

**AGENDA OF A SPECIAL MEETING OF THE
CHAIRPERSON AND TRUSTEES OF THE
ARDMORE PUBLIC WORKS AUTHORITY, TO
BE
HELD ON 08/30/2021 AT 7:00 PM IN THE
COMMISSION CHAMBERS FOLLOWING
REGULAR CITY COMMISSION MEETING**

NOTICE: "Official action can only be taken on items which appear on the agenda. The Trustees may adopt, approve, ratify, deny, defer, recommend, amend, strike, or continue any item. When more information is needed to act on an item, the Trustees may refer the matter to the Manager or the Municipal Counselor. The Trustees may also refer items to standing committees of the City Commission or to a board or commission for additional study. Under certain circumstances, items are deferred to a specific later date or stricken from the agenda entirely."

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **APPROVE AGENDA - ORDER OF BUSINESS
AND CONTENTS**
4. **APPROVE MINUTES**
 - 4.A. **Ardmore Public Works Authority Regular Minutes**
of the Meeting Held on August 2, 2021

Documents:

[APWA MINUTES 08-02-2021.PDF](#)

5. **CONSENT AGENDA**

All items listed are considered to be routine by the Authority and will be enacted by one motion. There will be no separate discussion of these items unless a Trustee or a citizen so requests, in which event the item will be removed from the consent status and considered in its normal sequence on the agenda.

5.A. **Consent A**

Consideration and Possible Action to Consent to Ratify an Approval by the Ardmore City Commission of the Annual Payment to Tyler Technologies for Fiscal Year 2021/2022, a Single Source Provider for Incode Software and Cloud Storage Utilized by the Finance Department, Human Resources, and Municipal Court in the Total Amount of \$84,082.00 and Approval or Rejection of Any Amendments Proposed and Considered by the Ardmore Public Works Authority at the Meeting

(Submitted by Sissy Burge, City Treasurer)

Documents:

[CONSENT A.PDF](#)

6. **REGULAR BUSINESS**

6.A. **AGREEMENT(S)**

6.A.1. **Agreement 1**

Consideration and Possible Action of a Renewal to Continue Hosting Services for the City Works Application with New Edge Services, LLC, Utilized by the Ardmore Public Works Authority to Maintain Inventory, Infrastructure and a Work Order System in the Total Amount of \$25,000.00 and Approval or Rejection of Any Amendments Proposed and Considered by the Ardmore Public Works Authority at the Meeting

(Presented by Robert Newell, Director of Information Technology)

Documents:

[AGREEMENT 1.PDF](#)

7. **ADJOURN**

**MINUTES OF A REGULAR MEETING OF THE TRUSTEES OF THE
ARDMORE PUBLIC WORKS AUTHORITY HELD ON
AUGUST 2, 2021 AT 7:00 PM IN THE COMMISSION CHAMBERS**

Present:	Sheryl Ellis	Chairperson
	Doug Pfau	Vice-Chairperson
	John Credle, Jr.	Trustee
	David Plesher	Trustee
	Kevin Boatright	Manager
	Lori Linney	Secretary

This meeting was held in compliance with the Oklahoma Open Meeting Act (OSS 25)

1. CALL TO ORDER BY THE CHAIRPERSON

Chairperson Ellis called the meeting to order.

2. ROLL CALL

The Secretary called roll. All were present.

3. APPROVE AGENDA – ORDER OF BUSINESS AND CONTENTS

Motion was made by Vice-Chairperson Pfau and seconded by Trustee Credle to approve the agenda as written.

Ayes:	Credle, Plesher, Pfau, Ellis
Nays:	None

4. APPROVE MINUTES

A. of the Ardmore Public Works Authority Regular Meeting held on July 19, 2021

Motion was made by Trustee Credle and seconded by Vice-Chairperson Pfau to approve the minutes of July 19, 2021.

Ayes:	Credle, Plesher, Pfau, Ellis
Nays:	None

5. CONSENT

A. Consideration and Possible Action to Consent to Ratify an Approval by the Ardmore City Commission to Declare a 2013 Ford Taurus (Asset Number 008605) from the Ardmore Downtown Executive Airport, and a 1984 Semi Dump Trailer (Asset Number 004145) from the Wastewater Plant as Surplus and Disposed of in Accordance with City Code and Approval or Rejection of Any Amendments Proposed and Considered by the Ardmore Public Works Authority at the Meeting

The Utilities Department requests that a 2013 Ford (Asset Number 008605) from the Ardmore Downtown Executive Airport, and a 1984 Semi Dump Trailer (Asset Number 004145) from the Wastewater Plant be declared as surplus and disposed of by auction, sealed bid or OK Iron & Metal.

B. Consideration and Possible Action to Consent to Ratify an Approval by the Ardmore City Commission for the Purchase of a 1/2 Ton 2022 Silverado 1500 Double Cab Truck from the Oklahoma State Contract from Carter Chevrolet Agency, LLC for the Water Distribution Department in the Total Amount of \$26,367.00 and Approval or Rejection of Any Amendments Proposed and Considered by the Ardmore Public Works Authority at the Meeting

Staff requests approval to purchase a ½ ton truck from the Oklahoma State Contract (SW0035) from the Carter Chevrolet Agency, LLC, for the Water Distribution Department. The price for this vehicle is \$26,367.00. This truck is in the current Water Distribution Department Budget.

Motion was made by Trustee Credle and seconded by Vice-Chairperson Pfau to approve Consent Agenda Items 5.A. - 5.B.

Ayes: Credle, Plesher, Pfau, Ellis
Nays: None

6. NEW BUSINESS

None

7. ADJOURN

Motion was made by Vice-Chairman Pfau and seconded by Trustee Plesher to adjourn from this meeting.

Ayes: Credle, Plesher, Pfau, Ellis
Nays: None

ARDMORE PUBLIC WORKS AUTHORITY

Authority Letter No. 5177

Meeting Date: August 30, 2021

Chairman and Trustees
Ardmore Public Works Authority

Re: Tyler Technologies Incode Payment

Dear Trustees:

The Finance Department and the Ardmore Public Works Authority's (APWA) staff respectfully requests that you to ratify the approval by the City of Ardmore Commission to approve the payment to Tyler Technologies for FY 21/22. The Customer Service Department budgeted \$84,082 in the Customer Service Budget for this expense. The current agreement provides a fixed annual cost of \$84,082.00 for the remaining four years of the contract.

Respectfully,

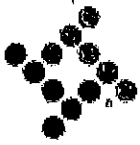


Sissy Burge
City Treasurer

Reviewed by: _____



K. Bortner
City Manager



tyler
technologies

Remittance:
Tyler Technologies, Inc.
(FEIN 75-2303920)
P.O. Box 203556
Dallas, TX 75320-3556

Invoice

<i>Invoice No</i>	<i>Date</i>	<i>Page</i>
025-344752	08/10/2021	1 of 1

Questions:
Tyler Technologies - Local Government
Phone: 1-800-772-2260 Press 2, then 2
Email: ar@tylertech.com



Bill To: City of Ardmore
23 South Washington
Ardmore, OK 73401

Ship To: City of Ardmore
23 South Washington
Ardmore, OK 73401

<i>Cust No.-BillTo-ShipTo</i>	<i>Ord No</i>	<i>PO Number</i>	<i>Currency</i>	<i>Terms</i>	<i>Due Date</i>
42108 - MAIN - MAIN	131251	2020-107281	USD	NET45	09/24/2021

Description	Extended Price
INCODE - Annual SaaS Fees - Year 2 (08/01/2021 - 07/31/2022)	84,082.00

Milestone Details

Description:	Contract Amount:	Percent Invoiced:	Amount Invoiced:
INCODE - System Software Non SQL- Thrd Party Software	4,360.00	20%	872.00
INCODE - Payroll - Electronic Time Clock Interface (Generic) - Annual SaaS Fee	4,270.00	20%	854.00
INCODE - Thrd Party Printing Interface - Annual SaaS Fee	13,390.00	20%	2,678.00
INCODE - Purchase Orders - Annual SaaS Fee	24,320.00	20%	4,864.00
INCODE - Central Cash Collection - Annual SaaS Fee	28,960.00	20%	5,792.00
INCODE - Utility CIS System - Annual SaaS Fee	63,995.00	20%	12,799.00
INCODE - Fixed Assels - Annual SaaS Fee	8,940.00	20%	1,788.00
INCODE - Core Financials - Annual SaaS Fee	59,810.00	20%	11,962.00
INCODE - Utility Handheld Meter-Reader Interface - Annual SaaS Fee	4,910.00	20%	982.00
INCODE - Citation Issuing Device Interface - Annual SaaS Fee	9,840.00	20%	1,968.00
INCODE - Human Resources Base Package - Annual SaaS Fee	82,140.00	20%	16,428.00
INCODE - Payroll-Personnel - Annual SaaS Fee	32,435.00	20%	6,487.00
INCODE - Criminal Court Case Mgt - Annual SaaS Fee	83,040.00	20%	16,608.00

****ATTENTION****
Order your checks and forms from
Tyler Business Forms at 877-749-2090 or
tylerbusinessforms.com to guarantee
100% compliance with your software.

Subtotal	84,082.00
Sales Tax	0.00
Invoice Total	84,082.00

CITY OF ARDMORE
Information Technology Department

Council Letter No. 5178
Meeting Date: August 30, 2021

Ardmore Public Works Authority
City of Ardmore, Oklahoma

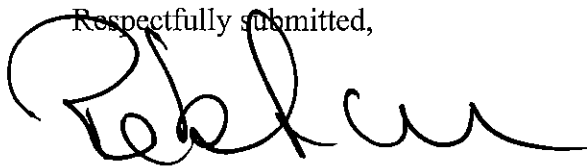
RE: Agreement Renewal - Support Services for City Works Application

Dear Trustees:

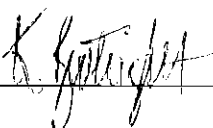
The City of Ardmore entered into an agreement with New Edge Services, LLC in the 14/15 fiscal year for hosting and support services for the City Works application. The APWA utilizes City Works by Azteca to maintain inventory, infrastructure and a work order system and Development Services uses the application to assist with building permits and code enforcement.

It is staff's recommendation that the APWA approve the agreement renewal to continue support services with New Edge Services, LLC in the amount of \$25,000.00. This is a budgeted item in the 21/22 fiscal year.

Respectfully submitted,



Robert Newell
Director of Information Technology

Reviewed by: 

NewEdge Services, LLC

Master Agreement for Material and Services

This Material and Services Agreement (hereinafter "Agreement"), is between NewEdge Services, LLC, a Texas limited liability company, and its subsidiaries, parents, affiliates, successors, and assigns ("NewEdge"), and the City of Ardmore, and its subsidiaries, parents, affiliates, successors, and assigns, each of them ("Client"), each of which may be referred to in the singular as "Party" or in the plural as "Parties."

Article I. SCOPE OF AGREEMENT

NewEdge shall provide to Client such Materials and Services as described in Appendix A – Statement of Work at the prices set therein, or any Order executed under this Agreement substantially in the form of Appendix B - Order, subject to the terms and conditions of this Agreement. Any Order in effect on the date when this Agreement expires or is terminated shall continue in effect until such Order either (i) expires by its own terms or (ii) is separately terminated, prior to its own scheduled expiration, as provided in this Agreement. The terms and conditions of this Agreement shall continue to apply to such Order as if this Agreement were still in effect.

Article II. TERM OF AGREEMENT

This Agreement shall commence and be effective on the date when signed by the last Party ("Effective Date") and shall continue for a term of 3 years.

TERMINATION FOR NON-APPROPRIATION OF FUNDS

Notwithstanding any other provision of this Contract, the City shall not be obligated to expend any funds for the Contractor's performance hereunder or by any provision of this Contract during any of the City's future fiscal years unless and until the City's Board of Commissioners appropriates funds for this Contract in the City's Budget for each such future fiscal year. In the event that funds are not appropriated for this Contract, then this Contract shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The City shall notify the Contractor in writing of any such non-allocation of funds at the earliest possible date.

DEFINITIONS

"Affiliate" with respect to either Party to this Agreement or any Order under this Agreement means a business association that has legal capacity to contract on its own behalf, to sue in its own name, and to be sued, if and only if either (a) such business association owns, directly or indirectly, a majority interest in such Party (its "parent company"), or (b) a thirty percent (30%) or greater interest in such business association is owned, either directly or indirectly, by such Party or its parent company.

"Documentation" means all tangible and intangible written materials including user instructions and training materials or other such materials as necessary in NewEdge's sole and exclusive judgment shall be required to demonstrate or explain a requirement, provision, or other detail.

"Information" means without limitation, with respect to a Party, all information of any sort in any form including without limitation confidential, proprietary or trade secret information of such Party or of a third party that is in the possession of such Party, including discoveries, ideas, concepts, know-how, techniques, processes, procedures, designs, specifications, strategic information, proposals, requests for proposals, proposed products, drawings, blueprints,

tracings, diagrams, models, samples, flow charts, data, computer programs, marketing plans, employee personal information, health or financial information, authentication credentials, operations, infrastructure, network and system configurations and settings, user interface designs, class libraries, objects, facilities, products, pricing whether expressed as fixed price or hourly rates, customer lists, regulatory compliance, competitors and other technical, financial or business information, whether disclosed in writing, orally, or visually, in tangible or intangible form, including in electronic mail or by other electronic communication.

“Laws” includes all federal, state, provincial, regional, territorial and local laws, statutes, ordinances, regulations, rules, executive orders, supervisory requirements, directives, circulars, opinions, interpretive letters and other official releases of or by governmental authority.

“Material” means a unit of Documentation or software, whether created by NewEdge for Client as a custom application, un-modified commercial off the shelf software, or commercial off the shelf software modified by NewEdge at NewEdge’s election, purchased or licensed hereunder by Client from NewEdge or otherwise provided by or on behalf of NewEdge, including third party Material provided or furnished by NewEdge. “Material” shall be deemed to include any working or preliminary draft or revised draft whenever it shall be provided by NewEdge.

“Services” means anything that is not otherwise Material, including any labor or service, provided in connection with this Agreement or any Order under this Agreement.

“Specifications” means (a) NewEdge’s applicable specifications and detailed descriptions in whatever form such may be described in Appendix A – Statement of Work or any Order executed under this Agreement, and (b) Client’s requirements, requests, and descriptions specified in, or attached to, Appendix A – Statement of Work or any Order executed under this Agreement, which shall control over an inconsistency with Client’s specifications and descriptions wherever they may be stated except as expressly stated in this Agreement or any Order under this Agreement.

“Subcontractor” or “subcontractor” means any person or entity (including an agent) supplying labor or materials to perform any or all of either Party’s obligations under this Agreement or any Order under this Agreement, including any person or entity at any tier of subcontractors, and shall not be limited to those persons or entities with a direct relationship with such Party.

Article III. TERMS AND CONDITIONS

1.0 Delivery of Materials and Performance of Services

- 1.1 Delivery of Materials – NewEdge shall deliver Materials reasonably conforming to the Specifications provided in Appendix A – Statement of Work or any Order executed under this Agreement as provided in the section entitled Electronic Data Transmission and, as determined solely and exclusively in the discretion of NewEdge, such delivery of Materials shall constitute notice of completion (“Notice of Completion”) of the NewEdge promise of Materials.
- 1.2 Delivery of Services – NewEdge shall deliver Services reasonably conforming to the Specifications provided in Appendix A – Statement of Work and, as determined solely and exclusively in the discretion of NewEdge, such delivery of Services shall constitute Notice of Completion of NewEdge promise of Services.
- 1.3 Acceptance by Client – Client shall notify NewEdge in writing of non-acceptance of any such Materials or Services within 20 business days of receipt of Notice of Completion and, as determined solely and exclusively in the discretion of NewEdge, should any revisions, additions, conversions, or any other such adjustments be required, NewEdge in its sole and exclusive discretion shall deliver such Materials and Services within a time period determined by NewEdge as required to achieve reasonable compliance with the Specifications provided in Appendix A – Statement of Work. At such time as NewEdge determines the Materials and Services have achieved

reasonable compliance with the Specifications provided in Appendix A – Statement of Work, NewEdge shall have no further obligation to provide to Client any revisions, additions, conversions, or any other such adjustments. At such time NewEdge shall be deemed to have completely fulfilled its obligations under the Agreement or any Order under this Agreement.

2.0 License Grant

- 2.1 Client is granted a limited, nonexclusive, non-transferable license to use and distribute NewEdge’s Materials solely and exclusively for the purposes of the objectives stated in Appendix A – Statement of Work, provided Client performs its obligations as described in the Agreement, including without limitation payment of fees as provided in the Agreement. Except as provided in the Agreement, no other license or right shall be granted or implied. Client shall not transfer any license granted by this Agreement or any Order under this Agreement to another without prior express consent of NewEdge. Any use, except as granted in this Agreement, shall be at sole risk of Client without liability to NewEdge.
- 2.2 Should Client utilize NewEdge’s Materials in whole or part for any purpose, except as provided in the Agreement, or expressly authorized by NewEdge in a signed writing, Client hereby expressly releases NewEdge from all claims and causes of action resulting from such use, and agrees to defend, indemnify, and hold harmless NewEdge from all costs and expenses related to said claims and causes by any third party. Client’s duty under this provision shall not constitute a waiver of any of NewEdge’s rights or remedies under this Agreement or any Order under this Agreement or elsewhere.

To the extent that the limitation of liability and indemnity provisions contained herein is construed by a court of competent jurisdiction to be in violation of Oklahoma law, such limitation of liability shall be void.

3.0 Invoicing and Payment

- 3.1 Invoice Contents – NewEdge shall render an invoice for Materials and Services delivered as provided in Appendix A – Statement of Work specifying in reasonable detail: [i] Materials and Services to which the invoice applies, [ii] total amount due for each such Materials and Services delivered, [iii] total amount due for the invoice, [iv] date on which invoice was submitted (“Invoice Date”), and [v] either the physical address or direct deposit account via electronic fund transfer (EFT) to which payments must be remitted.
- 3.2 Invoice Payment Deadline – Client must remit payment in full for each invoice submitted pursuant to the Agreement or any Order under this Agreement for Materials and Services delivered as provided in Appendix A – Statement of Work no later than 30 calendar days after the Invoice Date.
- a. Temporary Suspension of NewEdge Performance – Should Client fail to pay any invoice within 30 calendar days of the Invoice Date, NewEdge may at its sole and exclusive election, upon written notice to Client, suspend further work until all outstanding invoices are paid in full. Client expressly agrees to indemnify and hold NewEdge harmless from any claim or liability under the Agreement or any Order under this Agreement or otherwise which may result from such suspension.
 - b. Termination of the Agreement or any Order under this Agreement – Should Client fail to pay any invoice within 90 calendar days of the Invoice Date, NewEdge may at its sole and exclusive election, upon written notice to Client, terminate the Agreement. Upon such written notice of termination, Client shall pay in full all fees due under the Agreement or any Order under this Agreement without regard to what portion of the Materials and Services provided in Appendix A – Statement of Work were actually delivered by NewEdge.

Client expressly agrees to indemnify and hold NewEdge harmless from any claim or liability under the Agreement or any Order under this Agreement or otherwise which may result from such suspension.

- c. Deemed Valid Invoices – Each invoice will be deemed valid when received by Client and shall be timely paid as provided herein.
- d. Unpaid Invoices and Collections – For any invoice not timely paid as provided in this provision, NewEdge may charge and Client agrees to pay interest on any such unpaid at the rate of one point five percent (1.5%) per month (18% APR) for past due payments or the maximum rate allowed by law, whichever is less. Invoices not paid by Client within 90 calendar days may, at the sole and exclusive election of NewEdge, be pursued by collections or legal action. Should NewEdge elect to pursue collections or legal action, Client agrees to pay any reasonable fees incurred by NewEdge including without limitation collection agency fees, attorney fees and court costs in addition to amounts due under any invoice as provided in the Agreement.

- 3.3 Taxes Included in Invoice – Except as specifically noted on any invoice, all payment made by Client to NewEdge shall be deemed to include all taxes and other charges levied by any government agency on NewEdge relating to its services. Client is a tax exempt entity and shall provide evidence of same to NewEdge prior to receipt of the first invoice.

4.0 Personnel and Provision of Materials and Services

- 4.1 NewEdge Personnel – Personnel provided by NewEdge shall be considered solely the employees of NewEdge or its Subcontractors and not employees or agents of Client. NewEdge has and shall retain the right to exercise full control of and supervision over the creation of Materials and performance of the Services and full control over the employment, direction, assignment, compensation, and discharge of all personnel creating the Materials and performing the Services. NewEdge and its Subcontractors are and shall be solely responsible for all matters relating to compensation and benefits for all personnel provided by NewEdge.
- 4.2 Materials and Services Provided by Others – If any part of NewEdge Materials or Services is dependent upon work, information or other condition precedent Materials or Services by others under control of Client, then Client shall inspect to ensure such work, information or other condition precedent Materials or Services sufficiently fulfills the quality needed for NewEdge to create subsequent Materials and or perform subsequent Services. Each Party shall promptly report to the other Party any defect or other deficiency in work, information or other condition precedent materials or services by others under control of Client that renders such materials or services unsuitable for NewEdge’s proper performance. In such case, the Parties shall work together to remedy such defects or deficiencies and NewEdge shall not be held in breach of any provision of the Agreement or any Order under this Agreement as a result of such defects or deficiencies.
- 4.3 Use of Subcontractors – NewEdge may, in its sole and exclusive discretion, use Subcontractors to create any portion of the Materials or perform any portion of the Services. NewEdge shall provide to Client, upon request, information about the Subcontractor including the identity, the location, and a complete description, of the activities to be performed by such Subcontractor. NewEdge shall remain responsible for the acts or omissions of its approved Subcontractors to the same extent as if such acts or omissions were performed by NewEdge.

5.0 Intellectual Property

- 5.1 Definitions – For purposes of this provision, the following terms govern:
 - a. “Items” shall mean any or all inventions, discoveries, ideas, (whether patentable or not), and all works and materials, including but not limited to products, devices, computer programs, source codes, designs, files, specifications, texts, drawings, processes, data or other information or Documentation in preliminary or final form, and all Intellectual Property Rights in or to any of the foregoing.

- b. "Excluded Materials" shall mean: [i] Client's Pre-Existing Materials; [ii] Client's Independently Developed Materials; and [iii] Client's Mere Reconfigurations.
 - c. "Client's Pre-Existing Materials" shall mean those Items owned by Client to the extent and in the form that they both existed prior to the date NewEdge began any work under this Agreement or any Order under this Agreement and were created without any use of any NewEdge Items. Client's Pre-Existing Materials shall not, however, include Paid-For Enhancements thereto.
 - d. "Client's Independently Developed Materials" shall mean those Items that have been developed by Client, or on Client's behalf, both [i] without use of any NewEdge Items; and [ii] independently of any work performed under any Agreements between or among the Parties.
 - e. "Client's Mere Reconfigurations" means those specific reconfigurations of Client's Pre-Existing Materials performed by NewEdge, or on NewEdge's behalf, but only to the extent that such reconfiguration is an alteration to such Materials required to permit Client's Materials to function as a precondition as described in Appendix A – Statement of Work. In no event shall Mere Reconfigurations include enhancements, modifications, or updates that are not contained in Client's Pre-Existing Materials and that add any features, functionality, or capabilities.
 - f. "Intellectual Property Rights" means all patents (including all reissues, divisions, continuations, and extensions thereof) and patent applications, trade names, trademarks, service marks, logos, trade dress, copyrights, trade secrets, mask works, rights in technology, know-how, rights in content, or other intellectual property rights, protected under the Laws of any governmental authority having jurisdiction.
 - g. "Paid-For Development" means any and all Items to the extent produced or developed by or on behalf of Clients or its employees, agents, or direct or indirect contractors or suppliers (and whether completed or in-progress), or forming part of any Materials pursuant to this Agreement or any Order under this Agreement for the development of which NewEdge has been paid monies pursuant to this Agreement. Paid-For Development shall always exclude all Excluded Materials, but shall include (without limitation) any modifications, alterations or updates of any Excluded Materials that otherwise fall within the definition of Paid-For Development. NewEdge's ownership of Paid-For Development shall, of course, be subject to Client's underlying rights and ownership in Client's Excluded Materials.
 - h. "Provided Items" means Items created by or on behalf of NewEdge or directly or indirectly provided to Client (in any form, including, without limitation, verbally) by or on behalf of NewEdge.
- 5.2 Reservation of Rights – The Parties hereby acknowledge and agree that notwithstanding any other provision in the Agreement, NewEdge is not transferring or granting to Client any right, title, or interest in or to (or granting to Client any license or other permissions in or to) any or all: a) Items created by or on behalf of Client or directly or indirectly provided to Client (in any form, including, without limitation, verbally) by or on behalf of NewEdge; b) Paid For Development or c) Intellectual Property Rights, including, without limitation, any Intellectual Property Rights in or to any NewEdge Provided Items or Paid-For Development. The sole exceptions to the foregoing reservation of rights are that [1] NewEdge hereby grants Client such license as is described in Section 2.0 License Grant, [2] raw data collected [a] by client without NewEdge assistance or [b] by NewEdge for compensation on Client's behalf, and [3] customized Crystal Reports' reports created by NewEdge for compensation on Client's behalf. In no way expanding the foregoing license, said license in no manner permits Client to (and Client hereby promises not to without the explicit prior written and signed consent of NewEdge) make use of any NewEdge Provided Items, Paid-For Development or Intellectual Property Rights either for the benefit of any third party or other than as agreed in a signed writing by NewEdge or expressly provided in the Agreement.
- 5.3 Client Acts and Obligations – Client shall promptly take or secure such action (including, but not limited to, the execution, acknowledgment, delivery and assistance in preparation of documents or the giving of testimony) as may be reasonably requested by NewEdge to evidence, transfer, perfect, vest or confirm NewEdge's right, title

and interest in any Paid-For Development. Client shall, in all events and without the need of NewEdge's request, secure all Intellectual Property Rights in any Paid-For Development (and any licenses specified above in any Excluded Materials) from each employee, agent, subcontractor or sub-supplier of Client who has or will have any rights in the Paid-For Development or Excluded Materials.

- 5.4 License Grant to Excluded Materials – If and to the extent that Client embeds any Excluded Materials in the Paid-For Development, Client hereby grants and promises to grant and have granted to NewEdge and its Affiliates a royalty-free, nonexclusive, sublicensable, assignable, transferable, irrevocable, perpetual world-wide license, in and to the Excluded Materials and any applicable Intellectual Property Rights of Client to use, copy, modify, distribute, display, perform, import, make, sell, offer to sell, and exploit (and have others do any of the foregoing on or for NewEdge's or any of its Affiliates behalf or benefit) the Excluded Materials but only for purposes of creating the Materials and performing the Services as provided in this Agreement.

6.0 Compliance

- 6.1 Compliance With Laws – Both Parties shall comply with all Laws attendant upon this Agreement or any Order under this Agreement and Client utilization of the Materials and Services provided in Appendix A – Statement of Work. Client shall procure all approvals, bonds, certificates, insurance, inspections, licenses, and permits that such Laws require for the performance of NewEdge under this Agreement. Client shall create and maintain any necessary records, provide any certificate, affidavit or other information or documentation requested or as otherwise required by NewEdge (a) to show compliance by Client with Laws, (b) to comply or otherwise establish Client's compliance with Laws or (c) to allow NewEdge to timely respond to any complaints, filings, or other proceedings. Client shall, to the extent it becomes aware of any new or previously unknown Law or other such requirement which may affect NewEdge's performance under this Agreement, promptly inform NewEdge of such requirement and agrees to indemnify, defend, and hold harmless NewEdge to the extent such requirements are not promptly communicated by Client to NewEdge.

7.0 Warranties

- 7.1 General Warranties - Each Party to this Agreement represents and warrants that such party is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party further represents and warrants to the other that the execution and delivery of the Agreement or any Order under this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms. Client further represents and warrants that: (a) all information provided to NewEdge is complete, accurate and correct and any additional time or expense incurred by NewEdge to reperform, revise or otherwise redo work performed by NewEdge on any incomplete, inaccurate or incorrect information provided by Client to NewEdge shall be solely at Client's expense.
- 7.2 Warranty of Execution - Each Party represents and warrants that the execution and performance of this Agreement or any Order under this Agreement does not violate any applicable law or other contract or obligation to which Client is a party or is otherwise bound.
- 7.3 Warranty of Quality - NewEdge's services shall be performed in a manner consistent with that degree of skill and care ordinarily exercised by professionals performing similar services in the same locality, at the same site and under the same or similar circumstances and conditions. NewEdge makes no other representations or warranties, whether expressed or implied, with respect to the services rendered hereunder.

NewEdge warrants that none of its services or products shall violate any copyright, patents or other unauthorized uses of protected materials and NewEdge agrees to indemnify and hold harmless the City from any liabilities arising from protected property violations by NewEdge.

7.4 Warranty Disclaimers – Notwithstanding any assurance of any type elsewhere in the Agreement, NewEdge does not guarantee any specific result from the Materials or Services provided under the Agreement or any Order under this Agreement or that Client will achieve any specific result or end as a result of the Materials or Services provided by NewEdge to Client. THE MATERIALS AND SERVICES ARE PROVIDED “AS IS” AND NewEdge SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND WITH RESPECT TO THE SERVICES AND THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION WARRANTIES OF QUALITY, PERFORMANCE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. THE FOREGOING EXCLUSIONS AND DISCLAIMERS ARE AN ESSENTIAL PART OF THIS AGREEMENT AND FORMED THE BASIS FOR DETERMINING THE PRICE CHARGED FOR THE SERVICES. THIS DISCLAIMER SHALL BE ENFORCED TO THE EXTENT PERMITTED BY LAW IN THOSE JURISDICTIONS THAT MAY LIMIT THE EXCLUSION OF IMPLIED WARRANTIES.

To the extent that the limitation of liability and indemnity provisions contained herein is construed by a court of competent jurisdiction to be in violation of Oklahoma law, such limitation of liability shall be void.

7.5 Unascertainable Conditions - NewEdge shall not be required to sign any documents, no matter by whom requested, that would result in NewEdge's having to certify, guaranty, or warrant the existence of conditions that NewEdge cannot independently ascertain with certainty.

8.0 Confidentiality

8.1 General Confidentiality - Both Parties agree that any Information either provides to the other shall be deemed confidential, and shall be the providing Party's property. The receiving Party shall use such Information for the sole purpose of providing the Materials and performing the Services under this Agreement or any Order under this Agreement and such Information shall not be used for any other purpose except as expressly permitted under this Agreement. Upon expiration or termination of this Agreement or any Order under this Agreement or upon the providing Party's request, receiving Party shall promptly (i) return all copies of such Information in written, graphic or other tangible form, or (ii) certify the destruction of all documents and other material in the possession, custody or control of receiving Party, its affiliates, employees, representatives, subcontractors or agents that bear or incorporate any part of providing Party's Information.

Regardless of the contract provisions regarding confidentiality, it is agreed that since the City is subject to the Oklahoma Open Records Act, as amended, the City shall not be precluded from disclosing any Confidential Information to the extent that it is specifically required to do so in accordance with the Oklahoma Open Records Act.

8.2 Confidentiality Waivers - Neither Party shall not have an obligation to the other with respect to Information which: (a) at the time of disclosure was already known to the other free of any obligation to keep it confidential (as evidenced by the other Party's written records prepared prior to such disclosure); (b) is or becomes publicly known through no wrongful act (such obligations ceasing at the time such Information becomes publicly known); (c) is lawfully received from a third party, free of any obligation to keep it confidential; (d) is independently developed by a third party or by the Party against whom an obligation to protect such Information is to be enforced, as evidenced by Party's written records, and wherein such development occurred without any direct or indirect use of or access to the Information received from the Party seeking to enforce such obligation; or (e) the providing Party consents in writing to be free of restriction.

Regardless of the contract provisions regarding confidentiality, it is agreed that since the City is subject to the Oklahoma Open Records Act, as amended, the City shall not be precluded from disclosing any Confidential Information to the extent that it is specifically required to do so in accordance with the Oklahoma Open Records Act.

8.3 Required Disclosures of Confidential Information

- a. **Compelled Disclosures of Confidential Information** - If either Party is required to provide or disclose Information to any court or government agency pursuant to a written court order, subpoena, regulatory demand, or process of law, such Party must, unless prohibited by applicable law, first provide the other Party with prompt written notice of such requirement and reasonably cooperate with the other Party should it seek reasonable protective arrangements for the production of such Information. Both Parties will take reasonable steps to limit any such provision of Information to the specific Information required by such court or agency, and continue to otherwise protect all Information disclosed in response to such order, subpoena, regulation, or process of law.
- b. **Limiting Disclosure of Confidential Information** – Both Parties will limit the disclosure of Information to employees, representatives, subcontractors or agents with a need to know who: (i) have been advised of the proprietary nature thereof; and (ii) have in writing either acknowledged a specific obligation to maintain the confidentiality of information or agreed to protect and keep confidential all proprietary information to which they have access in the scope of their employment.

9.0 Limitation of Damages and Indemnity

To the extent that the limitation of liability and indemnity provisions contained herein is construed by a court of competent jurisdiction to be in violation of Oklahoma law, such limitation of liability shall be void.

- 9.1 **Limitation of Type of Damages** - In no event shall either Party be liable to the other or any third party for any consequential or incidental damages regardless of whether either Party or third party has been apprised of such damages, however caused, based on any theory of liability including without limitation breach of contract or tort.
- 9.2 **Limitation of Amount of Damages** - THE MAXIMUM LIABILITY OF NewEdge AND NewEdge's OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS, SUPPLIERS, AFFILIATES AND SUBCONTRACTORS ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID BY CLIENT TO NewEdge PURSUANT TO THE AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM. THE EXISTENCE OF ONE OR MORE CLAIMS SHALL IN NO EVENT INCREASE NewEdge's TOTAL LIABILITY BEYOND THE TOTAL FEES PAID BY CLIENT TO NewEdge UNDER THE AGREEMENT AND IN NO EVENT SHALL ANY OF NewEdge's OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS, SUPPLIERS, AFFILIATES OR SUBCONTRACTORS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THE MATERIALS AND SERVICES PROVIDED UNDER THE AGREEMENT.

To the extent that the limitation of liability and indemnity provisions contained herein is construed by a court of competent jurisdiction to be in violation of Oklahoma law, such limitation of liability shall be void.

- 9.3 **NewEdge Reliance on Client Information** - NewEdge shall be entitled to rely, without liability, on the accuracy and completeness of any and all information provided by Client, Client's consultants and contractors, manufacturers, suppliers, publishers of technical standards, and information from public records, without the need for independent verification. To the extent such information appears to be incomplete or inaccurate, NewEdge shall in good faith advise client accordingly and Client shall promptly cooperate to resolve such inaccuracies or provide such information as need to provide NewEdge complete information. To the extent such inaccurate or incomplete information impedes or otherwise delays NewEdge's performance under this Agreement, Client agrees to indemnify, hold harmless, and defend NewEdge and its Affiliates, as well as their respective agents, distributors and subcontractors, individually or collectively, as the case may be, in accordance with this provision against any loss arising from, or in connection with, or resulting from, the Materials or Services furnished by NewEdge under this Agreement or any Order under this Agreement or acts or omissions with respect to this Agreement or any Order under this Agreement.

To the extent that the limitation of liability and indemnity provisions contained herein is construed by a court of competent jurisdiction to be in violation of Oklahoma law, such limitation of liability shall be void.

- 9.4 Client General Indemnity of NewEdge – To the extent allowed by law, Client agrees to indemnify, hold harmless and defend NewEdge, NewEdge’s officers, directors, employees, agents, subcontractors and third-party suppliers or affiliates, at Client’s expense, against any and all third-party claims, actions, proceedings, and suits brought against NewEdge or any of NewEdge’s officers, directors, employees, agents, subcontractors, third-party suppliers or affiliates, and pay all related liabilities, damages, settlements, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys’ fees and other litigation expenses) incurred by NewEdge or any of NewEdge’s officers, directors, employees, agents, subcontractors, third-party suppliers or affiliates, arising out of or relating to: (a) Client’s breach of any term or condition of this Agreement; (b) Client’s fraudulent, illegal or malicious use of the Materials or Services; (c) Client’s violation of applicable Laws, rules or regulations in connection with the Materials or Services; (d) NewEdge’s use of any content or information provided by Client to NewEdge; or (e) the disclosure of this Agreement. In such a case, NewEdge shall provide Client written or electronic notice of such claim, suit or action. Client shall cooperate as fully as reasonably required in the defense of any claim. NewEdge reserves the right, at NewEdge’s own expense, to assume the exclusive defense and control of any matter subject to indemnification by Client.

To the extent that the limitation of liability and indemnity provisions contained herein is construed by a court of competent jurisdiction to be in violation of Oklahoma law, such limitation of liability shall be void.

10.0 Termination

10.1 Termination for Cause

- a. This Agreement or any Order under this Agreement may be terminated in part or whole by either Party for [1] failure to comply with the terms and conditions of the Agreement, or [2] as provided elsewhere in the Agreement.
- b. In such case as Client elects to terminate for alleged deficiency in Materials provided or Services performed or alleged failure of NewEdge to comply with the terms and conditions of the Agreement or any Order under this Agreement and such alleged failure relates directly to the quality or consistency of the performance by NewEdge under the Agreement, Client shall provide written notice to NewEdge thirty (30) days in advance of the date of proposed termination. On receipt of such notice, Client shall work with NewEdge in good faith to allow NewEdge a reasonable time, exceeding such thirty (30) day period if reasonably necessary, to remedy such alleged deficiency or failure. If after such remedial effort, the alleged deficiency or failure, as determined by the Parties working together in good faith, has not been reasonably cured, the Agreement or any Order under this Agreement shall be deemed terminated.

- 10.2 Termination by Agreement – The Agreement or any Order under this Agreement may be terminated by a writing signed by both Parties. In such case, Client shall pay fees for work performed up to and including the date of agreed termination in compliance with the terms of the Agreement.

- 10.3 Temporary Suspension of Work – Should the Client desire to temporarily suspend work under this Agreement or any Order under this Agreement without terminating the Agreement or any Order under the Agreement, Client shall provide NewEdge thirty (30) days written notice of such suspension, the reasons for such suspension, and the proposed date on which work may recommence. Such temporarily suspended work may be resumed on a mutually agreed date but in no event shall NewEdge be required to agree to a date which unreasonably interferes with previous or anticipated commitments or scheduled events. In such case, Client shall pay fees for work performed up to and including the date of agreed suspension in compliance with the terms of the Agreement.

11.0 Miscellaneous Terms

11.1 Electronic Data Transmission

The Parties may exchange communications, documents, and other relevant Materials ("Data") electronically, in place of tangible documents, and unless otherwise agreed in a signed writing, shall direct such Data to the respective contact listed in the Notices provision of this Agreement. The following additional conditions apply to any such exchanges:

- a. Statute of Frauds. All Data transmitted pursuant to this clause shall be deemed to be a "writing" or "in writing" for purposes of the Uniform Commercial Code. Any such Data containing or having affixed to it a Signature shall be deemed for all purposes to: (i) to have been "signed" and "executed," and (ii) to constitute an "original" when printed from electronic files or records established and maintained in the normal course of business.
- b. Method of Exchange. Data shall be exchanged by direct electronic or computer systems communication between NewEdge and Client or by indirect communications using a third-party service provider to translate, forward and/or store such Data. Each Party shall be responsible for the cost(s) and associated cost(s) of any such third-party service provider with which it contracts.

11.2 Independent Contractor - The relationship of the Parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement or any Order under this Agreement shall be construed to (a) constitute Parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking, or (b) except to the extent expressly set forth in this Agreement, allow any Party hereto to create or assume any obligation on behalf of another Party hereto for any purpose whatsoever.

11.3 Cumulative Remedies - The rights and remedies of the Parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, by statute or otherwise, except in those cases where this Agreement or any Order under this Agreement specifies that a particular remedy is sole or exclusive, but neither Party may retain the benefit of inconsistent remedies. No single or partial exercise of any right or remedy with respect to one breach of this Agreement or any Order under this Agreement precludes the simultaneous or subsequent exercise of any other right or remedy with respect to the same or a different breach.

11.4 Assignment and Delegation - Neither Party may assign, delegate, or otherwise transfer its rights or obligations under this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner, without the prior written consent of the other Party, except as follows:

- a. Permitted Assignment of Rights or Delegation of Duties - Without securing the consent of the other, either Party may assign its rights, or delegate its duties, or both, in whole or in part: to any present or future Affiliate of assigning Party, to any lender providing financing to assigning Party, or to any third party that assumes the operation of or otherwise acquires any substantial portion of the business of assigning Party affected by this Agreement.
- b. Delegation Permitted by this Agreement - NewEdge may subcontract its performance subject to the Section entitled "Use of Subcontractors."
- c. Assignment of Right to Receive Money – Either Party may assign its right to receive money due hereunder, but any assignment of money is void to the extent (a) the assignor fails to give the non-assigning Party at least thirty (30) days prior notice, (b) the assignment purports to impose upon the non-assigning Party additional costs or obligations in addition to the payment of such money, or (c) the assignment purports to preclude non-assigning Party from dealing solely and directly with assigning Party in all matters pertaining to this Agreement.

- d. Non-Compliant Assignment and Delegations are Void - Any assignment, delegation or transfer for which consent is required hereby and which is made without such consent given in writing is void.
- 11.5 Entire Agreement - This Agreement, including all appendices, exhibits, attachments and documents incorporated by reference, constitutes the final, complete, and exclusive expression of the Parties' agreement on the matters contained in this Agreement. The terms of this Agreement or any Order under this Agreement shall govern in lieu of all other pre-printed, standardized or other provisions that may otherwise appear in any other paper or electronic record of either Party. All prior written and oral negotiations and agreements, and all contemporaneous oral negotiations and agreements, between the Parties on the matters contained in this Agreement or any Order under this Agreement are expressly merged into and superseded by this Agreement or any Order under this Agreement. The Parties do not intend that the provisions of this Agreement or any Order under this Agreement be explained, supplemented, or qualified through evidence of trade usage or any prior course of dealings or any course of performance under any prior agreement. In entering into this Agreement or any Order under this Agreement, neither Party has relied upon any statement, estimate, forecast, projection, representation, warranty, action or agreement of the other Party except for those expressly contained in this Agreement or any Order under this Agreement. There are no conditions precedent to the effectiveness of this Agreement or any Order under this Agreement other than any expressly stated in this Agreement or any Order under this Agreement.
- 11.6 Orders – Client may order Materials or Services by submitting Orders in connection with this Agreement that are substantially in the form of Appendix B – Order Form.
- 11.7 Force Majeure - If a Force Majeure Event prevents a party from complying with any one or more obligations under this agreement, that inability to comply will not constitute breach if (1) that party uses reasonable efforts to perform those obligations, (2) that party's inability to perform those obligations is not due to its failure to (a) take reasonable measures to protect itself against events or circumstances of the same type as that Force Majeure Event or (B) develop and maintain a reasonable contingency plan to respond to events or circumstances of the same type as that Force Majeure Event, and (3) that party complies with its obligations under this provision.
- a. Definition of Force Majeure Event - For purposes of this agreement, "Force Majeure Event" means, with respect to a Party, any event or circumstance, whether or not foreseeable, that was not caused by that Party (other than a strike or other labor unrest that affects only that Party, an increase in prices or other change in general economic conditions, a change in law, ordinance, or other statutory or regulatory provision with which such Party must comply, or an event or circumstance that results in that party's not having sufficient funds to comply with an obligation to pay money) and any consequences of that event or circumstance.
- b. Force Majeure Event Notice Requirement - If a Force Majeure Event occurs, the noncomplying party shall promptly notify the other party of occurrence of that Force Majeure Event, its effect on performance, and how long the noncomplying party expects it to last. Thereafter the noncomplying party shall update that information as reasonably necessary. During a Force Majeure Event, the noncomplying Party shall use reasonable efforts to limit damages to the other Party and to resume its performance under this Agreement.
- 11.8 Time Not of the Essence – Time is not of the essence.
- 11.9 Governing Law - This Agreement and all Orders under the Agreement shall be construed in accordance with the Laws of the State of Oklahoma, without regard to principles of conflicts of law and excluding the United Nations Convention on Contracts for the International Sale of Goods. For purposes of applying its Uniform Commercial Code, the Materials and Services provided under this Agreement or any Order under this Agreement shall be deemed to be "goods."

11.10 Forum

Forum for Judicial Actions - Other than to the extent expressly set forth below in this provision, any legal action or proceeding arising out of or relating to this Agreement or the transactions it contemplates shall be brought only in the United States District Court for the Western District of Oklahoma or the District Court of Carter County, Oklahoma, and each Party consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts) in any such Judicial Action and waives any claim of forum non conveniens in connection therewith and objection to venue laid therein. Process in any such judicial action may be served on a Party anywhere in the world, whether within or without the State of Texas. The choice of forum above shall not prohibit the enforcement of any judgment obtained in that forum or any other appropriate forum.

11.11 Amendments and Waivers

- a. General Amendment - The Parties may not amend this Agreement or any Order under this Agreement except by a written agreement of the Parties that identifies itself as an amendment to this Agreement or any Order under this Agreement and is signed by both Parties.
- b. General Waivers of Rights - No waiver of any right or condition is effective unless given in writing and signed by the Party waiving such right or condition. No delay or omission by either Party to exercise any right or power it has under this Agreement or any Order under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by any Party of any breach, condition or covenant shall not be construed to be a waiver of any succeeding breach or condition or of any other covenant. All waivers must be in writing and signed by the Party waiving its rights.
- c. Changes to Scope of Materials or Services - Changes to scope of the Materials or Services as described in this Agreement or any Order under this Agreement must be expressly stated and comply with the terms of this Agreement.

11.12 Severability - If any provision of this Agreement or any Order under this Agreement is determined to be invalid, illegal, or unenforceable, then the remaining provisions of this Agreement or any Order under this Agreement shall remain in full force to the extent both the economic and legal substance of the transactions contemplated by this Agreement or any Order under this Agreement are not affected in any manner that is materially adverse to either Party by severing the provision determined to be invalid, illegal, or unenforceable.

11.13 Construction and Interpretation

- a. Joint Drafting and Understanding - This Agreement has been prepared jointly and has been the subject of arm's length and careful negotiation. Each Party has been given the opportunity to independently review this Agreement with legal counsel and other consultants, and each Party has the requisite experience and sophistication to understand, interpret and agree to the particular language of its provisions. Accordingly, the drafting of this Agreement is not to be attributed to either Party.
- b. General Construction
 - (1) Headings contained in this Agreement or any Order under this Agreement are for reference purposes only and are not to affect the meaning or interpretation of this Agreement.
 - (2) The word "include" in every form means to include without limitation by virtue of enumeration and a derivative of a defined term shall have the meaning appropriate to the context of its use.
 - (3) References to content posted on any website referred to in this Agreement or any Order under this Agreement shall mean such content as it may be revised from time to time.

- (4) Whenever this Agreement or any Order under this Agreement refers to a consent or approval to be given by either Party, such consent or approval is effective only if given in writing and signed by the Party giving approval or consent.
- (5) The use of singular words includes the plural and vice versa.

11.14 Third Party Beneficiaries - Except as expressly set forth to the contrary in this Agreement, there are no third-party beneficiaries of this Agreement or any Order under this Agreement, and this Agreement or any Order under this Agreement shall not provide any third person or entity with any remedy, claim, liability, reimbursement, claim of action or other legal or equitable right in excess of those existing without reference to this Agreement. NewEdge's Materials and Services provided through this Agreement or any Order under this Agreement are solely for the benefit of the Client.

11.15 Survival of Obligations - Obligations and rights under this Agreement or any Order under this Agreement that by their nature would reasonably continue beyond the termination or expiration of this Agreement or any Order under this Agreement (including without limitation those in the Sections entitled "Intellectual Property," "Compliance," "Warranties," "Confidentiality," "Limitation of Damages and Indemnity," and "Miscellaneous Terms") shall survive the termination or expiration of this Agreement or any Order under this Agreement.

11.16 Notices

- a. Each Party giving or making any notice, consent, request, demand, or other communication pursuant to this Agreement or any Order under this Agreement must give the notice in writing and use one of the following methods, each of which for purposes of this provision is a writing: by hand; certified mail (return receipt requested and postage prepaid); U.S. Postal Service overnight or priority mail; internationally recognized overnight courier (in either case with all fees prepaid); or email. Each Party giving a notice shall address the notice to the appropriate person (the "Addressee") at the receiving Party at the address listed below:

- (1) **NewEdge:**

Laura Carr, Chief Operating Officer
9191 Kyser Way, Suite 103
Frisco, TX 75033
469-766-3732 - bdaugherty@newedgeservices.com

- (2) **CLIENT:**

Robert Newell, Director of IT
317 Veterans Blvd
Ardmore, OK 73401
580-226-3772 – rnewell@cityofardmore.org

- b. A notice is effective only if the Party giving notice has complied with the foregoing requirements of this Section and the Addressee has received the notice. A notice is deemed to have been received as follows:
 - (1) If a notice is furnished by hand, on the date of delivery if delivered during business hours on a business day (otherwise on the next business day);
 - (2) If a notice is sent by certified mail, U.S. Postal Service overnight or priority mail, or internationally recognized overnight courier, upon the date of delivery as indicated by the receipt or other tracking record;
 - (3) If a notice is sent by e-mail, upon successful transmission to the recipient's email account, if such notice is sent in time to allow it to be accessible by the Addressee before the time allowed for giving such notice expires, and a confirmation copy is sent by one of the other methods.

- (4) The addresses and telephone numbers to which notices may be given to either Party may be changed by written notice given by such Party to the other pursuant to this Section.

12.0 Transmission of Original Signatures and Executing Multiple Counterparts

Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document (e.g., pdf or similar format) are true and valid signatures for all purposes hereunder and shall bind the Parties to the same extent as that of original signatures. This Agreement may be executed in multiple counterparts, each of which shall be deemed to constitute an original but all of which together shall constitute only one document.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

[client name]	NewEdge Services, LLC
Signature	Signature
Printed Name	Printed Name
Title	Title
Date	Date

APPENDIX A – STATEMENT OF WORK

1) Description of Materials and Services:

a) **Cityworks Hosting Services**

NewEdge will host the City's Cityworks application in a secure, NewEdge managed, Amazon Cloud environment. NewEdge staff will provide all administration of the Cityworks application and database and mapping services including hardware, software and database administration. City staff will have access to the Cityworks application website through the cloud but will not be responsible for the administration of the Cityworks hardware and software.

Support does not include field data collection. Any GIS edits would be performed using markups, as-builts and other data sources provided by the City. Field data collection, such as collection of features using field equipment, would need to be performed by the City or issued under a separate contract.

The client is responsible for providing local user hardware (desktops, laptops, tablets, smart phones, etc.) and internet access to be able to access the NewEdge Cloud. Future needs may require the City to purchase additional ArcGIS Online and/or ArcGIS Desktop licenses, but current needs do not require.

Assumptions

City will acquire and maintain Cityworks software licensing.

The City will provide source information needed to develop and maintain data.

City will provide all user hardware (desktops, laptops, tablets, etc) to access the system.

City will provide reliable internet connectivity for users of Cityworks to access the application.

City will place hosting budget for each fiscal year for the 3-year term into the City's proposed budget.

Schedule

Contract term is 3 years

TERMINATION FOR NON-APPROPRIATION OF FUNDS

Notwithstanding any other provision of this Contract, the City shall not be obligated to expend any funds for the Contractor's performance hereunder or by any provision of this Contract during any of the City's future fiscal years unless and until the City's Board of Commissioners appropriates funds for this Contract in the City's Budget for each such future fiscal year. In the event that funds are not appropriated for this Contract, then this Contract shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The City shall notify the Contractor in writing of any such non-allocation of funds at the earliest possible date.

Pricing

Total Fee - \$29,000.00 billed annually.

Payment Schedule

\$29,000.00 billed on agreement execution date

b) **Enterprise GIS Hosting Services**

The City has plans to move the current GIS model to the Esri GIS Enterprise Model. This task is hosting the Enterprise environment in the NewEdge cloud. The City would have 3 servers for GIS, 1 server for Cityworks and a Database instance for both. NewEdge would manage all aspects of the hardware and software for the City.

The City currently has the following servers in the NewEdge cloud environment:

- 1 Application Server for Cityworks and ArcGIS Server
- 1 Database Server for Cityworks SQL Database and GIS ArcSDE database
- Replication is set up between hosted environment and on-premise GIS

Hosting the Enterprise GIS in the NewEdge environment will introduce new server hardware and configurations. The new hosted environment would look like:

- Cityworks Application Server
- SQL Database Server for Cityworks & SDE
- Enterprise ArcGIS Server
- ArcGIS Portal Server
- Datastore Server

Project tasks include:

- **Remote Kickoff Meeting** – Purpose of this meeting is to acquaint both NewEdge and client project teams and obtain a high-level understanding of the client’s GIS system goals. This will include detailed discussions about the client’s network and servers. During this meeting, the required tasks for both NewEdge and the client will be defined and a project schedule developed with key milestones, deliverables and meetings.
- **ArcGIS Enterprise Review** – NewEdge will review information learned from the kick-off meeting and provide a detailed system diagram for the proposed GIS system architecture. A remote meeting will be scheduled where the diagram will be discussed and finalized.
- **ArcGIS Enterprise Installation** – NewEdge will install ArcGIS Enterprise **10.8.1** Core components on the client’s hardware utilizing the client’s Esri licensing. Components of this installation include:
 - ArcGIS Server
 - Portal
 - Datastore
 - ArcGIS WebAdaptor
- **ArcGIS Enterprise Configurations** – NewEdge staff will configure the Enterprise solution to the client’s needs. Tasks include but are not limited to:
 - Configure Active Directory connectivity to Portal (Choose 1):
 - Direct to AD
 - ADFS Server
 - SAAS – Azure/Google/AWS
 - Configure Portal federation to ArcGIS and configure hosting server (Required at 10.7.1)
 - Establishing database GIS maintenance plans
 - Ensure all components have proper connectivity and authentication both internal and external of the client network.
- **ArcGIS Enterprise Go-Live** – When installation, configuration and testing of the ArcGIS Enterprise system is complete and the client is ready to transition, NewEdge will assist the client in migrating current geodatabases, services and Portal contents to the production environment. This go-live will be performed remotely during off-hours.

- **Training and Knowledge Transfer** – Throughout the project, NewEdge will share best practices and educate client staff on system configuration

Assumptions

City will acquire and maintain Esri software licensing.
The City will provide source information needed to develop and maintain data.
City will provide all user hardware (desktops, laptops, tablets, etc) to access the system.
City will provide reliable internet connectivity for users of Cityworks to access the application.
City will place hosting budget for each fiscal year for the 3-year term into the City's proposed budget.

Schedule

Contract term is 3 years

TERMINATION FOR NON-APPROPRIATION OF FUNDS

Notwithstanding any other provision of this Contract, the City shall not be obligated to expend any funds for the Contractor's performance hereunder or by any provision of this Contract during any of the City's future fiscal years unless and until the City's Board of Commissioners appropriates funds for this Contract in the City's Budget for each such future fiscal year. In the event that funds are not appropriated for this Contract, then this Contract shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The City shall notify the Contractor in writing of any such non-allocation of funds at the earliest possible date.

Pricing

Total Fee - \$25,000.00 billed annually.

Payment Schedule

\$25,000.00 billed on agreement execution date

c) Support Hours for GIS and PLL

NewEdge staff will provide hourly support for both the Esri GIS and Cityworks PLL applications hosted in the NewEdge cloud.

Assumptions

Hourly support will not include configuration of PLL for other departments or divisions.
Should the City reach the maximum number of hours (75), NewEdge will work with the City for additional hours and provide an Order/Statement of Work to this contract.

Schedule

Support hours will be renewed yearly. NewEdge will review hours used within the past year and discuss if support hours should be adjusted prior to the renewal date. NewEdge will provide an Order/Statement of Work to this contract.

Pricing

Cap of \$11,250.00 per year
Hourly rate of \$150.00/hour

Payment Schedule

Billed monthly at a rate of \$150.00/hour.

d) **Support Hours for Public Works**

NewEdge staff will provide hourly support for the use of the Cityworks AMS Application within the Public Works department.

Assumptions

Hourly support will not include configuration of AMS for other departments or divisions.

Should the City reach the maximum number of hours (75), NewEdge will work with the City for additional hours and provide an Order/Statement of Work to this contract.

Schedule

Support hours will be renewed yearly. NewEdge will review hours used within the past year and discuss if support hours should be adjusted prior to the renewal date. NewEdge will provide an Order/Statement of Work to this contract.

Pricing

Cap of \$11,250.00 per year

Hourly rate of \$150.00/hour

Payment Schedule

Billed monthly at a rate of \$150.00/hour.

2) **Invoices/Billing Information:**

Invoices and billing information are to be sent to Client at:

Robert Newell, Director of IT

317 Veterans Blvd

Ardmore, OK 73401

580-226-3772 – rnewell@cityofardmore.org

3) **Project Manager/Point of Contact:**

The Client project manager and/or point of contact shall be:

Robert Newell, Director of IT

317 Veterans Blvd

Ardmore, OK 73401

580-226-3772 – rnewell@cityofardmore.org

4) **Special Terms and Conditions**

Amazon Web Services, Inc.

Client acknowledges that hosting services originate with Amazon Web Services, Inc. ("AWS") and that both NewEdge and Client are bound by the terms that govern AWS products and services. Client expressly acknowledges that Materials and Services provided by NewEdge to Client can be no more robust than those provided by AWS to NewEdge and agrees to comply with the terms and conditions that govern AWS products and services and that govern the relationship between NewEdge and AWS as they may be amended from time to time. Client may access such terms as may be relevant to the Materials and Services provided by NewEdge to Client at the following web links:

- a. AWS Customer Agreement applicable to all AWS offerings provided by NewEdge.
<https://aws.amazon.com/agreement/>

- b. Amazon EC2 Service Level Agreement applicable to Amazon Elastic Compute Cloud ("Amazon EC2") and Amazon Elastic Block Store ("Amazon EBS") offerings.
<https://aws.amazon.com/ec2/sla/>
- c. Amazon Relational Database Service ("Amazon RDS")
<https://aws.amazon.com/rds/sla/>

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