

AVOLVE SOFTWARE CORP

SOFTWARE LICENSE AND SERVICES AGREEMENT
TERMS AND CONDITIONS

This Agreement ("Agreement") is made this, 12/21/10 between AVOLVE SOFTWARE Corporation ("Licensor"), a Delaware corporation, having its principal place of business at 4835 E. Cactus Road, Suite 420, Scottsdale, Arizona 85254, United States of America, and the City of Ocala, FL, a Florida Municipal Corporation, with its principal place of business at 151 SE Osceola Avenue, Ocala, FL, 34471. ("Licensee")

WHEREAS Licensor has created a computer software program called ProjectDox ("Software") hereafter more fully described;

Whereas Licensor's software has unique functionality unavailable from other software providers as described in Attachment 5

WHEREAS the parties wish to provide the terms and conditions under which the Licensor will provide the Software for the use by Licensee;

IN CONSIDERATION OF THIS GRANT OF LICENSE and the terms and covenants herein, the receipt and sufficiency of which is acknowledged by all parties, the parties agree as follows:

I. Licensor Obligations.

a. **Single Jurisdiction License Grant.** So long as the Licensee complies with the terms of this Agreement, the Licensor grants to the Licensee, subject to the terms, conditions, and limitations hereof, the non-transferable (except as set forth in Section 11 below), non-exclusive right to use and permit its Users to use the Software for the term set out herein solely for Licensee's business operations. The rights granted to Licensee under this Agreement are subject to the following restrictions: (i) except as expressly stated herein to the contrary, Licensee shall not license, sell, rent, lease, copy, transfer, assign, distribute, display, host, outsource, disclose or otherwise commercially exploit or make the Software available to any third party; or (ii) Licensee shall not modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Software, or access or use the Software in order to build a similar or competitive product or service.

b. **Scope of Grant.**

Licensee may:

- Make one copy of the Software for archival purposes, if the copy contains all of the original Software's proprietary notices;
- Use the Application Programming Interfaces ("APIs") of the Software to program those APIs (a "Custom Application") but only as described in the documentation for the Software and only to the extent necessary to permit the Licensee's Custom Application to function with the Software through the APIs as described in the Documentation;
- Use the Software solely for publishing, displaying, marking up and making accessible internal documents and documents posted by any of Licensee's customers or vendors.

Licensee may not:

- Permit other individuals to use the Software except under the terms listed above;
- Permit concurrent use of the Software, except where a load balanced license of the Software has been purchased as an option;
- Use any Custom Application on any computer server other than the computer server on which the Software is installed without purchasing additional licenses for each additional computer server on which Licensee wishes to use the Custom Application.

c. **Training, Technical Support and Deliverables.** Licensor shall provide the education, training and technical support services and deliverables according to the allocation of time as outlined in Attachment 1, attached hereto and incorporated herein by this reference.

d. **Maintenance Services.** Licensor shall provide the maintenance services described in Attachment 2, attached hereto and incorporated herein by this reference.

2. **Ownership.** Licensee acknowledges and agrees that Licensor owns all right, title, and interest in and to all intellectual property rights (including all derivatives or improvements thereof) in the Software and any suggestions, enhancements requests,

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feedback, recommendations or other information provided by Licensee or any of its Users related to the Software. Licensee's rights in the Software, updates, and the related materials supplied by the Licensor pursuant to this Agreement are strictly limited to the right to use the proprietary rights in accordance with the terms of this Agreement. No right of ownership, expressed or implied, is granted under this Agreement.

3. License Fees. The license fees paid by Licensee and set forth in Attachment 3, attached hereto and incorporated herein by this reference, are paid in consideration of the licenses granted under this Agreement. The license fees constitute a flat rate payment for an enterprise wide license. All Fees are due in full within thirty (30) calendar days from the date of the Licensor's invoice, such fees being irrevocable, and non-refundable. Licensee agrees to provide Licensor with complete and accurate billing and contact information. Overdue payments shall bear interest commencing thirty (30) days after the due date until paid at the rate of prime plus two (2) percentage points per annum, or the maximum charge permitted by law, whichever is less. Any amounts payable pursuant to this Agreement are exclusive of all taxes of any kind. If taxes of any sort (other than Licensor's income taxes or withholding taxes) are imposed by any taxing authority, they shall be paid by Licensee in addition to all amounts specified in this Agreement. To the extent Licensee is exempt from sales or other taxes; Licensee agrees to provide Licensor, upon request, with the appropriate exemption certificates. Under certain circumstances Avolve Software will engage a third party agent to expedite the payment to Licensor in advance of the actual invoice due date. Upon notification Licensee will redirect invoice payments to Factors Southwest instead of being made directly to Avolve Software.

4. Term. The term of this License Agreement shall commence as of the date of this Agreement and shall continue unless and until terminated pursuant Section 5 below.

5. Termination. Licensee may terminate this License Agreement at any time by returning the Software and all copies thereof and extracts thereof to Licensor. Licensor may terminate this License Agreement upon the material breach by Licensee of any term hereof. Upon such termination by Licensor, Licensee agrees to return to Licensor the Software and all copies and portions thereof. Upon termination of this Agreement for any reason, Licensee shall (i) immediately discontinue its use of the Software, and (ii) return to Licensor the original and all copies of all Software and Documentation in whatever form in Licensee's possession, custody or control or, upon the written request of Licensor, destroy all such copies and certify to Licensor in writing that Licensee has complied with all requirements. If Licensor chooses to terminate the the agreement for any reason other than a material breach Licensee is entitled to a prorated refund of funds calculated from the date of termination.

6. Confidentiality. Each party shall hold confidential information of the other in confidence. All confidential information (including but not limited to data) shall (i) remain the sole property of the disclosing party and (ii) be used by the receiving party only as authorized herein. Information will not be considered to be confidential information if (i) available to the public other than by a breach of this agreement; (ii) rightfully received from a third party not in breach of any obligation of confidentiality, (iii) independently developed by or for a party without access to confidential information of the other; (iv) lawfully known to the receiving party at the time of disclosure, (v) produced in compliance with applicable law, securities reporting requirement or a government or court order, provided the other party is given notice and an opportunity to intervene; or (vi) it does not constitute a trade secret and more than three (3) years have elapsed from the date of disclosure.

7. Limited Warranties. Licensor warrants Licensee for a period of thirty (30) days following successful completion of the Project Services set forth in Attachment 1 (referred to as the "Warranty Period") that the Software media is delivered free from defects in material and workmanship. Licensor further warrants, for Licensee's benefit alone, that during the Warranty Period the Software shall operate substantially in accordance with the functional specifications in the User's Manual. If during the Warranty Period, a defect in the Software appears, Licensee may return the Software to Licensor for either replacement or, if so elected by Licensor, refund of amounts paid by Licensee under this License Agreement. Licensee agrees that the foregoing constitutes Licensee's sole and exclusive remedy for breach by Licensor of any warranties made under this Agreement. EXCEPT FOR THE WARRANTIES SET FORTH ABOVE, THE SOFTWARE, AND THE SOFTWARE CONTAINED THEREIN, ARE LICENSED "AS IS," AND LICENSOR DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE LICENSEE ASSUMES THE ENTIRE RISK AS TO THE QUALITY OF PERFORMANCE WITH RESPECT TO THE SOFTWARE AND THE SOFTWARE CONTAINED THEREIN, EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT.

8. Limitation of Liability. SUBJECT TO SUCH LIMITATIONS AS MAY EXIST UNDER CALIFORNIA LAW, LICENSOR'S CUMULATIVE LIABILITY TO LICENSEE OR ANY OTHER PARTY FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE LICENSE FEE PAID TO LICENSOR FOR THE USE OF THE SOFTWARE. IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES

9. **Trademark.** No right, license, or interest to trademarks held by Licensor are granted hereunder, and Licensee agrees that no such right, license, or interest shall be asserted by Licensee with respect to such trademarks.
10. **Support.** For a period pursuant to terms in Attachment 3 following the date of this Agreement, Licensor will furnish Licensee with support by telephone, electronic mail or mail, to assist Licensee in use of the Software. Support for subsequent years is included in the annual maintenance fees. All correspondence relating to the Software and this Agreement should be directed to: Avolve Software Corp., 4835 E. Cactus Road, Suite 420, Scottsdale, AZ 85254.
11. **Governing Law and Venue.** This Agreement shall be governed in accordance with the laws of the State of Florida. The Uniform Computer Information Transactions Act, the United Nations Convention on the International Sale of Goods and choice of law rules of any jurisdiction will not apply to this Agreement. Any legal action or proceeding relating to this Agreement shall be instituted in a state or federal court in Marion County, Florida, and each party hereby submits to the personal jurisdiction of such courts and waives any defense related to venue or forum non convenient.
12. **Indemnification.** The Licensor will defend and hold Licensee harmless from and against any and all costs, liabilities, and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against Licensee to the extent that it is based on a claim that Licensee's use of the Software infringes a copyright, patent, or other intellectual property right enforceable in Canada or the United States; provided that Licensee (a) shall promptly notify Licensor of any claim, demand, action or other proceeding for which Licensee intends to claim indemnification; (b) gives Licensor the right to participate in, and to the extent Licensor so desires jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel selected by Licensor; and (c) reasonably cooperates with Licensor and its legal representatives in the investigation of any claim, demand, action or other proceeding covered by this Section 12. If the Software is held to infringe any intellectual property right, Licensor may, in its sole discretion and at its own expense, either procure a license that will protect Licensee against such claim without cost to Licensee or replace the Software with a non-infringing service with comparable functionality. Provided that Licensor complies with this Section 12, Licensee shall have no additional remedy against Licensor by reason of a third party infringement claim.
13. **Costs of Litigation.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs, and all expenses even if not taxable as court costs (including without limitation, all such fees, costs and expenses incident to arbitration, appellate, bankruptcy and post judgment proceedings) incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorney's fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, and all other charges billed by the attorney to the prevailing party.
14. **Export Restrictions.** Licensee agree to comply strictly with all export laws and restrictions or regulations of the United States or foreign agency or authority, and not to export, or allow the export or re-export of the Software, Documentation or any technical data in violation of any such restriction, law or regulation, without all necessary approvals.
15. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties and supersedes any prior agreements, representation, or understandings, whether oral or written, relating to the Software.
16. **Severability.** Should any court of competent jurisdiction declare any term of this Agreement void or unenforceable, such declaration shall have no effect on the remaining terms hereof.
17. **Waiver.** Neither party's failure to exercise or delay in exercising any right or remedy that it may have under this Agreement shall operate as a waiver of that right or remedy or preclude any other or further exercise of any right or remedy available under this Agreement.
18. **Assignment.** This License, the Licensed Software and any other information or rights provided by Licensor, may not be sold, leased, assigned, sublicensed or otherwise transferred in whole or in part. Licensee may not assign this Agreement or the benefits there from in whole or in part without the prior written consent of Licensor, which consent shall not be unreasonably withheld. Any assignment made in conflict with this provision shall be voidable at the option of the Licensor.
19. **Publicity.** Licensor may identify Licensee on its customer lists and list Licensee as a customer in its marketing and advertising materials, and reproduce Licensee's company name, logo, trademark, trade name, service mark, or other commercial designations, solely in connection therewith.

20. **Notices.** Any notices being given by this Agreement shall be in writing and shall be effective if delivered personally, sent by prepaid courier service, sent by prepaid mail, or sent by facsimile or electronic communication (confirmed on the same or following day by prepaid mail). All correspondence shall be in English and addressed to the parties as follows:

If to Licenser (Avolve Software):

Attn: Ronald Loback
President/CEO
Avolve Software
4835 E. Cactus Road, Suite 420
Scottsdale, Arizona 85254
Phone: 602-971-6061
rloback@avolvesoftware.com

If to Licensee:

Attn: Tye Chighizola
Title: Growth Management Director
Address: 201 SE 3rd Street
Street Ocala FL 34471
Phone: 352-629-8490
Email: tchighizola@ocalafl.org

Any party may change its address for service by notice served as set out above.

21. **Independent Contractor.** The Licenser is an independent contractor and not an employee of the Licensee. Any personnel performing services under this Agreement on behalf of the Licenser shall at all times be under the Licenser's exclusive direction and control. The Licenser shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of services under this Agreement and as required by law. The Licenser shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and worker's compensation insurance.

22. **Indemnification and Insurance.**

a. **Indemnification.** The Licenser agrees to indemnify, defend (with counsel reasonably approved by Licensee) and hold harmless the Licensee and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement designated to the extent caused by the negligent, reckless, or willful acts, errors or omissions of Licenser or its employees, officers or sub-licensors.

b. **Insurance.** The Licenser agrees to provide insurance set forth in Attachment 4.

23. **Equal Opportunity.** The Licenser complies with the Equal Employment Opportunity Program of the State of Arizona and rules and regulations adopted pursuant thereto: Executive Order 11246, as amended by Executive Order 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, and other applicable Federal, State, and County laws, regulations and policies, including laws and regulations hereafter enacted. The Licenser shall not unlawfully discriminate against any employee, applicant for employment, or service recipient on the basis of race, national origin or ancestry, religion, sex, marital status, age, political affiliation or disability.

24. **Recycling.** The Licenser shall make a reasonable effort to comply with the Licensee's recycled product purchasing standards policy which requires vendors to use recycled paper for proposals/reports and for any printed or photocopied material created as a result of a contract with the Licensee. The policy also requires vendors to use both sides of paper sheets for reports submitted to the Licensee whenever practical.

25. **Conflict of Interest.** The Licenser shall make all reasonable efforts to ensure that no conflict of interest exists between its officer, employees, or subcontracted Licensers, and the Licensee. The Licenser shall make all reasonable efforts to ensure that no Licensee officer or employee, whose position with the Licensee enables him/her to influence any award of this Agreement or any competing offer, shall have any direct or indirect financial interest resulting from the award of this Agreement or shall have any relationship to the Licenser or officer or employee of the Licenser. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event that the Licensee determines a conflict of interest situation exists, the Licensee may disallow any increase in costs associated with the conflict of interest situation and such conflict may constitute grounds for termination of the Agreement. This provision shall not be construed to prohibit employment of persons with whom the Licenser's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

26. **Disclosure of Criminal and Civil Proceedings.** The Licensee reserves the right to request the information described herein from the Licenser. The Licensee also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Licenser may be asked to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought

against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Licensor shall describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail. In addition, the Licensor may be asked to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Licensor shall describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail. For purposes of this provision "key employees" includes any individuals providing direct service to the Licensee. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

27. **Drug-Free Workplace Policy.** The Licensor certifies that it will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
- Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - Establish a Drug-Free Awareness Program
 - The dangers of drug abuse in the workplace.
 - The person's or organization's policy of maintaining a drug-free workplace.
 - Any available counseling, rehabilitation and employee assistance programs.
 - Penalties that may be imposed upon any employees for drug abuse violations.
 - Provide that every employee who works on the proposed or resulting Agreement:
 - Will receive a copy of the company's drug-free policy statement; and
 - Will agree to abide by the terms of the company's drug-free policy statement as a condition of employment.

28. **Improper Consideration.** Licensor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any item of values to any office, employee, or agent of the Licensee in an attempt to secure favorable treatment regarding the award of this proposal. The Licensee, by written notice, may immediately terminate this Agreement if it determines that any improper consideration as described was offered to any officer, employee, or agent of the Licensee with respect to the Agreement. Licensor shall immediately report any attempt by a Licensee officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Licensor. The report shall be made to the supervisor or manager charged with supervision of the employee or to the Administrative Office.

29 **Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if all signatories had signed the same document. All counterparts must be construed together to constitute one instrument.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the Effective Date.

City of Ocala, FL, a municipal corporation

► Daniel Owen
President, Ocala City Council

Attest:

Name:

Angel B. Jacobs
City Clerk

Approved as to firm legality

Patrick G. Gilligan
City Attorney

Avolve Software

Name:

ACCEPTED BY CITY COUNCIL

December 7, 2010

DATE

OFFICE OF THE CITY CLERK

ATTACHMENT I-Licensor's Allocation of Services

Activity	Phase	Days
<u>Discovery</u> - Kick-off meeting, Goals Setting - Business Process Discovery - Permit System Integration Requirements - Reports Definition	Assessment	Proposed Jan 2011
<u>Discovery Deliverables</u> - Detailed Statement of Work - Configuration Specifications - Workflow Specifications - Project Schedule - Acceptance of SOW (signature required)	Assessment	Proposed March 2011
<u>Software Installation</u> - Review Network and Hardware Configuration - Pre-Installation review - ProjectDox Installation - Security Policies	Assessment	Proposed Jan 2011
<u>Permit System- to Pdox for Project Initiation</u> - Integration Design and Testing - Acceptance	Design	Proposed May 2011
<u>Process Customization-</u> - Workflow and forms customization - Knowledge View customization - Framework configuration (templates, roles, folder structure) - Validation & Preliminary Sign off	Design	Proposed May 2011
<u>Project Documentation</u> - Administrator and Users Guides - Approved Process Flowcharts - Responsibility matrix - Training materials	Deploy	Proposed May 2011
<u>Initial Rollout</u> - Initial Deployment (Beta) - Validation - Acceptance and Sign off	Deploy	Proposed June 2011
<u>Administrator Training</u> - Project & User Setup - Workflow and Forms Overview - Knowledge View Usage	Deploy	Proposed June 2011
<u>Train the Trainer</u> Detailed Training on Workflow Processes	Deploy	Proposed June 2011
<u>End User Training-maximum TBD people</u> - Process and Workflow based - Hands on training (up to 10 users per class)	Deploy	Proposed June 2011
<u>Workflow Design Training</u> Basic Form and Workflow customization (up to 5 designers per class)	Deploy	Proposed June 2011
<u>Design Optimization</u> - Process refinements - Form refinements	Optimize	Proposed July 2011
<u>Turnover/Closeout</u> - Full Deployment - Final Documentation - Project Acceptance and sign off	Closeout	Proposed Aug 2011

ATTACHMENT 2

MAINTENANCE AGREEMENT

1. **Scope of Maintenance Agreement.** This Attachment describes the Technical Support plans and terms and conditions currently applicable to the Software offered by Licensor. The Technical Support described below does not expand or change any warranty provisions set forth in the Agreement. Capitalized terms used in this Attachment and not separately defined below shall have the meanings set forth in the Agreement.
2. **Terms and Conditions Related to Standard Technical Support...** Licensor will provide the following standard Technical Support for the Software:
 - a. **Designation of a User Login and Password.** Licensee must register with Licensor unique passwords and user names, which will be required when seeking Technical Support. Licensee acknowledges and agrees that Licensee is prohibited from sharing passwords and/or user names with unauthorized users. Licensee will be responsible for the confidentiality and use of passwords and user names. Licensor will act as though any electronic communication it receives under Licensee passwords, user names, and/or account number will have been sent by Licensee. Licensee agrees to immediately notify Licensor if Licensee becomes aware of any loss or theft or unauthorized use of any passwords, user names, and/or account number.
 - b. **Software Updates.** Licensee will receive, at no additional charge, during the term of its Maintenance Agreement all minor (e.g. from Release 1.0 to 1.1) and major updates (e.g. from Release 1.1 to 2.0) of the Software as they are generally made available by Licensor. Where applicable, Licensee will also be entitled to driver updates. Licensee will be notified by email when updates are available and may also visit Licensor's website at www.avolvesoftware.com for current information concerning updates. All Software and driver updates are provided under, subject to, and governed by the terms and conditions of this Agreement. Upon installation of updated Software, Licensee must destroy all prior releases/versions of the Software.
 - c. **E-mail, Fax and Telephone Support.** Licensee may contact Licensor's helpdesk by phoning 602-714-9774 x1112 and speaking with a support representative. Depending on availability, Licensee may be routed to voice mail to report the problem. Licensee may send Licensor an email through Licensor's customer support web interface, located in the technical support section of Licensor's website, www.avolvesoftware.com, or by sending a fax to 602-923-3544. Any e-mail or fax requests identifying potential errors or problems in Licensee's use of the Software should provide Licensor with sufficient information to reproduce the error. Licensor's helpdesk personnel will assist Licensee in accessing and utilizing the Software, and work with Licensee in good faith to determine the final disposition of all reported problems or errors, including identifying and providing workarounds for any problem discovered. Assistance may include communicating via telephone, e-mail, our Support web site, or if allowed by Licensee, remote desktop sharing.
 - d. **Support Hours.** Licensor's helpdesk currently accepts calls, e-mails, and faxes from 7 a.m. to 5 p.m., U.S. Arizona Time Monday through Friday (excluding standard U.S. holidays).
 - e. **Error Corrections.** Licensor will use commercially reasonable efforts to correct any reproducible and material programming error discovered in the Software applying a level of effort reasonably commensurate with the severity of the error. Licensor is not responsible for correcting errors that result from problems residing outside of the Software. Typically, Licensor will address errors through updates to the Software, but on occasion and at its sole discretion may provide Licensor with an interim correction (such as a work-around) pending formal implementation of an update.
 - f. **Licensee's Suggestions:** Any errors or suggested changes, clarifications, additions or other improvements to the Software which Licensee communicates to Licensor shall constitute Licensee's grant to Licensor, without charge or other obligation, of the right to incorporate such suggestions, changes and modifications into the Software under Licensor's standard intellectual property notices.
3. **Non-qualifying Issues and Events**
 - a. **Non-Qualified Products.** Licensor does not provide Technical Support for any hardware or software product that is not part of the Software licensed to Licensee by Licensor (a "Nonqualified Product"). Licensee remains responsible for the compatibility and functioning of Nonqualified Products with the Software. If Licensor provides Technical Support for a problem caused by a Nonqualified Product or the failure of Licensee's computer system or environment to comply with the technical specification requirements included in the documentation provided with the Software (or Licensor's Technical

Support efforts are materially increased as a result of Licensee's use of Nonqualified Products or failure to comply with the technical specification requirements), Licensor reserves the right to charge Licensee time and materials for such extra services at Licensor's then current published rates for customized, premium technical support services.

- b. **Other Exclusions.** Licensor's Technical Support does not cover:
- (1) Software that has been superseded by a new update/release for more than one (1) year;
 - (2) Altered, damaged, or modified Software;
 - (3) Any custom applications developed by Licensor for Licensee; or
 - (4) Software installed in an operating environment that is not supported by Licensor or used other than as specified in the user manual.

4. General Terms and Conditions

- a. **Initial Term.** For the term specified in Attachment 3 and initiating on the date the Agreement was signed (unless, pursuant to the terms and conditions of the Agreement it is terminated earlier) Licensee will be entitled at no extra charge to standard Technical Support (the "Initial Term") for the Software.
- b. **Renewal Terms.** Licensor shall automatically renew the standard Technical Support at the end of the "Initial Term" and every anniversary thereafter at the rates listed in Licensor's then-current price list.
- c. **Maintenance Fees.** After the Initial Term, Licensee shall pay Licensor the applicable fee as listed in Licensor's then-current price list for Maintenance for each Unit of Software for which Licensee purchased (the "Maintenance Fees"). At the end of the term specified in Attachment 3, the Maintenance Fees will be either billed annually or a new, multi-year agreement will be created at the then current rate. Maintenance Fees are paid in advance of the term and are irrevocable and non-refundable. Maintenance Fees are due thirty (30) calendar days from the date of the invoice. If Licensee fails to pay all Maintenance Fees by the due date, this Maintenance Agreement, and all Technical Support provided for under it, may be immediately terminated, without notice, by Licensor. Alternatively, Licensor, in its sole discretion, may elect to continue to provide Technical Support and assess interest as provided for under Section 3 of the Agreement. To reinstate or renew the Maintenance Agreement (if reinstatement is allowed by Licensor), Licensee must pay in advance and in full (i) all Maintenance Fees and (ii) the upgrade fee as published in Licensor's then-current price list.
- d. **Termination.** Licensee may terminate this Maintenance Agreement at the end of the Initial Term or the end of any renewal term by giving written notice to Licensor at least thirty (30) calendar days before the end of the existing term. Licensor may immediately suspend or cancel Technical Support under this Maintenance Agreement by giving written notice to Licensee of Licensee's material breach of the Agreement. This Maintenance Agreement will automatically and immediately terminate without written notice upon termination of the Agreement.

5. Limited Warranties and Liability Limitations

- a. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT, NO MATTER WHAT THE CIRCUMSTANCES, AND IRRESPECTIVE OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND (INCLUDING LOST PROFITS, LOST REVENUES, FAILURE TO REALIZE EXPECTED SAVINGS, OR OTHER COMMERCIAL OR ECONOMIC LOSSES OF ANY KIND) ARISING FROM BREACH OF WARRANTY OR BREACH OF CONTRACT, OR NEGLIGENCE, OR ANY OTHER LEGAL CAUSE OF ACTION ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT OR SUCH PARTY'S PERFORMANCE HEREUNDER. LICENSOR'S MAXIMUM LIABILITY FOR DAMAGES FOR ANY CAUSE OF ACTION RELATING TO THIS MAINTENANCE AGREEMENT SHALL NOT EXCEED THE AMOUNT PAID BY LICENSEE FOR THE MAINTENANCE AGREEMENT FOR THE APPLICABLE YEAR. LICENSOR'S LIABILITY SHALL FURTHER BE LIMITED AS PROVIDED IN THE AGREEMENT. THESE LIMITATIONS OF LIABILITY SHALL NOT BE APPLICABLE IN THE CASE OF DEATH OR BODILY INJURY.
- b. **Service Warranties.** Licensor warrants that all professional services provided hereunder will be performed in a workmanlike manner, in conformity with the professional standards for comparable services in the industry. For any breach of this warranty for service, Licensee's exclusive remedy shall be the re-performance of the deficient services, and if Licensor is unable to re-perform the deficient services as warranted, Licensee shall be entitled to recover the portion of the Maintenance Fees paid to Licensor for such deficient services, and such refund

shall be Licensor's entire liability. THESE TERMS AND CONDITIONS FOR TECHNICAL SUPPORT AND MAINTENANCE SERVICES ARE A SERVICE CONTRACT AND NOT A PRODUCT WARRANTY. THE SOFTWARE AND ALL RELATED MATERIALS ARE EXCLUSIVELY SUBJECT TO THE WARRANTIES SET FORTH IN THE AGREEMENT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THEIR ESSENTIAL PURPOSE.

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ATTACHMENT 3

Project Budget

Pricing

ProjectDox Pricing Agreement

Product Name	Product Description	Product Code	Qty	Unit Price	Total Price
ProjectDox Professional Services Installation and Training	Services are defined in the agreed upon Statement of Work and require a services contract with the customer. Includes 15 days of training and development of three complete business process/workflows.	372-SVC			\$63,000.00
ProjectDox Standard Edition	Includes workflow & eforms modules as well as installation. Also includes first year of maintenance and support. FOUR ADDITIONAL YEARS OF MAINTENANCE, SUPPORT AND UPDATES WILL BE ADDED IF ORDER PLACED BY 10/30/2010 AT NO CHARGE FOR TOTAL OF FIVE YEARS INCLUDED. THIS IS A VALUE OF \$88,000.00, INTEGRATION TO CRW PERMITTING SYSTEM, PROVIDED AT NO ADDITIONAL CHARGE	372-SE	1	\$88,000.00	\$88,000.00

Payment for the total amount is due net thirty days (30) from the date of Initial Invoice and shipment of software. Payment via EFT. See note 5 for details. Travel and expenses are not included and will be billed as incurred.	Grand Total, FOR FIVE YEARS:	\$151,000.00
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Notes:

- Marketing Agreement: As part of an Enterprise agreement both parties agree and to execute the following activities during the first two years of the agreement. Avolve Software is responsible for travel costs associated with these marketing events.
 - Press Release
 - Case Study Testimonial
 - ROI Benchmarking Study
 - Client Referrals
- ProjectDox Standard System is based on a standard configuration ProjectDox Enterprise System based on a load balanced, failover configuration. Licensing will be based on the IP address or Hostnames for the servers and is not based on number of users or transactions. The license file will contain the required information for licensing the associated Job Processors that will be used by the IIS (ProjectDox) servers. The license file is server specific and if a server is changed or moved a new license file will need to be generated and applied to all servers in the ProjectDox environment.
- The current rate for professional services is \$1,800 per day plus expenses. Please consult Avolve Software for current rates for any additional Implementation and Training for ProjectDox. Licensee shall reimburse Avolve Software for all implementation and training expenses (T&E). Maximum of 10 persons per training class (each with a computer).
- The Applicant Tutorial is a series of voice over video for the applicant processes. These are custom tutorials for the applicant to explain uploading drawings, reviewing change requests, printing, and versioning.
- Advanced Forms and Workflow Course is a 4 day advanced day class for building and configuring forms and workflows. The attendees must complete the general admin training for forms and workflow in order to attend this advanced class. Travel and expenses for the participant is not included. This is at an additional price \$5000 for the week per participant.
- Maintenance for the first effective year is included in the software price. This includes all maintenance from the date of effective date of the agreement for one year.
- Test Systems are available at an additional price. Maintenance for the test server is delivered at no charge if maintenance on the production system is paid and current.

8. Maintenance includes all service packs, service releases, and upgrades to modules purchased. Maintenance also includes unlimited technical support for jurisdiction personnel, available from 7 a.m. to 5 p.m. Arizona Time, as well as web and email support.
9. Software installation and general product administration is included in the price of software.
10. EFT Information:
Bank: Compass Bank
Routing: 122105744
Account #: 2508914310

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ATTACHMENT 4
Insurance Coverage

1) **Workers' Compensation.**

a) A program of Worker's Compensation Insurance or a State-approved Self Insurance Program in an amount and form to meet all applicable requirements of the State of Arizona, including Employer's Liability with two hundred and fifty thousand dollars (\$250,000) limits, covering all persons, including volunteers providing services on behalf of the Licensors and all risks to such persons under this Agreement.

b) If the Licensors has no employees, it may certify or warrant that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirements for Workers' Compensation coverage may be waived by the Licensee's Director of Risk Management.

2) **Commercial/General Liability Insurance.** The Licensors shall carry General Liability Insurance covering all operations performed by or on behalf of the Licensors providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence. The policy coverage shall include:

- a) Premises operations and mobile equipment.
- b) Products and completed operations.
- c) Broad form property damage (including completed operations).
- d) Personal injury.
- e) Contractual liability.
- f) Two million dollars (\$2,000,000) general aggregate limit.

3) **Automobile Liability Insurance.** Primary insurance coverage shall be written on ISO Business Auto Coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If the Licensors is transporting one or more non-employee passengers in performance of Agreement services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If the Licensors owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

4) **Umbrella Liability Insurance.** An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury, property damage, and personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

5) **Professional Liability.**

a) Professional Liability Insurance with limits of not less than one million dollars (\$1,000,000) and two million dollars (\$2,000,000) aggregate limits, or **Errors and Omissions Liability Insurance** with limits of not less than one million dollars (\$1,000,000) and two million dollars (\$2,000,000) aggregate limits, or **Directors and Officers Insurance** coverage with limits of not less than one million dollars (\$1,000,000) shall be required for Agreements with charter labor committees or other not-for-profit organizations advising or acting on behalf of the Licensee.

b) If insurance is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the start of the Agreement work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after Agreement completion.

c) The coverage described above is not required for Licensors providing services which are not relied upon by Licensee departments for decision making. These would include trainers or instructors, expert witnesses, statisticians, etc. Whether such coverage is required will be determined by the Licensee Risk Manager.

6) **Additional Insured.** All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming the Licensee and its officers, and employees, as additional insured's with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the Licensee to vicarious liability but shall allow coverage for the Licensee to the full extent provided by the policy.

7) **Waiver of Subrogation Rights.** The Licensors shall require the carriers of required coverage's to waive all rights of subrogation against the Licensee, its officers, employees, agents, volunteers, Licensors and sub-Licensors. All general or auto liability insurance coverage provided shall not prohibit the Licensors and the Licensors's employees or agents from

waiving the right of subrogation prior to a loss or claim. The Licensor hereby waives all rights of subrogation against the Licensee.

- 8) **Policies Primary and Non-Contributory.** All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the Licensee.
- 9) **Severability of Interests.** The Licensor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Licensor and the Licensee or between the Licensee and any other insured or additional insured under the policy.
- 10) **Proof of Coverage.** The Licensor shall furnish Certificates of Insurance to Licensee, including endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to Licensee, and the Licensor shall maintain such insurance from the time the Licensor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, the Licensor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.
- 11) **Acceptability of Insurance Carrier.** Unless otherwise approved by Licensee's Risk Management, insurance shall be written by insurers authorized to do business in the State of the Licensee and with a minimum "Best" Insurance Guide rating of "A- VII".
- 12) **Deductibles and Self-Insured Retention.** Any and all deductibles or self-insured retentions in excess of ten thousand dollars (\$10,000) shall be declared to and approved by Licensee's Risk Management.
- 13) **Failure to Procure Coverage.** In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, the Licensee has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by the Licensee will be promptly reimbursed by the Licensor; alternatively, the Licensee's payments to the Licensor under this Agreement will be reduced to pay for insurance purchased by the Licensee.
- 14) **Insurance Review.** Insurance requirements are subject to periodic review by the Licensee. The Licensee's Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Licensee's Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the Licensee. In addition, if the Licensee's Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Licensee's Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the Licensee, inflation, or any other item reasonably related to the Licensee's risk.
- 15) **Changes.** Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. The Licensor agrees to execute any such amendment within thirty (30) days of receipt.
- 16) **Waiver.** Any failure, actual or alleged, on the part of the Licensee to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the Licensee

ATTACHMENT 5
Sole Source



A Subsidiary of Informative Graphics Corp.

Mr. Tye Chighizola
Growth Management Director
Ocala, Florida

Dear Mr. Chighizola:

This letter is to verify the following facts of our ProjectDox Electronic Plan Review solution and services associated with the product.

-ProjectDox is the only electronic plan review solution with a proven two way integration with CRW Systems. We have reference customers currently running in Florida with our integrations.

-ProjectDox also has integration with Hummingbird Systems. We have customers running that integration as well.

-ProjectDox is the chosen electronic solution in the State of Florida with over 20 cities and counties using it for electronic plan review and many more in the procurement process.

-Avolve Software is the sole maker of ProjectDox. Avolve/Informative Graphics are also the sole maker of Brava! which is the viewer within ProjectDox. Avolve is the only company authorized to license ProjectDox and provide support, maintenance and upgrades to the software.

Please contact us if you need anything further, or have any other questions.

Best Regards,

A handwritten signature in cursive script, appearing to read "Donald Spuck".

President, CEO
Avolve Software
4835 E. Cactus Road
Suite 420
Scottsdale, AZ 85254-3546

Handwritten initials, possibly "KL", in the bottom right corner of the page.