

**SERIAL 05189 RFP ELECTRONIC DATA BASE PRODUCTS AND SERVICES
WebFeat Contract**

DATE OF LAST REVISION: July 20, 2006

CONTRACT END DATE: May 31, 2016

CONTRACT PERIOD THROUGH MAY 31, 2016

TO: All Departments

FROM: Department of Materials Management

SUBJECT: Contract for **ELECTRONIC DATA BASE PRODUCTS AND SERVICES**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **July 20, 2006 (Eff. 08/01/06)**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

Wes Baysinger, Director
Materials Management

DL/mm
Attach

Copy to: Clerk of the Board
Susan Varscsak, Library District
Mirheta Muslic, Materials Management



CONTRACT PURSUANT TO RFP

SERIAL 05189-RFP

This Contract is entered into this 26th day of July, 2006 by and between the Maricopa County Library District ("District"), a political subdivision of the State of Arizona, and WebFeat, Inc., a New York corporation ("Contractor") for the purchase of Electronic Data Base Products and Services.

1.0 TERM:

- 1.1 This Contract is for a term of ten (10) years, beginning on the 1st day of August, 2006 and ending the 31st day of May, 2016.
- 1.2 The District may, at its option and with the agreement of the Contractor, extend the period of this Contract for additional terms up to a maximum of fifteen (15) years. The District shall notify the Contractor in writing of its intent to extend the Contract period at least thirty (30) calendar days prior to the expiration of the original contract period, or any additional term thereafter.

2.0 PAYMENT:

- 2.1 As consideration for performance of the duties described herein, District shall pay Contractor the sum(s) stated in Exhibit "A."
- 2.2 Payment shall be made after the District's receipt of a properly completed invoice. Invoices shall follow the billing instructions contained in the account set-up. The District will establish the account set-up in concert with the Contractor.

3.0 DUTIES:

The Contractor shall perform all duties stated in Exhibit "B."

4.0 TERMS & CONDITIONS:

4.1 **Indemnification.**

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the District, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses, including but not limited to attorney fees and costs, relating to this Contract.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

The scope of this indemnification does not extend to the negligence of the District.

4.2 **Warranty and Indemnification – Copyright**

Contractor warrants and represents that it has the full right, power and authority to enter into this Contract and to grant the rights granted herein; that it has not previously licensed the interactive multimedia rights to the Material to any third party; and that District's inclusion and use of the Material will not violate any rights of any kind or nature whatsoever of any third party. Contractor shall indemnify and hold harmless District, its successors, assigns and licensees, and the respective officers, directors, agents and employees, from and against any and all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fee), arising out of or in any way connected with any breach of any representation or warranty made by Contractor herein.

4.3 **Warranty and Indemnification – Use of Internet**

Contractor shall indemnify and hold District harmless from and against any claims, liabilities, damages and expenses, including, without limitation, reasonable attorney's fees relating to or arising out of Contractor's breach of any of its material obligations under this Contract. Contractor shall not be liable for any third party claims based upon or arising from District's negligent operation of the System or for any indirect, incidental or consequential damages arising from the use of or inability to use the System attributable to District's negligence, provided that Contractor is not also negligent.

4.4 **PROCUREMENT CARD ORDERING CAPABILITY:**

It is the intent of the District to pay via purchase order or through use of a MasterCard Procurement Card as best meets the needs of the District.

4.5 **NOTICES:**

All notices given pursuant to the terms of this Contract shall be addressed to:

For District:

Maricopa County Library District
Attn: Director
17811 N. 32nd Street
Phoenix, Arizona 85032
Telephone: 602-506-5751
Fax: 602-506-4689
E-mail: harrycourtright@mcl.d.maricopa.gov

For Contractor:

WebFeat, Inc.
Todd Miller
President and CEO
3-1 Park Plaza
Old Brookville, New York 11545
Telephone: (888) 757-9119
Facsimile: (516) 908-4311
Email: tmiller@webfeat.org

4.6 **REQUIREMENTS CONTRACT:**

4.6.1 Contractor signifies its understanding and agreement by signing this document that this Contract is a requirements contract. This Contract does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when District identifies a need and issues a purchase order or a written notice to proceed.

4.6.2 District reserves the right to cancel purchase orders or notice to proceed within a reasonable period of time after issuance. Should a purchase order or notice to proceed be canceled, the District agrees to reimburse the Contractor for actual and documented costs incurred by the Contractor. The District will not reimburse the Contractor for any avoidable costs incurred after receipt of cancellation, or for lost profits, or shipment of product or performance of services prior to issuance of a purchase order or notice to proceed.

4.6.3 Contractor agrees to accept oral cancellation of purchase orders.

4.7 PRICE ADJUSTMENTS:

Requests for reasonable price adjustments, if any, must be submitted sixty (60) days prior to the Contract anniversary date, beginning after Year Three of the Contract. Requests for adjustment in cost of service-related labor, copyright, licensing and/or materials must be supported by appropriate documentation. If District agrees to the adjusted price terms, District shall issue written approval of the change. The reasonableness of the request will be determined by comparing the request with the Consumer Price Index or by performing a market survey.

4.8 TERMINATION FOR CONVENIENCE:

The District reserves the right to terminate the Contract, in whole or in part at any time, with thirty (30) days written notice, when in the best interests of the District without penalty or recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the District. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.

4.9 TERMINATION FOR DEFAULT:

4.9.1 Either party may terminate the Contract if the other party materially breaches any term or condition of the Contract and fails to remedy such breach within thirty (30) days after written notice of such breach; or becomes subject to any receivership, insolvency, bankruptcy, moratorium or similar proceeding for more than thirty (30) days. In addition to the rights reserved in the Contract, the District may terminate the Contract in whole or in part due to the failure of the Contractor to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

4.9.2 The District may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the District for any excess costs incurred by the District in procuring materials or services in substitution for those due from the Contractor.

4.9.3 The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

4.10 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. §38-511 the District may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the District is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S §38-511 the District may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the District from any other party to the contract arising as the result of the Contract.

4.11 OFFSET FOR DAMAGES;

In addition to all other remedies at law or equity, the District may offset from any money due to the Contractor any amounts Contractor owes to the District for damages resulting from breach or deficiencies in performance under this contract.

4.12 ADDITIONS/DELETIONS OF SERVICE:

The District reserves the right to add and/or delete products and/or services provided under this Contract. If a requirement is deleted, payment to the Contractor will be reduced proportionately to the amount of service reduced in accordance with the proposal price. If additional services and/or products are required from this Contract, prices for such additions will be negotiated between the Contractor and the District.

4.13 SUBCONTRACTING:

The Contractor may not assign this Contract or subcontract to another party for performance of the terms and conditions hereof without the written consent of the District, which shall not be unreasonably withheld. All correspondence authorizing subcontracting must reference the Contract Serial Number and identify the job project.

4.14 AMENDMENTS:

All amendments to this Contract must be in writing and signed by both parties.

4.15 RETENTION OF RECORDS:

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for five (5) years after final payment or until after the resolution of any audit questions which could be more than five (5) years, whichever is longer. The District, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of, any and all said materials.

If the Contractor's books, records and other documents relevant to this Contract are not sufficient to support and document that requested services were provided, the Contractor shall reimburse District for the services not so adequately supported and documented.

4.16 AUDIT DISALLOWANCES:

If at any time, District determines that a cost for which payment has been made is a disallowed cost, such as overpayment, District shall notify the Contractor in writing of the disallowance. District shall also state the means of correction, which may be but shall not be limited to adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

4.17 ALTERNATIVE DISPUTE RESOLUTION:

4.17.1 After the exhaustion of the administrative remedies provided in the Maricopa County Procurement Code, any contract dispute in this matter is subject to compulsory arbitration. Provided the parties participate in the arbitration in good faith, such arbitration is not binding and the parties are entitled to pursue the matter in state or federal court sitting in Maricopa County for a de novo determination on the law and facts. If the parties cannot agree on an arbitrator, each party will designate an arbitrator and those two arbitrators will agree on a third arbitrator. The three arbitrators will then serve as a panel to consider the arbitration. The parties will be equally responsible for the compensation for the arbitrator(s). The hearing, evidence, and procedure will be in accordance with Rule 74 of the Arizona Rules of Civil Procedure. Within ten (10) days of the completion of the hearing the arbitrator(s) shall:

4.17.1.1 Render a decision;

4.17.1.2 Notify the parties that the exhibits are available for retrieval; and

4.17.1.3 Notify the parties of the decision in writing (a letter to the parties or their counsel shall suffice).

4.17.2 Within ten (10) days of the notice of decision, either party may submit to the arbitrator(s) a proposed form of award or other final disposition, including any form of award for attorneys' fees and costs. Within five (5) days of receipt of the foregoing, the opposing party may file objections. Within ten (10) days of receipt of any objections, the arbitrator(s) shall pass upon the objections and prepare a signed award or other final disposition and mail copies to all parties or their counsel.

4.17.3 Any party which has appeared and participated in good faith in the arbitration proceedings may appeal from the award or other final disposition by filing an action in the state or federal court sitting in Maricopa County within twenty (20) days after date of the award or other final disposition. Unless such action is dismissed for failure to prosecute, such action will make the award or other final disposition of the arbitrator(s) a nullity.

4.18 SEVERABILITY:

The invalidity, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

4.19 RIGHTS IN DATA:

The District shall have the use of all data and reports resulting from this Contract without additional cost or other restriction except as provided by law. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder. Upon expiration or termination of this Contract, District will not retain any rights to the services included in this Contract.

4.20 INTEGRATION:

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, communications, understandings, representations, or agreements, whether oral or written, express or implied.

4.21 GOVERNING LAW:

This Contract shall be governed by the laws of the state of Arizona. Venue for any actions or lawsuits involving this Contract will be in Maricopa County Superior Court or in the United States District Court for the District of Arizona, sitting in Phoenix, Arizona.

4.22 ORDER OF PRECEDENCE:

In the event of a conflict in the provisions of this Contract and Contractor's license agreement, the terms of this Contract shall prevail.

4.23 INCORPORATION OF DOCUMENTS:

The following are to be attached to and made part of this Contract.

4.23.1 Exhibit A, Pricing.

4.23.2 Exhibit B, Scope of Work

4.23.3 Exhibit C, WebFeat, Inc. License Agreement

IN WITNESS WHEREOF, this Contract is executed on the date set forth above.

CONTRACTOR



AUTHORIZED SIGNATURE

TODD MILLER, PRESIDENT
PRINTED NAME AND TITLE

3-1 PARK PLAZA, OLD BROOKVILLE, NY 11545
ADDRESS

7/3/06
DATE

MARICOPA COUNTY LIBRARY DISTRICT

BY: 
DIRECTOR, LIBRARY DISTRICT

7/21/06
DATE

BY: _____
CHAIRMAN, BOARD OF DIRECTORS

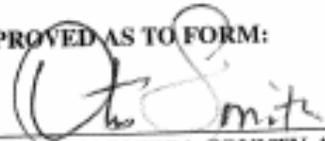
DATE

ATTESTED:

CLERK OF THE BOARD

DATE

APPROVED AS TO FORM:


DEPUTY MARICOPA COUNTY ATTORNEY

7/27/06
DATE

EXHIBIT A

SERIAL 05189-RFP

PRICING SHEET: NIGP 95635, B0604225

BIDDER NAME: WebFeat, Inc.
 VENDOR # : _____
 BIDDER ADDRESS: 3-1 Park Plaza, Old Brookville, NY 11545
 P.O. ADDRESS: N/A
 BIDDER PHONE #: (888) 757-9119
 BIDDER FAX #: (516) 908-4311
 COMPANY WEB SITE: www.webfeat.org
 COMPANY CONTACT (REP): Marge Ehmann
 E-MAIL ADDRESS (REP): mehmann@webfeat.org

WILLING TO ACCEPT FUTURE SOLICITATIONS VIA EMAIL: X YES _____ NO

ACCEPT PROCUREMENT CARD: _____ YES X NO

REBATE (CASH OR CREDIT) FOR UTILIZING PROCUREMENT CARD: _____ YES X NO _____ % REBATE

(Payment shall be made within 48 hrs utilizing the Purchasing Card)

INTERNET ORDERING CAPABILITY: _____ YES X NO 0 % DISCOUNT

OTHER GOV'T. AGENCIES MAY USE THIS CONTRACT: X YES _____ NO

PAYMENT TERMS:

NET 10 _____
 NET 15 X
 NET 20 _____
 NET 30 _____
 NET 45 _____
 NET 60 _____
 NET 90 _____
 2% 10 DAYS NET 30 _____
 1% 10 DAYS NET 30 _____
 2% 30 DAYS NET 31 _____
 1% 30 DAYS NET 31 _____
 5% 30 DAYS NET 31 _____

INDICATE PERCENTAGE OF M/WBE PARTICIPATION IF ANY HERE: 0 %

PLEASE INDICATE HOW YOU HEARD ABOUT THIS SOLICITATION:

_____ NEWSPAPER ADVERTISEMENT
 _____ MARICOPA COUNTY WEB SITE
 _____ PRE-SOLICITATION NOTICE (POST CARD)
 _____ E-MAIL
 X OTHER (PLEASE SPECIFY)

1.0 PRICE(S) FOR MARICOPA COUNTY ONLY

<u>ITEM DESCRIPTION</u>	<u>CATALOG/LIST PRICE</u>		<u>% OFF LIST</u>
	<u>List Price</u>	<u>Cost</u>	
1.1 WebFeat Prism Interface + SMART usage tracker - up to 50 databases. Annual subscription based on 1 year commitment	\$50,000	\$30,000	40%
1.2 WebFeat Prism Interface + SMART usage tracker - up to 50 databases. Annual subscription based on 3+ year commitment	\$50,000	\$27,000	46%
1.3 MyWebFeat personalized WebFeat add-on (requires WebFeat Prism) - annual subscription based on 1 year commitment	\$12,500	\$7,500	40%
1.4 MyWebFeat personalized WebFeat add-on (requires WebFeat Prism) - annual subscription based on 3+ year commitment	\$12,500	\$6,750	46%

2.0 PRICE(S) STATEWIDE (INCLUDING MARICOPA COUNTY)

<u>ITEM DESCRIPTION</u>	<u>CATALOG/LIST PRICE</u>		<u>% OFF LIST</u>
	<u>List Price</u>	<u>Cost</u>	
2.1 WebFeat Prism Interface + SMART usage tracker - annual subscription based on 1 year commitment. Includes Maricopa County plus WebFeat Prism/SMART systems for Arizona State Library and Tucson-Pima Public Library. Limit 50 databases per library	\$150,000	\$50,000	67%
2.2 WebFeat Prism Interface + SMART usage tracker - annual subscription based on 3+ year commitment. Includes Maricopa County plus WebFeat Prism/SMART systems for Arizona State Library and Tucson-Pima Public Library. Limit 50 databases per library	\$150,000	\$45,000	70%

2.3 MyWebFeat personalized WebFeat add-on to 2.1 (requires WebFeat Prism) - annual subscription based on 1 year commitment	\$37,500	\$12,500	67%
2.4 MyWebFeat personalized WebFeat add-on to 2.2 (requires WebFeat Prism) - annual subscription based on 3+ year commitment	\$37,500	\$11,250	70%

WebFeat, Inc.

EXHIBIT B

SCOPE OF WORK

1.0 INTENT:

1.1 This Contract is for electronic products and services. Products and services provided under this Contract may also become accessible for purchase by other public entities throughout the State of Arizona. Contractor's products and services shall allow for unlimited, simultaneous access for users.

1.2 New contractors may be added to the District's contract(s) for these services during the term of this Contract as appropriate in order to meet the continuing needs of the District.

2.0 SCOPE OF SERVICES:

2.1 Contractor shall make the following service available, via the internet, to all public libraries located within Maricopa County from inside the libraries and, if applicable, via remote customer access. Maricopa County, in partnership with other government entities, has the option of extending this service to all public libraries throughout the State of Arizona. Additional contractors and/or products and services may be added to this Contract as funding becomes available.

2.1.1 WebFeat Prism Interface + SMART usage tracker.

2.2 COPYRIGHT:

The Contractor is responsible to legally obtain copyright to items offered in the products.

2.3 TAX:

2.3.1 Libraries in the State of Arizona are exempt from any out-of-state tax on the purchase of books, electronic information and audio/visual materials. Tax Exempt numbers are not issued by the County. A copy of the Arizona Law providing this exemption will be provided at the time of account set-up.

2.3.2 An in-state contractor may only charge the city sales tax for the city within which the Contractor is located. The exception to this is where the Arizona city has also exempted these taxes.

2.3.3 No tax on labor services:

2.4 SERVICE DELIVERY:

It shall be the Contractor's responsibility to meet the service delivery requirements. The District reserves the right to obtain services on the open market in the event the Contractor fails to make delivery and any price differential will be charged against the Contractor.

2.5 TRAINING:

Contractor shall provide onsite, detailed, proactive training sessions on the use of Contractor resources including WebFeat Prism Interface + SMART Usage Tracker at no additional cost to the District. The schedule will be developed in conjunction with individual library systems.

Training sessions will be conducted as agreed-to with individual library systems. Additional training will be conducted annually or when there is a major change to the user interface upon request at no additional cost to the District.

2.6 STATISTICS:

Contractor shall provide or make available, via WebFeat's SMART Usage Tracker module, usage statistics per library at no additional cost to the libraries. Minimum statistics required by the District are Logons, Searches, all retrievals and full-text retrievals. Library systems may have additional statistical needs and will work in concert with Contractor concerning availability.

2.7 REMOTE ACCESS:

Contractor shall provide remote access to the WebFeat service on an unlimited basis, both on and off site, through an institution's Web page link to authenticated library users. Libraries may select the best method to meet their user-authentication needs.

2.8 SIMULTANEOUS USERS:

Contractor shall provide unlimited, simultaneous users access.

WEBFEAT INC., 3-1 PARK PLAZA, OLD BROOKVILLE, NY 11545

PRICING SHEET: NIGP 95635/ B0604225

Terms: NET 30

Vendor Number: W000008040

Telephone Number: 888/757-9119

Fax Number: 516/609-4311

Contact Person: Todd Miller

E-mail Address: mehmann@webfeat.org

Company Web Site: www.webfeat.org

Contract Period: To cover the period ending **May 31, 2016.**