

ORDINANCE NO. 1468

AN ORDINANCE AUTHORIZING THE CITY OF CANBY TO ENTER INTO A CONTRACT WITH MARK 43 INCORPORATED TO PROVIDE A RECORDS MANAGEMENT AND ANALYTICS SYSTEM AND RELATED PUBLIC SAFETY TECHNOLOGY SERVICES FOR THE CITY; AND DECLARING AN EMERGENCY

WHEREAS, the City of Canby desires to have a records management and analytics system that coincides with its Clackamas County public safety neighbors and partners; and

WHEREAS, the current records management system is no longer being used by Clackamas County and other neighboring police agencies; and

WHEREAS, Clackamas County and other neighboring police agencies are contracting with Mark 43; and

WHEREAS, the Mark 43 cloud-based system looks to be more intuitive, user-friendly, and eventually less costly overall.

THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:

Section 1. The City Administrator is hereby authorized on behalf of the City to enter into a contract Agreement with Mark 43 Incorporated to provide a records management and analytics system and related public safety technology services for the City. A copy of the Technology Services Contract is attached hereto as Exhibit "A."

Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to maintain public safety technology services in order to provide both essential and general services to the public, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon its enactment.

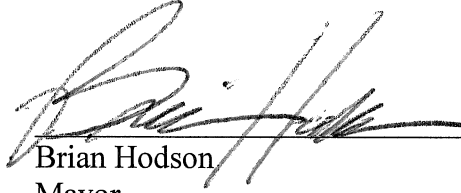
SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, November 15, 2017, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on Wednesday, December 6, 2017, commencing at the hour of 7:30 p.m. in the Council Meeting Chambers located at 222 NW 2nd Avenue, 1st Floor, Canby, Oregon.



Kimberly Scheaffer, MMC
City Recorder

PASSED on the second and final reading by the Canby City Council at a regular meeting thereof on December 6, 2017 by the following vote:

YEAS 6 NAYS 0



Brian Hodson
Mayor

ATTEST:



Kimberly Scheafer, MMC
City Recorder

**Canby Police Department
TECHNOLOGY SERVICES CONTRACT**

This Technology Services Contract (this "Contract") dated as of December 6, 2017 is entered into between Mark43, Inc. ("Contractor"), and Canby Police Department, a political subdivision of the State of Oregon ("City"). Contractor and City are each a "Party" and together the "Parties."

ARTICLE I.

1. Effective Date and Duration. This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on December 31, 2022. However, such expiration shall not extinguish or prejudice the City's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

No later than sixty calendar (60) days prior to the expiration of the Contract term, Contractor shall provide annual renewal rates, to include the number of licenses, annual cost per license and annual total cost. If accepted by the City, up to three (3) annual renewals may be memorialized by the issuance of a purchase order generated by the City finance system (each, a "Renewal Term").

2. Statement of Work. Contractor will provide the following technology services: Public Safety Technology Solution ("Work"), further described in **Exhibit A**.

3. Consideration. The City agrees to pay Contractor, from available and authorized funds, a sum of \$122,181.60 for accomplishing the Work required by this Contract during the initial term, not including any renewal authorized by the City or any additional licenses purchased on the rates set forth herein. Contractor shall be paid in accordance with the following fee schedule:

Contract Year	Total No. of Licenses	Cost Per License per year	Annual Total
January 1, 2018 or Acceptance Date whichever is later –December 31, 2018	25	\$960.00	\$24,000.00
January 1, 2019 – December 31, 2019	25	\$960.00	\$24,000.00
January 1, 2020 – December 31, 2020	25	\$960.00	\$24,000.00
January 1, 2021 – December 31, 2021	25	\$988.80	\$24,720.00
January 1, 2022 – December 31, 2022	25	\$1,018.46	\$25,461.60

The "Annual Total" for each year is due in full in advance on the first day of the applicable Contract Year. The City may order additional licenses at the rates set forth in the then current fee schedule and shall be prorated based on a monthly cost at time of order. For example, the monthly cost for Contract years one (1) through three (3) would be \$80.00. The prorated annual fee for such additional license(s) is due in full in advance within thirty (30) days after the effective date of such additional license(s). Additional licenses must be submitted in writing to Contractor and signed by a duly authorized representative of the City.

Mark43 Pricing is based on the number of active users employed directly or indirectly by Subscriber at the time the Order Form is signed. In the event that Subscriber increases its number of employed active users during the Term by more than 10 percent (10%), then the annual fee shall increase by \$960 per sworn officer in excess of 25.

4. Travel and Other Expense. Authorized: Yes No
Travel expense reimbursement is not in excess of the not to exceed consideration.

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Mark43, Inc.

City of Canby

Authorized Signature

Date


Richard Robinson

Date

12/7/17

Name / Title (Printed)

Approved as to Form:

Oregon Business Registry #


City Attorney

Date

11/17/17

Entity Type / State of Formation

5. Contract Documents. This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference: this base Contract, Exhibit A – Statement of Work, Exhibit B – Insurance, Exhibit C – Certification Statement, Exhibit D – Technical Requirements and Exhibit E – Insight Public Sector Price Quote. In the event of a conflict, the following order of priorities shall govern: (1) this base Contract, (2) Technical Requirements, (3) Statement of Work, (4) Insight Public Sector Price Quote and associated online terms of sale, (5) Insurance, and (6) Certification Statement. For the avoidance of doubt, the parties agree that the terms of the Insight Contract with Fairfax, Virginia No. 4400006644 and associated documents are not applicable to this Contract.

6. Contractor Data.

Name: Mark43, Inc.

Address: 28 E. 28th Street, 12th Floor, New York, NY 10016

Contractor Contract Administrator: David Jochim

Phone No.: 646-770-0412

Email: dave@mark43.com

MWESB Certification: DBE # MBE # WBE # ESB #

Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Contractor to backup withholding.

ARTICLE II.

1. DEFINITIONS

- 1.1. **Defined Terms.** Defined terms have the meanings set forth in this Article 1 (Definitions) and elsewhere in this Contract when capitalized, and may be read in singular, plural or an alternative tense as the context requires.
- 1.2. **“Acceptance”** Means the City has determined that a Deliverable or a product requiring Acceptance Testing has met the Acceptance Criteria and the City has provided a Certificate of Acceptance to Contractor with respect to the Deliverable or Product, as applicable.
- 1.3. **“Acceptance Criteria”** The functionality, performance, and reliability requirements as set forth in the Statement of Work.
- 1.4. **“Acceptance Date”** The date on which the City issues a certificate of Acceptance for the Solution or a Deliverable, as applicable.
- 1.5. **“Acceptance Test”** The evaluation and testing method, procedures, or both, acceptable to each Party in its reasonable discretion that are used to determine whether or not the Solution or a Product requiring Acceptance Testing operates in accordance with the Acceptance Criteria. Acceptance Testing may occur in one or more phases, depending on the integration of contingent products, scalability, performance tuning or other measurable features or milestones.
- 1.6. **“Acceptance Test Plan (ATP)”** An Acceptance Test Plan (ATP) is written document acceptable to each Party in its reasonable discretion that contains the procedures that will be used to determine the Solution’s/System’s conformance to the City’s requirements. Acceptance Criteria.
- 1.7. **“Affiliate”** means, with respect to any entity, any other entity who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.
- 1.8. **“Amendment”** A written document required to be signed by both Parties when in any way altering the Contract or Statement of Work, or any exhibit or attachment to any of the foregoing.
- 1.9. **“Applications”** means the Records Management System and Evidence Management System, as described in the Statement of Work.
- 1.10. **“Authorized User”** means an Affiliate, employee or independent contractor of City (solely to the extent such contractor is providing services to City), who has been authorized by City to use the SaaS Services.
- 1.11. **“Business Day”** A calendar day of twenty-four hours, excluding weekends and public state or federal holidays, beginning at midnight and ending at midnight twenty-four hours later.
- 1.12. **“Certificate of Acceptance”** A written instrument by which the City notifies Contractor that the Acceptance Criteria have been met or waived, in whole or in part.
- 1.13. **“Change Order”** A document, agreed and signed by both Parties, that changes an existing Statement of Work. The Change Order process is outlined in the Statement of Work.
- 1.14. **“City Data”** means all data, information, content and other materials stored or transmitted by City and any Authorized User through the SaaS Services (i) in their user accounts; and (ii) on any Third Party Application, excluding any Third Party Data and any Contractor Data.

- 1.15. **“Data Breach”** A security incident in which the Contractor transmits (or provides access to) data that is stored in the Services to an un-authorized person. A Data Breach does not include cases where the City transmits or otherwise provides access to data stored in the Services to un-authorized persons.
- 1.16. **“Deliverable”** The Products, Services, Documentation, and tangible work products to be provided to the City by Contractor as described in the Contract or Statement of Work.
- 1.17. **“Documentation”** means the user guides and user manuals for the SaaS Services that Contractor provides to City.
- 1.18. **“Error”** Any defect, problem, condition, bug, or other partial or complete inability of the Solution to operate either (a) in accordance with the applicable Specifications and Documentation; or, (b) as to the Solution, in the same manner in which the Solution operated as of the Final Acceptance Date.
- 1.19. **“Final Acceptance”** Means the City has determined that every Deliverable or Product in the Solution requiring Acceptance Testing has materially met the Acceptance Criteria and the City has provided a Certificate of Acceptance to Contractor.
- 1.20. **“Integration Control Document”** means the agreement, if applicable, governing any integrations with Third Party Applications.
- 1.21. **“Intellectual Property Rights”** means all intellectual and industrial property rights, whether now existing or existing in the future, including without limitation, (i) all patent rights, including any rights in pending patent applications and any related rights; (ii) all copyrights and other related rights throughout the world in works of authorship, including all registrations and applications therefor; (iii) all trademarks, service marks, trade dress or other proprietary trade designations, including all registrations and applications therefor (iv) all rights throughout the world to proprietary know-how, trade secrets and other confidential information, whether arising by law or pursuant to any contractual obligation of non-disclosure; and (v) all other rights covering industrial or intellectual property recognized in any jurisdiction.
- 1.22. **“Maintenance Request”** A request by the City to Contractor for maintenance.
- 1.23. **“Product”** Means Software, Documentation and supplies which may include Updates, Upgrades, Customization, and training.
- 1.24. **“Production Environment”** The operation portion of the Solution that is used on a daily basis to conduct the City’s business processes.
- 1.25. **“Professional Services”** means the evaluation, consultation, implementation, customization, configuration, development of interfaces and other services provided by Contractor in connection with the SaaS Services.
- 1.26. **“Project”** The Integrated Public Safety Technology System, all as described in the Statement of Work, comprising the Applications, and the work required to implement it, including the Professional Services and SaaS Services and any activities required for delivery and support of the Solution including, without limitation, design, development, integration, testing, support and maintenance, any of which Contractor may be providing in whole or in part.
- 1.27. **“Project Manager”** Individual designated by the Canby Police Department to provide day-to-day operational oversight of the Contract.
- 1.28. **“SaaS Services”** means the Applications, Software, and related software-as-a-service, hosting, maintenance and/or support services made available by Contractor for remote access and use by City, including any Documentation thereto.
- 1.29. **“Services”** means the services provided or required to be provided by or through Contractor, including without limitation, SaaS Services and Professional Services.

- 1.30. **“Software”** means the object code version of Contractor’s computer software and all Updates made available by Contractor to City under this Contract.
- 1.31. **“Software License”** Means the license(s) of the Software provided to the City for use of the SaaS Services as authorized by this Contract.
- 1.32. **“Solution”** The complete integrated public safety technology solution to be provided by Contractor, including collectively the SaaS Services, the Professional Services, and all Products, and Software to be provided by Contractor to City under this Contract.
- 1.33. **“Source Code”** A complete copy, expressed in high-level (i.e., human readable; not machine language or object code) computer language, of the Software which, when assembled or compiled, becomes the executable object code of the Software. Source Code shall include all material including but not limited to design documentation, Software Documentation, reference manuals and documentation, libraries for the Software, and interface software (patch or whole programs), in any form (printed, electronic, or magnetic) and any other information necessary for a reasonable skilled programmer or analyst to understand, maintain, or modify the Software/Solution.
- 1.34. **“Statement of Work”** means a detailed plan of work to be agreed by the Parties in conjunction with this Contract.
- 1.35. **“System Administrator”** An Authorized User with specific administrative system configuration privileges.
- 1.36. **“Term”** means the Initial Term and any Renewal Term.
- 1.37. **“Testing Environment”** The Testing Environment is that portion of the System that is used by System Administrators to test the Solution (e.g., new version releases, problem data sets, new configuration parameters, etc.). Actions taken and transactions completed in the Testing Environment must not affect the Production Environment.
- 1.38. **“Third Party Application”** means a third-party service approved by Contractor to which City and any Authorized User facilitates Contractor’s access to, and use, of the SaaS Services, via an application programming interface or other means.
- 1.39. **“Third Party Components”** means any components of the SaaS Service from time to time that are provided by third parties (e.g., Google Maps).
- 1.40. **“Third Party Data”** means any data owned by a third party or provided by a Third Party Provider that Contractor provides to City via the SaaS Service.
- 1.41. **“Third Party Provider”** means third parties, including other vendors, state agencies and local agencies that control products and/or databases with which Contractor SaaS Services are to be interfaced.
- 1.42. **“Third Party Software”** Third Party Software means computer software or other technology in which any person or entity, other than Contractor, has any right, title, or interest, including any restrictions or obligations (such as obligations to obtain consent or approvals and restrictions that may be eliminated only by obtaining such consent or approvals) applicable to the Solution.
- 1.43. **“Updates”** means any and all new releases, new versions, patches and other updates for the SaaS Services that Contractor makes generally available without additional charge to its other City’s of the SaaS Services.
- 1.44. **“Upgrade”** A newer, better version, change, modification, or enhancement to the Software (including Third Party Software), and related Documentation, which incorporates major new features or increases the core functionality of the Software and may be considered a new

version. Software Upgrades may include Error correction, bug fixes, additions to, or patches to the Software.

1.45. “Vendors” means third parties with whom Contractor contracts to provide components of the SaaS Services, and includes without limitation, Amazon Web Services (for platform hosting) and Google (for Google Maps).

1.46. “Website” means any Internet website through which Contractor provides the SaaS Services under this Contract.

- 2. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs anticipated to be incurred in the performance of this Contract. Upon not less than 14 days’ advance notice, Contractor, at its place of business or, at its option, electronically, shall provide to City and their duly authorized representatives access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
- 3. AVAILABILITY OF FUNDS.** City certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the City’s reasonable administrative discretion, to continue to make payments under this Contract.
- 4. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
- 5. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the Work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate City official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor’s surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor’s employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee’s wages to provide such services.
- 6. EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

7. **GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Contractor consents to jurisdiction of the Circuit Court for Clackamas County, in the State of Oregon for any claim, action, or suit between City and Contractor that arises out of or relates to the performance of this Contract. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.
8. **HAZARD COMMUNICATION.** Contractor shall notify City prior to using products containing hazardous chemicals to which City employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon City's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.
9. **INDEMNITY, RESPONSIBILITY FOR DAMAGES.**

9.1. Indemnification by Contractor

9.1.1. Indemnity for Data Breach. Contractor will indemnify, defend and hold City and its officers, elected officials, directors, employees and agents, harmless from and against any and all losses, damages, liability, costs and expenses arising out of any third party claim to the extent such claim is the result of a Data Breach resulting from Contractor's breach of its obligations in Article III, Section 2.1. For the avoidance of doubt, "third party" includes City officers, elected officials, agents, and employees but solely to the extent that such claim is made in their personal capacity.

9.1.2. IP Indemnity. Contractor will indemnify, defend and hold City and its officers, elected officials, employees and agents, harmless from and against any and all Losses resulting from, arising out of or relating to any third party claims that the deliverables or the System, or use thereof, infringe or violate any Intellectual Property Rights of any third party. If Contractor believes at any time that the Deliverables or the System infringe a third party's Intellectual Property Rights, Contractor may: (i) upon receipt of City's prior written consent, which City will not unreasonably withhold, replace an infringing item with a non-infringing item that meets or exceeds the performance and functionality of the replaced item; or (ii) obtain for City the right to continue to use the infringing item; or (iii) modify the infringing item to be non-infringing, provided that, following any replacement or modification made pursuant to the foregoing, the System continues to function in material conformance with the specifications set forth in this Contract. Contractor's failure or inability to accomplish any of the foregoing, within a reasonable period of time, will be deemed a material breach of this Contract, and City may pursue any rights and remedies available to it under this Contract, including termination.

9.1.3. Damages to City Property and Employees. Contractor shall be liable for all claims, suits, actions, losses, damages, liabilities, costs and expenses (collectively, "Damages") for personal injury, including death, damage to real property and damage to tangible personal property of the City or any of its employees proximately caused by the negligent, physical acts or omissions of Contractor, its officers, employees, subcontractors, or agents ("Contractor Personnel") under this Contract while performing Professional Services on premises that are owned or controlled by the City ("City Premises"). For the avoidance of doubt, the foregoing provision will not apply to any Damages resulting from the failure of any Software, SaaS Services or Third Party Materials, even if such failure is the result of negligent acts or omissions of Contractor Personnel while on City Premises (e.g, negligent code development performed on City Premises). "Third Party Materials" means

collectively, Third Party Applications, Third Party Components, Third Party Data and Third Party Software.

9.2. Exclusions

9.2.1. Contractor shall not be liable under Section 9.1 for any claim based on the following:

- 9.2.1.1.** City's modification of the Deliverables or the SaaS Services other than as contemplated by this Contract or a Deliverable's or the specifications; or, as otherwise authorized by Contractor in writing.
- 9.2.1.2.** Use of the Deliverables or the SaaS Services in a manner other than as contemplated in this Contract or a Deliverable or the System specifications; or, as otherwise authorized by Contractor in writing.
- 9.2.1.3.** Use of the Deliverables or the SaaS Services in combination, operation, or use of with other products other than as contemplated by this Contract or a Deliverables or the specifications; or, as otherwise authorized by Contractor in writing.
- 9.2.1.4.** claims brought by: (a) City or any Affiliate or (b) Authorized Users, City officers and employees or elected officials (other than claims by Authorized Users, City officers and employees, and elected officials making such claims in their personal capacity);
- 9.2.1.5.** claims arising from the use of old versions software after receipt of modified or updated versions of software;
- 9.2.1.6.** claims arising from the use of Third Party Applications or Third Party Data; and
- 9.2.1.7.** Losses attributable to the acts or omissions of City and its officers, employees or agents or for which City owes Contractor an indemnification obligation pursuant to Section 9.4.

9.2.2. Contractor shall not be liable under Section 9.1.2 for any claim arising from any data, product specifications, information or materials provided by City hereunder, when used in connection with the SaaS Services or any customization or configuration made to the SaaS Service proposed by or provided by City under a Statement of Work.

9.3. Control of Defense and Settlement. Contractor's obligation to indemnify City as set forth in Section 9.1 is conditioned on City providing to Contractor notification within thirty (30) days of any claim or potential claim of which City becomes aware that may be the subject of those Sections. Contractor will have control of the defense and settlement of any claim that is subject to Section 9.1; however, neither Contractor nor any attorney engaged by Contractor will defend the claim in the name of the City, nor purport to act as legal representative of the City without the approval of the City, nor will Contractor settle any claim on behalf of the City without the prior approval of the City.

9.4. Indemnification by City. To the extent permitted by Article XI Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 – 30.300), City will defend, indemnify and hold harmless Contractor and its Affiliates, and each of their officers, directors, managers, shareholders, members and employees from any and all claims, liabilities, costs and expenses in connection with (I) any third party claim arising from or relating to (i) any allegation that any data, product specifications, information or materials provided by City hereunder, including, without limitation, the City Data and Third Party Applications, when used in connection with the SaaS Services or any customization or configuration made to the SaaS Service proposed by or provided by City under a Statement of Work that: (a) infringes or misappropriates any Intellectual Property Rights of a third party, or (b) violates any Applicable Laws; (ii) the actual violation of Applicable Law by City, any Authorized User, or any Affiliate, employee, agent or independent contractor of City; or (iii) City's breach of this Agreement; provided, however, that the foregoing obligations shall be subject to Contractor

promptly notifying City of the claim, (y) providing City with reasonable cooperation in the defense of the claim and (z) providing City with sole control over the defense and negotiations for a settlement or compromise; provided, however, that City shall not enter into any such settlement without Contractor's prior written consent, which consent will not be unreasonably withheld, and that Contractor shall be permitted to participate in the defense of any such claim, at its own expense, with counsel of its choosing; (II) disabling a connection to a Third Party Application at City's request; (III) City's actions or failure to act, resulting in any third-party claim for personal injury or death, damage to personal property or reputation, environmental damage, interference with contract or employment, or violation of privacy.

10. INDEPENDENT CONTRACTOR STATUS. The service(s) to be rendered under this Contract are those of an independent contractor. Although the City reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, City cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of City for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to City employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656. (Also see Exhibit C)

At present, the Contractor certifies that he or she, if an individual is not a program, City or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

11. INSURANCE. Contractor shall provide insurance as indicated on **Exhibit B**, attached hereto and by reference is incorporated herein. Insurance policies cannot be excess to a self-insurance program and are to be issued on a policy that covers claims in the State of Oregon.

12. LIMITATION OF LIABILITIES.

12.1. Except for Contractor's liability for obligations pursuant to Section 9.1.2 (Indemnity for IP Infringement), Contractor's aggregate liability for damages to the City for any cause whatsoever will not exceed the aggregate amount of the fees paid and payable to Contractor by City during the six (6) month period preceding the date on which the claim arises. Contractor shall have no liability arising out of or relating to the Third Party Components or the Third Party Data.

12.2. Except for Liability arising out of or related to Section 9.4, and except for any liability arising in tort, City's liability for damages to the Contractor for any cause whatsoever will not exceed the aggregate amount of the fees paid and payable to Contractor by City during the six (6) month period preceding the date on which the claim arises. For the avoidance of doubt, nothing in this section 12 shall limit the City's responsibility to pay for services provided by Contractor hereunder.

12.3. Except for liability to third persons arising out of or related to Section 9.1.2 (Indemnity for IP Infringement) or Section 9.4, neither party will be liable to the other for any lost profits, lost savings, punitive, indirect, exemplary, consequential or incidental damages.

13. NOTICES. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to the City at: Canby Police Department, 1175 NW 3rd Ave., Canby, Oregon, 97013, smithb@canbypolice.com or to Contractor or at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

14. REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants to City that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

14.1. Service Warranty. For Professional Services, Contractor warrants that the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with applicable industry standards. Except as provided for herein, Contractor's liability and City's remedy under this Section 14.1 are limited to Contractor's prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the City to Contractor. The City agrees to provide Contractor reasonable access to its facilities and third party vendor software for purposes of repair or replacement under this services warranty.

14.2. Warranty Against Infringement.

Contractor warrants that to its knowledge, the Deliverables will be free of the rightful claim of any third party by way of infringement or misappropriation of patent, copyright, trade secret, trademark or other rights arising under the laws of the United States. Contractor further warrants that to its knowledge, no act or omission of the Contractor will result in a third party holding a claim that interferes with the City's use and enjoyment of the Deliverables. Contractor warrants that it owns or possesses the necessary rights, title and licenses necessary to perform its obligations hereunder. Notwithstanding the forgoing, the forgoing warranty does not extend to: (i) use of the SaaS Services, Software, Services or Products in combination with modules, apparatus, hardware, software, or services not authorized by the Contractor or contemplated for use with the Software, Services or Products; (ii) use of the SaaS Services, Software, Services or Products in a manner that is not in accordance with this Contract or (iii) the alteration or modification of the SaaS Services, Software, Services or Products by a party other than the Contractor, unless such alterations and modifications were authorized by the Contractor or contemplated for use with the SaaS Services, Software, Services or Products.

14.3. No Other Warranties.

Contractor cannot guarantee that every error in the SaaS Services or problem raised by City will be resolved. THE SERVICES, THE THIRD PARTY COMPONENTS, AND THE THIRD PARTY DATA ARE PROVIDED "AS IS." EXCEPT AS EXPRESSLY SET FORTH IN THIS CONTRACT NEITHER PARTY MAKES ANY WARRANTY IN CONNECTION WITH THE SERVICES, THE THIRD PARTY COMPONENTS, THE THIRD PARTY DATA OR THIS CONTRACT AND HEREBY DISCLAIMS ANY AND ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING ALL IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE OR UNINTERRUPTED OPERATION AND

ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. To the extent that a party may not as a matter of Applicable Law disclaim any implied warranty, the scope and duration of such warranty will be the minimum permitted under such law.

14.4. Responsibility for Correction.

Except with respect to any Third Party Application, Contractor shall make any correction, replacement, or modification necessary to bring the Software, Services, Products and Equipment into compliance with the Statement of Work, the documentation, and applicable law, solely to the extent detailed in the service level provisions contained in Sections 1.3.1 and 1.3.2 of Article IV below. Contractor's responsibilities for any corrections, replacements, modifications or repairs relating to any Third Party Application are outlined in Section 1.3.3 of Article IV below.

14.5. Liens.

Contractor shall hold the City harmless from claimants supplying labor or materials to the Contractor or its subcontractors in the performance of the Work required under this Contract.

15. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Paragraphs 1, 7, 9, 12, 13, 14, 15, 16, 18, 21, 22, 23, 24, 28, 30.

16. SEVERABILITY If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

17. SUBCONTRACTS AND ASSIGNMENTS. Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the City. In addition to any provisions the City may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Paragraphs 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. City's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract. For the avoidance of doubt, the use of Vendors shall not be subject to this Section.

18. SUCCESSORS IN INTEREST. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

19. TAX COMPLIANCE CERTIFICATION. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle City to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to City's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. City shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not

limited to; direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and City may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, Contractor has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any Work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

20. TERMINATIONS. This Contract may be terminated for the following reasons:

- 20.1.** This Contract may be terminated at any time by mutual consent of the parties, or by either party upon written notice to the other party, if the other party breaches a material term of this Agreement and such breach remains uncured for thirty (30) days after the other party's receipt of such notice.
- 20.2.** City may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the City, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the City is prohibited from paying for such Work from the planned funding source; or (ii) any material license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed.
- 20.3.** This Contract may also be immediately terminated by the City for default (including breach of Contract) if (i) Contractor materially fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor materially fails to perform any of the other provisions of this Contract or so fails to pursue the Work as to endanger performance of this Contract in accordance with its terms, (iii) and after receipt of notice from the City, materially fails to correct such failure within thirty (30) business days.
- 20.4.** If sufficient funds are not provided in future approved budgets of the City (or from applicable federal, state, or other sources) to permit the City in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, City may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.
- 20.5.** If Contractor reasonably determines that City's use of the Services either: (i) fails to comply with the Restrictions on Use in Article III, Section 1.5; (ii) poses a security risk to the Services or any third party, (iii) creates or is likely to create an adverse impact on Contractor's systems, the Services, or the systems or content of any other subscriber; or (iv) subjects Contractor or its Affiliates to possible liability, then Contractor may immediately upon notice temporarily suspend City's and any Authorized User's right to access any portion or all of the Services, pending remedial action by City, or after a period of 30 days, terminate the Services.

21. EFFECT OF TERMINATION. In the event of any termination or expiration of this Contract:

- 21.1. City will pay all Contractor invoices for Services that were provided up to the termination date. The termination date is the later of (a) the date when Contractor receives a written termination notice from the City or (b) the date on which the City stops using the Services.
- 21.2. All rights and licenses granted hereunder to City (as well as all rights granted to any Authorized Users of City) will immediately cease, including but not limited to all use of the SaaS Services;
- 21.3. Contractor will provide records to City in accordance with its transition assistance services (“**Transition Assistance**”) as set forth in Section 23 below; and
- 21.4. The Parties will, upon written request of the other Party, either return to the requesting Party or destroy any information of requesting Party that are in other Parties possession or control.

22. REMEDIES.

- 22.1. In the event of termination pursuant to Article II Sections 20.2(i) or 20.4, Contractor’s sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the City, less previous amounts paid and any claim(s) which the City has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 21.1, Contractor shall pay any excess to City on demand.
- 22.2. In the event of termination for any other reason, each party shall have any remedy available to it in law or equity.
- 22.3. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless City expressly directs otherwise in such notice of termination or as required for Transition Assistance.

23. TRANSITION ASSISTANCE.

Upon termination of the Agreement for any reason, and subject to all Fees due being paid in full, Contractor will return City’s data in a CSV, PDF or other mutually agreeable format for each record (“**Record**”) and provide them to the City for download. Records can be uploaded to City’s new records management system by the City or its new vendor.

Transition Assistance as outlined in this Section 23 is included in the Fees charged to City for the Services. Fees are due and payable up to the Cutoff Date. In the event that any Fees, not contested by the City, have not been paid as required in this Contract, Contractor may retain all Records and decline to provide the support outlined in this Section 23 until such uncontested Fees are paid in full.

23.1. Preparation.

- 23.1.1. The City will provide the desired cutoff date of the SaaS Services (the “Cutoff Date”), at which time all existing user accounts will be terminated.
- 23.1.2. Contractor will provide one (1) account for the City to access a web-based storage platform to retrieve City documents and Records (the “Transition Account”). The Transition Account will be available to City for thirty (30) days prior to the Cutoff Date.

23.2. Content.

- 23.2.1. Each Record in the RMS will be submitted to the City in a CSV format or other mutually agreed to format as described above.

23.2.2. All archive files will be accessible via the internet on the Cutoff Date.

23.3. Support.

23.3.1. Contractor will maintain City data in the RMS for up to 1 year following the Cutoff Date.

23.3.2. Contractor will maintain City archives for up to 2 years following the Cutoff Date.

23.3.3. Contractor will resolve any issues deemed to be the result of errors in the RMS platform or export process for a period of six (6) months after the Cutoff Date.

23.3.4. At City's written request, no less than 2 years after the Cutoff Date, and upon the City's receipt of all City Data, Contractor will delete City Data from all Contractor online systems (e.g. primary database, replica databases, search databases, application caches, etc.) other than database backups, audit logs and server system logs.

23.3.5. Within 6 months from the date of deletion of City Data from all Contractor online systems, all City Data will be erased from database backups.

23.3.6. Notwithstanding the foregoing, Contractor reserves the right to retain City Data on audit logs and server system logs and in support tickets, support requests and direct communications with Contractor.

24. NO THIRD PARTY BENEFICIARIES. City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

25. [Reserved].

26. FOREIGN CONTRACTOR. If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

27. FORCE MAJEURE. Neither City nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, City's or Contractor's reasonable control. Contractor shall, however, make reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

28. WAIVER. The failure of a Party to enforce any provision of this Contract shall not constitute a waiver by such Party of that or any other provision.

29. COMPLIANCE. Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:

- 29.1. Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished.
- 29.2. If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the City may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of this Contract.
- 29.3. The Contractor shall pay employees for Work in accordance with ORS 279B.020 and ORS 279B.235, which by reference is incorporated herein . All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- 29.4. The Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care, or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

30. CONFIDENTIALITY.

30.1. Definition of Confidential Information. For the purposes of this Contract, “**Confidential Information**” means:

- 30.1.1. With respect to Contractor, the Product and SaaS Services and any and all Source Code relating thereto as well as Documentation and non-public information or material regarding Contractor’s legal or business affairs, financing, customers, properties or data, and;
- 30.1.2. With respect to the City, any non-public information or material regarding the City’s legal or business affairs, financing, customers, property or data. Notwithstanding any of the forgoing, Confidential Information does not include information which: (i) is or becomes public knowledge without any action by or involvement of, the party to which the Confidential Information is disclosed (the “Receiving Party”); (ii) is documented as being known to the Receiving Party prior to its disclosure by the other party (the “Disclosing Party”); (iii) is independently developed by the Receiving Party without reference or access to the Confidential Information of the Disclosing Party and is so documented; or (iv) is obtained by the Receiving Party without restrictions on use or disclosure from a third person who did not receive it, directly or indirectly, from the Disclosing Party.

30.2 Use and Disclosure of Confidential Information. The Receiving Party will, with respect to any Confidential Information disclosed by the Disclosing Party before or after the effective date: (i) use such Confidential Information only in connection with the Receiving Party’s performance of this Contract; (ii) subject to Section 30.4 below, restrict disclosure of such Confidential Information within the Receiving Party’s organization to only those of the Receiving Party’s employees and independent contractors who have a need to know such Confidential Information in connection with the Receiving Party’s performance of this Contract; and (iii) except as provided herein, not disclose

such Confidential Information to any third party unless authorized in writing by the Disclosing Party to do so.

30.3 Protection of Confidential Information. The Receiving Party will protect the confidentiality of any Confidential Information disclosed by the Disclosing Party using at least the degree of care that it uses to protect its own confidential information (but no less than a reasonable degree of care). Each Party shall notify the other Party as soon as reasonably practicable in the event that Confidential Information of the Party is believed to have been compromised.

30.4 Employee and Independent Contractor Compliance. The Receiving Party will, prior to providing any employee or independent contractor access to any Confidential Information of the Disclosing Party, inform such employee or independent contractor of the confidential nature of such Confidential Information and require such employee or independent contractor to comply with the Receiving Party's obligations under this Contract with respect to such Confidential Information.

30.5 Required Disclosures. In the event that either Party is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or similar process or by any law, rule or regulation of any governmental agency or regulatory authority) (for the purposes of this paragraph, each, a "Request") to disclose any of the Confidential Information of the other Party, such Party shall provide the other Party with prompt written notice of any such request or requirement so that such other Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Contract. If, in the absence of a protective order or other remedy or the receipt of a waiver, and if one Party is nonetheless, legally compelled to disclose Confidential Information, such Party may, without liability hereunder, disclose to such tribunal only that portion of the Confidential Information which such counsel advises it is legally required to be disclosed, provided that such Party shall use its best efforts to preserve the confidentiality of the Confidential Information, including, without limitation, by cooperating with the other Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be afforded the Confidential Information by such tribunal.

30.6 Contractor acknowledges and agrees that Oregon Public Record Law may apply to certain information disclosed hereunder and that City will promptly comply with such disclosures. City acknowledges that certain exemptions to the Oregon Public Record Law may apply to information disclosed hereunder. Accordingly, City will contact Contractor within 3 business days after City receives a public records request for Contractor records. Once the City identifies records it is prepared to release in response to the request, the City will notify the Contractor and provide copies of the documents the City plans to release. The City will provide the Contractor with an opportunity to object to the release of the Contractor information, providing sufficient time to review the documents in light of the volume of responsive documents. If City chooses to release the Contractor's information over the objection of the Contractor, then City will provide written notice to the Contractor. The written notice must be received by the Contractor at least ten calendar days before the date the City intends to release the Contractor's records.

30.7 The Parties agree that a violation of this Section 30 shall be deemed to cause irreparable harm justifying injunctive relief in court, without waiving any additional rights or remedies available at law or in equity or by statute.

31. CRIMINAL BACKGROUND CHECK REQUIREMENTS.

31.1 Contractor personnel requiring physical access to any City facility or remote access to any criminal justice information processing systems shall complete a background check conducted by the Clackamas County Sheriff's Office, which will include a local and notational fingerprint check (remote personnel may obtain fingerprints at their local law enforcement agency and mail or electronically transmit them to the representative identified by the City). Personnel not meeting Clackamas City Sheriff's Office standards will be removed from the project. Contractor further agrees that all workers and subcontractors (collectively "Contract Worker(s)") that Contractor furnishes to the City pursuant to this Contract shall be subject to a background and security checks and screening (collectively "Background Screening") at Contractor's sole cost and expense.

31.2 Terms Applicable to All Contractor's Contracts and Subcontracts.

Contractor shall include the terms of this Section 31 for Contract Worker background screening in all contacts and subcontracts for services furnished under this Contract including, but not limited to, supervision and oversight services.

31.3 Materiality of Background Screening Requirements.

The Background Screening requirements of this Section 31 are material to the City's entry into this Contract and any breach by Contractor shall be a material Breach of this Contract.

31.4 Continuing Duty; Audit.

Contractor's obligations and requirements that Contract Workers satisfy this Background Screening Section 31 shall continue throughout the entire term of this Contract. Contractor shall notify the City immediately of any change to a Background Screening of a Contract Worker previously approved by the City. Contractor shall maintain all records and documents related to all Background Screenings and the City reserves the right to audit Contractor's compliance with all Background Screenings and requirements of Section 31.

31.5 Criminal Justice Information/CLETS Training.

The City shall be responsible for providing CJI or CLETS – related training to Contractor personnel and/or obtaining any certifications for Contractor personnel who may have access to CJI data of the City.

31.6 Contractor shall be required to have criminal background checks (and in certain instances specified by the City, fingerprint background checks) performed on all employees, agents, or subcontractors that perform services under this Contract. Only those employees, agents, or subcontractors that have met the acceptability standards of the City may perform services under this Contract or be given access to Personal Information, Confidential Information or access to City facilities.

32 KEY PERSONS. Contractor acknowledges and agrees that a significant reason the City is entering into this Contract is because of the special qualifications of certain key persons set forth in the Contract. Under this Contract, the City is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the City provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the City with such Key Person's services unless the Contractor provides prior written notice of such reassignment or transfer.

33 THIRD PARTY PROVIDERS. The City understands that it is responsible for establishing any required agreement(s) and/or statement(s) of work with Third Party Providers, and for paying any

Third Party Provider costs and expenses in connection with the interfaces to be developed by Contractor.

- 34 Acceptance Testing.** Prior to accepting the Solution, the City and Contractor shall perform Acceptance Testing in accordance with the Statement of Work. Acceptance by City shall not relieve Contractor from its responsibility under any warranty. Payment for Products, Services, or the Solution does not constitute Acceptance, nor does it constitute a waiver of any applicable warranty.
- 35 Changes to Services.** Contractor may make changes and Updates to its Services, provided that it does not materially derogate the overall quality of the Services. Unless otherwise specified in the Scope of Work, Contractor does not guarantee that the Services are or will remain compatible with any particular third party software or equipment, and may, upon written notice, terminate its support for, any software or equipment of City that Contractor determines are incompatible with the operation of the Services.

ARTICLE III.

1. SOFTWARE LICENSE PROVISIONS

- 1.1. License.** During the Term of this Contract, Contractor hereby grants a non-exclusive, non-transferable, non-sublicensable license to City and its Authorized Users to access and use the SaaS Services through the Website for City's business purposes and in accordance with the terms and conditions of this Contract. Contractor will be responsible for hosting the Website, and City and its Authorized Users will be responsible for obtaining internet connections and other third party software and services necessary for it to access the Website. City will be responsible to Contractor for compliance with the restrictions on use and other terms and conditions of this Contract by any of its Authorized Users.
- 1.2. Professional Services.** Contractor offers Professional Services in connection with the SaaS Services as further described in the Statement of Work. To the extent any Professional Services involve the development of any Customization to the SaaS Services, all Intellectual Property Rights to such Customization to the SaaS Services, all Intellectual Property Rights to such Customization will be solely owned by Contractor and will be deemed to be included in the definition of SaaS Services and licensed to City on the terms set forth herein.
- 1.3. Copies of Documentation.** Contractor will provide City via the Website or other means with access to the Documentation, as may be updated from time to time. The City may reproduce the Documentation, and any web-based or computer-based training materials, if applicable, provided that each copy thereby produced shall be marked with Contractor's proprietary markings as delivered to the City. City may use the Documentation solely in connection with the use of the SaaS Services.
- 1.4. Title.** As between Contractor and City, Contractor retains title to and ownership of the SaaS Services, Software, Source Code, Services, Products, and Documentation, including all Intellectual Property Rights relating thereto (collectively, "Contractor Intellectual Property"). Contractor's licensors retain title to and ownership of the Third-Party Data and the Third-Party Components, including all copyrights and other Intellectual Property relating thereto. City will have no rights with respect to the SaaS Services, Software, Source Code, Services, Products, and Documentation, the Third-Party Data or the Third-Party Components other than those expressly granted under this Contract. Any suggestions for changes or improvements to Services that City provides to Contractor, whether solicited by Contractor or not, shall be

owned by Contractor and Contractor hereby irrevocably assigns, and shall assign, to Contractor all right, title, and interest in and to such suggestions. Contractor shall have no obligation to incorporate such suggestion into its products or Services.

1.5. Restrictions on Use. City and its Authorized Users will not (and will not permit any third party to), (i) share City's or any Authorized User's login credentials; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to discern the Source Code, underlying ideas, algorithms, file formats, or interface protocols of the SaaS Services, Software, Services or Products or of any files contained in or generated by the SaaS Services; (iii) copy, modify adapt or translate the SaaS Services, Software, Services or Products, or otherwise make any use, resell, distribution or sublicense the Software, Services, Third-Party Data, or Products other than in connection with this Contract; (iv) make the SaaS Services, Software, Services, or Products available on a "service bureau" basis or allow any third party to use the Software, Services or Products; (v) disclose the SaaS Services, Software, Services or Products or any of its components to third parties; (vi) remove or modify any proprietary marking or restrictive legends placed on the SaaS Services, Software, Services, Third-Party Data, or Products; (vii) use the SaaS Services or the Third Party Data in violation of any Applicable Law; (viii) create or augment any mapping-related dataset including a mapping or navigation dataset, business listings database, mailing list, or telemarketing list) for use in an implementation that is not connected to the Services; (ix) use the SaaS Services or the Third Party Data in violation of any Applicable Law; (x) introduce into the Services any viruses, worms, defects, Trojan horses, malware, or any items of a destructive nature; (xi) use the Services to post advertising or listings; (xii) use the Services to defame, abuse, harass, stalk, or threaten others; (xiii) permit access or use of the Services by any individual outside the United States; (xiv) hide or obscure any Authorized User's location; (xv) permit access or use of the Services, for any activities other than to enhance City's own services, where reliance solely on, or failure to use, the Services could lead to death, personal injury, or property damages. City and its Authorized Users will not access the SaaS Services if in direct competition with Mark 43, and will not allow access to the SaaS Services by any party who is in direct competition with Contractor, except with Contractor's prior written consent.

1.6. Third Party Applications. If City installs or enables a Third Party Application for use with the SaaS Services, Software, Services or Products, City grants Contractor permission to access City Data stored on that Third Party Application as required for the interoperation of that Third Party Application with the SaaS Services, Software, Services or Products. In no event will Contractor be responsible for any Third Party Application, or any failure of a Third Party Application to properly interoperate with the Software, Services or Products. If Contractor receives information that a Third Party Application may violate any applicable laws or third-party rights, City will, promptly upon receiving notice of the foregoing from Contractor, disable any connection between such Third Party Application and the Software, Services or Products to resolve the potential violation (and if City fails to promptly disable such connection, Contractor shall have the right to do so). In addition, in the event that City fails to properly obtain the grant of rights to Contractor to access and use Third-Party Data as required for the interoperation of that Third-Party Application, City shall defend, indemnify, and hold harmless Contractor from any and all claims based on Contractor's use of such Third-Party Application. City, and not Contractor, is solely responsible for establishing any required agreement(s) and/or statement(s) of work with Third Party Providers in connection with the interfaces, and for paying all fees, costs and expenses of Third Party Providers.

1.7. Third Party Components.

1.7.1. **Usage of Third-Party Components.** If any of the licensors of the Third-Party Components require Contractor to flow down any terms and conditions to City (“Additional Terms”), City’s use of such Third-Party Components, as incorporated into the SaaS Services, shall be subject to such Additional Terms, which Contractor shall provide to City in writing. In the event of any inconsistency or conflict between the Additional Terms and the terms of this Contract, such Additional Terms shall govern with respect to the City’s use of the applicable Third-Party Component.

1.7.2. **DISCLAIMER REGARDING THIRD-PARTY COMPONENTS.** CONTRACTOR NOT BEING THE PROVIDER OR MANUFACTURER OF THE THIRD-PARTY COMPONENTS, NOR THE PROVIDERS; OR MANUFACTURERS’ AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE THIRD-PARTY COMPONENTS AND DISCLAIMS ANY SUCH WARRANTIES THAT MIGHT OTHERWISE EXIST.

1.8. Third-Party Data. City shall access and use the Third-Party Data in accordance with the terms and conditions of the agreement between the City and the provider of such Third-Party Data. CONTRACTOR, NOT BEING THE PROVIDER OR MANUFACTURER OF THE THIRD-PARTY DATA, NOR THE PROVIDERS OR MANUFACTURERS’ AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE THIRD-PARTY DATA AND DISCLAIMS ANY SUCH WARRANTIES THAT MIGHT OTHERWISE EXIST.

1.9. City Data. As between Contractor and City, City owns and shall retain all rights, title, and interest, including, without limitation, all Intellectual Property Rights, in and to City Data. City shall have the sole responsibility for the accuracy, quality, and legality of the City Data, including obtaining all rights and consents necessary to share the City Data with Contractor as set forth in this Contract. Contractor shall not access City user accounts or City data, except; (i) in the course of data center operations, (ii) in response to services or technical issues, (iii) as required by the express terms of this Contract, (iv) at City written request. Contractor shall not collect, access, or use user-specific City information except as strictly necessary to provide the Services to the City. Notwithstanding anything to the contrary contained herein, City hereby grants to Contractor an irrevocable, worldwide, royalty free, non-exclusive license to use the City Data to: provide the SaaS Services to City and other Contractor subscribers; analyze the City Data in anonymized and/or aggregate form in order to operate, maintain, manage, and improve the SaaS Services, create new products and services; and for Contractor’s internal purposes to improve the Applications, Software, and related services.

1.10. Export of City Data. The City will have ability to directly query a near-live copy of their database in order to extract City Data stored in the Applications. Furthermore, the City will have the ability to export common datasets directly from the Contractor user interface.

2. SECURITY

2.1. Data Protection. Protection of personal privacy and data shall be an integral part of the business activities of the Contractor, who shall use reasonable commercial efforts to ensure there is no inappropriate or unauthorized use of City information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of City information by complying with the following conditions:

2.1.1. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures designed to safeguard against unauthorized access,

disclosure or theft of CJI and non-public data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own CJI and non-public data of similar kind.

2.1.2. All City Data obtained by the Contractor in the performance of the Contract shall become and remain the property of the City.

2.1.3. All City Data (including CJI) stored in the Applications shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the personal data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the Statement of Work, or otherwise made a part of the Contract.

2.1.4. Unless otherwise stipulated, the Contractor shall encrypt all non-public data at rest and in transit. The City shall identify data it deems as non-public data to Contractor.

2.1.5. Except as otherwise provided herein, Contractor shall not use any information collected in connection with the services issued from this Contract for any purpose other than fulfilling the services; provided, however, City understands and agrees that when it uses certain features of the SaaS Services, certain information and data may be collected from Authorized Users, including monitoring and recording activity, and tracking physical location, which may include personal identifying information. City agrees that Contractor may use such information to (i) provide more effective Services, or (ii) to develop and test its Services.

2.2. Data Location.

Contractor shall store City Data in data centers in the U.S. Contractor shall permit its personnel and contractors to access City Data remotely from the U.S. as required to perform services or provide technical support.

2.3. Security Incident or Data Breach Notification.

2.3.1. City agrees it and its Authorized Users shall securely manage their respective password(s) for access to the SaaS Service. City agrees it shall notify Contractor promptly in the event it becomes aware of any unauthorized access or use of the SaaS Service, or of any of its or its Authorized Users passwords or accounts. Unless expressly stated otherwise in this Agreement, a single username or password may not be used by more than one (1) Authorized User. City shall comply with all applicable local, state, federal and regional or other laws and regulations applicable in connection with use of the SaaS Service, including all those related to data privacy and the transmission of technical or personal data. City agrees to (a) provide true, accurate, current and complete registration data for each account it creates via the SaaS Service, and (b) maintain and promptly update the registration data to keep it true, accurate, current and complete.

2.3.2. **Incident Response.** Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law, contained in the contract or as otherwise determined by the Contractor. Discussing security incidents with the City should be handled on an urgent as needed basis, as part of Contractor's communication and mitigation processes as mutually

agreed upon, defined by law or contained in the Contract or as otherwise determined by the Contractor.

2.3.3. **Security Incident Reporting Requirements.** Each Party shall report a security incident to the other Party's identified contact immediately, as soon as possible, or promptly without out reasonable delay, or as defined in the Contract.

2.3.4. **Breach Reporting Requirements.**

2.3.4.1. Each Party shall promptly notify the other Party of any such security breach that materially compromises the City systems and/or data. Both Parties agree to cooperate in any investigation of such a security breach.

2.3.4.2. Contractor shall promptly notify City of any unauthorized access or unauthorized disclosure or use by a third party of the CJI collected or obtained by the Contractor under this Contract. Contractor shall provide such notice following discovery and without unreasonable delay.

2.4. Criminal Justice Information Data Breach Responsibilities.

This section only applies when a Data Breach occurs with respect to CJI data within the possession or control of the Contractor.

2.4.1. Contractor, unless stipulated otherwise, shall immediately notify the appropriate City identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a Data Breach with respect to CJI data.

2.4.2. Contractor, unless stipulated otherwise, shall promptly notify the appropriate City identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it has confirmed that there is, or reasonably believes that there has been a Data Breach. Contractor shall (i) cooperate with the City as reasonably requested by the City to investigate and resolve the Data Breach, (ii) promptly implement necessary remedial measures, if necessary, and (iii) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

2.4.3. Unless otherwise stipulated, if a Data Breach is a direct result of Contractor's breach of its contractual obligation to encrypt CJI data, the Contractor shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state (or federal) law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws — all not to exceed the average per record per person cost calculated for Data Breaches in the United States in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the Data Breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause.

2.5. Security Precautions.

2.5.1. CJI, whether in electronic format or hard copy, must be secured and protected in a manner that complies with the most recent version of the FBI's Criminal Justice Information Systems (CJIS) Security Policy.

- 2.5.2. When CJI, regardless of format, is subject to permanent deletion under Article II, Section 22, the information must be redacted or destroyed through appropriate and secure methods that are designed to ensure the information cannot be viewed, accessed, or reconstructed.
- 2.5.3. As requested by the City, the Contractor shall disclose its non-proprietary system security plans (SSP) or security processes and technical limitations to the City such that adequate protection and flexibility can be attained between the City and Contractor. For example: virus checking and port sniffing.
- 2.5.4. Contractor agrees that it will use commercially reasonable efforts to ensure that the requirements of this Section 2.5 shall be incorporated into all subcontractor contract/agreements entered into by the Contractor. It is further agreed that a violation of this Section 2.5 shall be deemed to cause irreparable harm justifying injunctive relief in court.

2.6. Access to Security Logs and Reports.

Contractor shall provide security reports upon City's reasonable written request. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all public jurisdiction files related to this Contract.

2.7. Encryption of Data at Rest.

Contractor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all personal data, unless the City approves in writing for the storage of CJI on a Contractor portable device in order to accomplish work as defined in the Statement of Work.

ARTICLE IV.

1. SERVICE LEVEL AGREEMENT

The following provisions shall apply to all maintenance and repairs to the System, including any software, equipment, and Product(s). Should any ambiguities or conflicts arise between this section and the balance of the Contract, this section shall prevail over all other in matters of maintenance and repair.

1.1. Maintenance Requests.

1.1.1. Coverage Hours. Email support shall be available twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year.

1.1.2. Telephone Helpline/Staffing. Between 7:00 AM and 7:00 PM PT, Contractor shall maintain a telephone hotline at no cost to the City. Contractor shall staff the hotline with competent technical consultants who shall be trained in and thoroughly familiar with the Solution and with the City's applicable configuration. Telephone support and all communication shall be delivered in English from within the United States.

1.1.3. Response. Contractor's support specialists shall respond to a Maintenance Request from the City within the times specified in this Contract. Such response times shall be measured from the time the City contact requests support in writing or by phone.

1.2. Training. Contractor shall offer, in its sole discretion, written instructions or telephone training in connection with Upgrades or major repairs that change the functional operation of the Solution/system or any custom software or component whether repair or alteration is a permanent or interim modification. Training may be offered to a subset of Authorized Users who can then go on to train additional Authorized Users.

1.3. Service Levels for RMS.

1.3.1. RMS Availability.

During any calendar month of a Regular Usage Period, the RMS shall be available to users no less than 99.9% of the time on a 24x7 basis, excluding scheduled maintenance of the RMS (“RMS Scheduled Downtime”); provided, however, that Contractor is not responsible for any downtime of the RMS caused by Third Party Data services (e.g. Department of Motor Vehicles license plate database), or Third Party Components, and such Third Party downtime will not count against the service levels promised herein; provided, further, that Contractor shall be responsible for any downtime of RMS caused by Integrated Third Party Software (as defined below) solely to the extent specified in Section 1.3.3 below (“Service Levels for Integrated Third Party Software”). Contractor shall provide City with prompt notification as soon as it becomes aware of any actual or potential unscheduled downtime (defined below) of the RMS, as well as continual periodic updates during the unscheduled downtime regarding Contractor’s progress in remedying the unavailability and the estimated time at which the RMS shall be available.

1.3.2. RMS Service Credits.

In the event that Contractor fails to make the RMS available at least 99.9% of the time in any given month during the Regular Usage Period due to RMS Unavailability (as defined below), Contractor will credit the City’s account for the unavailable RMS as follows:

RMS Availability (Monthly)	Credit Percentage
Above 99.9%	0%
99.8 – 99.0%	10%
98.9 – 98.0%	20%
Below 97.9%	30%

“**RMS Unavailability**” is defined as the percentage of minutes per month in which the RMS is completely and generally unavailable for City’s use (but not the use of any one Authorized User), provided that RMS Unavailability does not include any unavailability attributable to: (a) RMS Scheduled Downtime for maintenance (whether by Contractor, by a vendor, or by City); (b) acts or omissions of City or any City user of the RMS; (c) server downtime related to connectivity issues resulting from Third Party-managed VPN access to hosted server or City internal network problems; (d) defects or bugs in the Applications or Software caused by City, any Authorized User, or any Affiliate, employee, agent or independent contractor of City; or (e) any other cause(s) beyond Contractor’s reasonable control, including but not limited to those caused by Third Party Data services (e.g. Department of Motor Vehicles license plate database), Third Party Components, overall internet congestion or a force majeure. City will be responsible for immediately notifying Contractor of all Third Party-managed VPN access and internal or external (e.g. internet service provider) network problems that arise.

“Credit Percentage” means the applicable percentage of the portion of the Fees attributable to Services in the calendar month in which the RMS Unavailability occurs. For example, if City has paid Contractor \$1,000 for one year of a Regular Usage Period, and the RMS Availability falls to 99.5% during any calendar month in that year, then Contractor will owe City a 10% credit on that month’s portion of the Fee, or: $\$1,000/12 = \83.33 per month, and $10\% \text{ of } \$83.33 = \8.33 . In this example, Contractor would owe City \$8.33 in credit for the month in which RMS Availability fell to 99.5%.

In order to receive this credit, City must notify Contractor in writing within fifteen (15) days following the end of the month the RMS Unavailability occurred. All claims are subject to review and verification by Contractor prior to any credits being granted. Contractor will acknowledge credit requests within fifteen (15) business days of receipt and will inform City whether such claim request is approved or denied. The issuance of RMS Service Credit by Contractor hereunder is the City’s sole and exclusive remedy for any failure by Contractor to satisfy the service levels set forth in this Section 1.3.2.

1.3.3. Service Levels for Integrated Third Party Software. Notwithstanding anything else to the contrary contained herein, Contractor shall be responsible for any downtime of or related to the Applications or Integrated Third Party Software (as defined below) that is caused by Integrated Third Party Software solely to the extent specified in this Section 1.3.3. Credit Percentages Service Credits referenced elsewhere in this Contract shall not apply to downtime caused by Integrated Third Party Software or the integrations or connections to Integrated Third Party Software.

1.3.3.1. Availability of Third Party Applications. The Statement of Work will outline specific Third Party Application integrations (the **“Integrated Third Party Software”**) to be performed by Contractor during the Professional Services Period, and the City’s and Contractor’s respective rights regarding acceptance of those Services. During the Regular Usage Period, the Integrated Third Party Software shall be operational no less than 99.9% of the time on a 24x7 basis, excluding any scheduled maintenance of the Integrated Third Party Software (whether scheduled by Contractor or by the third party provider, the **“Integration Scheduled Downtime”**); provided, however, that Contractor shall not be responsible for downtime caused by upgrades or updates to Integrated Third Party Software of which Contractor does not receive the requisite advance notice, and such downtime will not count against the service levels promised herein. Contractor agrees that it shall schedule any Integration Scheduled Downtime on minimal traffic days whenever possible. The Parties further agree that Contractor shall not schedule in excess of 90 minutes of Integration Scheduled Downtime in during any 30-day period. Contractor shall provide City with immediate telephone notification to the point of contact set forth in the Contract as soon as it becomes aware of any actual or potential unavailability of an Integration other than Integration Scheduled Downtime (**“Integration Unscheduled Downtime”**), as well as continual periodic updates during the Integration Unscheduled Downtime regarding Contractor’s progress in remedying the unavailability and the estimated time at which the Integration shall be available.

1.3.3.2. Responsibilities for Planned Updates. City shall provide Contractor with prompt notice, and in no case fewer than forty-five (45) days’ advance notice, of any update by the Third Party provider of Integrated Third Party Software. Contractor shall undertake commercially reasonable efforts to patch, repair or update the Software in order to integrate it with the updated Integrated Third Party Software.

1.3.3.3. Responsibilities for Planned Upgrades. The City shall provide Contractor with prompt notice, and in no case fewer than ninety (90) days' advance notice, of any planned upgrade by the Third Party provider of Integrated Third Party Software. The Contractor shall evaluate the time and resources required to patch, repair or update the Software in order to integrate it with the upgraded Integrated Third Party Software. The Parties shall engage in good faith negotiations to agree on the terms (including, without limitation, schedule and price) on which Contractor would develop a patch, repair, update or Upgrade to integrate the Software with the Integrated Third Party Software.

1.3.4. Access to City Facilities.

Contractor agrees that Contractor's physical or remote access to the City facilities shall be subject to the security interests and controls necessary to protect public property.

2. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Mark43, Inc.

City of Canby

Matthew N. Polega 12/7/2017
Authorized Signature Date

[Signature] 12/7/17
Richard Robinson Date

Matthew N. Polega / Cofounder & VP of Operations
Name / Title (Printed)

Approved as to Form:

1370582-93
Oregon Business Registry #

[Signature] 11/17/17
City Attorney Date

Corporation / Delaware
Entity Type / State of Formation

**EXHIBIT A
STATEMENT OF WORK**

Attached.

**EXHIBIT B
INSURANCE**

During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below:

1. Required by City of Contractor with one or more workers, as defined by ORS 656.027.

Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.

2. Required by City Not required by City

Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract.

Technology Errors & Omissions. The Contractor agrees to furnish the City evidence of Technology Errors & Omissions insurance coverage including Professional Liability, Risk, Data Breach and Privacy/Cyber in the amount of \$1,000,000 in the aggregate.

At Contractor's election, (i) the policies must provide extending reporting period coverage for claims made within two years after the contract is completed or (ii) Contractor will renew professional liability insurance and technology errors & omissions for two years after contract is completed or (iii) Contractor will purchase a two-year extended reporting period in the event the insurance is not renewed.

3. Required by City Not required by City

General Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract.

4. Required by City Not required by City

Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each accident for Bodily Injury and Property Damage, including coverage for hired, or non-owned vehicles, as applicable.

5. Certificates of Insurance. Contractor shall furnish evidence of the insurance required in this Contract. The insurance for general liability and automobile liability must include an endorsement naming the City, its officers, elected officials, agents, and employees as additional insureds with respect to the Work under this Contract. Insuring companies or entities are subject to City acceptance. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

6. Notice of cancellation or change. There shall be no cancellation or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the City at the following address: Canby Police Department, 1175 NW 3rd Ave, Canby, Oregon, 97013, smithb@canbypolice.com.

EXHIBIT C
CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR
(Contractor completes if Contractor is not a corporation or is a Professional Corporation)

Contractor certifies he/she is independent as defined in Oregon Revised Statutes 670.600 and meets the following standards that the Contractor is:

1. Free from direction and control, beyond the right of the City to specify the desired result; **AND**
2. Are licensed if licensure is required for the services; **AND**
3. Are responsible for other licenses or certificates necessary to provide the services **AND**
4. Are customarily engaged in an "independently established business."

To qualify under the law, an "independently established business" must meet three (3) out of the following five (5) criteria. **Check as applicable:**

- _____ A. Maintains a business location that is: (a) Separate from the business or work of the City; or (b) that is in a portion of their own residence that is used primarily for business.
- _____ B. Bears the risk of loss, shown by factors such as: (a) Entering into fixed price contracts; (b) Being required to correct defective work; (c) Warranting the services provided; or (d) Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
- _____ C. Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- _____ D. Makes significant investment in the business through means such as: (a) Purchasing tools or equipment necessary to provide the services; (b) Paying for the premises or facilities where the services are provided; or (c) Paying for licenses, certificates or specialized training required to provide the services.
- _____ E. Has the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

1. A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C is not required to meet the independently established business requirements.
2. Establishing a business entity such as a corporation or limited liability company, does not, by itself, establish that the individual providing services will be considered an independent contractor.

Contractor Signature _____ Date _____

EXHIBIT D TECHNICAL REQUIREMENTS

Workstation Requirements

	RMS Dispatch Workstation
Operating Systems Supported	Windows 7 and higher
Processor	Single, quad-core Intel processor
Memory	4 GB
Network Card Speed	2 Mbps
Screen Resolutions Supported	1024x768
Hard Disk Space Required	80GB
Monitor	Dual 24 inch, flat panel, monitors
Additional Applications Software and Versions	Mark43 systems do not require any 3rd party software or plugins.
Graphics Card Recommended	2, 512 MB NVIDIA Quadro NVS 310, 4MON

	RMS Non-Dispatch Workstation
Operating Systems Supported	Windows 7 and higher
Processor	Single, quad-core Intel processor
Memory	4GB
Network Card Speed	1 Mbps or above internet connection. Lower speeds are possible but will result in degraded service.
Screen Resolutions Supported	1024x768
Hard Disk Space Required	80GB
Monitor	24 inch, flat panel, monitors
Additional Applications Software and Versions	Mark43 systems do not require any 3rd party software or plugins.
Graphics Card Recommended	2, 512 MB NVIDIA Quadro NVS 310, 4MON

	RMS Non-Dispatch Mobile Laptop
Operating Systems Supported	Windows 7 and higher
Processor	Single, quad-core Intel processor
Memory	4GB
Network Card Speed	1 Mbps or above internet connection. Lower speeds are possible but will result in degraded service.

Screen Resolutions Supported	1024x768
Hard Disk Space Required	80GB
Monitor	13"
Additional Applications Software and Versions	Mark43 systems do not require any 3rd party software or plugins.

Browser Requirements

Mark43 RMS is web-based, and requires a modern web browser to access the system. Mark43 RMS supports all versions of Microsoft Internet Explorer and Google Chrome that receive technical support and security updates from the browser vendor. Mark43 requires Subscriber to upgrade to a supported browser version at least 3 months before the browser vendor stops technical support and security updates. Mark43 recommends using Google Chrome as it updates to the latest version automatically and is proven high performance.

Interface Server Requirements

If 3rd party integrations are required, an interface server may be installed on site. The requirements of this server are:

	Requirements
Sever Purpose	Servers only required for interfacing with 3rd party applications. Mark43 systems are cloud based and require no server hardware on premise.
Operating System	RHEL 7, CentOs 7
Processor speed & quantity	3.1 Ghz
Cores per processor	2
Memory	8GB
Network Card Speed	2 Mbps
Network Card Quantity	1 NIC (2 NICs at 1 GBPS or greater preferred)
Screen Resolution	1024x768
Hard Disk Space Required	250GB
Hard Disk Space Drive Configuration	500GB

Networking/Firewall:

Inbound	Outbound	VPN	User Accounts
SSH over client VPN	All	Mark43 needs ability to SSH to the interface server over our client VPN	Admin user accounts for personnel with client VPN access.

Internet Connectivity Requirements

Mark43's software-as-a-service platform is accessed via web browser and requires Subscriber to connect via an active internet connection.

In office, Mark43 requires a 1 GB internet connection along with a backup internet service provider line for redundancy purposes. In the field, Mark43 recommends a 4G LTE connection for best performance.

Mark43 Evidence

Operating Systems Supported	Android 5+	
Android Phone	Galaxy S7 (Suggested)	
Zebra Printer (Required: 1)	Desktop: GK420t, GX420t, GX430t (Suggested) ZD500	Industrial: 110Xi4, 140Xi4, 170Xi4, 220Xi4, ZT220, ZT230, ZT410 ZT420
Additional Information	Printer must support: - Prints 4" x 2" labels horizontally - Thermal transfer - Zebra Programming Language (ZPL) - Web connectivity (Ethernet or USB)	

EXHIBIT E
INSIGHT PUBLIC SECTOR PRICE QUOTE

Attached.