

# Loxahatchee River District

Water Reclamation | Environmental Education | River Restoration

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D. Albrey Arrington, Ph.D., Executive Director

DATE: January 10, 2014

DEPARTMENT: WATER RESOURCES  
Bud Howard, Director of Water Resources

BUDGET: Budgeted Professional Services Item of \$110,000 for FY2013-2014.

PURCHASE AMT.: \$109,000 for FY 2013-2014

ACTION REQUEST: Authorization for the purchase of a new Computerized Maintenance Management System, including software, implementation and training.

## DESCRIPTION:

The proper and efficient maintenance and management of our assets and infrastructure are essential for providing cost effective and reliable service to our customers. Computerized Maintenance Management Systems (CMMS) are powerful tools that enable staff to effectively and efficiently manage and utilize data related to our assets. Present CMMS solutions offer a variety services including asset tracking, maintenance scheduling, inspection data record keeping, document management for assets and inspections, inventory and purchasing management, as well as integration with other data systems including SCADA, GIS and accounting systems. Our present CMMS is not meeting our needs because it lacks key capabilities for data storage, work order management, integration and efficiency.

Over the past year, the IT team has been researching CMMS solutions. After learning about the capabilities of the various solutions, we developed a comprehensive Request For Proposals (RFP) for a replacement CMMS that provides the functionality we believe will provide great value to the District. On November 25, 2013 we posted the RFP on the District's website, advertised the RFP on the government bidding service Governmentbids.com and bidnet.com, and sent the RFP announcement directly to more than 15 CMMS vendors that we were aware of. Proposals were due December 19. Only one vendor (eRPortal Software Group) submitted a complete proposal; 10 other vendors responded with a decline to submit. We have summarized the vendors' reasons for declining to submit in the attached page. The majority of declines were based on budget constraints, and limitations with providing integration with our GIS, SCADA and accounting systems.

The District's Selection Committee has completed a thorough review of eRPortal's proposal and contacted the references; eRPortal staff also provided a demonstration of their solution to District staff. eRPortal is proposing a comprehensive solution that provides all of the high priority features that we seek. We believe the proposed eRPortal solution will meet our needs, and the eRPortal team has the expertise to effectively implement the system and train our staff.

Gordon M. Boggie  
Board Member

Stephen B. Rockoff  
Board Member

Dr. Matt H. Rostock  
Chairman

Harvey M. Silverman  
Board Member

James D. Snyder  
Board Member

eRPortal's proposal delivers the fully functional software with the features we seek, and provides the implementation and training for \$109,000, within our budgeted amount of \$110,000 for FY2013-2014. The implementation and training are scheduled to be complete by September 30, 2013. eRPortal proposes a second year charge of \$65,000. Annual maintenance and support costs for years 3 through 5 would be \$21,000 per year, or 19.3% of first year costs, which is consistent with the maintenance and support costs of other CMMS vendors. Our present maintenance and support costs are approximately \$5,098 per year.

Year (FY)	Cost
1 (2013-2014)	\$ 109,000
2 (2014-2015)	\$ 65,000
3 (2015-2016)	\$ 21,000
4 (2016-2017)	\$ 21,000
5 (2017-2018)	\$ 21,000

We believe eRPortal provides a cost effective solution that will thoroughly meet our needs, and the eRPortal team has the expertise to effectively implement the system and train our staff. We are confident that following implementation, this new CMMS will provide us with significant improvements to the efficiency of our organization, and provide valuable benefits to our asset and data management. Therefore, we recommend the following suggested motion.

**SUGGESTED MOTION:**

**“THAT THE DISTRICT GOVERNING BOARD authorize the Executive Director to: 1) enter into a 5-year contract with eRPortal Software Group, LLC for the software, implementation, training, maintenance and support of the eRPortal Computerized Maintenance Management System described in the Request for Proposal, eRPortal's Response to the RFP (including the Project Plan and Software and Implementation Pricing); 2) execute the Software License/Maintenance Agreement; and 3) approve a purchase order to eRPortal Software Group, LLC in the amount not to exceed \$114,450 (\$109,000 proposed cost plus \$5,450 (5%) contingency) for this project for FY2013-2014.**

**Summary of Vendor Responses  
for the Computerized Maintenance Management System (CMMS)  
January 10, 2014**

**Proposal Submitted**

1. eRPortal Software Group, LLC., 59 Interstate Dr. Suite 30, West Springfield, MA.

**Declined**

1. AssetWorks Inc., 998 Old Eagle School Rd, Ste 1215, Wayne, PA  
Email response – declined due to budget.
2. Starboard Consulting / IBM Maximo, 2170 West SR 434, Ste. 124 Longwood, FL  
Email response – asked for pricing information; declined to submit with no specific reason.
3. Maintenance Connection, 1477 Drew Ave., Ste 103, Davis, CA  
Email response – declined due to integration and project timeline factors.
4. Bigfoot, PO Box 188, Center Harbor, NH  
Email response – declined due to not offering GIS interface with their CMMS.
5. Cityworks, Azteca Systems, Inc., 11075 South State St., Ste. 24, Sandy, UT  
Written response - declined due to budget and integration factors.
6. TMA, 5100 E. Skelly Dr., Ste. 900, Tulsa, OK  
Email response – declined due to lack of GIS and not being able to track linear assets.
7. Mainsaver, 10803 Thornmint Rd, San Diego, CA  
Email response – declined due to budget.
8. CyberMetrics, 1523 W. Whispering Wind Drive, Phoenix, AR  
Email response - declined due to not a good fit.
9. EAM, Infor , 641 Avenue of the Americas, New York, NY  
Phone response- declined due to budget and no exceptions clause caused them to think they could not negotiate.
10. Tero, Web Work, 1833 Coast Meridian Rd, Port Coquitlam, BC  
Email response – declined primarily due to lack of GIS functionality.

<b>Software and Implementation Pricing</b>				
Software Product/License Description	Quantity	Unit Price (\$)	Total Price (\$)	Annual Maintenance (\$/year)
<b>Maintenance Work Order System</b> Asset Tracking, PMs, Scheduling, Work Order Management, Time Tracking	1	\$5,500	\$5,500	\$990.00
<b>Materials Management System</b> Inv Control, Purchasing, Replenishment, Requisition, Warehouse Mngt, Barcode, Vendor Mngt, Usage Tracking	1	\$5,500	\$5,500	\$990.00
<b>ESRI GIS Interface</b> two-way Interface to ESRI ArcGIS Server or ArcGIS OnLine - mapping, asset history, work order request, status tracking, route optimization	1	\$5,500	\$5,500	\$990.00
<b>Asset Condition Assessment</b> Adds data collection, recording, & Condition based WO trigger functionality to inspections Any data value (numeric, date, look-up, text, response, image capture, readings, etc.) can be collected via a procedure	1	\$4,500	\$4,500	\$810.00
<b>PACP/MACP Data interface</b> Ability to import PACP compliant inspection data (e.g., IT Pipes) and ratings and store and report at asset master level. Also, ability to create corrective action work orders in response to CCTV inspection results	1	\$0	\$0	\$0.00
<b>Project &amp; Milestone Tracking</b> Requisitions, approvals, time collection, expense tracking, work order milestones, and cost rollups, budgeting, reporting	1	\$4,500	\$4,500	\$810.00
<b>WO &amp; PO Requisition Approval Routing</b> Work Order or Purchase Order initiation, assignment, and completion workflow, rules based approvals, routing, & notifications	1	\$5,500	\$5,500	\$990.00

Software Product/License Description	Quantity	Unit Price (\$)	Total Price (\$)	Annual Maintenance (\$/year)
<b>Trihedral SCADA Interface</b> two-way interface between VT SCADA operators & CMMS, Utilization work order triggers, condition based inspection/work order triggers & alarms.	1	\$4,500	\$4,500	\$810.00
<b>Mobile Workforce module</b> Ability to use mobile devices (handhelds and tablets) to create work orders, complete, enter time, create assets, issue parts, receive parts, create parts, and receive PO's.	1	\$4,500	\$4,500	\$810.00
<b>Fleet Asset Management</b> Full featured vehicle and fleet maintenance functionality, including fuel, tire, safety, VMRS code tracking and reporting	1	\$0	\$0	\$0
<b>Dynamics GP Interface</b> eRPortal connector to Dynamics GP allows two-way info exchange between materials mngt (inv, purch) and cmms suite (assets; WO costs; project costs, etc.). Connector configuration is highly flexible and is implemented per customer workflow & data exchange requirements	1	\$4,500	\$4,500	\$810
<b>FOG PreTreatment &amp; Backflow Device Inspection Mngt</b> Ability to both, create periodic inspection rounds to collect required inspection data or create reminder rules for triggering outside service provider workflows.	1	\$3,000	\$3,000	\$540
<b>User Licensing</b> (discounted from \$1200) <i>can be device ID or User ID based licensing</i> <b>Terms:</b> for 1st 2 years, LRD has rights to deploy on any number of devices for any number of users. within 3rd year, jointly, eRPortal & LRD will finalize count. Any add-on full user licenses required to be added at \$1200 each, plus annual maintenance	60	\$900	\$54,000	\$9,720

Software Product/License Description	Quantity	Unit Price (\$)	Total Price (\$)	Annual Maintenance (\$/year)
<p><b>Intranet User Licensing</b>  <i>based on user ID license model</i>                      Operator/Customer Service interface for placing requests (work, service, supplies, project, etc.) and viewing reports/KPIs, plus 2-way email notification rules.  <b>Terms:</b> for 1st 2 years, LRD has rights to deploy for any number of Intranet users. within 3rd year, jointly, eRPortal &amp; LRD will finalize count. Any add-on Intranet user licenses required to be added at jointly agreed upon pricing model, plus annual maintenance</p>	10	\$250	\$2,500	\$450
<p><b>Single Sign-On</b>                      Ability to manage user names and passwords via LDAP, Active Directory, NeTegrity, Jasig CAS, Shibboleth, or other single sign-on utilities.</p>	1	\$4,500	\$4,500	\$810

Software Product/License Description	Quantity	Unit Price (\$)	Total Price (\$)	Annual Maintenance (\$/year)
<b>Implementation Services</b> Includes installation, workflow analysis, application shaping, KPI & Reports configuration, all user profile configurations, interface to all required systems, and all data import. Also included are results review and written statement of workflow processes and how data will be entered, viewed, and reported by all stakeholders (role specific)	25	\$1,250	\$31,250	
<b>Training Services</b> On Site Training and Implementation Support days, per enclosed project plan (pricing includes travel expenses)	20	\$1,500	\$30,000	
<b>Software Total</b>			\$108,500	
<b>Services Total</b>			\$61,250	
<b>Annual Maintenance Total</b>			\$19,530	
<b>Subtotal</b>			\$189,280	
<b>Special Terms:</b>				
	1st year	<b>\$109,000</b>		
	2nd year	<b>\$65,000</b>		
<b>(Annual Maintenance)</b>	3rd year & after	<b>\$21,000</b>		
		3yr tot: 195000		

# Loxahatchee River Project Plan



Task Name	Start Date	End Date
<b>Phase 0 - Preliminary</b>	<b>02/03/14</b>	<b>02/12/14</b>
Order Received / Kickoff	02/03/14	02/03/14
Create custom survey and forward to customer	02/05/14	02/05/14
Conference Call to go over timeline and process	02/11/14	02/11/14
Customer Conference Call to review survey	02/11/14	02/11/14
Develop first phase set of screens	02/12/14	02/12/14
<b>Phase 1 Implementation</b>	<b>02/13/14</b>	<b>06/06/14</b>
Product Install	02/13/14	02/13/14
Assets & Hierarchy Review	02/14/14	02/20/14
PMs and Procedures Review	02/21/14	02/27/14
WO Review	02/28/14	03/06/14
Fleet Asset Management Review	03/07/14	03/13/14
Trihedral SCADA Interface Review	03/14/14	03/20/14
Condition Assessment Review	03/21/14	03/27/14
Project & Milestone Tracking Review	03/28/14	04/03/14
Inventory & Purchasing Review	04/04/14	04/10/14
Mobile Workforce Review	04/11/14	04/17/14
Dynamics GP Review	04/18/14	04/24/14
ESRI GIS Interface Review	04/25/14	05/01/14
PACP/MACP Data Interface Review	05/02/14	05/08/14
Requisition Approval Workflow Review	05/09/14	05/15/14
FOG PreTreatment & Backflow Review	05/16/14	05/22/14
Request & Inquiry Intranet Review	05/23/14	05/29/14
Single Sign-on Review	05/30/14	06/05/14
User Profiles & Reports Review	05/30/14	06/05/14
Phase 1 sessions results review (internal meeting)	06/06/14	06/06/14
<b>Phase 2 Implementation</b>	<b>06/09/14</b>	<b>06/25/14</b>
Configuration of all screens	06/09/14	06/10/14
Trial import and test of data	06/11/14	06/12/14
Test reports, filters and KPI grids	06/13/14	06/16/14
Results review with customers	06/18/14	06/20/14
Finalize training and go live dates	06/23/14	06/23/14
Support documentation for outside interfaces	06/24/14	06/25/14
Hard copy of customer manuals and documentation	06/24/14	06/25/14
<b>Phase 3 Implementation</b>	<b>06/24/14</b>	<b>08/28/14</b>
Customer go live readiness meeting (internal)	06/24/14	06/24/14
Final Data Conversion	06/25/14	06/27/14
On Site Training Session #1 (go live support on site)	06/30/14	07/04/14
On Site Training Session #2	07/14/14	07/18/14
On Site Training Session #3	07/28/14	08/01/14
On Site Training Session #4	08/11/14	08/15/14
On Site Training Session #5	08/25/14	08/28/14





## *eRPortal Software Group Software License/Maintenance Agreement*

**1. Software License** eRPortal Software Group, LLC, a Massachusetts Partnership, with a principal place of business at 59 Interstate Drive, West Springfield, MA 01089 (hereinafter referred to as “eRPortal”) grants to Loxahatchee River Environmental Control District., with a principal place of business at 2500 Jupiter Park Drive, Jupiter, Florida (hereafter referred to as Customer), and Customer accepts, subject to the terms and conditions contained herein, a non-exclusive and non-transferable license to use eRPortal Software as agreed upon.

### **2. Definitions**

*For the purpose of this Agreement, the following are defined terms:*

The term “**Licensed Program**” shall mean a series of machine readable instructions or statements which form a set of information processing programs relating to a particular application or optional feature licensed for use under this Agreement.

The term “**Enhancement**” shall mean modifications, refinements and improvements that eRPortal makes to a Licensed Program or Licensed Materials and elects to incorporate into and make a part of that Licensed Program or Licensed Materials and which eRPortal does not separately market. eRPortal reserves the right to determine what constitutes an Enhancement.

The term “**Errors**” shall mean significant deviations between the Software and the eRPortal user manual or on-line help documentation

The term “**To Correct**” shall mean solely to provide corrections which will bring errors into agreement with the eRPortal user manual or on-line help documentation.

The term “**System Software**” shall mean software responsible for controlling, integrating, and managing the individual hardware components of a computer system.

The term “**Application Software**” shall mean software used to accomplish specific tasks other than simply running a computer system.

The term “**Testing/Acceptance**” shall mean that eRPortal will provide on-going testing throughout all phases, and a review session with Customer at the end of phase II prior to delivery of phase III services.

### **3. Grant of License**

a.) Subject to the meeting of payment terms jointly agreed upon as reflected in Customer’s purchase order, eRPortal grants to Customer a non-transferable, non-exclusive license to use eRPortal Software.

b.) Customer hereby agrees as follows:

(i) To keep each and every item of the Software free and clear of all claims, liens and encumbrance (except those of eRPortal and/or a leasing company). Any act of Customer, voluntary or involuntary, purporting to create a claim, lien or encumbrance including assignment in bankruptcy, on any such items shall be void.

(ii) Not to reveal any information contained in the Software, or any part thereof, or any copies therefor, in any form to any party without the written consent of eRPortal.

(iii) To take all appropriate actions by instructions, agreement or otherwise with its employees or other persons permitted access to the software to satisfy its obligations under this agreement with respect to its use, protection and security of the Software.

(iv) To permit reasonable inquiries by eRPortal concerning Customer’s compliance herewith and to take reasonable protective measures at eRPortal’s request.

(v) Customer’s rights to the system under this Agreement shall not be assigned, licensed or otherwise transferred voluntarily or involuntarily, except to a purchaser of all or substantially all of the outstanding stock or assets of the Customer, and who has agreed to the terms and conditions of this Agreement, without the prior written approval of eRPortal.



- 4. Use of Software** Customer is authorized to use the Software solely for its own operations at designated Facilities within the agreed upon terms and licensed users. In the event that Customer wishes to support additional sites, users, or venues of operation the Customer must purchase additional licenses from eRPortal for each such venue.
- 5. Term of License** The license to use the Software solution shall be effective on upon a jointly agreed upon date and per agreed upon payments to eRPortal.
- 6. Payment** For eRPortal's performance of Professional Services, Customer will pay eRPortal the Professional Services fees net 30 days from the date of invoice unless otherwise stated in each Order and/or each Scope of Work. In addition, Customer will reimburse eRPortal for all reasonable and customary travel, lodging and other related expenses incurred by eRPortal or its personnel in connection with the performance of Professional Services including travel time; such expenses will only be incurred at Customer's direction. At Customer's request, eRPortal will provide Customer with receipts and other documentation for all such expenses. eRPortal reserves the right to stop work on any project that has invoices that are outstanding more than 90 days.
- 7. Copies of Program** Customer shall not copy the System in whole or in part. The system may be copied by eRPortal onto a designated fail-over computer for use by customer at a designated site for emergency restart or disaster recovery purposes. Customer agrees not to remove or destroy any proprietary marking or proprietary legends appearing on or contained within any licensed program or materials and Customer agrees that such proprietary marking or legends shall appear on all copies or partial copies of the License Program and Materials made by Customer.
- 8. Operation of Software & Computer Equipment Not Sold By eRPortal** Customer assumes full responsibility for the suitability of the computer equipment and any other Software not purchased or licensed from eRPortal and upon which the Software is to function. Any computer equipment, operating system software, and/or services provided by eRPortal to ensure the proper installation will be billed at the discounted rate of \$105/hr, and/or be based upon actual time and materials involved. The customer also assumes responsibility for the effectiveness of the overall environment within which the software and computer systems will operate. Customer agrees to pay all reasonable expenses incurred by eRPortal relating to eRPortal's efforts to rectify problems within its Software which are determined to be the result of problems occurring outside of eRPortal's Software responsibility. eRPortal will notify and obtain written approval from Customer in advance of any additional charges.
- 9. Applicable Taxes** In addition to the License Fee, Customer agrees to pay all federal, state, local or other taxes based on this Agreement for the System, its use, or for any onsite services performed in connection with this Agreement, excluding taxes based on eRPortal net income and privilege taxes, but including state withholding based on eRPortal onsite services if customer is -required to withhold such state withholding income taxes.

## 10. Services

10.1 **Scope of Work** - From time to time, Customer and eRPortal may execute statements of work that describe the specific services to be performed by eRPortal, including any work product to be delivered by eRPortal (as executed by the parties, a “**Scope of Work**”). Each Scope of Work will expressly refer to this Agreement, will form a part of the Agreement, and will be subject to the terms and conditions contained herein.

10.2 **Performance of Services** - Subject to Customer’s payment of the Professional Services fees set forth in each Order Form and/or each Scope of Work, eRPortal will perform the services specified in each Scope of Work (the “**Professional Services**”) in accordance with the terms and conditions of this Agreement and each Scope of Work.

10.3 **Changes to Scope of Work** - Customer may submit to eRPortal written requests to change the scope of Services described in a Scope of Work (each such request, a “**Change Order Request**”). eRPortal will review each Change Order Request and promptly notify Customer if it believes that the Change Order Request requires an adjustment to the fees or to the schedule for the performance of the Professional Services. In such event, the parties will negotiate in good faith a reasonable and equitable adjustment to the fees and/or schedule, as applicable. eRPortal will continue to perform Professional Services pursuant to the existing Scope of Work and will have no obligation to perform any Change Order Request unless and until the parties have agreed in writing to such an equitable adjustment.

10.4 **Customer Responsibilities** - Customer will provide facilities for the installation of the System and shall have the following responsibilities:

- a.) Customer shall appoint personnel to a project team for the purpose of installing, learning and using the System. The project team shall comprise:
  - (i) A project leader to interface with eRPortal’s support staff and Customer’s operations
  - (ii) Key Users representing pertinent departments, including IT, if required
- b.) Customer shall schedule the training of Customer personnel and shall supervise the testing and implementation of the System
- c.) Customer will also make available to eRPortal any data, information and any other materials required by eRPortal to perform the Professional Services, including, but not limited to, any data, information or materials specifically identified in the Scope of Work or the Implementation Project Data Requirements document (collectively, “Customer Materials”). Customer will be responsible for ensuring that all such Customer Materials are accurate and complete.

10.5 **eRPortal Responsibilities** - eRPortal will provide the deliverables and the services as agreed upon.

- a.) eRPortal will perform the services required under this Agreement in a manner consistent with industry standards of care and competence, and in the manner of one who is a recognized specialist in rendering these types of services.
- b.) eRPortal must keep confidential any information systems and data pertaining that is made available to eRPortal in support of eRPortal’s responsibilities under this Agreement.

10.6 **Relationship of the Parties** - eRPortal is performing the Professional Services as an independent contractor, is not an employee, agent, joint venturer or affiliate of Customer, and



has no authority to bind Customer by contract or otherwise. eRPortal acknowledges and agrees that its personnel are not eligible for or entitled to receive any compensation, benefits or other incidents of employment that Customer makes available to its employees. eRPortal is solely responsible for all taxes, expenses, withholdings, and other similar statutory obligations arising out of the relationship between eRPortal and its personnel and the performance of Professional Services by such personnel.

### **11. Warranty**

eRPortal warrants that all eRPortal software products meet or exceed the specifications described in User Manuals/On-Line Help. Customer shall use its best efforts to implement each Licensed Program and to assist eRPortal in researching and documenting the circumstances of program non-conformance. Should a Licensed Program not function in accordance with the User manuals/on-line help, eRPortal staff will correct non-conformances at its own expense. *In the event the licensed eRPortal software does not perform to the standards described in the User Manuals/Online after the installation of any eRPortal software/firmware/hardware update, eRPortal will support a rollback to the last compatible and fully functioning version of the eRPortal software and will attempt to troubleshoot and resolve the incompatibility, free of charge, unless it is determined that the source of the incompatibility is due to Customer owned software/firmware/hardware. In which case, it will be the Customer's responsibility to provide compatible software/firmware/hardware or otherwise continue using the last functioning version of the eRPortal software.* Should a licensed program require features, capabilities, data entry or data access functionality outside the scope of the User Manual, customers are encouraged to submit those requests to eRPortal for addition to our product development roadmap. Alternatively, eRPortal will often perform code customizations required by a particular customer. This enhancement will be done at a discounted, but agreed upon cost to the customer. eRPortal will warranty this code to the fullest, as well as incorporate this feature or enhancement into our standard build, via configuration setting that enables or disables this feature. This approach guarantees that this feature will be fully supported going forward with all future releases.

eRPortal warrants that the eRPortal software products shall be in good operating condition and shall perform in conformance with the User Manual/On-Line Help and any agreed upon Standard of Performance. Ongoing maintenance of the application is supplied to all on-premise software deployed customers via our annual maintenance agreement, as well as to all customers deployed via SaaS.

### **12. Warranty of Right to Grant License and non-Infringement**

a.) eRPortal warrants that it has the right to grant a license of the software free and clear of any liens and encumbrances. Further, eRPortal warrants that the system, the License Program and the License Material do not infringe the intellectual property rights of any third party.

b.) eRPortal shall indemnify, defend, and hold harmless Customer, its officers, agents and employees from and against any and all actions, proceedings, claims of any type, losses, damages, liabilities, costs and expenses (including attorneys' fees) that allege the Software and Services provided hereunder infringes another's patent, copyright, trademark, or other proprietary right or violates another's trade secret or other contractual right of any third party. Customer agrees to notify eRPortal with prompt notice of any such action, proceeding or claim and eRPortal shall have control of the defense. eRPortal shall not settle any suit or action

without the consent of the Customer. Customer reserves the right to participate in the defense at its own cost.

c.) If the Software, or any part thereof, is, or in the opinion of eRPortal may become the subject of any claim for infringement of any third party patent, trademark, copyright, trade secret, or other proprietary right, or if it is adjudicated by a court of competent jurisdiction that the Software, or any part thereof, infringes any third party patent, trademark, copyright, trade secret, or other proprietary rights of any third party, then eRPortal may, at its option and expense, either (i) procure for Customer the right to use the Software or (ii) replace or modify the Software or parts thereof, with other suitable and reasonably equivalent technology so that the Software becomes non-infringing or (iii) if it is not commercially reasonable to take the actions specified in items (i) and (ii), terminate the license for the infringing Software and return the license fee paid by Licensee for such Software.

### ***13. Limitation of Liability***

THE WARRANTIES STATED IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS EXPRESSED OR IMPLIED INCLUDING, BUT NOT LIMITED TO THOSE CONCERNING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

eRPortal shall not be liable for any loss, cost, damage or expense arising directly or indirectly in connection with this Agreement or any Amendments or Attachments to it in excess of the amount of the License Fee paid by Customer to eRPortal. In no event shall eRPortal be liable for any special or consequential damages or for any indirect damages such as punitive damages even if eRPortal has been notified of the possibility of such damages.

No limitation of liability is applicable to the following: (1) the indemnification obligation set forth in section 12 of this Agreement; (2) claims for personal injury or property damage caused by eRPortal while on the Customer's premises; (3) breach of any provision in Customer's UC Appendix DS; and (4) breach of the Publicity section in this Agreement.

### ***14. Right to Data***

Customer data created, housed, and stored as part of the Software solution deployment is considered proprietary and belongs to the customer. Unless otherwise agreed upon between eRPortal and customer, this data can be downloaded at any time into a SQL Server db format within 48 hrs notice. Pricing for this download is \$500. Downloads in any other format will be quoted at the time of request.

### ***15. Software Maintenance and Upgrades***

Software maintenance is included:

This Agreement provides:

(i) Software updates, including remedies and revisions to the originally purchased software program.

(ii) Documentation updates

(iii) Unlimited telephone support, enabling communications with an eRPortal

Software Specialist during business hours of 8:30 A.M. to 6:00 P.M., Eastern Time, Monday through Friday, exclusive of holidays. eRPortal will respond to the Customer Contact by helping to identify, verify and resolve problems with the Software

(iv) The customer is required by the terms of this agreement to provide and maintain 24/7 high-speed communication access to eRPortal software, during the entire term of this Agreement, or any subsequent Software Maintenance Agreements and renewals thereof.

(v.) Costs to correct reported errors shall be borne by Customer if caused by computer equipment malfunctions, Customer's negligence or fault or failure to follow

the routines or operations specified in the Software user manual or any other cause beyond eRPortal's control.

(vi) eRPortal agrees to provide customer 30 days advance notice of any upgrades or updates occurring to the SaaS solution, along with a description of what functionality will be enhanced or affected.

(vii) In the event a service outage occurs for more than 4 hours, eRPortal will credit the customer twice the service cost of the outage period.

(viii) Updates are done periodically - approximately every 3 to 4 months. These include fixes, enhancements, Industry OS revision updates, etc. Major upgrades occur approx every 24 months. All associated work in delivering these upgrades and updates are included in the annual maintenance fee structure. All testing - internal and QA assurance for service packs, plus beta testing for upgrades, is done prior to the release of any update/upgrade. Moreover, these updates are done with zero to little impact to your existing operations, since all are done after hours, even those that require no off-time. Documentation is accompanied with the upgrades and no charge training is provided to all end users wishing to maximize usage and understanding of the new features.

## **16. Operating Environment**

eRPortal commits to supporting access to the Software solution via Microsoft's Internet Explorer Browser on Windows OS devices, current versions and one level back, throughout the term of this license agreement. In addition, eRPortal agrees to support non-administrative, customer based functions such as browsing and remote ordering via alternative internet browsers, including Apple's Safari, Google Chrome, and Mozilla Firefox.

eRPortal is not responsible for preventive or corrective maintenance to the Operating System Software, Computer Hardware hosting the Operating System, or the Internet Browsers deployed on the Operating Systems or Computers.

## **17. Documentation**

eRPortal shall provide Customer with one set of software user manuals/on-line help for each training session attendee. If the Customer requires additional software user manuals, they may be purchased from eRPortal at the then prevailing price.

## **18. Ownership**

eRPortal will exclusively own all rights, title and interest in and to any software programs or tools, utilities, technology, processes, inventions, devices, methodologies, specifications, documentation, techniques and materials of any kind used or developed by eRPortal or its personnel in connection with performing Professional Services (collectively "**eRPortal Materials**"), including all worldwide patent rights (including patent applications and disclosures), copyright rights, moral rights, trade secret rights, know-how and any other intellectual property rights therein. Customer will have no rights in the eRPortal Materials except as expressly agreed to in writing by the parties. Nothing in the Agreement or the Scope of Work will be deemed to restrict or limit eRPortal's right to perform similar services for any other party or to assign any employees or subcontractors to perform similar services for any other party.

## **19. Right to Source Code**

eRPortal agrees to keep a current version of all present and future source code for its Software as included on this Agreement in escrow. Customer will be allowed access to a copy of this source code only if eRPortal shall cease conducting business, become insolvent, make a general assignment for the benefit of its creditors, file a petition for bankruptcy, or has involuntary bankruptcy filed against it.

**18. Governing Law** Intentionally silent.

**19. Continued Operability;**

**No Harmful Code** eRPortal warrants that the Software shall not install, nor permit any other party to install, any timer, key lock, “back door”, or any other means or device that allows unauthorized access to and/or compromises the University’s computers, networks or databases. eRPortal warrants that it has used commercially reasonable efforts to cause the Software to be free of any known computer virus or harmful, malicious, or hidden program, data, or other computer instructions whose purpose is to disrupt, damage, or interfere with the use of computer and telecommunications software or hardware for their normal purposes.

**20. Publicity and Use of Name**

Neither party shall use the name of the other without the prior written consent of an authorized representative of the party. Customer also requires that its name not be used in connection with any advertisement, press release, or other form of business promotion or publicity, or refer to this Agreement or products and /or services provided hereunder, without its prior written approval.

**21. Attorneys Fees.** The prevailing Party in any suit under this Agreement shall recover all reasonable costs, expenses and reasonable attorney fees incurred in such action.

**22. Severability.** In the event that any provision or provisions shall be held to be unenforceable, those provisions shall in good faith be renegotiated to be enforceable and shall reflect as closely as possible the intent of the original provisions of this Agreement. Such negotiations shall not affect the enforceability of the remainder of the Agreement.

**23. Force Majeure.** Non-performance of either party shall be excused to the extent that performance is rendered impossible by acts of God, strike, fire, flood, earthquake, governmental acts or orders or restrictions, failure of suppliers, or any other reason when failure to perform is beyond the control non-performing party.

**24. No Waiver.** The waiver by either party of a breach of any provision of this Agreement or the failure by either party to exercise any right hereunder shall not operate or be construed as a waiver of any subsequent breach of that right or as a waiver of any other right.

**25. External Audits and Investigations.**

To the extent required by applicable law or any successor statutes or regulations, until the expiration of five (5) years after the furnishing of Software and Services pursuant to this Agreement, eRPortal shall make available, upon written request of the Comptroller General of the United States, or any of their duly authorized representatives, the Agreement, and books, documents and records of eRPortal that are necessary to verify or certify the nature and extent of eRPortal invoiced charges for software and/or services furnished to Customer.

**26. Entire Agreement; Amendments.**

This Agreement, including the Exhibits which are incorporated herein, constitutes the whole and entire Agreement between the parties with respect to the subject matter hereof and no oral or written commitments not referenced herein shall apply. Any amendment or modification to this Agreement shall be effective only if reduced to writing and signed by duly authorized representatives of eRPortal and Customer.



The customer acknowledges that they have read this agreement, including all printed language; that s/he understands it and agrees to be bound by the terms set forth herein; and that s/he further agrees that it is the complete and exclusive statement of the agreement between the parties with regard to the subject matter hereof; and that it supersedes all prior proposals oral or written and all other prior communications between the parties relating to the subject matter of this agreement.

**eRPortal Software Group**

**Loxahatchee River Environmental Control District**

**BY:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_