

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 **SECOND ADDENDUM TO PURCHASE ORDER NO. BPFM07000005**

2 **30318**

3 This Addendum is made to the Purchase Order agreement between the City of
4 Long Beach and Affinity Source Inc., as follows:

- 5 1. Consultant agrees to furnish specialized services delineated in Attachment "A",
6 in an amount not to exceed One Hundred Forty Thousand (\$140,000.00).
7 2. The City Manager for the City of Long Beach shall have the option of renewing
8 this agreement annually for a term of two additional years.

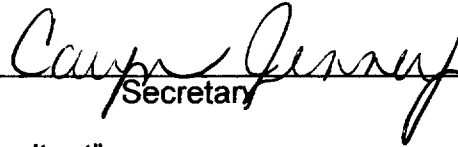
9 Except as expressly amended herein, all of the terms and conditions in Purchase
10 Order BPFM07000005, are ratified and confirmed and shall remain in full force and
11 effect.

12 AFFINITY SOURCE, INC.

13 DATED: September 20, 2007

By: 
Vice-President

15 DATED: September 10, 2007

By: 
Secretary
"Consultant"

CITY OF LONG BEACH

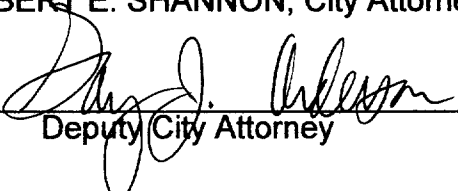
19 DATED: 10/28, 2007

By: 
City Manager

"City"

22 This Addendum is approved as to form on Oct. 15, 2007.

23 ROBERT E. SHANNON, City Attorney

24 By: 
25 Deputy City Attorney



Attachment "A"

July 31, 2007

Ms. Elizabeth Haynes
Technical Systems Officer
City of Long Beach
Department of Finance
333 West Ocean Blvd.
Sixth Floor
Long Beach, CA 90802

Subject: Financial Management System Maintenance and Support Services

Dear Elizabeth:

In response to your request, Affinity Source Inc. (Affinity) is pleased to submit this proposal to the City of Long Beach (the City) to provide services related to the maintenance and support of your financial management system (FMS) for fiscal year 2008. We are very pleased that you are happy with our performance in providing services to you over the past eight months and are interested in expanding the scope of our responsibilities.

We understand that the City would like Affinity to continue to provide support services for your internal technical and functional financial management system projects, and would like to expand the scope of these production support activities to include maintenance activities previously provided by your FMS software vendor.

With that in mind, we would like to provide the following summary of our proposed services.

Support Activities

Overview

Since December 2006, Affinity has been providing both production support and project support services to the City for its FMS. The production support services included production problem determination, installation of update packages provided by the FMS vendor, and installation of critical software patches provided by the FMS vendor. The project support services included functional and technical assistance with such critical processes as Vendor Recast and Index Code Recast, and identification/correction of various data issues.

The Affinity team can continue to provide the invaluable production and project support services, and also provide the necessary maintenance support services that the City is seeking to replace. We propose a unique bundling of production support, project support, and maintenance support, combining all these services in one contract for a fixed price. Not only does this allow us to offer the City very competitive pricing, it provides unprecedented flexibility to the City in responding to the needs of its FMS users.



Description of Services

Affinity will perform the following services for the City.

Production Support Services

- Perform problem determination for production issues related to the City's FMS software.
- Execute data updates as required.
- Perform unit testing of all changes in the City's development region.
- Migrate all changes to the City's QA Test region.
- Upon the City's approval, migrate all changes to the City's Production region.

Maintenance Support Services

- Log and track all reported problems / defects.
- Correct software defects and/or data updates to resolve problems.
- Document the resolution of software defects / problems and provide written testing instructions.
- Provide functional assistance

Project Support Services

- Provide functional and technical support to the City as needed on specific projects such as Vendor Recast, Index Code Recast, 1099 processing, and custom reporting.
- Provide analysis, design, and programming services to assist the City in the enhancement of its FMS software as needed.
- Submit time estimates and supporting design documentation to the City for approval prior to commencing work on software enhancements.

Other Services

- Provide remote staffing coverage to the City during the hours of 6:30 AM to 6:30 PM Pacific time.
- Be available during non-business hours as necessary to execute critical processes as approved by the City.
- Provide a dedicated email address for the City to submit problems and requests. Affinity staff will monitor the email account daily.
- Provide a problem escalation process to ensure that critical problems are addressed in a timely manner.
- Maintain records of activities performed with hours worked, and provide monthly status reports.



Fees

Affinity will perform the services described above for a monthly fee of \$10,000 (a total of \$120,000 for the twelve-month period from October 1, 2007 to September 30, 2008). Support hours provided will not exceed 960 hours for the twelve-month period. In the event the City uses all 960 hours prior to the end of September 30, 2008, the City has the option of utilizing additional support hours on a time and materials basis at Affinity's standard rate of \$125/hour. Affinity will issue invoices to the City on a monthly basis beginning on October 1, 2007 and on the 1st day of each subsequent month. The monthly status reports provided with the invoices will include a balance of hours remaining on the contract to assist the City in its planning.

Assumptions

- All work shall be performed offsite.
- The City shall provide remote access to all Affinity resources providing the support services, at no cost to Affinity.
- If the City requires that work be performed onsite, the City shall reimburse Affinity for all reasonable travel expenses.
- The City shall provide Affinity access to FMS documentation as required to perform the services.

Staffing

Affinity proposes the following staff for this project. Occasionally, Affinity may need to utilize other staff on a project, subject to the approval of the City.

- **Caryn Jenney:** Caryn has over 18 years of experience in the public sector with a focus in the design, development, implementation, and maintenance of the financial management system used by the City. Caryn has provided services to the City on several projects over the past 16 years, and has an in-depth knowledge of the City's systems environment. Caryn will serve as the technical lead for all work done for the City.
- **Donna Wukasch:** Donna has over 16 years of public sector experience, including more than 11 years working with the financial management system used by the City. Donna has worked with the City on various projects, and is familiar with the City's financial management system and business processes. Donna will serve as the project manager, and will also provide functional support to the City.





Affinity is committed to the success of your projects, and we are confident that we can provide the services the City needs in a very cost-effective manner. We look forward to working with the City as a partner on this and future projects. Please feel free to contact me to discuss any questions you might have.

Sincerely yours,

Donna Wukasch
Vice President
954-693-4991
dwukasch@affinitysource.com

c: Caryn Jenney

ATTACHMENT TO PURCHASE ORDER NO. BPFM07000005

FOR PROFESSIONAL SERVICES EQUAL TO OR UNDER \$100,000 (CITY)

ADDITIONAL TERMS AND CONDITIONS

1. All references in the General Conditions of the Purchase Order to "Supplier" shall mean and include Consultant.

2. Consultant shall furnish specialized services in accordance with the standards of the profession and as set forth on the Purchase Order and any attachments thereto or hereto, not to exceed \$ 93,000.00. Consultant may select the time and place of performance hereunder provided, however, that access to documents, records, and the like, of the City, if needed by Consultant, shall be available only during City's normal business hours. City shall pay Consultant in due course of payments following receipt from Consultant and approval by City of an itemized statement showing the services performed, the time expended (if billing is hourly), and the name of the project. Consultant shall certify on the statement that Consultant has performed the services in full conformance with the Purchase Order and is entitled to receive payment.

3. As an independent contractor and not an employee, representative, or agent of City, Consultant shall have control of Consultant's work and the manner in which it is performed. Consultant shall be free to contract for similar services to be performed for others during the term of the Purchase Order. Consultant acknowledges and agrees that a) City will not withhold taxes of any kind from Consultant's compensation, b) City will not secure workers' compensation or pay unemployment insurance to, for or on Consultant's behalf, and c) City will not provide and Consultant is not entitled to any of the usual and customary rights, benefits or privileges of City employees. Consultant expressly warrants that neither Consultant nor any of its/his/her employees or agents shall represent themselves to be employees or agents of City.

4. Notwithstanding anything to the contrary in the Purchase Order, and as a condition precedent to the effectiveness of the Purchase Order, Consultant shall procure and maintain at Consultant's expense for the duration of the Purchase Order from insurance companies that are admitted to write insurance in California or from authorized non-admitted insurance companies that have ratings of or equivalent to A:VIII by A.M. Best Company:

(a) Commercial general liability insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. Such coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractors liability, and products and completed operations liability. The City, its officials, employees and agents shall be named as additional insureds by endorsement (on the City's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or to both CG 20 10 10 01 and CG 20 37 10 01), and this insurance shall contain no special limitations on the scope of protection given to the City, its officials, employees and agents.

(b) Workers' compensation insurance as required by the California Labor Code and employer's liability insurance in an amount not less than \$1,000,000 per accident.

(c) Professional liability errors and omissions insurance in an amount not less than \$1,000,000 per claim.

(d) Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto), in an amount not less than Five Hundred Thousand Dollars (\$500,000) combined single limit per accident.

Any self-insurance program, self-insured retention, or deductible must be separately approved in writing by City's Risk Manager or designee and shall protect the City, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions. Each insurance policy shall be endorsed to state that coverage shall not be reduced in coverage, nonrenewed, or canceled except after thirty (30) days prior written notice to City, and shall be primary and not contributing to any other insurance or self-insurance maintained by the City, its officials, employees and agents. Consultant shall notify the City within five (5) days after any insurance required herein has been voided by the insurer or cancelled by the insured.

Consultant shall require that all contractors, subcontractors and sub-consultants which Consultant uses in the performance of services under the Purchase Order maintain insurance in compliance with this Section unless otherwise agreed in writing by City's Risk Manager or designee.

Prior to the start of performance under the Purchase Order, Consultant shall deliver to City certificates of insurance and required endorsements, including any insurance required of Consultant's contractors, subcontractors and sub-consultants for approval as to sufficiency and form. The certificates and endorsements shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. In addition, Consultant shall, at least thirty (30) days prior to expiration of the insurance required hereunder, furnish to the City certificates of insurance and endorsements evidencing renewal of such insurance. City reserves the right to require complete certified copies of all policies of Consultant and Consultant's contractors, subcontractors and sub-consultants at any time. Consultant and Consultant's contractors, subcontractors and sub-consultants shall make available to the City all books, records and other information relating to the insurance coverage required herein during normal business hours.

Any modification or waiver of the insurance requirements herein shall only be made with the written approval of the City's Risk Manager or designee. Not more frequently than once a year, the City's Risk Manager or designee may require that Consultant, Consultant's contractors, subcontractors and sub-consultants change the amount, scope or types of coverages required herein if, in his or her sole opinion, the amount, scope, or types of coverages herein are not adequate.

The procuring or existence of insurance shall not be construed or deemed as a limitation on liability relating to Consultant's performance of services or as full performance of or compliance with the indemnification provisions herein.

5. The Purchase Order contemplates the personal services of Consultant and Consultant's employees, and the parties acknowledge that a substantial inducement to City for entering it was and is the professional reputation and competence of Consultant and Consultant's employees. Consultant shall not assign any interest herein, or any portion hereof, without the prior approval of the City Manager, except that Consultant may with the prior approval of the City Manager assign any moneys due or to become due the Consultant hereunder. Any attempted assignment or delegation shall be void, and any assignee or delegate shall acquire no right or interest by reason of such attempted assignment or delegation. Furthermore, Consultant shall not subcontract any portion of the performance required hereunder without the prior approval of the City Manager or his designee. Nothing

stated in this Section shall prevent Consultant from employing as many employees as Consultant deems necessary for performance hereunder.

6. Consultant, by signing these Additional Terms and Conditions, certifies and shall obtain similar certifications from Consultant's employees, approved subcontractors and approved sub-consultants that, at the time Consultant signs these Additional Terms and Conditions and during the term hereof, Consultant does not and will not perform services for any other client which would create a conflict, whether monetary or otherwise, as between the interests of City hereunder and the interests of such other client.

7. In addition to the items identified in Section 4 of the Purchase Order, Consultant shall furnish all supervision, tools, machinery, appliances, transportation, and services necessary to or used in the performance of Consultant's obligations hereunder.

8. All materials, information and data prepared, developed, or assembled by Consultant or furnished to Consultant in connection herewith, including but not limited to documents, estimates, calculations, studies, maps, graphs, charts, computer disks, computer source documentation, samples, models, reports, summaries, drawings, designs, notes, plans, information, material, and memoranda (hereinafter "Data") shall be the exclusive property of City. Data shall be given to City, and City shall have the unrestricted right to use and disclose the Data in any manner and for any purpose without payment of further compensation to Consultant. Copies of Data may be retained by Consultant but Consultant warrants that Data shall not be made available to any person or entity for use without the prior approval of City. Said warranty shall survive termination of the Purchase Order for five (5) years. To the extent the Data is covered by copyright laws, then Consultant hereby assigns its ownership rights in said copyright and Data to the City reserving a nonexclusive license to use the Data with the prior approval of the City.

9. Notwithstanding anything to the contrary in the Purchase Order, City shall have the right to terminate the Purchase Order for any reason or no reason at any time by giving five (5) calendar days' prior notice to Consultant. In the event of termination pursuant to this Section, City shall pay Consultant for services satisfactorily performed up to the effective date of termination for which Consultant has not been previously paid but City shall have no obligation to have Consultant perform services after notice of termination has been given. The procedures for payment above with regard to an itemized statement shall apply. On the effective date of termination, Consultant shall deliver to City all Data developed or accumulated in performance hereunder, whether in draft or final form, or in process.

10. Consultant shall keep the Data confidential and shall not disclose the Data or use the Data directly or indirectly other than in the course of services provided hereunder during the term of the Purchase Order and for five (5) years following expiration or termination hereof. In addition, Consultant shall keep confidential all information, whether written, oral, or visual, obtained by any means whatsoever in the course of Consultant's performance hereunder for the same period of time. Consultant shall not disclose any or all of the Data to any third party, nor use it for Consultant's own benefit or the benefit of others except for the purpose of the Purchase Order.

11. Consultant shall not be liable for a breach of confidentiality with respect to Data that:

- a. Consultant demonstrates Consultant knew prior to the time City disclosed it; or
- b. Is or becomes publicly available without breach of the Purchase Order by Consultant; or
- c. A third party who has a right to disclose does so to Consultant without restrictions

on further disclosure; or

d. Must be disclosed pursuant to subpoena or court order.

12. If, in the opinion of City, the Data or services performed by Consultant requires correction during a one-year period following termination or expiration hereof, Consultant shall make said corrections at no additional charge or cost to City. The corrective action required hereunder shall be in addition to any other rights or remedies City may have.

13. No provision or breach of the Purchase Order, including these Additional Terms and Conditions, shall be waived, except in writing signed by the parties which expressly refers to the Purchase Order.

14. The Purchase Order, including these Additional Terms and Conditions, constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter herein.

15. Notwithstanding anything to the contrary in Section 7 of the General Conditions of the Purchase Order, Consultant shall, with respect to all services performed hereunder, indemnify and hold harmless the City, its Boards and commissions, and their officials, employees, and agents (collectively in this Section, "City") from and against any and all liability, claims, demands, damage, loss, causes of action, proceedings, penalties, costs and expenses (including but not limited to attorney's fees, court costs, and expert and witness fees)(collectively "Claims" or individually "Claim"). Claims include allegations and include by way of example but are not limited to: Claims for property damage, personal injury or death arising, in whole or in part, from any negligent act or omission of Consultant, its officers, employees, agents, invitees, sub-consultants, or anyone under Consultant's control (collectively "Indemnitor"); Consultant's breach of this Purchase Order and Additional Terms and Conditions; misrepresentation; willful misconduct; and Claims by any employee of Indemnitor relating in any way to worker's compensation. Independent of the indemnification duty and as a free-standing duty on the part of Consultant, Consultant shall defend City and shall continue such defense until the Claim is resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of Indemnitor shall be required for the duty to defend to arise.

Consultant shall give to the City notice of any Claim within ten (10) calendar days. Likewise, the City shall notify Consultant of any Claim, shall tender the defense of such Claim to Consultant, and shall assist Consultant, as may be reasonably requested, in such defense.

16. In the event of any conflict or ambiguity between the Purchase Order and these Additional Terms and Conditions, the provisions of these Additional Terms and Conditions shall govern.

17. If there is any legal proceeding between the parties to enforce or interpret the Purchase Order, including these Additional Terms and Conditions, or to protect or establish any rights or remedies hereunder, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees.

18. Any notice or approval required hereunder by either party shall be in writing and personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid to City at 333 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager and to Consultant at the address shown on the Purchase Order. Notice of change of address shall be given in the same manner as stated herein for other notices. Notice shall be deemed given on the date deposited in the mail or on the date personal delivery is made, whichever first occurs.

19. The acceptance of any services or payment of any money by City shall not operate as a waiver of any provision hereof, or of any right to damages or indemnity stated herein. The waiver of any breach hereof shall not constitute a waiver of any other or subsequent breach.

20. City shall have the right at all reasonable times during the term hereof and for a two-year period following completion of Consultant's performance hereunder or following termination hereof to examine, audit, inspect, review, extract information from, and copy all books, records, accounts and other documents relating hereto.

21. The parties acknowledge that a substantial inducement to City for entering the Purchase Order was and is the reputation and skill of Consultant's key employee Caryn Jenney. City shall have the right to approve any person proposed by Consultant to replace that key employee.

22. Consultant shall place the following copyright protection on all Data: © City of Long Beach, California ____ (inserting the appropriate year). As described above, City reserves the exclusive right to seek and obtain a patent or copyright registration on any Data or other result arising from Consultant's performance hereunder. Consultant warrants that the Data does not violate or infringe any patent, copyright, trade secret or other proprietary right of any other party. The indemnity provisions hereof shall apply to any breach or alleged breach of this warranty.

23. Termination or expiration of the Purchase Order shall not affect rights or liabilities which accrued under the Purchase Order or these Additional Terms and Conditions prior to termination or expiration of the Purchase Order, and shall not extinguish any warranties hereunder.

24. As required by federal and state law, City is obligated and will report the payment of compensation to Consultant on Form 1099-Misc. Consultant shall be solely responsible for payment of all federal and state taxes resulting from payments hereunder. Consultant's Employer Identification Number is [REDACTED]. If Consultant has a Social Security Number rather than an Employer Identification Number, then Consultant shall submit that Social Security Number in writing to City's Accounts Payable Division, Department of Financial Management. Consultant acknowledges and agrees that City has no obligation to pay Consultant hereunder until Consultant provides one of the aforesaid Numbers.

25. Consultant acknowledges and agrees that the services to be performed hereunder do not constitute a peculiar risk of bodily harm and that no special precautions are required to perform said services.

26. The Purchase Order is intended by the parties to benefit themselves only and is not in any way intended or designed to or entered for the purpose of creating any benefit or right for any person or entity of any kind that is not a party to the Purchase Order.

27. Consultant shall not use the name of City, its officials or employees in any advertising or solicitation for business, nor as a reference, without the prior approval of the City Manager or designee.

28. Subject to federal laws, rules and regulations, Consultant shall not discriminate in employment or in the performance of this Purchase Order on the basis of race, religion, national origin, color, age, sex, sexual orientation, AIDS, HIV status, handicap, or disability.

Consultant acknowledges and agrees to these Additional Terms and Conditions by signing below. Consultant shall return these Additional Terms and Conditions to the City after execution. The Purchase Order shall not be valid until the City has received these

signed Additional Terms and Conditions.

Consultant's Signature,
if an individual:

Consultant's Name,
if a corporation

Affinity Source Inc.

By Don Whit
President

By Camp Jenson
Secretary

Consultant's Name,
if a partnership

By _____
General Partner

Consultant's Name,
if a limited liability company

By _____
Manager or Member

DFG:3-26-01;7-8-03;9-21-05(AddtlTerms\$100000Consultant)
I:\Atty\AddtlTerms\$100000Consultant..wpd