

CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE: 12/1/09

SUBJECT: Discuss Contrac		City Staff Regarding	Innoprise Ar	nendment to
DEPARTMENT:	Information Technol	ogy		
RECOMMENDED M	OTION:			
Motion to reject the I Manager and City At	nnoprise Addendum torney to proceed w	n of October 15, 2009, vith all available legal r	and to authoremedies.	orize the City
SUMMARY:				
The attached documents are drafts and re-drafts between Innoprise and the City of Port Orange relating to the Amendment to Contract. The documents have been highlighted to identify additions and deletions by each of the parties.				
ATTACHMENTS: [] Ordinance [] Resolution [] Budget Resolution				
[] Other [] Support Documents/Contracts Available for Review in Manager's Office				
DEPARTMENT HEA	AD SIME	Tony Marino, IT Director		Date 11/17/29
FINANCE DEPART	MENT 8	A. Shelley, Finance	Director f	Date /// 7/09 Date //. 19.09
CITY ATTORNEY	Anti hla	Approved as to Form and	Legality	
CITY MANAGER		Approved Agenda Item F	or:	12/1/09
COUNCIL ACTION		ommended [] Disappro		[] Tabled



MEMORANDUM

To:

Mayor Allen Green

Vice Mayor Mary Martin

Councilman Dennis Kennedy Councilman Robert Pohlmann Councilman George Steindoerfer

From:

Kenneth W. Parker, City Manager fermeth W. Parker

Subject:

Innoprise

Date:

November 18, 2009

On March 21, 2006, the City Council awarded a software contract to Innoprise. There were several modules that were to be installed as part of the overall package. Also, Innoprise was responsible for writing the software interface with our existing general ledger and accounting software.

Rather than allowing all of the Innoprise software to be installed, the City opted to install each application and bring that application on line before moving forward to install the other applications. Two of the applications were installed, Occupational and Business Licenses and Code Enforcement.

The Occupational and Business License module is required to interface with the HTE accounting software. From the very beginning, there were problems with the Innoprise software balancing the General Ledger. That created great concern for our Finance Department. The Information Technology Department would not authorize additional installation of Innoprise software until the technical difficulties were resolved. The City notified Innoprise that the software was not operating properly. Ultimately, the City provided Innoprise with notice of non-compliance with the contract.

On June 17, 2008, Innoprise appeared before the City Council requesting the City Council allow them to complete the installation of the software. The City Council agreed to work with Innoprise. The Council provided guidance to staff on contract terms and conditions based on Innoprise's presentation and commitment.

Since that time, we have been working to achieve an agreement with Innoprise. In my opinion, we have reached the point of impasse. In September, we submitted our final contract proposal for their signature. They have made several modifications to the City's contract. The City Attorney's office has provided a comparison of the changes that Innoprise has made to the City's contract.

I have come to the conclusion that we cannot reach agreement with Innoprise. It seems the major sticking point is the guarantee that <u>all</u> software, including the two modules already installed, would operate properly and interface with our HTE software. Second, we have requested \$100,000 to be posted as a security bond to guarantee performance.

I recommend that the City Council cease negotiations with Innoprise and authorize the City Attorney to take those actions necessary to recover the City's funds that have already been paid to Innoprise.

I need to inform the Council that Innoprise offered to pay for City representatives to fly to Colorado to visit their corporate headquarters and to visit a number of cities that are using their software. I rejected the offer. I felt that it was inappropriate. Just because it might work in another City does not guarantee that it will work here.

Should you have questions, please feel free to contact me.

Kwp/rlg

Cc: Tony Marino, Information Technology Director Margaret Roberts, City Attorney Wayne Clark, Community Development Director John Shelley, Finance Director

Whereas, the City of Port Orange (the City) and Innoprise Software, Inc. (Innoprise) entered into a contract on March 7, 2006 (the Contract). Under the terms of the Contract, copy attached, Innoprise agreed to provide a software system to the City. The Contract provided for system set-up, training, software license, and other support services; and

Whereas, a dispute arose between the parties whereby the City declared Innoprise in default of the Contract for failure to perform its obligations; and

Whereas, the parties have agreed to enter into this Amendment to resolve the dispute and provide Innoprise with additional time to perform; and

Whereas, the parties have agreed to provide a good-faith effort to successfully inplement the software system; and

Therefore, the parties agree as follows:

- 1. Within thirty (30) working days Innoprise shall provide the City with an Implementation Schedule specifying time periods for completion of each module consistent with the scope of work, as set forth in the original Contract. The Implementation Schedule shall serve as a guide for scheduling functions dependent on City participation. The City shall review the Implementation Schedule within thirty (30) working days and approve or modify. If modified, Innoprise shall review and approve, unless Innoprise is unable to approve, whereupon no further action shall be taken by the parties as described in this Amendment.
- 2. The Implementation Schedule shall include regular weekly project update meetings including Innoprise Project Manager, City Project Manager, City Manager, the independent consultant, and others as requested by the City or Innoprise. In the weekly project update meeting Innoprise shall identify in writing the progress of the work completed including the dates that the module is installed, tested by Innoprise, tested by the City and the date the module is certified by Innoprise Project Manager and City Project Manager to be operating accurately for the purposes intended. A "module operating accurately" shall mean that the Innoprise software module, to the extent that the module is accounted for within the General Ledger, shall interface with the HTE General Ledger software and shall function with each type of transaction and shall balance accurately without a forced balance.
- 3. The City shall select through a RFP process an independent consultant to monitor the progress and performance of Innoprise and to confirm compliance with the original Contract and this Amendment. The City's cost shall not exceed

New language from Innoprise underlined in red/ Draft returned to City by Innoprise 8/26/09. \$5,000.00 for the consulting services. Upon execution of this Amendment Innoprise shall deposit \$5,000.00 with the City for Innoprise's share in the costs of the consulting services. Innoprise may contract for its own independent consultant at its own cost. Either party may request that the two independent consultants identify and agree upon a third consultant. The cost of such third consultant will be borne by Innoprise. The independent consultants shall have access to the computer software and hardware throughout the Implementation Schedule. The independent consultants shall possess the qualifications necessary to examine the installation, operation and performance of the software and shall certify that that the installation and operation fully complies with Generally Accepted Governmental Auditing Standards (GAGAS).

Deleted: Total contract services with the independent consultant shall not exceed \$10,000.

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4. Once the independent consultants are	Deleted: is			
the scope of work as set forth in the Contract	within ninety (90) days.	Deleted: by the City		
5. Within ten (10) days of the execution of provide to the City an Irrevocable Letter of Creamount of \$100,000.00. The Letter of Credit the City notifies the institution issuing the Letter have determined that Innoprise has failed to prince (90) day period, the \$100,000.00 shall to the City upon presentment of the original Letter (10).	edit for the benefit of the City in the shall specify the following terms: If er of Credit that the consultants perform the scope of work within the be immediately paid by the surety etter of Credit and the above			
referenced notice. The Letter of Credit is a su	ubstitution to all other remedies for	Deleted: in addition		
default provided in the Contract. When the contract within the pinety	(90) day period the \$100,000,00	Formatted: Font: Arial		
performed the scope of work within the ninety (90) day period, the \$100,000.00 shall be immediately withdrawn by the surety. Formatted: Font: Arial				
Innoprise Software, Inc.	City of Port Orange			
Ву:	By: Allen Green, Mayor			
(PRINT NAME)	Attest:			
Date:	By: Kenneth W. Parker, City Manager			
	Date:			

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Whereas, a dispute arose between the parties whereby the City declared Innoprise in default of the Contract for failure to perform its obligations; and

Whereas, the parties have agreed to enter into this Amendment to resolve the dispute and provide Innoprise with additional time to perform; and

Therefore, the parties agree as follows:

- 1. Within thirty (30) working days Innoprise shall provide the City with an Implementation Schedule specifying time periods for completion of each module consistent with the scope of work, as set forth in the original Contract. The Implementation Schedule shall serve as a guide for scheduling functions dependent on City participation. The City shall review the Implementation Schedule within thirty (30) working days and approve or modify. If modified, Innoprise shall review and approve, unless Innoprise is unable to approve, whereupon no further action shall be taken by the parties as described in this Amendment.
- 2. The Implementation Schedule shall include regular weekly project update meetings including Innoprise Project Manager, City Project Manager, City Manager, the independent consultant, and others as requested by the City or Innoprise. In the weekly project update meeting Innoprise shall identify in writing the progress of the work completed including the dates that the module is installed, tested by Innoprise, tested by the City and the date the module is certified by Innoprise Project Manager and City Project Manager to be operating accurately for the purposes intended. A "module operating accurately" shall mean that the Innoprise software module, to the extent that the module is accounted for within the General Ledger, shall interface with the HTE General Ledger software and shall function with each type of transaction and shall balance accurately without a forced balance.
- 3. The City shall select through a RFP process an independent consultant to monitor the progress and performance of Innoprise and to confirm compliance with the original Contract and this Amendment. The City's cost shall not exceed \$5,000.00 for the consulting services. Upon execution of this Amendment Innoprise shall deposit \$5,000.00 with the City for Innoprise's share in the costs of the consulting services. Total contract services with the independent

Draft sent to Innoprise 8/24/09 by City. Deleted by Innoprise consultant shall not exceed \$10,000. The independent consultant shall have access to the computer software and hardware throughout the implementation Schedule. The independent consultant shall possess the qualifications necessary to examine the installation, operation and performance of the software and shall certify that that the installation and operation fully complies with Generally Accepted Governmental Auditing Standards (GAGAS).

- 4. Once the independent consultant is retained by the City, innoprise shall complete the scope of work as set forth in the Contract within one hundred twenty (120) days.
- 5. Within ten (10) days of the execution of this Amendment, Innoprise shall provide to the City an Irrevocable Letter of Credit for the benefit of the City in the amount of \$100,000.00. The Letter of Credit shall specify the following terms: If the City notifies the Institution issuing the Letter of Credit that Innoprise has failed to perform the scope of work within the ninety (90) day period, the \$100,000.00 shall be immediately paid by the surety to the City upon presentment of the original Letter of Credit and the above referenced notice. The Letter of Credit is in addition to all other remedies for default provided in the Contract.

Innoprise Software, Inc.	City of Port Orange
Ву:	By: Allen Green, Mayor
(PRINT NAME)	Attest:
Date:	By: Kenneth W. Parker, City Manage
	Date:

INNOPRISE AMENDMENT TO CONTRACT

FROM: City

DATE: September 30, 2009

Blue Underlining Shows the City's Changes to the Innoprise Draft of August 26, 2009

Whereas, the City of Port Orange (the City) and Innoprise Software, Inc. (Innoprise) entered into a contract on March 7, 2006 (the Contract). Under the terms of the Contract, copy attached, Innoprise agreed to provide a software system to the City. The Contract provided for system set-up, training, software license, and other support services; and

Whereas, a dispute arose between the parties whereby the City declared Innoprise in default of the Contract for failure to perform its obligations; and

Whereas, the parties have agreed to enter into this Amendment to resolve the dispute and provide Innoprise with additional time to perform; and

Whereas, the parties have agreed to provide a good-faith effort to successfully implement the software system; and

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Therefore, the parties agree as follows:

- 1. Within thirty (30) working days Innoprise shall provide the City with an Implementation Schedule specifying time periods for completion of each module consistent with the scope of work, as set forth in the original Contract. The Implementation Schedule shall serve as a guide for scheduling functions dependent on City participation. The City shall review the Implementation Schedule within thirty (30) working days and approve or modify. If modified, Innoprise shall review and approve, unless Innoprise is unable to approve, whereupon no further action shall be taken by the parties as described in this Amendment.
- 2. The Implementation Schedule shall include regular weekly project update meetings including Innoprise Project Manager, City Project Manager, City Manager, the independent consultant, and others as requested by the City or Innoprise. In the weekly project update meeting Innoprise shall identify in writing the progress of the work completed including the dates that the module is installed, tested by Innoprise, tested by the City and the date the module is certified by Innoprise Project Manager and City Project Manager to be operating accurately for the purposes intended. A "module operating accurately" shall mean that the Innoprise software module, to the extent that the module is accounted for within the General Ledger, shall interface with the HTE General Ledger software and shall function with each type of transaction and shall balance accurately without a forced balance.
- 3. The City shall select through a RFP process an independent consultant to monitor the progress and performance of Innoprise and to confirm compliance with the original Contract and this Amendment. The City's cost shall not exceed

Draft sent to Innoprise 9/30/08 by City,

City's changes, to draft sent by Innoprise

are underlined or added in blue B

\$5,000.00 for the consulting services. Upon execution of this Amendment Innoprise shall deposit \$5,000.00 with the City for Innoprise's share in the costs of the consulting services. <u>Innoprise may contract for its own independent</u> consultant at its own cost. Either party may request that the two independent consultants identify and agree upon a third consultant. The cost of such third consultant will be borne by Innoprise. The independent consultants shall have access to the computer software and hardware throughout the Implementation Schedule. The independent consultants shall possess the qualifications necessary to examine the installation, operation and performance of the software and shall certify that that the installation and operation fully complies with Generally Accepted Governmental Auditing Standards (GAGAS).

Deleted: Total contract services with the independent consultant shall not exceed \$10,000.

The independent consultants shall be retained within 20 days of the date of this amendment. Once the independent consultants are retained, innoprise shall complete the scope of work as set forth in the Contract within ninety (90) days.

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Deleted: by the City

Within ten (10) days of the execution of this Amendment, Innoprise shall 5. provide to the City an Irrevocable Letter of Credit for the benefit of the City in the amount of \$100,000.00. The Letter of Credit shall specify the following terms: If the City notifies the institution issuing the Letter of Credit that the consultants have determined that Innoprise has failed to perform the scope of work within the ninety (90) day period, the \$100,000.00 shall be immediately paid by the surety to the City upon presentment of the original Letter of Credit and the above referenced notice *When the consultants agree that Innoprise has performed

the scope of work within the ninety (90) day period, the \$100,000.00 shall be

immediately withdrawn by the surety.

Innoprise Software, Inc.	City of Port Orange
By:	By: Allen Green, Mayor Attest:
Date:	By: Kenneth W. Parker, City Manager
	Date:

Deleted: The Letter of Credit is a substitution

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9/30/09-draft-City deleted "The Letter of Credit is a substitution to all other remedies for default provided in the Contract."

INNOPRISE AMENDMENT TO CONTRACT

FROM: Innoprise

DATE: October 15, 2009

Red Underlining Shows New Language Added by Innoprise (To The City's Draft of September 30, 2009)

Green Underlining Shows Language Deleted by Innoprise (To The City's Draft of September 30, 2009)

Orange Underlining Shows the Deletions Made by Innoprise Of Language Which Was Initially Added by Innoprise (To The City's Draft of September 30, 2009)

ADDITIONS SHOWN ON FIRST DOCUMENT
DELETIONS SHOWN ON SECOND DOCUMENT

New language from Innoprise underlined in red B

AMENDMENT TO CONTRACT DATED MARCH 7, 2006 BETWEEN INNOPRISE SOFTWARE, INC. AND THE CITY OF PORT ORANGE

Whereas, the City of Port Orange (the City) and Innoprise Software, Inc. (Innoprise) entered into a contract on March 7, 2006 (the Contract). Under the terms of the Contract, copy attached, Innoprise agreed to provide a software system to the City. The Contract provided for system set-up, training, software license, and other support services; and

Whereas, a dispute arose between the parties regarding the ability of the Innoprise system to accurately post transactions from the License module to the general ledger; and

Whereas, the parties have agreed to enter into this Amendment to amicably resolve the dispute and complete the project according to a mutually agreeable Project Plan; and

Whereas, the parties have agreed to provide a good-faith effort to successfully implement the software system;

Therefore, the parties agree as follows:

- 1. Within thirty (30) working days of the approval of this Amendment. Innoprise shall provide the City with a Project Plan specifying time periods and each party's responsibilities for completion of each module consistent with the Specifications, as set forth in the original Contract. The Project Plan shall serve as a guide for scheduling functions dependent on City participation. The City shall review the Project Plan within thirty (30) working days and approve or modify. If modified, Innoprise shall review and approve, unless Innoprise is unable to approve, whereupon no further action shall be taken by the parties as described in this Amendment.
- 2. The Implementation Schedule shall include regular weekly project update meetings including the Innoprise Project Manager, the City Project Manager, the City Manager, the Independent Consultant, and others as requested by the City or Innoprise. Attorneys may only be present if both the City Attorney and, Innoprise Attorney are present and both the City's Project Manager and Innoprise' Project Manager have agreed to have attorneys present prior to the meeting. In the weekly project update meeting, Innoprise shall identify in writing the progress of the work completed by both Innoprise and the City, including the dates that the module is installed, tested by Innoprise, tested by the City and the date the module is certified by the Innoprise Project Manager and the City Project Manager to be operating accurately for the purposes intended. A "module operating accurately" shall mean that the Innoprise software module, to the extent that the module is accounted for within the General Ledger, shall interface

Signed version sent to City 10-15-09 by Innoprise.

Red constitutes new language added by Innoprise.on 10/15/09

with the HTE General Ledger software and shall function with each type of transaction and shall balance accurately without a forced balance.

- 3. The City shall select through a RFP process an independent consultant to monitor the progress and performance of Innoprise and to confirm compliance with the original Contract and this Amendment. Innoprise will interview the consultant selected by the City to ensure that the consultant is agreeable. If Innoprise agrees to the consultant selected by the City, the City and Innoprise will enter into a joint contract with the independent consultant and shall each pay the independent consultant directly. The City's cost shall not exceed \$5,000.00. The independent consultant shall have appropriate access to the computer software and hardware throughout the implementation Schedule. The independent consultants shall possess the qualifications necessary to examine the installation, operation and performance of the software and shall certify that that the installation and operation fully complies with Generally Accepted Governmental Auditing Standards (GAGAS).
- 4. The independent consultants shall be retained within 20 days of the date this amendment is approved by both Innoprise and the City. Once the Independent Consultant is retained and the Project Plan is agreed to by both Innoprise and the City, a Testing Period of thirty (30) days shall begin where Innoprise and the City will confirm that the License Module is "Operating Accurately" as defined in Paragraph 2 of this amendment. During this period, the City and Innoprise must agree upon User Acceptance Tests which will define the data and steps to be included in the confirmation. Upon the successful completion of the test period. Innoprise and the City shall complete the work outlined in the Project Plan.
- 5. Within ten (10) days of the commencement of the Testing Period, Innoprise shall provide to the City an Irrevocable Letter of Credit for the benefit of the City in the amount of \$100,000.00. The Letter of Credit shall specify the following terms: If, at the end of the thirty (30) day Testing Period, it is determined by the Independent Consultant that Innoprise has failed to meet the conditions of the User Acceptance Test mutually agreed to by Innoprise and the City, and that Innoprise is solely at fault for this failure, the \$100,000:00 shall be immediately paid by the surety to the City upon presentment of the original Letter of Credit and the above referenced written conclusion by the Independent Consultant stating that the License Module is not operating accurately and that Innoprise is solely at fault, if, at the end of the thirty (30) day Testing Period, it is determined by the Independent Consultant that Innoprise has successfully met the conditions of the User Acceptance Test and that the License Module is operating accurately as defined in Paragraph 2, the \$100,000,00 shall be immediately withdrawn by the surety.

Most of last sentence of City's 4/30/09 was deleted

last two sentences 9 9/30/09 draft wer replaced w/ this

Innoprise Software, Inc.	City of Port Orange
By: Dennis J. Harward	By:Allen Green, Mayor Attest:
Date: October 15, 2009	By: Kenneth W. Parker, City Manager
	Date:

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Whereas, a dispute arose between the parties whereby the City declared Innoprise in default of the Contract for failure to perform its obligations; and

Whereas, the parties have agreed to enter into this Amendment to resolve the dispute and provide Innoprise with additional time to perform; and

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Draft sent to Innoprise 9-30-09 by KWP.

Green constitutes deletions made by Innoprise to Orange constitutes deletions made by Innoprise to language initially added by Innoprise.

\$5,000.00 for the consulting services. Upon execution of this Amendment Innoprise shall deposit \$5,000.00 with the City for Innoprise's share in the costs of the consulting services. Innoprise may contract for its own independent consultant at its own cost. Either party may request that the two independent consultants identify and agree upon a third consultant. The cost of such third consultant will be borne by Innoprise. The independent consultants shall have access to the computer software and hardware throughout the Implementation Schedule. The independent consultants shall possess the qualifications necessary to examine the installation, operation and performance of the software and shall certify that that the installation and operation fully complies with Generally Accepted Governmental Auditing Standards (GAGAS).

Deleted: Total contract services with the independent consultant shall not exceed \$10,000.

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Innoprise Software, Inc.

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By:	By: Allen Green, Mayor Attest:
Date:	By: Kenneth W. Parker, City Manage

Date:

City of Port Orange