purchaser under the terms of this Agreement.

1. In consideration of the compensation stated in paragraph 2, the SELLER shall provide all the Software, Services and Maintenance described in the Scope of Services attached hereto as Exhibit “1” and incorporated by reference. The Software License Agreement for software included in this Agreement is attached hereto as Exhibit 2. The Maintenance agreement is attached hereto as Exhibit 3. The express terms of this Product Agreement shall take precedence and control over any term or provision of the Exhibits that in any way conflicts with, differs from, or attempts to alter the terms of this Agreement.
2. Except in the event of a duly authorized change order approved in writing by Purchaser as provided in this Agreement, and in consideration of the SELLER’s final completion of all work in conformity with this Agreement, the City shall pay the SELLER an amount not to exceed **Forty-One Thousand Seven Hundred Fifty Dollars (\$41,750.00)**.

PAYMENT METHOD AND SCHEDULES

Software Products (\$21,000) invoice upon execution of this Agreement by both parties.

Services and Software Maintenance: (\$17,450) invoice upon completion and acceptance by Purchaser.

Acceptance means that Purchaser agrees that Software and Services meet or exceed the specifications and the requirements contained in the Scope of Services.

Travel and Daily Expenses: (NOT TO EXCEED \$3,300.00). Invoice as actual expenses, as incurred.

SELLER’s policies for reimbursement of employee or contractor travel and living expenses shall be subject to BUYER’s review and approval, such approval not to be unreasonably withheld. SELLER shall provide BUYER with supporting documentation such as receipts for travel, hotels, and rental cars with regard to such reimbursable items upon BUYER’s request. Fees for services shall be limited to rate schedules provided to BUYER in advance of providing the additional services. SELLER agrees to use the same diligence in controlling reimbursable expenses as it uses in its own business for expenses incurred by its own employees.

3. All undisputed amounts payable under this Agreement that remain unpaid for more than thirty (30) days are subject to Tex. Gov’t. Code Section 2251.001 et. seq. as amended.
4. No changes shall be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid except upon the prior written order from Purchaser. The SELLER shall not execute change orders on behalf of Purchaser or otherwise alter the financial scope of the Project.

5. Written change orders may be approved by the City Manager or his delegate provided that the change order does not increase the amount set forth in paragraph 2 of this Agreement to more than \$50,000.00. Changes in excess of this amount must be approved by the City Council prior to commencement of the services or work. **Any request by the SELLER for an increase in the Scope of Services and an increase in the amount listed in paragraph 2 of this Agreement shall be made and approved by Purchaser prior to SELLER providing such services or the right to payment for such additional services shall be waived.**

6. **Time is of the essence on this Agreement.** SELLER shall complete all work under this Agreement by the dates set forth below:

Within 45 days of Agreement Approval by all Parties.

7. No "Notice to Proceed" may be given nor any work commenced until this Agreement is fully executed and all exhibits and other attachments are completely filled out and attached hereto.

8. It is understood and agreed by the parties that the SELLER is an independent SELLER retained for the above-mentioned purpose. Purchaser shall not control the manner nor the means of the SELLER's performance, but shall be entitled to a work product as described above and in Exhibit 1. The term "subcontractor" shall mean and include only those hired by and having a direct contact with SELLER for performance of work on the Project. Purchaser shall have no responsibility to any subcontractor employed by SELLER for performance of work on the Project, and all subcontractors shall look exclusively to the SELLER for any payments due. Purchaser will **not** be responsible for reporting or paying employment taxes or other similar levies that may be required by the United States Internal Revenue Service or other State or Federal agencies. Every subcontractor shall be bound by the terms and provisions of this Agreement and the Agreement Documents as far as applicable to their work. SELLER shall be fully responsible to Purchaser for the acts and omissions of its subcontractors. Nothing contained herein shall create any Contractual or employment relations between any subcontractor and Purchaser.

9. OPTION - SELECT A OR B (initial) (*both A & B shall apply if Agreement amount is over \$15,000.00*)

CSB A.

The SELLER shall procure and maintain, at its sole cost and expense for the duration of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by SELLER, its agents, representatives, volunteers, employees, or subcontractors. Said insurance shall list College Station, its employees, and officials as additional named insureds. See Exhibit 4 for required limits of insurance. Certificates of insurance evidencing the required insurance coverages shall be attached hereto as Exhibit 5.

- OR -

CSB B.

It is further agreed that SELLER (separately and collectively the "Indemnitee") shall indemnify, hold harmless, and defend Purchaser, its officers, agents, and employees from and against any

and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person or for damage to any property arising out of or in connection with the work done by SELLER under this Agreement. Such indemnity shall apply regardless of whether the claims, losses, damages, causes of action, suits, or liability arise in whole or in part from the negligence of Purchaser, any other party indemnified hereunder, SELLER, or any third party.

- 10. SELLER assumes full responsibility for the work to be performed hereunder and hereby releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person and any loss of or damage to any property that is caused by, alleged to be caused by, arising out of, or in connection with SELLER's work to be performed hereunder. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance and regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of Purchaser, any other party released hereunder, SELLER, or any third party.**
11. Purchaser is a tax-exempt entity and will provide its tax exemption number to SELLER. Purchaser is exempt from payment of state and local sales and use of taxes on labor and materials incorporated into the project. If necessary, it is SELLER's responsibility to obtain a sales tax permit, resale certificate, and exemption certificate that shall enable SELLER to buy any materials to be incorporated into the project and then resale the aforementioned materials to the City without paying the tax on the materials at the time of purchase.
12. SELLER shall comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws, including but not limited to the Immigration Reform and Control Act (IRCA). SELLER may not knowingly obtain the labor or services of an unauthorized alien. SELLER, not Purchaser, must verify eligibility for employment as required by IRCA.
13. At any time, Purchaser may terminate the Project for convenience, in writing. At such time, Purchaser shall notify SELLER, in writing, who shall cease work immediately. SELLER shall be compensated for the services performed. In the event that Purchaser terminates this Agreement for convenience, Purchaser shall pay SELLER for the services performed and expenses incurred prior to the date of termination.
14. No waiver or deferral by either party of any term or condition of this Agreement shall be deemed or construed to be a waiver or deferral of any other term or condition or subsequent waiver or deferral of the same term or condition.
15. This Agreement may only be amended by written instrument approved and executed by both parties.
16. This Agreement and the rights and obligations contained herein may not be assigned by SELLER without the prior written approval of Purchaser.

17. The parties hereby state that they have read the terms of this Agreement and hereby agree to the conditions contained herein.
18. This Agreement shall be governed by, subject to, and interpreted in accordance with the laws of the State of Texas and the United States of America, without regard to rules or laws regarding conflict of law. The parties hereto submit to the exclusive jurisdiction of the courts within the State of Texas.
19. SELLER, its employees, associates or subcontractors shall perform all the work hereunder. SELLER agrees that all of its associates, employees, or subcontractors who work on this Project shall be fully qualified and competent to do the work described hereunder. SELLER shall undertake the work and complete it in a timely manner.
20. SELLER's policies for reimbursement of employee or contractor travel and living expenses shall be subject to Purchaser's review and approval, such approval not to be unreasonably withheld. SELLER shall provide Purchaser with supporting documentation such as receipts for travel, hotels, and rental cars with regard to such reimbursable items upon Purchaser's request. Fees for services shall be limited to rate schedules provided to Purchaser in advance of providing the additional services. SELLER agrees to use the same diligence in controlling reimbursable expenses as it uses in its own business for expenses incurred by SELLER.
21. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it may become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
22. SELLER shall maintain a trained staff capable of rendering the services set forth in this Agreement
23. This Agreement represents the entire and integrated agreement between Purchaser and SELLER and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may only be amended by written instrument approved and executed by both parties.

BY ENTERING INTO THIS AGREEMENT PURCHASER DOES NOT GIVE ITS CONSENT TO SUIT, WAIVE ITS GOVERNMENTAL IMMUNITY OR THE LIMITATIONS AS TO DAMAGES IN THE TEXAS TORT CLAIMS ACT.

24. This Agreement will be effective when signed by the last party whose signing makes the Agreement fully executed.

DYNASOURCE, INC.

BY: 
Printed Name: CHARLES E. BEARD
Title: PRESIDENT
Date: 09/01/05

CITY OF COLLEGE STATION

BY: _____
Ron Silvia, Mayor
Date: _____

ATTEST:

Connie Hooks, City Secretary

Date: _____

APPROVED:

Glenn Brown, Interim City Manager

Date: _____



City Attorney

Date: _____

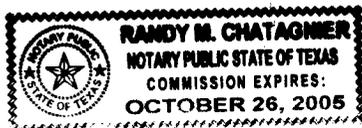
Jeff Kersten, Finance & Strategic

Planning Director

Date: _____

STATE OF TEXAS)
)
COUNTY OF Jefferson) ACKNOWLEDGMENT

This instrument was acknowledged before me on the 7th day of September, 2005
by Charles E. Beard in his/her capacity as PRESIDENT of
Dynasource, a corporation, on behalf of said corporation.



Randy M. Chatagner
Notary Public in and for
the State of Texas

STATE OF TEXAS)
)
COUNTY OF BRAZOS) ACKNOWLEDGMENT

This instrument was acknowledged before me on the ___ day of _____,
2005, by _____, in the capacity as Mayor of the **City of College
Station**, a Texas home-rule municipality, on behalf of said municipality.

Notary Public in and for
the State of Texas

Exhibit 1

SCOPE OF SERVICES

Services and products included under this Agreement include the following items:

Products & Maintenance

LaserFiche Agenda Manager (5 Profiles)*	\$15,000.00
Basic Support – Maintenance	\$ 3,000.00
Agenda Manager Additional Profile – 5 Pack	\$ 6,000.00
Additional Profiles – Maintenance	<u>\$ 1,200.00</u>
Sub Total	\$25,200.00

Services

VIP Service, Install/Training – 5 Day**	\$ 8,750.00
Database Conversion	\$ 1,500.00
DynaSource Installation Services	<u>\$ 3,000.00</u>
Sub Total	\$13,250.00

Travel and Daily Expenses (Billed as Actual)***

Per Diem	\$ 1,500.00
Air Fare	\$ 1,200.00
Travel Time (12 hours @ \$50/hr)	<u>\$ 600.00</u>
Sub Total	\$ 3,300.00

Total \$41,750.00

* LaserFiche Agenda Manager will come with 25 Temporary Full User Licenses needed for editing feature functions until the new release is available, installed and tested. These licenses will not be required under the new release, estimated to be about October 2005.

** The VIP Service covers a LaserFiche engineer from LaserFiche in California to be onsite and assist in conversion, installation and training.

***** Travel and Daily Expenses to be billed as Actual, Not to Exceed the Travel and Daily Expenses Sub Total of \$3,300.00**

Services covered under this scope of services include:

- Upgrading the current LaserFiche (LF) Document Imaging Software from Version 6.1 to Version 7.1 (including database conversion).
- Installation of LF Agenda Manager Suite with up to ten profiles.
- Provide on-site Services of a LaserFiche engineer for no less than five (5) eight hour days to assist in the upgrade, installation and training.
- Training for key, City designated, personnel.

- Testing of all products including all software, database operations and procedures developed or changed as a result of this upgrade and/or installation.
- Documentation for all products and materials including all hardware and software. "Documentation" means all specifications, manuals, drawings, and other media and materials other than Equipment and Software.

SELLER Responsibilities:

1. Coordinate with the City Project Manager to develop a mutually acceptable project plan and installation schedule for this project.
2. Provide to the City a complete list of all preparations and tasks that must be completed prior to the arrival of the installation team.
3. Provide on-site services as required to successfully complete this project. On-site services will include a minimum of five (5) eight hour days by a LaserFiche engineer to assist in the upgrade from LF Version 6.1 to LF Version 7.1, database conversion, and installation of Agenda Manager, profile creation, testing and training.
4. Provide all software updates and upgrades for twelve months from the completion of the installation at no extra cost (not including labor)
5. Install, configure and test all software, database functions and agenda profiles.
6. Provide system administration training to minimum of two system administrators.
7. Provide user training to a minimum of five and a maximum of ten system users for the Agenda Management application.

Purchaser Responsibilities:

1. Provide a Project Manager who will be involved in the various stages of the project and who will be a single point of contact for SELLER Program Manager.
2. Coordinate with SELLER to develop a mutually acceptable project plan and installation schedule for this project.
3. Complete all required preparations and tasks that must be completed prior to the arrival of the installation team.
4. Coordinate with other City departments to ensure identification and availability of personnel for training.
5. Provide SELLER and SELLER's representatives required physical, network and database access required to perform the services contained in this Agreement and scope of services.

Exhibit 2
Software License Agreement

Exhibit 3
Laserfiche Software Assurance Program Agreement

Exhibit 4

City of College Station Insurance Requirements

1. The Contractor agrees to maintain the types and amounts of insurance required in this Contract throughout the term of the Contract. The following insurance policies shall be required:

- (a) Commercial General Liability
- (b) Business Automobile Liability
- (c) Workers' Compensation
- (d) Professional Liability

2. For each of these policies, the Contractor's insurance coverage shall be primary insurance with respect to the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers, shall be considered in excess of the Contractor's insurance and shall not contribute to it. Certificates of insurance and endorsements shall be furnished to and approved by the City's Risk Manager *before* any letter of authorization to commence planning will issue or any work on the Project commences. No term or provision of the indemnification provided by the Contractor to the City pursuant to this Contract shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. **All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as Exhibit "D", and approved by the City before work commences.**

3. The Contractor shall include all subcontractors as additional insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4. General Requirements Applicable to All Policies.

- (a) Only insurance carriers licensed and admitted to do business in the State of Texas will be accepted.
- (b) Deductibles shall be listed on the certificate of insurance and are acceptable only on a "per occurrence" basis for property damage only.
- (c) "Claims made" policies will not be accepted, except for Professional Liability insurance.
- (d) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice has been given to the City of College Station by certified mail, return receipt requested.
- (e) Upon request, certified copies of all insurance policies shall be furnished to the City.
- (f) The certificates of insurance shall be prepared and executed by the insurance company or its authorized agent. Each certificate shall contain the following provisions and warranties: (a) that the insurance company is licensed and admitted to do business in the State of Texas; (b) that the insurance policy is underwritten on forms provided by the Texas State Board of Insurance or ISO; (c) all endorsements and coverages according to the requirements of this Contract; (d) the form of notice of cancellation, termination, or change in coverage provisions; and (e) original endorsements affecting coverage required by this Contract.
- (g) The City of College Station, its officials, employees, and volunteers are to be added as "Additional Insureds" to the Commercial General Liability and Business Automobile Liability Policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and volunteers.

5. **Commercial (General) Liability** requirements:

- (a) Coverage shall be written by a carrier with an "B+:VII" or better rating in accordance with the current Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$1,000,000 per occurrence per project for bodily injury and property damage with a \$2,000,000 annual aggregate limit.
- (c) Coverage shall be at least as broad as Insurance Service's Office Number CG 00 01.
- (d) No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.
- (e) The coverage shall include but not be limited to: premises/operations; independent contracts, products/completed operations, contractual liability (insuring the indemnity provided herein), and where exposures exist, "Explosion Collapse and Underground" coverage.
- (f) The City shall be named as an additional insured and the policy shall be endorsed to waive subrogation and to be primary and non contributory.

6. **Business Automobile Liability** requirements:

- (a) Coverage shall be written by a carrier with an "B+:VII" or better rating in accordance with the current Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$1,000,000 per occurrence for bodily injury and property damage.
- (c) The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.
- (d) The coverage shall include owned, leased or rented autos, non-owned autos, any autos and hired autos.

7. **Workers' Compensation Insurance** requirements:

- (a) Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, *all* employees of the Contractor, the Contractor, *all* employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers' compensation insurance policy: either directly through their employer's policy (the Contractor's, or subcontractor's policy) or through an executed coverage agreement on an approved TWCC form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, Contractors and subcontractors *must* use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.
- (b) The worker's compensation insurance shall include the following terms:
 - (i) Employer's Liability limits of \$1,000,000 for each accident is required.
 - (ii) "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
 - (iii) Texas must appear in Item 3A of the Worker's Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.
- (c) Pursuant to the explicit terms of Title 28, Section 110.110(c)(7) of the Texas Administrative Code, this Agreement, the bid specifications, this Agreement, and all subcontracts on this Project must include the terms and conditions set forth below, without any additional words or changes, except those required to accommodate the

specific document in which they are contained or to impose stricter standards of documentation:

A. *Definitions:*

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission, or a coverage agreement (TWCC-81, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractors" in § 406.096 [of the Texas Labor Code]) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

C. The Contractor must provide a certificate of coverage to the governmental entity **prior** to being awarded the contract.

D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Contractor knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.

H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to the Contractor:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-

insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity.

8. **Professional Liability** requirements:

- (a) Coverage shall be written by a carrier with a "B+:VII" or better rating in accordance with the current Best Key Rating Guide.
- (b) Minimum of \$1,000,000 per occurrence and \$2,000,000 aggregate, with a maximum deductible of \$10,000.00.
- (c) Coverage must have an **Extended Reporting Period Endorsement** to be maintained for two (2) years after the expiration of the term or termination of this Contract.

Exhibit 5

CERTIFICATES OF INSURANCE