



**NORTHWEST PIPE FITTINGS INC. AMR NEPTUNE/AMI
SOFTWARE HOSTING AGREEMENT**

THIS AGREEMENT is made and entered into _____
by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation
organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings,
Montana 59103, hereinafter referred to as "**CITY**," and **NORTHWEST PIPE FITTINGS,
INC.**, of 1725 Majestic Lane, Billings, MT 59102, hereinafter referred to as "**HOST**."

WITNESSETH:

WHEREAS, the **CITY** proposes to provide software service for AMR
Neptune/AMI software hosting, service, and warranty and desires to hire **HOST** as an
independent contractor to perform the services as described in the Scope of Work
attached hereto as Exhibit "A" and by this reference made a part hereof.

WHEREAS, the **CITY** has authority to contract for such services, and;

WHEREAS, the **HOST** represents that he/she is fully qualified to perform such
services personally and is in compliance with the Montana Statutes relating to the
provisions of such services.

NOW THEREFORE, in consideration of the mutual covenants and agreements
herein contained, the receipt and sufficiency whereof being hereby acknowledged, the
parties hereto agree as follows:

1. **PURPOSE:** **CITY** agrees to hire **HOST** as an independent contractor to
provide and host AMR Neptune/AMI cloud software (13980-207 NEPTUNE 360 Annual
Subscription). In performing these services, the **HOST** shall at all times comply with all
federal, state and local statutes, rules and ordinances applicable. These services and all
duties incidental or necessary therefore, shall be performed diligently and completely
and in accordance with professional standards of conduct and performance.
2. **TERM:** This **AGREEMENT** shall be for a period of three (3) years from
the execution of this **AGREEMENT**. This **AGREEMENT** may not be extended .
3. **PAYMENT:** In consideration of the services provided by the **HOST** under
this **AGREEMENT**, the **CITY** agrees to pay the **HOST** \$60,480 in year one, \$63,504 in
year two, and \$66,679.20 in year three. Except as otherwise specified herein, the **CITY**
shall pay the **HOST** for said invoice within thirty (30) days after receipt.

In the event scope of work issues arise, the **HOST** shall immediately discuss them with the Project Manager for the **CITY**. It is understood that the **HOST** will not perform any work that the **CITY** deems outside the scope prior to receiving written approval from the **CITY**, and at a rate agreed upon by both parties. Any payment for work not agreed upon by the **CITY** shall be denied.

The prices established in this **AGREEMENT** may be extended to other political subdivisions within the State of Montana solely at the **HOST'S** discretion.

4. INCORPORATION BY REFERENCE: All exhibits and addenda attached hereto, as well as any bid or proposal referenced, are hereby incorporated into this **AGREEMENT** and made a part hereof. If there is any conflict between such exhibits or addenda and the terms of this **AGREEMENT**, the terms of this **AGREEMENT** shall control.

5. INDEPENDENT CONTRACTOR STATUS: The parties agree that **HOST** is an independent contractor for purposes of this **AGREEMENT** and is not to be considered an employee of the **CITY** for any purpose. **HOST** is not subject to the terms and provisions of the **CITY's** personnel policies handbook and may not be considered a **CITY** employee for workers' compensation or any other purpose. **HOST** is not authorized to represent the **CITY** or otherwise bind the **CITY** in any dealings between **HOST** and any third parties.

6. INDEMNITY:

The **HOST** SHALL:

- A. Indemnify and hold **CITY**, its officers, agents and employees harmless from any and all losses, damage and liability to the extent caused by any intentional or negligent act on the part of **HOST** or its agents or employees.
- B. Not indemnify and hold the **CITY** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or reasonable attorneys' fees and costs to the extent caused by the wrongful or negligent acts, error or omission of the **CITY** occurring during the course of or as a result of the performance of the **AGREEMENT**.
- C. Where claims, lawsuits or liability, including reasonable attorneys' fees and costs arise from any wrongful or negligent act of both the **CITY** and the **HOST**, the **HOST** shall indemnify and hold the **CITY** harmless from only that portion of claims, causes of action, lawsuits, damages,

judgments, liabilities, and litigation costs and expenses including reasonable attorneys' fees and costs, to the extent caused by the **HOST'S** or any subcontractor's wrongful or negligent acts occurring as a result from the **HOST'S** performance pursuant to this **AGREEMENT**.

The **CITY** SHALL:

- D. Indemnify and hold **HOST**, its officers, agents and employees harmless from any and all losses, damage and liability to the extent caused by any intentional or negligent act on the part of **CITY** or its agents or employees.
- E. Not indemnify and hold the **HOST** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or reasonable attorneys' fees and costs to the extent caused by the wrongful or negligent acts, error or omission of the **HOST** occurring during the course of or as a result of the performance of the **AGREEMENT**.
- F. Where claims, lawsuits or liability, including reasonable attorneys' fees and costs arise from any wrongful or negligent act of both the **HOST** and the **CITY**, the **CITY** shall indemnify and hold the **HOST** harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, to the extent caused by the **CITY'S** or any subcontractor's wrongful or negligent acts occurring as a result from the **CITY'S** performance pursuant to this **AGREEMENT**.

7. **AGREEMENTS OF HOST**: As an inducement to the execution of this **AGREEMENT** by the **CITY** and in consideration of the agreements to be performed by the **CITY**, the **HOST** agrees that:

A. Qualifications

The **HOST** is qualified to perform the services to be furnished under this **AGREEMENT** and is permitted by law to perform such services, and all personnel engaged in the work shall be qualified and so permitted to do the work they perform.

B. Solicitation of Agreement

The **HOST** has not employed any person to solicit this **AGREEMENT** and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, or other compensation in connection with the procurement of this **AGREEMENT**.

C. Facilities and Personnel

The **HOST** has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed.

D. Subcontracting

None of the work or services covered by this **AGREEMENT** shall be subcontracted without the prior approval of the **CITY**.

E. Affidavits of Compliance

The **HOST** will, if requested by the **CITY**, furnish the **CITY** affidavits certifying compliance with the provisions of this Section.

8. AGREEMENTS OF CITY:

A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the **CITY'S** portion of the project as designated in the scope of work.

B. Name a Project Manager who shall be the liaison between the **HOST** and the **CITY**. For this project, the Project Manager for the **HOST** designated is Tait Cross and the Project Manager for the **CITY** designated is Scott Emerick.

9. NONDISCRIMINATION:

A. **HOST** shall, in performance of work under this **AGREEMENT**, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. **HOST** is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by **HOST** subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016. **HOST** agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture,

creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this **AGREEMENT**.

- B. The **HOST** shall state, in all solicitations or advertisements for employees to work on jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.

The **HOST** and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and/or qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

The **HOST** and any **SUBHOST** shall abide by the requirements of 41 CFR 60-1.4, which states employees or applicants may not be discharged or in any other manner discriminated against because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the **HOST'S** legal duty to furnish information.

- C. The **HOST** shall comply with any and all reporting requirements that may apply to it that the **CITY** may establish by regulation.
- D. The **HOST** shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.
- E. The **HOST** shall include the provisions of Subsections A through D of this Section in every subcontract or purchase order under this **AGREEMENT**, so as to be binding upon every such subcontractor or vendor of the **HOST** under this **AGREEMENT**.
- F. The **HOST** agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this

non-discrimination clause.

10. PERMITS, LAWS, AND TAXES: The **HOST** shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this **AGREEMENT**. All actions taken by the **HOST** under this **AGREEMENT** shall comply with all applicable statutes, ordinances, rules and regulations. The **HOST** shall pay all taxes pertaining to its performance under this **AGREEMENT**.

11. NONWAIVER: The failure of either party at any time to enforce a provision of this **AGREEMENT** shall in no way constitute a waiver of the provision, nor in any way affect the validity of this **AGREEMENT** or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

12. CONFLICT OF INTEREST: **HOST** shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with **CITY'S** interest. During the term of this **AGREEMENT**, **HOST** shall not accept any employment or engage in any consulting work which creates a conflict of interest with **CITY** or in any way compromises the services to be performed under this **AGREEMENT**. **HOST** shall immediately notify **CITY** of any and all violations of this Section upon becoming aware of such violation.

13. SUCCESSORS AND ASSIGNS: This **AGREEMENT** and all of the covenants hereof shall inure to the benefit of and be binding upon the **CITY** and the **HOST** respectively and his partners, successors, assigns, and legal representatives. Neither the **CITY** nor the **HOST** shall have the right to assign, transfer, or sublet his interest or obligations hereunder without written consent of the other party.

14. CHANGES IN WORK: Any change in the scope of **HOST'S** services as stated in this **AGREEMENT** for whatever reason, will be negotiated between the **CITY** and the **HOST** and an amendment to this **AGREEMENT** will be issued with the appropriate change of services and **AGREEMENT** fee noted.

15. LEGAL RELATIONS: The **HOST** shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done.

16. TERMINATION OF AGREEMENT: The right is reserved by the **CITY** to terminate this **AGREEMENT** at any time upon not less than thirty (30) days written notice to the **HOST**.

In the event the **CITY** terminates this **AGREEMENT**, the **HOST** shall be paid for the amount of work performed or services rendered to date of termination per the **AGREEMENT** fee.

17. ENDORSEMENTS: The **HOST** shall furnish signatures, statements, or other suitable means to signify responsible endorsement of work on all reports furnished by him.

18. SYSTEM SECURITY: The **HOST** shall ensure systems delivered under this **AGREEMENT** are adequately secure. For purposes of this **AGREEMENT**, adequate security is defined to require compliance with federal and State of Montana security requirements and to ensure freedom from those conditions that may impair the **CITY** or State's use of its data and information technology or permit unauthorized access to the **CITY** or State's data or information technology.

The **CITY** and State have established control standards and policies that align with the NIST Cybersecurity Framework. The latest revision of NIST SP 800-53 is used for control adherence evaluation established after developing a security categorization utilizing FIPS PUB 199. Thus, **HOST** shall provide reasonable proof, through independent audit reports, security scans of operating systems, code or the technology environment provided; that the system specified under this **AGREEMENT** meets or exceeds federal and State of Montana security requirements to ensure adequate security and privacy, confidentiality, integrity, and availability of the **CITY** or State's data and information technology. Annual assurance statements shall be delivered to the Contract Liaison. Annual assurance statements must contain a detailed accounting of the security controls provided and must be in the form of a NIST Security Assessment Report or FedRAMP Security Assessment Report.

Prohibited Activities and Spoofing. **HOST**, Licensor and its officers, employees, agents, subcontractors, and affiliated users, shall not violate or attempt to violate the security of the **CITY** or State's network or interfere or attempt to interfere with the **CITY** or State's systems, networks, authentication measures, servers or equipment, or with the use of or access to the **CITY** or State's network by any other user. Such prohibited activity includes (i) accessing or logging into a server where access is not authorized; (ii) unauthorized probing, scanning, or testing the security or vulnerability of the **CITY** or State's network or other systems; and (iii) attempting to portray itself as the **CITY** or State, or an affiliate of the **CITY** or State, or otherwise attempting to gain access, without authorization, via the **CITY** or State's network or systems to any account or information technology resource not belonging to **HOST**, Licensor or its officers, employees, agents, subcontractors, and affiliated users ("Spoofing"). **HOST** or Licensor shall not perform unauthorized Spoofing or scanning of any kind, including user account identity. Systems shall not Spoof the billings.mt.gov or mt.gov domains or engage in Email Spoofing. Email Spoofing is the creation of email messages with a forged sender address. For example, Email Spoofing includes creating or sending emails using the **CITY** or State's domain.

19. OWNERSHIP OF DOCUMENTS: All information relating to the project and prepared under the terms of this **AGREEMENT**, including reports, data, recommendations, exhibits, analyses, and plans shall be deemed the property of the **CITY**. Reproducibles of all notes, reports, and plans shall be made available at the **CITY'S** request.

20. PUBLIC INFORMATION: The **HOST** shall not issue any statements, releases, or information for public dissemination without prior written approval of the **CITY**. All

materials related to this **AGREEMENT** and services provided are considered public records under Article II, Section 9 of the Montana Constitution and §§ 2-6-102 and 7-1-4144, MCA and may be distributed by written request pursuant to Montana's Constitutional Right to Know or Public Records Acts.

- 21. PROPRIETARY RIGHTS:** If patentable discoveries or inventions should result from work required herein, all rights accruing from such discoveries or inventions shall be the property of the **CITY**.
- 22. RECORDS:** The **HOST** shall maintain accounting records and other evidence pertaining to the cost incurred and to make the records available at all times during the **AGREEMENT** term and for three (3) years from the date of final payment. Such accounting records and other evidence pertaining to the cost incurred will be made available for inspections authorized by the **CITY** and copies thereof shall be furnished if requested.
- 23. ATTORNEY'S FEES AND COSTS:** That in the event it becomes necessary for either Party to this **AGREEMENT** to retain an attorney to enforce any of the terms or conditions of the **AGREEMENT** or to give any notice required herein, then the prevailing Party or the Party giving notice shall be entitled to reasonable attorney's fees and costs.
- 24. LITIGATION LOCATION:** The parties agree that this **AGREEMENT** shall be governed in all respects by the laws of the state of Montana, and the parties expressly agree that venue shall be in the Montana Thirteenth Judicial District County for Yellowstone County and there shall be no other venue for resolution of disputes arising from the **AGREEMENT** or the performance of its terms.
- 25. MODIFICATION AND AMENDMENTS:** That any amendment or modification of this **AGREEMENT** or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this **AGREEMENT**.



IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

CITY OF BILLINGS, MONTANA

NORTHWEST PIPE FITTINGS, INC.

WILLIAM A. COLE, MAYOR

PRINT NAME

APPROVED AS TO FORM:

PRINT TITLE

CITY ATTORNEY'S OFFICE

ATTEST:

DENISE BOHLMAN, CITY CLERK