

CONTRACT
FOR SERVICES OVER \$20,000

ANY ALTERATIONS OF CONTRACT LANGUAGE WILL RESULT IN REVOCATION OF CITY ATTORNEY APPROVAL.

This Contract for Backflow Compliance Office database management services is entered into by and between Tokay Software, Inc (herein referred to as “Contractor”), and the City of Columbus, Department of Public Utilities (herein referred to as “City”).

WITNESSETH

WHEREAS, the City has a need for a computerized database management system; and

WHEREAS, the Contractor has the necessary experience and expertise to provide said service; and

WHEREAS, this Contract is authorized by Ordinance No. 0783-2016, passed by Columbus City Council on _____; and

NOW, THEREFORE, in consideration of the mutual promises as hereinafter set forth, the parties agree as follows:

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof. Understandings, agreements, representations, or warranties not contained in this Contract, or as written amendment hereto, shall not be binding on either party. Except as provided herein, no alteration of any terms, conditions, delivery, price, quality, or specifications of this Contract shall be binding on either party without the written consent of both parties. This Contract is subject to the Ohio Public Records Act.

1.

1. Contract Term

Services under this agreement are to be provided over a period of approximately ten (10) years beginning June 1, 2016 to February 28, 2026.

2. Maximum Obligation

Funds for the project shall be reviewed and approved each year of the ten year contract by City Council and the Mayor, and Auditor’s certification of funds. Notwithstanding any provision in this Agreement to the contrary, the maximum obligation of the CITY for services described in this agreement for the period commencing on June 1, 2016 through February 28, 2017 (“Phase 1”) is limited to the amount of forty-three thousand, two hundred and sixty-two dollars and fifty cents (\$ 43,262.50), unless all the following occur: this Agreement is modified in writing; City Council enacts an ordinance approving the new amount; the Mayor has authorized the additional amount; and the Auditor has certified the additional funds. The CITY is not obligated to spend the maximum obligation authorized under this Agreement.

Costs under this agreement for each of the nine (9) one year periods from March 1, through February 28, beginning March 1, 2017 are estimated at forty-five thousand, three hundred, and fifty dollars (\$45,350).

3. Pricing and Scope of Services

The Contractor agrees to perform and invoice the Scope of Services as set forth **ON ATTACHED EXHIBIT A*** and as contained in the bid specifications, which are expressly incorporated herein.

*Contract is NOT valid if the Scope of Services is NOT attached.

No other costs, rates, or fees shall be payable to the Contractor for services performed hereunder. The terms and conditions specified in this Contract constitute the entire contract governing the purchase of services by the City from the Contractor, and shall supersede any terms and conditions which may accompany Contractor’s invoice/bid/estimate. Any and all verbal representations are superseded by this

Contract. The terms of this Contract shall prevail over any conflicting or deficient terms or conditions listed in any attachments from Contractor.

4. Equal Opportunity Clause

Contractor agrees to abide by all of the terms, conditions and requirements set forth in Columbus City Code Section 3909.01(B), Equal Opportunity Clause. Failure or refusal of a Contractor or Subcontractor to comply with the provisions of Article I, Title 39, may result in cancellation of this Contract.

5. Taxes

Federal or State taxes are not to be included on invoices for the described services. Contractor will be provided an exemption certificate, if needed.

6. City's Contract Administrator/Contract Administration

George F. Meyers, Backflow Compliance Office Manager will manage the Contract on behalf of the City and will be the principal point of contact for the City concerning the Contractor's performance under this Contract.

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall only be effective if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Services as first-class certified mail, postage prepaid and return receipt requested, to the parties at the following addresses:

(List names and addresses of City and Contractor contact persons below.)

7. Contractor as an Independent Contractor

The Contractor shall be and shall remain an Independent Contractor with respect to all services performed hereunder and neither Contractor nor its employees shall be considered "public employees" for purposes of OPERS membership. Contractor agrees to and does hereby accept full and exclusive liability for the 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 state or federal law which are measured by the wages, salaries or other remunerations paid to the Contractor or persons employed by the Contractor for work performed under the terms of this Agreement 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.

Individuals utilizing a personal social security number for tax identification purposes and business entities with four (4) or fewer employees must complete and submit, as Exhibit D, the OPERS independent contractor acknowledgment form. THIS FORM CAN BE FOUND AT WWW.OPERS.ORG

8. Applicable Law, Remedies

This Agreement shall be governed in accordance with the laws of the State of Ohio and the ordinances, statutes and provisions of the Columbus City Code and Charter; specifically including, but not limited to Charter Sections 159 and 161. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and the Contractor arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within the County of Franklin, State of Ohio.

9. Payment/Invoice Submittal

Fees shall be paid for services rendered following: (1) the City's receipt of a correct invoice, which designates the specific applicable charges, and (2) issuance of a certified purchase order. The City will not be subject to any late payment charges. Rates shall be firm during the term of this Contract. The City will process correctly documented invoices for payment and Contractor should receive payment for such invoice within thirty (30) days from receipt and approval by the City.

Invoices: All invoices shall be submitted to the address listed on the Purchase Order.

10. Modifications

No modification, amendment, alteration, addition or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by an authorized representative of the City and the Contractor and approved by the appropriate City authorities.

11. Contract Termination

If either the City or the Contractor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party (the "responsible party") written notice of such failure or violation. The responsible party will correct the violation or failure within thirty (30) calendar days or as otherwise mutually agreed. If the failure or violation is not corrected, this Contract may be terminated immediately by written notice from the aggrieved party. The option to terminate shall be at the sole discretion of the aggrieved party.

When it is in the best interest of the City, the City may terminate this Contract, in whole or in part by providing seven (7) calendar days written notice to the Contractor prior to the effective date of termination. If this Contract is so terminated, the City is liable only for payments required by the terms of this Contract for services received and accepted by the City.

12. Nonexclusive Remedies

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under the law.

13. Survivorship

All services executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, prices discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Contract, or any extension thereof. Further, the terms, conditions, and warranties contained in this Contract that by their sense in context are intended to survive this completion of the performance, cancellation or termination of this Contract, shall so survive.

14. Save Harmless

Contractor shall protect, indemnify and save the City harmless from and against any damage, cost, or liability, including reasonable attorneys' fees, resulting from claims for any or all injuries to persons or damage to property arising from intentional, willful or negligent acts or omissions of Contractor, its officers, employees, agents, or Subcontractors.

15. Severability

If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions for the Contract are declared severable.

16. Assignment

This Contract may not be assigned or otherwise transferred to others by the Contractor without the prior written consent of the City. If this Contract is so assigned, it shall inure to the benefit of and be binding upon any respective successors and assigns (including successive, as well as immediate, successors and assignees) of the Contractor.

17. Authority to Bind

The signatories to this Contract represent that they have the authority to bind themselves and their respective organizations to this Contract.

18. Worker's Compensation

The Contractor shall comply with all Workers' Compensation laws of the State of Ohio. **Proof of coverage shall be attached to this Contract AS EXHIBIT B.**

19. Insurance/Indemnity

Contractor shall carry at least the minimum amounts listed below of Commercial Liability Insurance (Bodily Injury and Property Damage) naming the City as an additional insured. **Contractor must attach a copy of the Certificate of Insurance to this Contract AS EXHIBIT C:**

Bodily Injury Liability:

Each Person \$500,000
Each Accident \$1,000,000

Property Damage Liability:

Each Accident \$500,000
All Accidents \$1,000,000

20. Campaign Contributions

Contractor hereby certifies the following: that it is familiar with Ohio Revised Code ("O.R.C.") Section 3517.13; that it is in full compliance with Divisions (I) and (J) of that Section; that it is eligible for this contract under the law and will remain in compliance with O.R.C. Section 3517.13 for the duration of this contract and for one year thereafter.

21. City Income Taxes

Contractor hereby further agrees to withhold and pay all city income taxes due or payable under the provisions of Chapter 361, Columbus City Codes, for wages, salaries and commissions paid to its employees and further agrees that any of its subcontractors shall be required to agree to withhold and pay any such city income taxes due under said chapter for services performed under this Contract. If it has been determined by the Columbus Income Tax Division that Contractor, or any of its subcontractors, owes city income taxes, the Contractor agrees that the City may withhold the amount due to the City from any amount due to the Contractor for services performed under this Contract notwithstanding paragraph 9 hereinabove.

IN WITNESS WHEREOF, the parties have executed this Contract as of the day and year written below.

EXHIBITS A, B AND C MUST BE ATTACHED HERETO.

ANY ALTERATIONS OF CONTRACT LANGUAGE WILL RESULT IN REVOCATION OF CITY ATTORNEY APPROVAL.

CITY OF COLUMBUS

EBOCO Approval _____

Signature Date

Approved As To Form:

Printed Name, Title and Department

City Attorney Date

CONTRACTOR

Signature Date

Please list remit address below:

Printed Name and Title
Federal ID Number:_____

CONTRACT SIGNATURE AFFIDAVIT

(Must be completed when the individual signing the Contract is NOT an officer or Member of the Company.)

STATE OF: _____

COUNTY OF: _____

_____, being duly sworn, deposes and says that he/she is
_____ of _____, a Corporation, LLC, or LLP organized and existing under and by
(Title) (Company Name)

virtue of the laws of the State of _____, and having its principal office at

City, State, Zip Code

Affiant further says that he/she is familiar with the records, minute books and by-laws of

(Company Name)

Affiant further says that _____ is _____
(Name of Person Signing Contract) (Title)

Of the Company and is duly authorized to sign the Contract for : _____

For said Company by virtue of _____
(State whether the provision of by-laws or a resolution of the Board of Directors. If resolution, give date of adoption.)

Signature of Affiant**

**** AFFIANT MUST BE SOMEONE OTHER THAN THE INDIVIDUAL SIGNING THE CONTRACT.****

Sworn to before me and subscribed in my presence this _____ day of _____ 20____

Notary Public

My Commission Expires: _____