



Oak Park Elementary School District 97

970 Madison ▪ Oak Park ▪ Illinois ▪ 60302 ▪ ph: 708.524.3000 ▪ fax: 708.524.3019 ▪ www.op97.org

MEMORANDUM

TO: Albert G. Roberts, Superintendent of Schools

FROM: Therese M. O'Neill, Assistant Superintendent for Finance & Operations

SUBJECT: Forecast5 Service Agreement

DATE: June 11, 2013

As mentioned at the May 28, 2013 Board meeting, a subcommittee of FORC (Finance Oversight Review Committee) comprised of Bob Spatz, Bruce Ulrich, Aaron Lebovitz and me met on May 23, 2013, with Steve Miller from PMA to review the Forecast5 software which produces statewide financial data, by school district, in a multiplicity of fields, that can assist us with future district endeavors. After the presentation by Steve, it was agreed that this software should be reviewed by FORC. When we met on Wednesday, June 5, there was unanimity from FORC that this is something worthwhile for District 97 to acquire. They recommended that the Board consider purchasing this software for a year which can be utilized by both the Human Resources and Business Offices and then evaluating its usefulness after its first year to determine if it is valuable enough to purchase for a second year.

Please find attached the Service Agreement, along with an invoice, for \$9,000, which includes one license. I am recommending, given the support of FORC, to enter into this agreement, purchase two additional licenses (each \$750) and believe we should make this purchase from this current year's budget, for a total of \$10,500. Currently there is over \$14,000 held in your budget (101.M.96.221.0323 – Consultants).

This would return to the Board for final approval and execution at its June 25, 2013 Board meeting.

tmo

attachments (2)

You must use this as your coversheet



1. Sign your document if needed



2. Use this coversheet with your document & fax to

1 888 634 4320

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1 202 315 3320

To:	Forecast5 Analytics	From:	thereseoneill@op97.org
Date:	05/29/2013 08:34AM PDT	Re:	Oak Park Elementary School District 97 Forecast5 Analytics Customer

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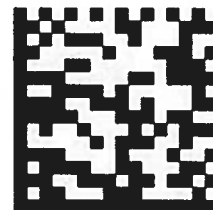
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CUSTOMER AGREEMENT

This Customer Agreement is entered into by Forecast 5 Analytics, Inc., a Delaware corporation ("Forecast5"), and Customer (named below), and will commence on the Effective Date indicated below.

<u>Forecast5 Product ID</u>	<u>Product Description*</u>	<u>Price</u>	<u>Quantity</u>	<u>Product Discount</u>	<u>Total Cost</u>
5Sight9	5Sight - License Agreement	\$9,000.00	1		\$9,000.00
				Subtotal	\$9,000.00
				Discount	
				Total Amount Due:	\$9,000.00

*Subscriptions to each product include 1 Primary User. Additional Users may be added. Customer may redesignate its users upon written notice to Forecast5.

The above Services are provided pursuant to the Forecast5 Terms of Service (available at www.forecast5analytics.com/about/termservice), which are incorporated herein by this reference. Customer and Forecast5 may from time to time agree upon additional Services pursuant to a mutually agreed Work Order. All subscriptions (even if purchased after your Effective Date, such as Additional User subscriptions) will be coterminous and end on the applicable anniversary of your Effective Date.

Customer acknowledges and agrees that if it provides access to the Services to another governmental unit or other third party, or uses the Services for the benefit of any such party, then it will be liable for, among other things, additional subscription fees for each such party at the applicable Forecast5 prices.

EFFECTIVE DATE: Based on Date of Customer Agreement Execution (All subscriptions are for periods of 1 year, unless indicated otherwise).

**Customer: Oak Park Elementary School
District 97**

FORECAST 5 ANALYTICS, INC.

Signature: _____

Signature: 

Name: Therese O'Neill

Name: Michael R. English

Title: Assistant Superintendent

Title: CEO

970 Madison St
Oak Park, IL 60302-4430

2135 CityGate Lane, 7th Floor
Naperville, Illinois 60563

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FORECAST5 TERMS OF SERVICE

Thank you for selecting the services offered by Forecast 5 Analytics, Inc. (referred to below as "Forecast5", "we", "our", or "us"). Please review these Terms of Service (this "Agreement") thoroughly.

This Agreement is a legal agreement between Forecast5 and your governmental entity (or other Forecast5 customer entity). In most cases, your entity has entered into a written Customer Agreement to subscribe to one or more Forecast5 Services in accordance with this Agreement.

If, however, your entity was not required to sign a Customer Agreement in order to get your password, then by clicking "I AGREE," indicating acceptance electronically, or accessing or using the Services, (a) you represent and warrant to Forecast5 that you are the authorized representative of the entity on behalf of which you are accessing this service, and (b) your entity hereby agrees to this Agreement. If your entity does not agree to this Agreement, then do not indicate acceptance, and do not use the Services.

The applicable government entity (or other Forecast5 customer entity) is referred to below as "you" or "your."

1. AGREEMENT

1.1 Overview. This Agreement describes the terms governing your use of the Forecast5 online services provided to you through any Forecast5 website, including all data, content, updates and new releases (collectively, the "Services"). It includes by reference:

- a. Forecast5's Privacy Policy available on this website.
- b. Forecast5's Acceptable Use Policy available on this website.
- c. Any Additional Terms and Conditions for the Services that you have selected, including from third parties.
- d. Any terms provided separately to you for the Services, including for example, ordering, activation, pricing and payment terms, if applicable, for the Services.

1.2 Your Responsibilities. Forecast5 is not in the business of providing legal, financial, accounting or other professional services or advice. Consult the services of a competent professional when you need this type of assistance. The Services are a data access and calculation tool only and you are solely responsible for the quality of all analysis and decisions you may make as a result of your use of the Services.

2. PAYMENT AND RENEWAL. Unless otherwise stated on an applicable Customer Agreement or Work Order: (a) all payments are due within thirty (30) days after the date of the applicable invoice, and (b) all subscriptions are for one (1) year. Once paid, all payments are non-refundable for any reason, including your cancellation of the Services. For all amounts not paid when due, you agree to pay an additional charge equal to one and one-half percent (1.5%) of such amounts per month or partial month during which such amounts were owed and unpaid. This Agreement also incorporates by reference all program ordering and payment terms provided to you. Forecast5 will automatically renew your annual subscriptions at the then-current rates,



unless you provide notice that you do not wish to renew your subscription prior to the end of the applicable term.

3. RIGHTS TO USE THE SERVICES AND RESTRICTIONS

3.1 Ownership and License. The Services are protected by copyright, trade secret, and other intellectual property laws. You are only granted the right to use the Services, and Forecast5 (or its applicable licensors or suppliers) reserves all rights of ownership in the Services not granted to you in writing here. As long as you meet any applicable payment obligations and comply with this Agreement, Forecast5 grants to you a personal, limited, nonexclusive, nontransferable, nonsublicensable right to use the Services that is valid only for the period of use specified, and only for your own internal needs. *You acknowledge and agree that if you provide access to the Services to another governmental unit or other third party, or use the Services for the benefit of any such party, then you will be liable for, among other things, additional subscription fees for each such party at the applicable Forecast5 prices.*

3.2 Restrictions. You agree not to use the Services or content on this website in a manner that violates any applicable law, regulation or this Agreement. For example, unless authorized by Forecast5 in writing, you agree you will not:

- a. Provide access to or give any part of the Services to any third party, including by means of running reports or downloading data for the benefit of another governmental unit or any other unauthorized person or entity.
- b. Reproduce, duplicate, copy, deconstruct, sell, trade or resell the Services.
- c. Attempt to access any other Forecast5 systems that are not part of these Services.

If you violate any of these terms, this Agreement and your right to use the Services may be terminated by Forecast5 in its sole discretion.

4. PRIVACY AND PERSONAL INFORMATION. You can view Forecast5's Privacy Statement on the Forecast5 website, or via a link on the website for the Services you have selected. You agree to be bound by the applicable Forecast5 Privacy Statement, subject to change in accordance with its terms. Most importantly, you agree to Forecast5 maintaining your data according to the Forecast5 Privacy Statement, as part of the Services.

5. COMMUNITY FORUMS

5.1 Submitted Content. You are legally responsible for all information, data, text, software, music, sound, photographs, graphics, video, messages or other materials ("Submitted Content") uploaded, posted or stored through your use of the Services. You grant Forecast5 a worldwide, royalty-free, non-exclusive license to host and use the Content in order to provide you with the Services.

5.2 5Share Community Forums. The Services may include access to 5Share or other community forum to exchange information with other users of the Services and the public. Please use respect when you interact with other users. Forecast5 does not support and is not responsible for the accuracy of others' content in these community forums. Do not reveal information in the community forum that you do not want to make public. Users may post



hypertext links to content hosted and maintained by third parties for which Forecast5 is not responsible.

5.3 Monitoring. Forecast5 may, but has no obligation to, monitor Submitted Content. We may disclose any information necessary or appropriate to satisfy our legal obligations, protect Forecast5 or its customers, or operate the Services properly. Forecast5, in its sole discretion, may refuse to post, remove, or refuse to remove, any Submitted Content, in whole or in part, alleged to be unacceptable, undesirable, inappropriate, or in violation of this Agreement.

5.4 Use of Feedback. You agree that Forecast5 may use your feedback, suggestions, or ideas in any way, including in future modifications of the Services, other products or services, advertising or marketing materials. You grant Forecast5 a perpetual, worldwide, fully transferable, sublicensable, irrevocable, fully paid-up, royalty free license to use the feedback you provide to Forecast5 in any way.

6. ADDITIONAL TERMS

6.1 Responsibility for User Accounts and Passwords. To use the Services, you may be required to create an account and provide information about yourself to us. We will provide one or more passwords for your employees (each, a "User") to access and use the Services on your behalf. You are responsible for securely managing your passwords. If you are issued multiple passwords, each password will only be provided with access to the files for that particular password/User. You are responsible for all activities that occur in connection with your account and for maintaining the confidentiality of your account passwords. If you become aware of any unauthorized access to your Services account, theft or loss of your password, you agree to contact Forecast5 as soon as possible. You may not impersonate someone else, provide an email address other than your own, or create multiple accounts for the same individual or business.

6.2 Reasonable Cooperation. You will provide reasonable cooperation in correcting any data errors you may find and to secure and perfect our intellectual property rights in the Services. You will promptly provide all relevant facts upon becoming aware of a likelihood of infringement or other illegal use or misuse by any third party of the Services.

6.3 Audit. Upon our written request, you will provide a signed certification (a) verifying the Services are being used in accordance with the terms of this Agreement; and (b) listing the locations in which the Services are run. We may, at our expense and not more than once annually, audit your use of the Services and compliance with the terms of this Agreement, upon notice to you. Any such audit will be conducted during business hours and will not unreasonably interfere with your business activities. You will provide all reasonable assistance and information required to enable us to determine whether you are in compliance with this Agreement. If such an audit reveals you have underpaid fees, you will be invoiced for the underpaid fees based upon Forecast5's generally available price list at the time the fees would have otherwise been incurred, together with interest thereon at a rate of one and one-half percent (1.5%) per month or partial month or the highest rate allowed by law, whichever is less, compounded, during which any amounts were owed and unpaid.

6.4 Other Services. You may be offered other services, features, products, applications, online communities, or promotions provided by Forecast5 ("Forecast5 Services"). If you decide to use any of these Forecast5 Services or product, additional terms and conditions and separate fees may apply. You acknowledge that in accessing some Forecast5 Services you may upload or enter



data such as names, addresses and phone numbers, purchases, and other data to the Internet. You grant Forecast5 permission to use information you provide and about your experience so that we can provide the Forecast5 Services to you, monitor and analyze your use of the services, maintain and update your data, and address errors or service interruptions. We may use this data to improve services, enhance future services, identify potentially relevant offers, and produce anonymous research data. You grant Forecast5 permission to combine the data you have entered or uploaded with that of others in a way that does not identify you or any individual personally. You also grant Forecast5 permission to share or publish summary results relating to such research data and to distribute or license such data to third parties.

6.5 Third Party Products or Services. Subject to the Forecast5 Privacy Statement, Forecast5 may offer products and services on behalf of third parties who are not affiliated with Forecast5 ("Third Party Products") or the Services may contain links to third party websites ("Third Party Sites"). You agree that Forecast5 can use your contact information, including name and address, for the purpose of offering these products to you in accordance with your stated Forecast5 contact preferences. If you decide to use any Third Party Products or access any Third Party Sites, you are responsible for reviewing the third party's separate product terms, website terms and privacy policies. You agree that the third parties, and not Forecast5, are responsible for their product's performance and the content on their websites. Forecast5 is not affiliated with these Third Party Products or Third Party Sites and has no liability for them.

6.6 Communications Choices. Forecast5 may be required by law to send you communications about the Services or Third Party Products. You agree that Forecast5 may send these communications to you via email or by posting them on one of our sponsored websites. We may also send business communications such as confirmations or notices that will be delivered to you via email or posted on our websites. You are required to receive these communications. You can choose not to receive some types of communication, such as marketing. Please review the Privacy Statement or follow instructions on the communication.

6.7 Accepting Updates. The Services may periodically be updated with tools, utilities, improvements, third party applications, or general updates to improve and enhance the features and performance of the Services. You agree to receive these updates automatically as part of the Services.

7. DISCLAIMER OF WARRANTIES

7.1 YOU ACKNOWLEDGE THAT, WHILE WE USE COMMERCIALY REASONABLE EFFORTS TO PROVIDE USABLE DATA, THE DATASETS ARE DERIVED FROM PUBLIC SOURCES AND THE ACCURACY THEREOF CANNOT BE ASSURED.

7.2 FORECAST5 CANNOT CORRECT DATA THAT IS OBTAINED FROM PUBLIC SOURCES. YOU MUST PROVIDE CORRECTIONS TO THE PUBLIC SOURCES IN THE MANNER PROVIDED FOR BY THAT PUBLIC SOURCE. PERIODICALLY FORECAST5 MAY, BUT IS NOT OBLIGATED TO, UPDATE THE PUBLIC SOURCE DATA.

7.3 YOUR USE OF THE SERVICES, SOFTWARE, AND CONTENT IS ENTIRELY AT YOUR OWN RISK. EXCEPT AS DESCRIBED IN THIS AGREEMENT, THE SERVICES ARE PROVIDED "AS IS." TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, FORECAST5, ITS AFFILIATES, AND ITS THIRD PARTY SERVICE OR DATA



PROVIDERS, LICENSORS, DISTRIBUTORS OR SUPPLIERS (COLLECTIVELY REFERRED TO AS, "SUPPLIERS") DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY THAT THE SERVICES ARE FIT FOR A PARTICULAR PURPOSE, TITLE, MERCHANTABILITY, DATA LOSS, NON-INTERFERENCE WITH OR NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS, OR THE ACCURACY, RELIABILITY, QUALITY OR CONTENT IN OR LINKED TO THE SERVICES. FORECAST5 AND ITS AFFILIATES AND SUPPLIERS DO NOT WARRANT THAT THE SERVICES ARE SECURE, FREE FROM BUGS, VIRUSES, INTERRUPTION, ERRORS, THEFT OR DESTRUCTION. IF THE EXCLUSIONS FOR IMPLIED WARRANTIES DO NOT APPLY TO YOU, ANY IMPLIED WARRANTIES ARE LIMITED TO 60 DAYS FROM THE DATE OF PURCHASE OR DELIVERY OF THE SERVICES, WHICHEVER IS SOONER.

7.4 FORECAST5 AND ITS AFFILIATES AND SUPPLIERS DISCLAIM ANY REPRESENTATIONS OR WARRANTIES THAT YOUR USE OF THE SERVICES WILL SATISFY OR ENSURE COMPLIANCE WITH ANY LEGAL OBLIGATIONS OR LAWS OR REGULATIONS. THIS DISCLAIMER APPLIES TO BUT IS NOT LIMITED TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA"), THE GRAMM-LEACH-BLILEY ACT OF 1999, THE SARBANES-OXLEY ACT OF 2002, OR OTHER FEDERAL OR STATE STATUTES OR REGULATIONS. YOU ARE SOLELY RESPONSIBLE FOR ENSURING THAT YOUR USE OF THE SERVICES IS IN ACCORDANCE WITH APPLICABLE LAW.

8. LIMITATION OF LIABILITY AND INDEMNITY

8.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ENTIRE LIABILITY OF FORECAST5, AND ITS AFFILIATES AND SUPPLIERS FOR ALL MATTERS OR CLAIMS RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT YOU PAID FOR THE SERVICES DURING THE TWELVE (12) MONTHS PRIOR TO SUCH CLAIM. UNLESS OTHERWISE REQUIRED BY APPLICABLE LAW, FORECAST5 AND ITS AFFILIATES AND SUPPLIERS ARE NOT LIABLE FOR ANY OF THE FOLLOWING: (A) INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES; (B) DAMAGES RELATING TO FAILURES OF TELECOMMUNICATIONS, THE INTERNET, ELECTRONIC COMMUNICATIONS, CORRUPTION, SECURITY, LOSS OR THEFT OF DATA, VIRUSES, SPYWARE, LOSS OF BUSINESS, REVENUE, PROFITS OR INVESTMENT, OR USE OF SOFTWARE OR HARDWARE THAT DOES NOT MEET FORECAST5 SYSTEM REQUIREMENTS. THE ABOVE LIMITATIONS APPLY EVEN IF FORECAST5 AND ITS AFFILIATES AND SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS AGREEMENT SETS FORTH THE ENTIRE LIABILITY OF FORECAST5, ITS AFFILIATES AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO THE SERVICES AND ITS USE.

8.2 You agree to indemnify and hold Forecast5 and its Affiliates and Suppliers harmless from any and all claims, liability and expenses, including reasonable attorneys' fees and costs, arising out of your use of the Services or breach of this Agreement (collectively referred to as "Claims"). Forecast5 reserves the right, in its sole discretion and at its own expense, to assume the exclusive defense and control of any Claims. You agree to reasonably cooperate as requested by Forecast5 in the defense of any Claims.



9. ESSENTIAL BASIS OF BARGAIN. You acknowledge and agree that the fees we charge reflect the overall allocation of risk between us, including by means of the provisions for limitation of liability, indemnity and exclusive remedies described in this Agreement. Such provisions form an essential basis of the bargain between us and a modification of such provisions would affect substantially the fees charged by Forecast5 hereunder. In consideration of such fees, you agree to such allocation of risk and hereby waive any and all rights, through equitable relief or otherwise, to subsequently seek a modification of such provisions or allocation of risk.

10. CHANGES TO THIS AGREEMENT OR THE SERVICES. We may change this Agreement from time to time, and the changes will be effective when posted on our website for the Services or when we notify you by other means. Please review the Agreement periodically on this website for changes. We have the right to change any of the terms of this Agreement upon reasonable notice to you. We may also change or discontinue the Services, in whole or in part, including but not limited to, the Internet based services, pricing, technical support options, and other product-related policies. Your continued use of the Services after Forecast5 posts or otherwise notifies you of any changes, indicates your agreement to the changes.

11. TERMINATION. Forecast5 may immediately and without notice suspend or permanently discontinue the Services provided to you, if you fail to comply with this Agreement, including the Acceptable Use Policy, or if you no longer agree to receive electronic communications (see Section 6.6). You may also terminate your subscriptions in accordance with Section 2. Upon termination you must immediately stop using the applicable Services. Any termination of this Agreement shall not affect Forecast5's rights to any payments due to it. Forecast5 may terminate a free account at any time. Other requirements regarding termination or cancellation of the Services may apply based on the specific ordering terms for the Services provided to you. Sections 1, 2, 4, 5.1, 5.4, and 7 through 14 will survive and remain in effect even if the Agreement is terminated, cancelled or rescinded.

12. GOVERNING LAW, JURISDICTION, LEGAL FEES, ETC. Illinois state law governs this Agreement without regard to its conflicts of laws provisions. With respect to any suit, action or proceeding relating to this Agreement the undersigned irrevocably submits to the jurisdiction of the federal court located in Chicago, Illinois or state court in DuPage County, Illinois, which submission shall be exclusive unless (a) none of such courts has lawful jurisdiction over such proceedings, (b) we elect to pursue injunctive relief in another court having jurisdiction. Forecast5 prohibits accessing materials from countries or states where contents are illegal. You are accessing this website on your own initiative and you are responsible for compliance with all applicable laws. In the event of legal action to enforce rights under this Agreement, all costs and expenses incurred by the prevailing party, including reasonable attorneys' fees and court costs, will be paid by the other party. **Waiver of Jury Trial. BOTH PARTIES IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF THIS AGREEMENT.**

13. NO WAIVER. No failure on the part of either of us to exercise, and no delay in exercising, any right, power, or privilege will operate as a waiver thereof, nor will any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The waiver by either of us of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach.



14. GENERAL. This Agreement is the entire agreement between you and Forecast5 and replaces all prior understandings, communications and agreements, oral or written, regarding its subject matter. This Agreement may be modified only by a written amendment signed by the parties or as provided in this Agreement in Section 10 above. If any court of law, having the jurisdiction, rules that any part of this Agreement is invalid, that provision will be removed without affecting the remainder of the Agreement. The remaining terms will be valid and enforceable. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. This Agreement is an agreement between the Parties, and confers no rights upon any of the Parties' employees, agents, contractors or customers, or upon any other person or entity, except as may be set forth in Sections 2.5, 7 or 8. The words "hereof," "herein" and "hereunder" and other words of similar import refer to this Agreement as a whole, as the same may from time to time be amended or supplemented, and not to any subdivision contained in this Agreement. The word "including" when used herein is not intended to be exclusive and means "including, but not limited to." The word "or" when used herein is not intended to be exclusive unless the context clearly requires otherwise. You cannot assign or transfer ownership of this Agreement to anyone without the prior written approval of Forecast5. However, Forecast5 may assign or transfer it without your consent to (a) a Forecast5 affiliate, (b) another company through a sale of assets by Forecast5 or (c) a successor by merger. Any assignment in violation of this Section shall be void.

Last Revised: October 23, 2012

