



**State of Oklahoma
Department of Central Services
Central Purchasing**

**Notice of Statewide Contract
Award**

Official signed contract documents are on file with DCS-Central Purchasing.

Contract Title: Grants Management Software

Statewide Contract #: SW855

Contract Issuance Date: 11/01/2010

Total Number of Vendors: 1 (For details see: Vendor Information Sheet)

Contract Period: 11/01/2010 through 10/31/2011

Agreement Period: 11/01/2010 through 10/31/2015

Authorized Users: State agencies and government entities

Contract Priority: Mandatory

Type of Contract: Catalog, discount from list.

DCS-CP Contact: Gary Rowland

Title: Hi-Tech Procurement Officer

Phone: 1 - 405 - 521 - 2131

Fax: 1 - 405 - 522 - 1078

Email: Gary_rowland@dcs.state.ok.us



**State of Oklahoma
Department of Central Services
Central Purchasing**

Awarded Vendor Information

PAGE 1 OF 1

Vendor Name: Agate Software

Vendor ID#: 250926

Vendor Address: Address: 2214 University Park Drive, Suite 102

City: Okemos

State: MI

Zip Code: 48864

Contact Person Name: Mark Watters

Phone #: 1- 517 - 336 - 2536

Title: Contract Manager

Fax #: 1- - -

Email: matters@agatesoftware.com

Website: www.agatesoftware.com

Authorized Location: Locations list attached as (*attachment title*)

Address:

City:

State:

Zip Code:

Contract ID #: 2844

Delivery: FOB

Minimum Order:

P/Card Accepted: Yes

No

Other:



CONTRACT

State of Oklahoma

Dispatch via Print

Vendor ID 0000250926
 AGATE SOFTWARE INC
 2214 UNIVERSITY PARK DR STE 120
 OKEMOS MI 48864-3980

Contract ID 000000000000000000000000002844		Page 1 of 1	
Contract Dates 11/01/2010 to 10/31/2011	Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: SW855 Grants Management Sft		Contract Maximum 0.00	
TYPE: STATEWIDE			

Tax Exempt? Y Tax Exempt ID:736017987

Line #	Item ID/Item Desc	Minimum Order Qty	Amt	Maximum / Open Qty	Amt
1	1000022252 SOFTWARE: Grants Software License Information Technology	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.01000		EA	0001
2	1000022253 SOFTWARE: Grants Software Maintenance Information Technology	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.01000		EA	0001
3	1000022240 SERVICES: Grants Software Services Information Technology	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.01000		A8	0001
4	1000022241 SERVICES: Grants Software Training Information Technology	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.01000		EA	0001
5	1000022242 SOFTWARE: Grants Software Documentation Information Technology	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.01000		A8	0001

COMMENTS:

The initial contract term is 11/01/2010 through 10/31/2011

The agreement period is 11/01/2010 through 10/31/2015

Final = The price is final after adjustments
 Hard = Apply adjustments regardless of other adjustments
 Skip = Skip adjustments if any other adjustments have been applied

Authorized Signature

STATEWIDE CONTRACT – SW855

FOR

GRANTS MANAGEMENT SOFTWARE AND SUPPORTING SERVICES

THIS CONTRACT is made by and between the State of Oklahoma (the “State”), by and through the Department of Central Services, the Oklahoma Office of State Finance, and Agate Software, Inc.

NOW THEREFORE, in consideration of the terms, and conditions of this Contract, the parties agree as follows:

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A. CONTRACT PROVISIONS

A.1. PURPOSE OF THIS CONTRACT

The purpose of this Contract is to establish basis for acquiring grant management software and supporting services to implement, train, and support said software applications between the State and Agate Software, Inc. and other State governmental entities,

This contract is between the State of Oklahoma, through the Department of Central Services and the Oklahoma Office of State Finance with Agate Software, Inc. hereafter known as the "contractor."

A.2. SOLICITATION

The original solicitation was titled RFP 0900000032 and Agate's response was to this same solicitation. The award for RFP 0900000032 is made under statewide contract number of SW855 – Grants Management Software and Services.

A.3. TERM OF CONTRACT

This contract is effective November 1, 2010, for one year and may be renewed, or amended and renewed for up to four (4) additional one (1) year period upon written notice to Agate not less than 30 days prior to the expiration date of this Contract or any renewal period. Agate shall provide written notice to DCS of DCS's upcoming option to renew the Contract at least 60 days prior to the expiration date of this Contract or any renewal period.

A.4. NOTIFICATIONS

All notifications are made to:

Department of Central Services
Central Purchasing Division
P.O. Box 528803
Oklahoma City, OK 73152
Attention: Gary Rowland

A.5. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

A.5.1. The contractor and any subcontractor certifies to the best of their knowledge and belief, that they and their principals or participants:

A.5.1.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State or local department or agency;

A.5.1.2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) contract; or for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

A.5.1.3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph A.4.1.2. of this certification; and

A.5.1.4. Have not within a three-year period preceding this application/proposal had one or more public (Federal, State or local) contracts terminated for cause or default.

A.6. CONTRACT MODIFICATION

A.6.1. The Contract issued as a result of this solicitation is under the authority of the State personnel signing the Contract. The Contract may be modified only through a written Contract Modification, signed by the State.

A.6.2. Any change to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the State in writing, or made unilaterally by the Contractor, is a breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including unauthorized written Contract Modifications, shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the resultant Contract.

A.7. INVOICING AND PAYMENT

A.7.1. Pursuant to 74 O.S. §85.44(B), invoices will be paid in arrears after products have been delivered or services provided.

A.7.2. Interest on late payments made by the State of Oklahoma is governed by 62 O.S. §41.4a and 62 O.S. §41.4b.

A.8. TAX EXEMPTION

Purchases by the State of Oklahoma are exempt from Oklahoma sales or use taxes and Federal excise tax. The Central Purchasing Division shall furnish tax exemption certificates upon written request.

A.9. AUDIT AND RECORDS CLAUSE

- A.9.1.** As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any Contract with the State, the successful bidder(s) agree any pertinent State or Federal agency will have the right to examine and audit all records relevant to execution and performance of the resultant Contract.
- A.9.2.** The contractor is required to retain records relative to the Contract for the duration of the Contract and for a period of seven (7) years following completion and/or termination of the Contract. If an audit, litigation, or other action involving such records is started before the end of the seven (7) year period, the records are required to be maintained for seven (7) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.

A.10. NON-APPROPRIATION CLAUSE

The terms of any Contract resulting from the solicitation and any Purchase Order issued for multiple years under the Contract are contingent upon sufficient appropriations being made by the Legislature or other appropriate government entity. Notwithstanding any language to the contrary in the solicitation, purchase order, or any other Contract document, the procuring agency may terminate its obligations under the Contract if sufficient appropriations are not made by the Legislature or other appropriate governing entity to pay amounts due for multiple year agreements. The procuring agency's decisions as to whether sufficient appropriations are available shall be accepted by the contractor and shall be final and binding.

A.11. CHOICE OF LAW

Any claims, disputes, or litigation relating to the solicitation, or the execution, interpretation, performance, or enforcement of the Contract shall be governed by the laws of the State of Oklahoma.

A.12. CHOICE OF VENUE

Venue for any action, claim, dispute, or litigation relating in any way to the Contract shall be in Oklahoma County, Oklahoma.

A.13. TERMINATION FOR CAUSE

- A.13.1.** The contractor may terminate the Contract for default or other just cause with a 30-day written request and upon written approval from the Central Purchasing Division. The State may terminate the Contract for default or any other just cause upon a 30-day written notification to the contractor.
- A.13.2.** The State may terminate the Contract immediately, without a 30-day written notice to the contractor, when violations are found to be an impediment to the function of an agency and detrimental to its cause, when conditions preclude the 30-day notice, or when the State determines that, an administrative error occurred prior to Contract performance.
- A.13.3.** If the Contract is terminated, the State shall be liable only for payment for products and/or services delivered and accepted.

A.14. TERMINATION FOR CONVENIENCE

- A.14.1.** The State may terminate the Contract, in whole or in part, for convenience if the State determines that termination is in the State's best interest. The State shall terminate the Contract by delivering to the contractor a Notice of Termination for Convenience specifying the terms and effective date of Contract termination. The Contract termination date shall be a minimum of 60 days from the date the Notice of Termination for Convenience is issued by the State.
- A.14.2.** If the Contract is terminated, the State shall be liable only for products and/or services delivered and accepted, and for costs and expenses (exclusive of profit) reasonably incurred prior to the date upon which the Notice of Termination for Convenience was received by the contractor.

A.15. INSURANCE

The contractor shall obtain and retain insurance, including workers' compensation, automobile insurance, medical malpractice, and general liability, as applicable, or as required by State or Federal law, prior to commencement of any work in connection with the Contract. The contractor shall timely renew the policies to be carried pursuant to this section throughout the term of the Contract and shall provide the Central Purchasing Division with evidence of such insurance and renewals.

A.16. EMPLOYMENT RELATIONSHIP

The Contract does not create an employment relationship. Individuals performing services required by this Contract are not employees of the State of Oklahoma. The contractor's employees shall not be considered employees of the State of Oklahoma for any purpose, and accordingly shall not be eligible for rights or benefits accruing to state employees.

A.17. COMPLIANCE WITH APPLICABLE LAWS

The products and services supplied under the Contract shall comply with all applicable federal, state, and local laws and the contractor shall maintain all applicable licenses and permit requirements.

A.18. CONTRACT TERM, RENEWAL AND EXTENSION OPTION

- A.18.1.** The initial Contract period shall begin on the effective date and shall extend through One (1) Year unless renewed, extended, or terminated in accordance with applicable Contract provisions. The Contractor shall not commence work, or commit funds, or incur costs, or in any way act to obligate the State as if he/she were the Contractor until so notified in writing of the approval of the Contract. The State personnel signing this contract are the only individual(s) who can transmit that approval to the Contractor.
- A.18.2.** Under Oklahoma law, the State may not contract for a period longer than one (1) year. By mutual consent of the parties hereto, it is intended that there will be four (4) options to renew, each for duration of one (1) year.
- A.18.3.** The State, at its sole option, may choose to exercise an extension for a maximum of 90 days beyond the final renewal option period, at the contract compensation rate for the extended period. If option is exercised, DCS will notify the contractor in writing prior to contract end date.
- A.18.4.** Notification to exercise the option to renew the Contract shall be set forth, in writing, by the State at least 30 days prior to the end of each contract period. The Contract shall be contingent upon approval by the State. If a decision is made not to exercise an option period, notice shall be sent at least 30 days prior to the end of the current contract period.

A.19. GRATUITIES

The right of the contractor to perform under this contract may be terminated, by written notice, if the Contracting Officer determines that the contractor, or its agent or another representative offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of any state agency. Further more a contractor convicted of such violation may also be suspended or debarred.

A.20. MUTUAL RESPONSIBILITIES

The State and Contractor agree that under this Agreement:

- A.20.1.** Neither party grants the other the right to use any trademarks, trade names, or other designations in any promotion or publication without express written consent by the other party;
- A.20.2.** This is a non-exclusive agreement and each party is free to enter into similar agreements with others;
- A.20.3.** Each party grants the other only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted;

A.21. SUB-CONTRACTORS

- A.21.1.** The Contractor may use sub-contractors in support of this contract; however, the Contractor shall remain solely responsible for the performance of this Contract.
- A.21.2.** All payments for Products or Services shall be made directly to the Contractor. The Central Purchasing Contracting Officer reserves the right to approve any and all sub-contractors providing services under this Contract.
- A.21.3.** All sub-contractor changes after award, including changes of the actual employees performing services on this contract, are subject to approval by the Central Purchasing Contracting Officer. No payments will be made to the Contractor for services performed pursuant to this Contract by unapproved employees of a sub-contractor.
- A.21.4.** Contractor's employees or agents, if any, who perform services for the State under this Agreement shall also be bound by the provisions of this Agreement. At the request of the State, Contractor shall provide adequate evidence that such persons are their employees or agents. In accordance with the section on "Employment relationship", the State shall not be responsible to Contractor's employees for any employee benefit or any obligation relating to employment, including health insurance benefits, workers' compensation insurance, paid vacation, or any other employee benefit.

A.22. CONFIDENTIALITY

- A.22.1.** Pursuant to O.S. § Title 62 Section 34-12C. "The Office of State Finance and all agencies of the executive branch of the state shall not be required to disclose, directly or indirectly, any information of a state agency which is declared to be confidential or privileged by state or federal statute or the disclosure of which is restricted by agreement with the United States or one of its agencies, nor disclose information technology system details that may permit the access to confidential information or any information affecting personal security, personal identity, or physical security of state assets."
- A.22.2.** Each party recognizes that the other party has and will have information, business models, and other proprietary information (collectively, "Information") which are subject to confidentiality by virtue of statute or are valuable, special and unique assets of the other party and need to be protected from improper disclosure. In consideration for the disclosure of the Information, each party agrees that any of their employees, or any of their agents will not at any time or in any manner, either directly or indirectly, use any Information for their own benefit, or divulge, disclose, or communicate in any manner any Information to any third party. With the prior written consent of the State, such information may be released to authorized third parties. Each party will protect the Information and treat it as strictly confidential. A violation of this paragraph shall be a material violation of this Agreement.

A.23. UNAUTHORIZED OBLIGATIONS

At no time during the performance of this contract shall the Contractor have the authority to obligate the State for payment of any goods or services over and above the awarded contract. If the need arises for goods or services over and above the awarded contract for this project, Contractor shall cease the project and contact agency for approval prior to proceeding.

A.24. ELECTRONIC AND INFORMATION TECHNOLOGY ACCESSIBILITY

Pursuant to Title 74, Section 85.7d and OAC 580:15-6-22 electronic and information technology procurements, solicitations, agreements, and contracts shall comply with applicable Oklahoma Information Technology Accessibility Standards issued by the Oklahoma Office of State Finance.

EIT Standards may be found at www.ok.gov/DCS/Central_Purchasing/index.html or http://www.ok.gov/OSF/documents/isd_itas.doc.

1) For Information Technology or Communications Products, Systems and Applications not requiring development and/or customization. The Contractor shall provide a description of conformance with the applicable Oklahoma Information Technology Accessibility Standards for the proposed product, system, or application by means of either a Voluntary Product Accessibility Template (VPAT) or other comparable document, upon request.

The Contractor shall indemnify and hold harmless the State of Oklahoma and any Oklahoma Government entity purchasing the products, systems, or applications not requiring development and/or customized by the Contractor from any claim arising out of the Contractor's failure to comply with applicable Oklahoma Information Technology Accessibility Standards subsequent to providing certification of compliance to such Standards.

2) For Information Technology or Communications Products, Systems or Applications requiring development and/or customization. The Contractor shall provide a description of conformance with the applicable Oklahoma Information Technology Accessibility Standards for the proposed product, system, or application developed and/or customized by means of either a Voluntary Product Accessibility Template (VPAT) or other comparable document, upon request. Additional requirements and documentation may be required and compliance will be necessary on the Contractor's part. Such requirements will be stated in documents such as State Bids, Request for Proposals, Contracts, Agreements, Purchase Orders, and Amendments.

The Contractor shall indemnify and hold harmless the State of Oklahoma and any Oklahoma Government entity purchasing the products, systems, or applications from the Contractor, from any claim arising out of the Contractor's failure to comply with applicable Oklahoma Information Technology Accessibility Standards subsequent to providing certification of compliance to such Standards. However, the Contractor shall no longer have an obligation to indemnify the State for liability resulting from products, systems or applications developed and/or customized that are not in compliance with applicable Oklahoma Information Technology Accessibility Standards ("Standards") after the State has tested and confirmed that the product, system or application meets the accessibility requirements in the Standards.

A.25. INVOICES

A.25.1. Contractor shall be paid upon submission of proper invoice(s) to the agency at the prices stipulated on the contract.

A.25.2. Invoices shall contain the purchase order number.

A.25.3. Failure to provide proper invoices may result in delay of processing invoices for payment.

A.26. PATENTS AND ROYALTIES

Contractor without exception shall indemnify and hold harmless the State of Oklahoma and its employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or un-patented invention, process, or article manufactured or used in the performance of the contract. If the contractor uses any design, device, or materials covered by letters, patent copyright, it is mutually agreed and understood without exception that the prices shall include all royalties or cost arising from the use of such design, device, or materials in any way involved in the work.

A.27. EQUAL OPPORTUNITY AND DISCRIMINATION

The Contractor is an Equal Opportunity Employer, a provider of services and/or assistance, and is in compliance with the 1964 Civil Rights Act, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, as amended and Executive Orders 11246 and 11375. The provider assures compliance with the Americans with Disabilities Act of 1990 (Public Law 101-336), all amendments to, and all requirements imposed by the regulations issued pursuant to this act.

A.28. ASSIGNMENT

Contractor's obligations under this contract may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of the State.

A.29. SEVERABILITY

If any provision of this contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

A.30. FAILURE TO ENFORCE

Failure by the State at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the State to enforce any provisions at any time in accordance with its terms.

A.31. CONTRACT

The contract will be for indefinite delivery and indefinite quantity for the products/services awarded.

A.32. OFFSHORE SERVICES

No offshore services are provided for under the resulting contract.

A.33. LIMITATION OF LIABILITY

Contractor shall be liable for any damages resulting from, arising out of, or relating to the services provided through this agreement. Contractor's liability for all programs, including software products owned or distributed by the Contractor, program documentation, and any program updates acquired through technical support shall be limited to the Contractor's warranty.

"Any limitation of liability submitted by the Contractor does not apply to the extent a court of competent jurisdiction (including any appellate court of final review) determines such limitation of liability violates Oklahoma law, in which case the specific limitation that the court determines is in violation of Oklahoma law shall be void."

A.34. FAILURE TO PROVIDE

The contractor's repeated failure to provide defined services, without reasonable basis as determined by the State of Oklahoma, shall constitute a material breach of the contractor's obligations, which may result in cancellation of the contract.

A.35. EMERGING TECHNOLOGIES

The State of Oklahoma reserves the right to modify the terms of this contract at any time to allow for technologies not identified elsewhere under this document. If there are repeated requests for an "emerging technology" and the State feels it is warranted to add such technologies, the State reserves the right to include such technology hereunder or to issue a formal modification or amendment to the Contract.

A.36. AGENCY POLICIES

The contractor's associates must adhere to the agency policies pertaining to acceptable use of Internet and electronic mail, facility and data security, press releases, and public relations. It is up to the contractor to review and relate agency policies covering the above to the consulting staff.

A.37. OWNERSHIP RIGHTS

- a) The IntelliGrants software provided by the Contractor is licensed to the State under the terms and conditions of the attached License Agreement, however no term or condition in the attached License Agreement takes precedence over any term or conditions stated herein
- b) It is understood and agreed that additional Software modules may be custom developed by the Contractor for the sole and exclusive use of the State. Moreover, except with regard to any deliverable based on Contractor's reusable or pre-existing intellectual property ("Utilities") and IntelliGrants, the State shall be deemed the sole and exclusive owner of all right, title, and interest therein, including all copyright and proprietary rights relating thereto.
- c) Except for any Utilities and IntelliGrants, all work performed by Contractor of Software and any supporting documentation therefore shall be considered as Works for Hire (as such are defined under the U.S. Copyright Laws) and, as such, shall be opened by and for the benefit of State of Oklahoma.

A.38. RIGHT OF USE

- a) The State has the right to use or not use the Software, not including any Utilities and IntelliGrants, and to use, reproduce, re-use, alter, modify, edit, or change the software as it sees fit and for any purpose. However, Contractor shall bear no liability for any changes the State makes to such Software.
- b) In the event that it should be determined that any of such software or supporting documentation does not qualify as a "Work Made for Hire", Contractor irrevocably grants to the State a non-exclusive, irrevocable license to use such portion. With respect to any Utilities, The State shall have the right to perpetual, internal use of the Utilities included in the deliverable
- c) Contractor will assist the State and its Agents, upon request, in preparing U.S. and foreign copyright, trademark, and/or patent applications covering Software. Contractor will sign any such applications, upon request, and deliver them to the State. The State of Oklahoma will bear all expenses that it causes to be incurred in connection with such copyright, trademark, and/or patent protection.

A.39. SOURCE CODE ESCROW – REFERENCE TITLE 62 O.S. § 34.31

- a) No state agency, as defined by Section 250.3 of Title 75 of the Oklahoma Statutes, nor the Purchasing Division of the Department of Central Services, unless otherwise provided by federal law, shall enter into a contract for the acquisition of customized computer software developed or modified exclusively for the agency or the state, unless the vendor agrees to

place into escrow with an independent third party the source code for the software and/or modifications.

- b) The vendor must agree to place the source code for the software and any upgrades supplied to an agency in escrow with a third party acceptable to the agency and to enter into a customary source code escrow agreement which includes a provision that entitles the agency to receive everything held in escrow upon the occurrence of any of the following:
1. A bona fide material default of the obligations of the vendor under the agreement with the agency;
 2. An assignment by the vendor for the benefit of its creditors;
 3. A failure by the vendor to pay, or an admission by the vendor of its inability to pay, its debts as they mature;
 4. The filing of a petition in bankruptcy by or against the vendor when such petition is not dismissed within sixty (60) days of the filing date;
 5. The appointment of a receiver, liquidator or trustee appointed for any substantial part of the vendor's property;
 6. The inability or unwillingness of the vendor to provide the maintenance and support services in accordance with the agreement with the agency; or
 7. The ceasing of a vendor of maintenance and support of the software.

The fees of any third-party escrow agent subject to this section shall be borne by the vendor.

- c) The State Purchasing Director or a procurement officer of a state agency not subject to the Oklahoma Central Purchasing Act shall not process any state agency request for the customization, modernization, or development of computer software unless the proposed vendor provides documentation that complies with subsections A and B of this section.
- d) The State Purchasing Director shall provide advice and assistance, as may be required, in order for state agencies to comply with the provisions of this section.
- e) As used in this section:
1. "State agency" shall include all state agencies, whether subject to the Central Purchasing Act or not, except the Oklahoma Lottery Commission; and
 2. "Source code" means the programming instruction for a computer program in its original form, created by a programmer with a text editor or a visual programming tool and saved in a file.

A.40. WARRANTS

Contractor warrants and represents that Products or deliverables specified and furnished by or through the Contractor shall individually, and where specified by Contractor to perform as a system, be substantially uninterrupted and error-free in operation and guaranteed against faulty material and workmanship for a warranty period of a minimum of ninety (90) days from the date of acceptance. During the warranty period, defects in the products or deliverables specified and furnished by or through the Contractor shall be repaired or replaced by Contractor at no cost or expense to the Agency.

A.41. PERFORMANCE AND UPGRADES

Per Oklahoma Statute, Contractor warrants that this upgrade will enhance or is necessary for performance of the State's duties and responsibilities (Title 74 § 85.7c).

Contractor shall provide documentation of the projected schedule of recommended or required system upgrades to this system or any software provided to service this system for the three (3) year period following the target purchase date. If bidder does not plan recommended or projected system upgrades, the Contractor shall provide documentation in the bid that the Contractor plans no system upgrades to the high technology system for the three (3) year period following the target purchase date (Title 74 § 85.7c).

A.42. DISCLOSURE AND CONFLICT

In addition to any requirements at law or through a professional code of ethics or conduct, Contractor is required to disclose any outside activities or interests that conflict or may conflict with the best interests of the State. Further, Contractor shall not plan, prepare, or engage in any activity that conflicts or may conflict with the best interests of the State during the period of this agreement without prior written notification of and written approval of the Chief Information Officer. Prompt disclosure is required under this paragraph if the activity or interest is related, directly or indirectly, to any person or entity currently under contract with or seeking to do business with the State, its employees, other third-party individuals, or entities holding contracts with the State.

A.43. COMPLIANCE WITH TECHNOLOGY POLICIES

If the proposed solution is a web-based application, Contractor agrees to adhere to the State of Oklahoma "Information Security Policy, Procedures, and Guidelines" located at:

http://www.ok.gov/OSF/Information_Services/ISD_Publications.html

A.44. OWNERSHIP OF INFORMATION

The information produced as a result of the implementation of Contractor's proposed solution is the sole property of the State. If the contract is for Hosted services, Contractor shall provide to the State on a quarterly basis a backup copy of this information in electronic format that is machine-readable by the State for Disaster Recovery and Business Continuity purposes. At no time will the State be billed additional charges for the release of this information.

A.45. AUTHORIZED USERS

During the term of this contract, any state department, board, commission, agency, or institution may utilize this contract. The Oklahoma statutes state that counties, school districts, and municipalities of Oklahoma may avail themselves of the contract subject to the approval of the contractor. For purposes of the operation of this contract, counties, school districts, and municipalities shall have the same benefits and responsibilities as a state agency. Under this contract, the State of Oklahoma bears no liability for the actions of counties, school districts and municipalities and the privities of contract exists solely between the contractor and the county, school board or municipality.

A.46. SHRINK-WRAPPED SOFTWARE

In the event that provider specifies additional terms and conditions or clauses that conflict with this contract in an electronic license agreement notice, the additional terms and conditions or conflicting clauses will not be binding on the State of Oklahoma, and the provisions of this contract will prevail.

A.47. SOFTWARE

Agate will provide software that meets the specifications as outlined in the original solicitation RFP 0900000032.

A.48. ENTIRE AGREEMENT

This written contract contains the entire contract between the parties, and superseded any an all other contracts.

A.49. AMENDMENT

Any changes or modification to this agreement may only be made by a document executed by all parties

A.50. ORDER OF PRECEDENCE

The order of precedence among the Contract components shall be, first, the Contract and any amendments to it; second, the RFP and any amendments to it; third, the Vendor's proposal, including any clarifications requested and incorporated therein by the State; fourth, the attached IntelliGrants LicenseAgreement. A higher-order document shall supersede a lower-order document to the extent necessary to resolve any inconsistencies between them, but silence on any matter in a higher-order document shall not negate or modify the provisions of a lower-order document as to that matter.

In the event of a conflict in language between the documents referenced above, the provisions and requirements set forth and/or referenced in the Contract shall govern.

B. PURCHASING

Purchases from this contract to be approved and issued by the Office of State Finance.

C. PRICING

C.1. ENTERPRISE LICENSE FEE

IntelliGrants Grant Program License Fees – for the State of Oklahoma Module for grant program creation and configuration Module for report creation and configuration.

- a) \$240,000 for first 40 programs
- b) \$6000/grant program for programs 41 thru 75
- c) No costs for purchases beyond 75 programs

C.2. ANNUAL MAINTENANCE

- a) Year 1 - \$1,200/program (20% of License Fee). Maintenance fees based on number of grant programs in the system when an annual audit is performed 30 days prior to the end of the fiscal year.
- b) Annual Maintenance – Years 2-5 - \$1,200/program.

C.3. BUSINESS/GAP ANALYSIS SERVICES

OnSite Service to help agency Define Scope of Work. Recommended minimum ½ day per grant program.

- a) \$2,500/day, based on one onsite visit per Agency and 40 Grants
- b) Minimum 2 days onsite per Travel Date (documentation)

C.4. PLAN DOCUMENTATION

Project Plan Documentation, Business Analysis Documentation, Project Plans, Work Flows, Analysis Documentation.

- a) \$100 per hour with a maximum charge for 100 hours
- b) Maximum of \$10,000 per agency

C.5. DATA CONVERSION AND SYSTEM INTEGRATION.

The department/agency will be responsible for detecting and correcting (or removing) corrupt or inaccurate records from any record set, table, or database that is to be imported/integrated (aka, data cleansing). Lack of “clean” data could affect the overall implementation timeline and will result in additional cost for Agate to perform any data cleansing needed to successfully complete the task.

- a) Conversion of Legacy System Data to fit IntelliGrants Data Model. \$100 per hour.

C.6. SYSTEM CONFIGURATION

Grant Program Configuration.

- a) \$100 per hour

C.7. SOFTWARE DEVELOPMENT / CUSTOMIZATION.

PeopleSoft Integration and other custom interface programming.

- a) \$100 per hour

C.8. DOMAIN STRUCTURE FOR ENTERPRISE

Creation of a Unique Domain for each Agency.

- a) \$5,000 per agency

C.9. MANAGEMENT REPORTS

Agency Management Reports. Includes creation of up to six reports per agency.

- a) \$100 per hour, maximum of \$9,000 per agency.

C.10. DOCUMENTATION

User Training Manuals, One End-user Training Manual, One Administrator Operations Manual.

- a) \$6,500 per set

C.11. INTELLIGRANTS END USER TRAINING SESSION

One-day session for Sub-grantees. Unlimited class size dependent on facilities. Can be divided into 2 half-day sessions.

- a) \$2,500 per day

C.12. INTELLIGRANTS ADMINISTRATOR TRAINING SESSION

One-day session for Admin and Program staff. Train the Trainer Format. 30 student maximum per session.

- a) \$2,500 per day

C.13. MODULE TRAINING SESSIONS

3-day session for Admin and Program Staff. Train the Trainer Format. 30 student maximum per session.

- a) \$2,500 per day

IN WITNESS WHEREOF, the parties having read and understood the foregoing sections, expressly agree to these terms and conditions as evidence by their respective dated signatures below:

The signature below, by a duly authorized representative of the contractor, acknowledges agreement to comply with the specification stated herein.

Agate Software, Inc.

Signature: _____ (signature on file) _____

Printed Name: _____

Printed Title: _____

Signature Date: _____

Central Purchasing

Signature: _____ (signature on file) _____

Printed Name: _____

Printed Title: _____

Signature Date: _____

Office of State Finance

Signature: _____ (signature on file) _____

Printed Name: _____

Printed Title: _____

Signature Date: _____

IntelliGrants™ License Agreement

This Agreement, effective as of November 1, 2010 is made by and between Agate Software, Inc. ("Licensor"), a Michigan corporation, located at 2214 University Park Dr., Suite 102, Okemos, Michigan 48864 and State of Oklahoma ("Licensee").

NOW THEREFORE, in consideration of the mutual promises set forth below, Licensor and Licensee agree as follows:

1. License Grant

- a. Grant. Licensor grants to Licensee, on the terms and conditions of this Agreement, a non-exclusive license for use, solely by Licensee of the Licensor software and user documentation (collectively "Products") listed in Appendix B. The Products are licensed, not sold. The license is not transferable except as provided herein. Licensor reserves all other rights not expressly granted in this Agreement.
- b. Scope of License. The Products will be provided by Licensor as web applications, which will include a collection of files for installation on a web server and one database per application for installation on a database server. Licensee may not make any copies unless Licensee has paid the applicable fees. Products for which Third Party Software Requirements are specified in Appendix A are limited to use with those Third Party Software Requirements, and Licensee is responsible for obtaining any required licenses. If Products are to be used outside of the United States, Licensee must comply with the Export Restrictions set forth in Section 12.
- c. Assignment. Licensee may assign its rights under this Agreement to any other legal entity provided such assignment is pursuant to the sale of all or the majority of Licensee's assets, or pursuant to a merger, consolidation, or other reorganization. Licensee shall provide Licensor with written notice of such intended assignment no later than sixty (60) days prior to the intended date of assignment. Any permitted assignee must agree in writing to be bound by the terms and conditions of the Agreement as a licensee and must forward that writing to Licensor, as a condition of a valid assignment. In no event may Licensee assign or transfer any of its rights under this Agreement to any direct competitor of Licensor, or to any other third party except as permitted in this section. Any unauthorized assignment, sublicense, or other transfer by Licensee of this Agreement or the Products shall be void and shall be a material breach of this Agreement.
- d. Internal Use. Licensee may use the Products only to process Licensee's own data and only for Licensee's internal operations and the corresponding Licensee contract. Licensee may not use the

Products to offer timesharing or other computer based services to third parties, and may not sublicense, assign or otherwise permit use of the Products by third parties other than as permitted in this Agreement.

2. Term and Termination

The license term starts on the Effective Date of this Agreement and continues for a perpetual term unless terminated earlier in accordance with this Section. Licensor may terminate Licensee's license only in the event of a material breach by Licensee of this Agreement or Licensee Contract between the parties to which this Agreement is an attachment that is not cured within thirty (30) days after the giving of notice by Licensor. However, only one (1) day notice will be required in the event of infringement of Licensor's proprietary rights. Upon termination for any reason, Licensee agrees to stop all use of the Products, destroy all copies and certify their destruction to Licensor.

3. Pricing and Payment

For each Annual Support renewal period and for any other services provided hereunder, Licensee shall pay as invoiced at then-current prices, terms and conditions. Licensee agrees to pay all taxes associated with this Agreement, except for taxes on Licensor's net income. Failure to pay for license fees, service fees, annual support service fees and expenses by their due date shall constitute a material breach of this Agreement.

4. Support

- a. Support Services. Annual Support includes telephone and e-mail support for questions on the operation of the Products, as well as minor upgrades and patches for the Products. On-site support at any time during the term of this Agreement is subject to Licensor's then-current prices, terms, and conditions. All support is provided on a reasonable efforts basis only, and Licensee acknowledges that Licensor may not be able to resolve every support request. Support services can only be provided if the Product is in use with such Third Party Software Requirements as are specified in Appendix A. Any software patches, documentation, or other items provided as a part of the support services are solely owned by Licensor and will automatically be licensed to Licensee under this Agreement. Licensor will consult with the Licensee about any possible incompatibilities between the minor upgrades and patches and the customizations of the product and receive written approval from the Licensee BEFORE such patches and minor upgrades are applied. Licensor shall have the right to charge additional reasonable fees if Licensor spends time investigating or fixing a problem for Licensee that is not caused by a current standard release of a Product licensed to Licensee. The purchase by Licensee of Annual Support for all licensed Products is a requirement of this Agreement.

- b. Annual Support Renewal Periods. Annual Support will be invoiced thirty (30) days prior to each renewal period with then-current prices and terms of Net 30 days.

5. Installation, Customization, Data Conversion, and Training Services, and Work Products

- a. Any work products produced for Licensee as part of Installation, Customization, Data Conversion or Training Services will become Products licensed under this Agreement and are solely owned by Licensor.
- b. Unless the parties enter into a separate written agreement with respect to Installation, Customization, Data Conversion and Training Services, those services will be performed under the terms and conditions of this Agreement.
 - i) Installation. In order for Licensor to install the Products, Licensee will let Licensor use Licensee's system and equipment necessary for installation and testing. Licensee will provide such Third Party Software as is specified in Appendix A.
 - ii) Customization. If customization services are included in Appendix C, all such customization will be documented in Appendix D.
 - iii) Data Conversion. Licensee is solely responsible for conversion of its data into the database format required by the Products; however if data conversion services are included in Appendix C, Licensor will provide services for conversion of Licensee's data from any reasonable form to the database format required by the Products.
 - iv) Training. Training will be provided on-site at Licensee's facility using Licensee's equipment. Training can be customized upon request of Licensee to meet Licensee requirements.

6. Limited Warranty and Remedy

Licensor warrants that it has the right to grant Licensee this license. Licensor further warrants that the first release of each Product installed by Licensor for Licensee will for one year after the date of installation by Licensor perform substantially in accordance with Licensor's then current user documentation. Any unauthorized modifications made to Products by or on behalf of Licensee, or use other than with such Third Party Software Requirements as are specified in Appendix A., invalidates this warranty. Licensor makes no warranty and assumes no responsibility for any third party software licensed to or hardware acquired by Licensee or for any modifications, revisions or enhancements of the Products made by or on behalf of Licensee. Licensor does not warrant that the operation of the Products will be uninterrupted or error-free or that all errors discovered in the Products can or will be corrected.

LICENSOR'S SOLE OBLIGATION AND LICENSEE'S EXCLUSIVE REMEDY FOR ANY WARRANTY FAILURE

UNDER THIS AGREEMENT IS, AT LICENSOR'S OPTION, THE CORRECTION OR REPLACEMENT OF THE NONCONFORMING PRODUCTS OR ALTERNATIVELY, REFUND OF THE INITIAL LICENSE FEE AS STATED ON APPENDIX C.

7. Warranty Disclaimer

THE WARRANTIES CONTAINED IN THIS AGREEMENT ARE EXCLUSIVE. THEY ARE IN LIEU OF AND LICENSOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE.

8. Patents and Copyrights

Licensor will defend with the approval of the Attorney General's Office, and indemnify Licensee, at Licensor's expense, against any claim or suit against Licensee based on an alleged violation of a United States patent or copyright that arises out of Licensee's use of the Products as installed by Licensor and in accordance with this Agreement, and Licensor will pay all costs, settlements, or judgment finally awarded, provided (i) Licensee gives Licensor prompt written notice of any claim; (ii) Licensor has the right to control the defense of the litigation; and (iii) Licensee takes such actions as Licensor may reasonably request at Licensor's expense. If a judgment is obtained against Licensee's use of any part of the Products, or if Licensor believes that there is a likelihood of a claim of infringement, Licensor shall, at Licensor's option and expense: (i) modify or substitute the affected Products (but provide Licensee with substantially the same functionality); (ii) obtain the rights to continue use; or (iii) terminate the license and take back the affected Products. In the event of such termination, Licensor will refund the license fees paid for the affected Products, less a reasonable charge for use to the date of termination. Reasonable charge for use is calculated using the number of months from the effective date to the termination date dividing by 60 months multiplying by the paid license fees. After 60 months from the effective date no additional license fee refunds can be received. In the event the claim or liability could be avoided by the use of a current release, Licensor will provide Licensee with a copy of the current release at no extra charge. Licensor will have no obligation to defend and indemnify Licensee to the extent any claim or liability is based upon: (i) Licensee's continued use of a non-current release of Products, if Licensee has received notice of a claim and a current release has been supplied to Licensee; (ii) modifications, revisions or enhancements to the Products made by or on behalf of Licensee by third-party; (iii) work performed to Licensee's specifications; or (iv) use of software not supplied by Licensor but used in combination with the Products. The terms of this Paragraph do not apply to intellectual property licensed or otherwise provided by

Licensee to Licensor in order for the purposes of this Agreement to be accomplished. **THIS PARAGRAPH STATES LICENSOR'S ENTIRE LIABILITY FOR PATENT AND COPYRIGHT INFRINGEMENT.**

9. Limitation of Liability

- a. Limitation. **EXCEPT AS OTHERWISE PROVIDED IN SECTION 8, "PATENTS AND COPYRIGHTS," LICENSOR SHALL HAVE NO LIABILITY FOR THIRD PARTY CLAIMS, AND LICENSOR'S LIABILITY AND THAT OF ITS AGENTS, REPRESENTATIVES AND EMPLOYEES TO LICENSEE FOR DAMAGES WITH RESPECT TO THIS AGREEMENT, PRODUCTS, OR OTHER ITEMS OR SERVICES SHALL NOT EXCEED IN THE AGGREGATE THE LICENSE FEES PAID UNDER THIS AGREEMENT. IN NO EVENT SHALL LICENSOR HAVE ANY LIABILITY FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOST DATA, REVENUES, OR PROFITS, EVEN IF IT HAS BEEN ADVISED ABOUT THE POSSIBILITY OF THE SAME. THE LIMITATIONS AND EXCLUSIONS IN THIS PARAGRAPH SHALL APPLY TO ALL CLAIMS OF EVERY NATURE, WHETHER ARISING FROM CONTRACT, NEGLIGENCE OR OTHER TORT, OR OTHERWISE. DAMAGES AS LIMITED BY THIS PARAGRAPH IS LICENSEE'S SOLE AND EXCLUSIVE ALTERNATIVE REMEDY IN THE EVENT THAT ANY OTHER REMEDY PROVIDED IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.**
- b. Force Majeure. Licensor will not be responsible for any delay or failure in performance caused by acts of God, any government or any other cause beyond Licensor's reasonable control.
- c. Licensee Responsibility. Licensee is solely responsible for selecting and using Products and services to meet Licensee's needs and for establishing reasonable backups, accuracy checks, and security precautions to guard against possible malfunctions, loss of data, or unauthorized access. Licensee shall not modify, revise or enhance the Products other than as provided herein, or permit modification, revision or enhancement by third parties.

10. Ownership and Confidentiality

Licensor reserves all rights with respect to the Products under all applicable laws and treaties for the protection of intellectual property, and retains sole ownership of all right, title and interest, including but not limited to patent, copyright, trademark and trade secret rights in the Products, including work products that are the result of Installation, Training, Customization and Data Conversion Services. Licensee agrees that the Products constitute valuable confidential and proprietary products and trade secrets of Licensor. Licensee retains sole ownership of all of its data input into the Products. Likewise Licensee retains sole ownership of any of its copyrighted works provided to

Licensors hereby grants permission to Licensee to create such derivative works as are necessary in order for the purposes of this Agreement to be accomplished. Licensee agrees to take reasonable security precautions to prevent disclosure of Products to third parties and to protect and maintain confidentiality of the Products. Licensors will have the same confidentiality obligations for any specific confidential information Licensee supplies to Licensors, provided Licensee indicates in writing that the information is confidential at the time of disclosure.

Licensee agrees that it shall maintain the copyright and other proprietary rights notices that appear on and in the Products, and that it shall not make any copies or any use of the Products except as expressly set forth in this Agreement; cause or permit unauthorized access, use, copying, reproduction, disclosure, transfer, delivery or distribution by any means of all or any part of any Product; attempt to disassemble, reverse engineer, decompile, translate, modify, or discover the source code of any Product; separate components for use on more than one CPU; or merge all or any part of any Product with another program.

The parties agree that in the event of breach by Licensee of the provisions of this section, in addition to any other remedy the Licensors shall be entitled to seek a temporary restraining order or preliminary injunction from a court of competent jurisdiction to prevent Licensee from engaging in any further unauthorized use or disclosure of the Products.

Licensee may copy the Software in machine readable form for backup and archival purposes only as necessary to support Licensee's internal use of the Software with the Equipment on which use is licensed.

11. General

All Forms and Appendices are incorporated into and made a part of this Agreement by this reference. This Agreement shall be governed by and construed under the laws of the State of Oklahoma, exclusive of its choice of law rules. Licensee agrees to sole jurisdiction and venue in any Federal or state court in the State of Oklahoma. This Agreement may be amended, modified or waived only in writing signed by the authorized representatives of both parties. Sections 6 through 12 shall survive termination of this Agreement. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent. All notices shall be by personal delivery, by U.S. mail postage prepaid, by Federal Express or similar national delivery service, or by facsimile. Notices to Licensee shall be sent to Licensee's billing address. Notices to Licensors shall be sent to Licensors at the address first given in this Agreement. No waiver of any provision of this Agreement will be deemed a waiver of any other provision or of any subsequent breach or default of the same provision of this Agreement. If any provision of this Agreement is declared by a Court of competent jurisdiction to be invalid, illegal or unenforceable, then that provision shall be severed from the Agreement and the remaining provisions shall remain in full force and effect.

12. Export Restrictions

Products are subject to U.S. export control laws, including the U.S. Export Administration Act and Regulations, and may be subject to export or import regulations in other countries. Licensee agrees to comply fully with all export and import control laws and regulations of the United States and any other applicable country, including end-user, end-use and country destination restrictions.

THE ABOVE TERMS AND CONDITIONS ARE AGREED TO AND ACCEPTED by the parties each through its duly authorized representative.

(Please sign and return two copies. This agreement, any amendments and all future orders are subject to written acceptance at Licensor Headquarters in the State of Michigan.)

LICENSEE:	LICENSOR:
<u>State of Oklahoma</u>	Agate Software, Inc.
By: (signature on file)	By: (signature on file)
Name:	Name: Tim Pearl
Title:	Title: President
Dated:	Dated:

APPENDIX A
Third-Party Software Requirements

Licensee shall acquire licenses* for its use of the following third-party software. Licensee's entire rights and obligations with regard to the third-party software are subject exclusively to the terms and conditions of those licenses:

Third-party software includes but is not limited to the following:

1. Microsoft SQL Server 2005 or 2008
2. Microsoft .Net Framework 3.5 SP1
3. Microsoft Chart
4. Crystal Reports 10.5 or higher

*Agate Software will cover the costs of third party software licensing as long as the IG 09 Implementation is hosted by Agate Software

Appendix B

Licensors grants to Licensee a non-exclusive license to the following Software Products and Documentation. The Products are licensed, not sold.

- IntelliGrants IG 09 Web Based Grants Management Product
- IntelliGrants IG 09 Web Based Grants Management Document Designer Module
- IntelliGrants IG 09 Web Based Grants Management Report Builder Module

Appendix C – IntelliGrants Order Form

Refer to the IntelliGrants Web-based Grant Management System Proposal dated May 26, 2009 and the corresponding Licensee contract.

Details for any required customization services identified after the effective date of this License Agreement will be documented through a mutually agreed to statement of work including scope, timeline and budget. Unless otherwise stated in writing, the terms and conditions of the statement of work(s) are governed by this License Agreement.

Appendix D – Customizations

Refer to the IntelliGrants Web-based Grant Management System Proposal dated May 26, 2009 and the corresponding Licensee purchase order.

Details for any required customization services identified after the effective date of this License Agreement will be documented through a mutually agreed to statement of work including scope, timeline and budget. Unless otherwise stated in writing, the terms and conditions of the statement of work(s) are governed by this License Agreement.