

MASTER SERVICES AGREEMENT BETWEEN
INFOR(US), INC. AND
THE CITY OF DULUTH

THIS AGREEMENT, entered into this -- day of October____, 2015, by and between the CITY OF DULUTH, a municipal corporation under laws of the State of Minnesota, hereinafter referred to as "City", and INFOR (US), INC., a Delaware corporation, located at 13560 Morris Road, Alpharetta, Georgia 30004 ("Consultant").

WHEREAS, City needs professional services relating to its Enterprise Asset Management (EAM) system, which it purchased from Consultant in 2010; and

WHEREAS, in connection with the foregoing, Consultant is willing to provide such professional services ("Services") for the Software for City's benefit according to the terms set forth herein; and

WHEREAS, Consultant will provide not less than commercial, industry standard-level capacity and expertise to provide the Services in connection with the EAM system; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

ARTICLE I

Scope of Services

Consultant agrees that it will, at the direction of and in cooperation with the City, provide Services related to the EAM system and use, as more fully set forth in a separate, mutually-executed work order ("Work Order"), and provide other Services generally relating thereto as City staff may, from time to time, request subject to the terms and

conditions hereinafter set forth or as set forth in a Work Order. The Agreement between the parties shall consist of the following documents in the following order:

1. This Master Services Agreement.
2. The Work Order.

In the event of any conflict between the terms of this Agreement and the terms of the Work Order, this Agreement shall be deemed to be controlling.

ARTICLE II

In consideration of the provision of the Services referenced in Article above and as more fully set forth in the Work Order, City hereby agrees to pay or reimburse Consultant for Services as set forth below:

Compensation

A. Hourly Rates

Consultant will provide the City with Services as set forth in one or more mutually agreed to and signed Work Order(s) which shall contain without limitation, a description of the Services and the Services rate(s).

B. Expense Reimbursement

In addition to the compensation provided for in Paragraph A above, Consultant shall be entitled to reimbursement for expenses incurred by Consultant's staff for necessary travel to the City of Duluth for performance of the Services provided for in Article I. Approval of such requests shall not be unreasonably withheld, delayed or conditioned. Consultant's reimbursement for such expenses shall be

limited to the amount reasonably necessary to accommodate reasonable and ordinary travel costs.

C. Maximum Contract Payments

The maximum amount of the payments payable to Consultant under this Agreement shall not exceed \$160,000; said sum shall be payable from the Clean Water Surcharge Fund 532, Department/Agency 500, Object 520, Requisition No. 10-0107. Consultant shall not be obligated to perform any additional Services under any Work Order(s) once the maximum dollar threshold has been incurred, even if Consultant has not yet completed said Work Order(s).

D. Time for Payment

All fees and reimbursement of expenses payable hereunder shall be due and payable within thirty (30) days of the Receipt of Consultant's Invoice therefor, unless specified otherwise or subject to acceptance or approvals as set forth solely in the applicable Work Order. "Receipt of Consultant's Invoice" shall mean the date Infor emails the invoice to the City of Duluth's email address provided below. The City of Duluth agrees to accept all invoices provided by Infor via electronic billing / email. All invoices provided to the City of Duluth pursuant to this and the Master Services Agreement or any Work Order will be sent to: @DuluthMN.gov. If the email address changes, the City of Duluth must provide notification in writing to Infor.

ARTICLE III

Term

The term of this Master Services Agreement shall be from September --, 2015, to October 1, 2020.

ARTICLE IV

City Responsibilities

In addition to the payments to be made by City hereunder, the following shall be responsibilities of the City:

A. Project Manager

The City shall designate and identify to Consultant a person to serve as the City's Project Manager. The Project Manager shall be Consultant's principal contact with the City and shall be responsible for coordinating Consultant's staff and Services with that of the City. The Project Manager shall be responsible for providing Consultant with timely access to City Equipment, for providing access to appropriate City staff persons during ordinary working hours, for providing access to City buildings or other structures and for providing access and ability to use City owned or controlled data and information. The Project Manager shall be responsible for coordinating site visits by Consultant's staff to allow such site visits to accomplish the purpose or purposes for which they were approved and for providing City staff in so far as practical to facilitate the meeting of those objectives.

B. Scheduling of Work

City and Consultant agree to use reasonable efforts to cooperatively coordinate the scheduling of work which will require the coordinated effort of the other party.

ARTICLE V

Assignability

Consultant shall not in any way assign or transfer any of its rights or interests under this Agreement in any way whatsoever, without the prior written consent of the City, except that no consent is required in the event that Consultant undergoes a merger, reverse-merger, consolidation, reorganization or change of control, or if Consultant transfers or assigns its rights and obligations to an affiliate or subsidiary thereof. In the event of such an assignment or transfer, Consultant shall provide thirty (30) days' notice thereof to City.

ARTICLE VI

Termination

A. For Cause

1. Right to Terminate

In the event that either party shall be in material default of its obligations under this Agreement the non-defaulting party may give written notice of such material default to the defaulting party as provided below. Upon the giving of such notice the defaulting party shall have thirty (30) days in which to cure such material default .

2. Effect of Termination

In the event of termination for cause by City, City shall have no further obligation to pay Consultant any sums under Article II (a) herein (except for all amounts owed to it under the terms of this Agreement up to the effective date of such termination) and shall further retain all rights to recover costs or damages that it may otherwise be entitled to in a court of law or at equity. In the event of termination by Consultant for cause, Consultant shall have no further obligations to City pursuant to this Agreement and shall be entitled to recover from City all amounts owed to it under the terms of this Agreement up to the effective date of such termination. In the event of such termination the rights of the parties to claim damages against the other party shall survive such termination

B. Without Cause by City

In addition, each party may, by giving written notice, specifying the effective date thereof, which shall be no less than ten (10) business days from said notice, terminate this Agreement in whole or in part without cause. In the event of termination all property and finished or unfinished documents and other writings prepared by Consultant under this Agreement or the applicable Work Order shall become the property of City and Consultant shall promptly deliver the same to City, subject to the Ownership of Data provision and Consultant's non-exclusive, non-transferable license described in Article VII.F. Consultant shall be entitled to compensation for Services performed by it to and including the date of written notice of termination of this Agreement, including reimbursable expenses.

ARTICLE VII

Standard of Performance

A. Generally

Consultant agrees that all Services to be provided to City pursuant to this Agreement shall be in accordance with the generally accepted industry standards of the profession for provision of such Services of this type.

B. Warranties

(a) Consultant warrants and guaranties that the Services provided to City under the Agreement will be performed with reasonable care and skill for the period beginning on the specific date of the applicable Work Order and continuing for ninety (90) days after the completion of Services pursuant to a Work Order (the "Warranty Period"), such deliverables will materially comply with the specifications relating thereto as set forth on the Work Order.. If during the Term of this Agreement or the Warranty Period, as applicable, City becomes aware of any material failure to satisfy such warranties, then City shall promptly notify Consultant of such failure along with as much detailed information with regard thereto as is reasonably available to City. Such notice shall be in writing. Upon receipt of such notice from City, Consultant shall promptly remedy such failure at no cost to City. If, despite its reasonable efforts to remedy such failure, Consultant is unable to remedy such failure, then, subject to the limitations of liability set forth herein, City may pursue its remedy at law to recover direct damages resulting from the breach of these limited warranties.

- (c) The limited warranties set forth above are made to City exclusively and are in lieu of all other warranties. CONSULTANT MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO ANY SERVICES PROVIDED UNDER THIS AGREEMENT AND/OR ANY WORK ORDER, IN WHOLE OR IN PART. CONSULTANT EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. CONSULTANT EXPRESSLY DOES NOT WARRANT THAT THE SERVICES WILL MEET CITY'S REQUIREMENTS. THE PARTIES HAVE AGREED THAT THE LIMITATIONS OF LIABILITY SPECIFIED HEREIN WILL SURVIVE AND APPLY EVEN IF ANY REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, AND REGARDLESS OF WHETHER CITY HAS ACCEPTED ANY SERVICE UNDER THIS AGREEMENT. Upon the expiration of the warranty described in this Paragraph, Consultant's warranty obligations hereunder shall be deemed to have terminated. Provided further that the warranty provided pursuant to this paragraph shall not apply to failures resulting solely from the acts or omissions of City or its employees or any third parties which are not under Consultant's control.

C. Limitation of Liability

- (a) EXCEPT FOR DAMAGES ARISING DUE TO: (I) MISAPPROPRIATION OF THE SERVICES DELIVERABLES, OR (II) A PARTY'S INDEMNITY OBLIGATION (COLLECTIVELY, THE "UNCAPPED DAMAGES"), THE

TOTAL LIABILITY OF EITHER PARTY, ITS AFFILIATES AND CONTRACTORS IN CONNECTION WITH THE SERVICES PROVIDED HERUNDER (WHATEVER THE BASIS FOR THE CAUSE OF ACTION) SHALL NOT EXCEED THE FEE THAT CITY ACTUALLY PAID TO CONSULTANT FOR THE SERVICES GIVING RISE TO THE LIABILITY UNDER THE APPLICABLE WORK ORDER.

- (b) EXCEPT FOR THE UNCAPPED DAMAGES, IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES OR CONTRACTORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

ARTICLE VIII

Records and Inspection

A. Establishment and Maintenance of Records

Records shall be maintained by Consultant in accordance with all reasonable requirements prescribed by City and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of three (3) years after receipt of final payment under this Project.

B. Documentation of Costs

Consultant will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

C. Reports and Information

Consultant shall be responsible for furnishing to City records, data and information as City may require pertaining to matters covered by this Agreement, pursuant to the procedures set forth in Paragraph D below, and subject to any third party confidentiality requirements to which Consultant is subject.

D. Audits and Inspections

Consultant shall ensure that at any time during normal business hours (but in a manner which does not unreasonably interfere with Consultant's normal business operations) and at a frequency which is no greater than the minimum frequency mandated by the applicable Minnesota statute, at City's costs and expense, there shall be made available to City for examination, all of its records with respect to all matters covered by this Agreement, including all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

E. Confidentiality of Information

1. Consultant

All reports, data, information, documentation and material given or prepared by the City pursuant to this Agreement will be confidential and will not be released by Consultant without prior authorization from City except as required for the performance of Consultant's Services or as required by law, or to Consultant's employees, contractors, agents and representatives who have a need to know.

2. City

All data and information of Consultant that would reasonably be considered confidential under the circumstances of the disclosure shall not be disclosed to any third party by City without the prior written consent of Consultant except as follows. The foregoing shall not apply to the following:

- a. Data of the City and work product developed under this Agreement to the extent that the foregoing is not Consultant's intellectual property
- b. Notwithstanding the foregoing, all data and information generated by City or coming into the hands of the City shall be governed by the provisions of Minnesota Statutes Chapter 13 known as the Minnesota Government Data Practices Act.
- c. Nothing herein shall in any way prevent City from using all data and information generated by City or coming into the hands of the City resulting from the use of the Software and applications or any resulting information pertaining to said Software or applications for

use in implementing its asset management and maintenance functions or from using such information, including transferring such information to third parties in order to comply with requirements of the EPA or MPCA , provided, however, that if any Consultant-proprietary products, software or other intellectual property is subject to such disclosure, then City will provide reasonably advanced notice of such proposed disclosure so that Consultant will be afforded an opportunity to contest such disclosure.

F. Ownership of Data

All survey notes, reports, design plans, specifications, special studies, records and other data prepared under this Agreement shall become the property of City upon completion or termination of the Services of Consultant. For the avoidance of doubt, however, Consultant shall retain all right and title to any Services deliverables it provides which constitute derivative works of Consultant's proprietary Software or its proprietary methodologies, know-how or practices, and nothing in the first sentence of this Paragraph shall serve to abrogate or mitigate such ownership rights. For purposes of this Paragraph, "derivative work" shall have the meaning ascribed to such term as set forth in the U.S. Copyright Act, 18 U.S.C. Sec. 201 et al. Subject to all of the terms and conditions of this Agreement, Consultant grants the City a perpetual, non-exclusive, non-transferable license (without the right to sublease or sublicense) to use and copy for use the derivative works that belong to Consultant. The City shall continue to own all City proprietary and/or City confidential data including all data,

confidential information, and work processes. Consultant shall continue to own and will own all right, title and interest to the Services and any work product generated from the Services, and the City will execute and deliver to Consultant any documents reasonably necessary to vest in Infor all right, title and interest therein.

ARTICLE IX

Independent Contractor

It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting Consultant as an agent, representative or employee of City for any purpose or in any manner whatsoever. Consultant and any officers or employees thereof shall not be considered an employee of City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of Consultant while so engaged and any and all claims whatsoever on behalf of Consultant arising out of employment or alleged employment, including without limitation, claims of discrimination against City, its officers, agents, contractors or employees shall in no way be the responsibility of City. Consultant and its officers, agents, contractors and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay. Furthermore, City shall not, in any way, be responsible to defend, indemnify or save harmless Consultant from liability or judgments arising out of the intentional or negligent acts or omissions of Consultant or any of its employees or consultants while performing the Services specified by this Agreement.

ARTICLE X

Indemnity and Insurance

A. indemnity

Consultant agrees that it shall defend, indemnify and save harmless, City and its officers, agents, servants and employees from and against any and all third party claims, demands, suits, judgments, costs and expenses asserted by any person or persons, including agents or employees of City or of Consultant, by reason of the death of or injury to person or persons or the loss of or damage to tangible property arising out of Consultant's performance of its Services obligations under this Agreement. On ten (10) days' written notice from any of City, Consultant will appear and defend all lawsuits against City growing out of such injuries or damages. Provided that nothing contained in the Exhibits to this agreement shall in any way limit the defense, indemnification and hold harmless obligations of Consultant as set forth in this Article.

B. Insurance

1. Liability Insurance

Consultant shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than One Million Five Hundred Thousand and No/100s (\$1,500,000.00) Dollars aggregate per occurrence for personal bodily injury and death, and limits of One Million Five Hundred Thousand and No/100s (\$1,500,000.00) Dollars for Leased Premises damage liability. If person limits are specified, they shall be for

not less than One Million Five Hundred Thousand and No/100s (\$1,500,000.00) Dollars per person and be for the same coverages. The City shall be named as an additional insured therein. Insurance shall cover:

- a. Public liability.
- b. Independent contractors--protective contingent liability.
- c. Personal injury.
- d. Contractual liability covering the indemnity obligations set forth herein.

2. Workers' Compensation

Consultant shall procure and maintain continuously in force Workers' Compensation Coverage in statutory amounts with "all states" endorsement. Employees liability insurance shall be carried in limits meeting or exceeding the requirements of the State of Minnesota for such insurance.

3. Professional Liability Insurance

Consultant shall procure and maintain continuously in force Professional Liability Insurance in an amount not less than \$1,000,000 combined single limit in any year; and if the "Accord Form" of certificate is used, the words "endeavor to" shall be stricken therefrom. Provided further, that in the event that the Professional Malpractice Liability Insurance is in the form of "Claims Made" insurance, sixty (60) days• notice prior to any cancellation or modification shall be required; and in such event, Consultant agrees to

provide City with either evidence of new insurance coverage conforming to the provisions of this Paragraph which will provide unbroken protection to City or, in the alternative, to purchase, at its own cost, extended coverage under the old policy for the period the Statute of Repose runs; the protection to be provided by said "Claims Made" insurance shall remain in place until the running of the Statute of Repose for claims related to Services provided under this Agreement.

C. Requirements for All Insurance

All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota. City shall be named as an "additional named insured" on each liability policy other than the Professional Liability and Workers' Compensation policies of Consultant.

D. Certifications

Lessee to provide Certificate of Insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provisions included. City does not represent or guarantee that these types or limits of coverage are adequate to protect the Lessee's interests and liabilities. If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to City will render any such change or changes in said policy or coverages

ineffective as against the City. Lessee shall be permitted to obtain the insurance required under this Lease Agreement on a "blanket" basis, and shall be entitled to satisfy any insurance requirements with a combination of primary liability and umbrella coverage.

ARTICLE XI

Civil Rights Assurances

Consultant, for itself and all Team members and their officers, agents, servants and employees as part of the consideration under this Agreement, does hereby covenant and agree that:

- A. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation and/or disability shall be excluded from any participation in, denied any benefits of or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
- B. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code and any regulations and executive orders which may be affected with regard thereto

ARTICLE XII

RULES AND REGULATIONS

Both parties hereto agree to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and City and their respective agencies which are applicable to its activities under this Agreement.

ARTICLE XIII

Force Majeure

Under the terms of this Agreement, neither the Consultant nor City shall be considered in default or in breach of any of the terms with respect to the performance of their respective obligations under this Agreement in the event of enforced delay in the performance of its obligations due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to acts of God, acts of a public enemy, acts of the federal government, acts of another party, fire, floods, epidemics, strikes or embargoes, or for delays of contractors or subcontractors due to such causes. In the event of any such delay, any time for completion or delivery under this Agreement shall be extended for the period of any such delay upon written notice from the party seeking the extension to the other party.

ARTICLE XIV

Notices

Notice to City or Consultant provided for herein shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time:

City: City of Duluth
Director of Public Works and Utilities
411 West First Street Room 202
City Hall
Duluth, MN 55802

Consultant: Infor (US), Inc.
13560 Morris Road
Alpharetta, Georgia 30004

ARTICLE XV

WAIVER

Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

ARTICLE XVI

Applicable Law

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. Any legal action arising under or out of this Agreement shall be venued in courts located in the State of Minnesota.

ARTICLE XVII

Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

ARTICLE XVIII

Entire Agreement

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral and written agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

CITY OF DULUTH

INFOR (US), INC. a Delaware Corp.

By _____
Mayor

By _____

Its: _____

Attest:

City Clerk
Date Attested: _____

Countersigned:

City Auditor

As to form:

City Attorney