

Contract

Incremental Software License Increase and Maintenance and Support Services Agreement

By and Between

Cuyahoga County, Ohio

and

Philadelphia Industrial Development Corporation

THIS AGREEMENT (the "Contract") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between Cuyahoga County, Ohio (the "County"), on behalf of the Cuyahoga County Department of Development and Philadelphia Industrial Development Corporation ("PIDC"), a Pennsylvania Corporation having principal place of business at, 1500 Market Street, Suite 2600 West, Philadelphia, PA 19102

WHEREAS, the County has a present need for an Incremental Software License Increase and Maintenance and Support Services for PIDC's "Portfol Software" attached hereto and incorporated by reference herein as Schedule A and B; and

WHEREAS, PIDC, is a sole supplier and thus sole source for licensing and support and maintenance services for "Portfol Software"; and

WHEREAS, the County desires to avail itself to an Incremental Software License Increase and Maintenance and Support Services for PIDC's "Portfol Software" and PIDC is willing to provide such services to the County all upon the terms and conditions set forth herein.

NOW, THEREFORE, in the consideration of mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, PIDC and the County agree as follows:

ARTICLE I- AGREEMENT AND TERM

1.1 Scope of Agreement. During the term of this Contract, PIDC shall provide to the County, under this agreement, the following services as detailed in Exhibit A and B, insofar as the terms of those Exhibits concur with this agreement. In the event that a discrepancy exists between the terms of said Exhibits and this agreement, the terms of this agreement will be controlling and binding.

A. Incremental Software License Increase of 250 loans and corresponding Maintenance and Support Services

1.2 Term. The term of this Contract shall commence as of January 1, 2013; and, unless earlier terminated in accordance with the provisions of this Contract shall continue in effect for a period of three years from commencement date (1/1/2013 – 12/31/2015).

1.3 Cost The cost of this Contract shall not exceed Twelve-Thousand Fifty Dollars and Zero Cents (\$12,050.00).

## ARTICLE II – ADDITIONAL MAINTENANCE SERVICE

2.1 At the request of the County, and with the consent of PIDC, PIDC may also provide technical, operational or other assistance on a consulting basis to the County in excess of the scope of service included but such services would require an amendment to the annual Maintenance and Support Services Agreement between the County and PIDC under a separate and existing contract.

## ARTICLE III – SCOPE OF WORK

3.1 At the request of the County, and with the consent of PIDC, PIDC may also provide technical, operational or other assistance on a consulting basis to the County in excess of the scope of service included but such services would require an amendment to the annual Maintenance and Support Services Agreement between the County and PIDC under a separate and existing contract.

3.2 Record Audit Retention. PIDC agrees to make all pertinent contractual books and records and other documents pertaining to this Contract available to the County and its designated agents for purpose of audit and examination upon reasonable request during the term of this Contract and for a period of two (2) years from the expiration date or final payment under this Contract, whichever is later; provided however, that should PIDC be notified that an audit has been commenced pursuant to Ohio Revised Code Sec. 117.11 during said period, for which the aforesaid books and records are material, the aforesaid records shall be retained pending the completion of said audit.

## ARTICLE IV – PAYMENT AND INVOICING

4.1 Payment. During the term of this contract, the County shall pay one-hundred percent (100%) of the incremental increase price to receive an increase in capacity of 250 loans. Payment shall be upon receipt of a corresponding invoice from PIDC and the execution of this agreement by the Cuyahoga County Executive. In addition, the county shall pay the annual support and maintenance fee upon receipt of a separate invoice at the beginning of each calendar year during the contract period.

4.2 Invoicing. PIDC shall invoice the County upon execution of this agreement. PIDC shall submit original invoice(s) to the following address:

Cuyahoga County Information Services Center  
Business Department  
1255 Euclid Avenue, 4<sup>th</sup> floor  
Cleveland, Ohio 44115

ARTICLE V - INDEMNITIES AND LIABILITIES

- 5.1 Indemnification. PIDC shall agree to release, indemnify and to hold harmless Cuyahoga County and any and all officers, agents, servants or employees thereof, from any and all responsibility or liability for its gross negligence or willful misconduct under this contract.
- 5.2 Condition Precedent to Indemnification. The indemnities in Article V are conditioned upon the County providing PIDC prompt written notice of the claim, allegation or action for which indemnification is sought, together with full information and reasonable cooperation and full opportunity to control the response thereto and the defense thereof.
- 5.3 Warranties. All of PIDC services will be performed by qualified personnel and will be of a professional quality conforming to best practices of the industry.

ARTICLE VI - DISPUTE RESOLUTION AND TERMINATION

6.1 Dispute Resolution.

a) In the event of any dispute or disagreement between PIDC and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by PIDC or the County hereunder, which cannot be resolved in the normal course of business, then upon written notice of either party, each party will appoint a designated officer whose task it will be to meet for the purpose of endeavoring in good faith to resolve such dispute or to negotiate for an adjustment to such section or provision of this Contract. The designated officers shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. Such officers will discuss the problem and/or negotiate the applicable section or provision without the necessity of any formal proceedings relating thereto. During the course of such negotiation, all reasonable requests made by one party to the other for information will be honored in order that each of the parties may be fully advised in the negotiations. The specific format for such discussions will be left to the discretion of the designated officers but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party. No formal proceedings for the binding arbitration of such dispute may be commenced until (i) resolution as contemplated in this clause has been unsuccessful and (ii) either of the parties concludes in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely and so notifies the other party.

- (b) The rights and obligations of the parties under this provision shall not limit either party's right to terminate this Contract as may be otherwise permitted hereunder.

#### ARTICLE VII – MISCELLANEOUS

- 7.1 Notices. Wherever one party is required or permitted to give notice to the other pursuant to this Contract, such notice shall be deemed given when delivered by hand, via certified mail with return receipt requested, via overnight courier with signature required, and addressed as follows:

In the case of the County:

Cuyahoga County Information Services Center  
ATTN: Jeff Mowry  
1255 Euclid Avenue, 4th Floor  
Cleveland, Ohio 44115

In the case of PIDC :

Jean DeBellis  
Philadelphia Industrial Development Corporation  
1500 Market Street  
Suite 2600 West  
Philadelphia, PA 19102

Either party may from time to time change its designated recipient or address for notification purposes by giving the other party written notice of the new designated recipient or address and the date upon which it will become effective.

- 7.2 Severability. If, and only to the extent that, any provision of this Contract is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, it being the intent and agreement of the parties that this Contract shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent. If that is not possible, another provision that is legal and enforceable and achieves the same objective shall be substituted. If the remainder of this Contract is not affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.
- 7.3 Waiver. No delay or omission by either party in the exercise of any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties of any of the covenants, conditions or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained. No change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such change, waiver, or discharge is sought to be enforced.

- 7.4 Survival of Terms. Termination or expiration of this Contract for any reason shall not release either party from any liabilities or obligations set forth in this Contract which (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.
- 7.5 Headings and Interpretation. The article and section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.
- 7.6 Governing Law. This Contract shall be subject to interpretation under the laws of the State of Ohio.
- 7.7 Social Security Act. PIDC shall be and remain an independent contractor with respect to all services performed hereunder and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions, or annuities now or hereafter imposed under any Local, State or Federal Law which are measured by the wages, salaries, or other remuneration paid to persons employed by PIDC for work performed under the terms of this contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by and duly authorized State or Federal officials; and said PIDC also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.
- 7.8 Assignment. PIDC shall not assign, transfer, convey or otherwise dispose of this Contract, or its right to execute it, or its right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Contract without approval of Cuyahoga County by resolution.
- 7.9 Contract Processing. PIDC shall submit one (1) original contractual agreements with original signatures to the following:

Cuyahoga County Information Services Center  
ATTN: Business Department  
1255 Euclid Avenue, 4th Floor  
Cleveland, Ohio 44115

- 7.10 Commencement of Contract Performance. In order to protect the interest of Cuyahoga County this contract must be executed by the Cuyahoga County Executive before compensation for the services or products set forth in this contract can be provided. In the event that services are provided by PIDC prior to the execution of this agreement by the Cuyahoga County Executive, the same will be provided at PIDC's risk, and payment therefore cannot, and will not, be made unless and until this agreement is approved by the Cuyahoga County Executive. Upon approval by the Cuyahoga County Executive this contract, however, any and all prior performance under this contract shall be deemed

ratified and said performance shall be deemed to be included in this contract. Payment(s) for said prior performance shall not increase the amount of the contract limit.

- 7.11 Entire Agreement and Modification. This Contract, including any Schedules and documents referred to in this Contract or attached hereto, each of which is incorporated herein, constitutes the entire and exclusive statement of the agreement between the parties with respect to its subject matter and there are no oral or written representations, understandings or agreements relating to this Contract which are not fully expressed herein. The parties agree that any other terms or conditions included in any quotes, acknowledgments, bills of lading or other forms utilized or exchanged by the parties shall not be incorporated herein or be binding unless expressly agreed upon in writing by authorized representatives of the parties. No modification, change or amendment hereof shall be valid unless such is in writing and signed by the authorized representative of the party against which such modification, change or amendment is sought to be enforced.

#### ARTICLE VIII- ADHERENCE TO ELECTRONIC SIGNATURE POLICY OF COUNTY

- 8.1 Electronic Signature. By entering into this Contract, PIDC, its officers, employees, subcontractors, sub-grantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by Cuyahoga County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document.
- 8.2 Compliance with ORC. PIDC further agrees to be bound by the provisions of Chapter 304 and 1306 of the Ohio Revised Code as they pertain to Electronic Transactions and to comply with the electronic signature policy of Cuyahoga County.

IN WITNESS WHEREOF, THE County and PIDC have each caused this Contract to be signed and delivered by its duly authorized representative as of the date first written.

PIDC

BY:

Jean DeBellis

CUYAHOGA COUNTY, OHIO Executive

BY:

2013-01-28 15:19:04

Edward FitzGerald, Cuyahoga County Executive