AGREEMENT FOR SERVICES BETWEEN  
THE CITY OF MENLO PARK AND PLANET BIDS INC.  

THIS AGREEMENT made and entered into at Menlo Park, California, this 8/5/2020, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and PLANET BIDS INC., hereinafter referred to as “FIRST PARTY.”

WITNESSETH:

WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: PB system module

WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:

1. SCOPE OF WORK

In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A," Scope of Services.

2. SCHEDULE FOR WORK

FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A." Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.

FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this agreement.

3. PROSECUTION OF WORK

FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A," Scope of Services).
4. COMPENSATION AND PAYMENT

A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed $59,175 and extra services as needed up to City manager’s contract signing authority as described in Exhibit "A," Scope of Services. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.

B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.

C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.

D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

5. EQUAL EMPLOYMENT OPPORTUNITY

A. FIRST PARTY, with regard to the work performed by it under this agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap, marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.

B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.

C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.

E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.

F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY’s agreement with all sub-consultants.

6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

A. FIRST PARTY shall not assign this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.

B. In the event there is a change of more than 30 percent of the stock ownership or ownership in FIRST PARTY from the date of this agreement is executed, then CITY shall be notified before the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this agreement.
7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY’s services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

8. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY's work by CITY does not operate as a release of FIRST PARTY from said understanding.

9. NOTICES

All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

Nicole H. Nagaya
Public Works
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6740
nmmelgar@menlopark.org

Notices required to be given to FIRST PARTY shall be addressed as follows:
Alan Zavian
Planet Bids Inc.
13263 Ventura Blvd. Suite 101
Studio City, CA 91604
818-992-1771
alan@planetbids.com

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

10. HOLD HARMLESS

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.
11. INSURANCE

A. FIRST PARTY shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.

B. There shall be a contractual liability endorsement extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the CITY, at the address shown in Section 9, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.

1. Workers' compensation and employer's liability insurance:
   The FIRST PARTY shall have in effect during the entire life of this agreement workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this agreement" (not required if the FIRST PARTY is a Sole Proprietor).

2. Liability insurance:
   The FIRST PARTY shall take out and maintain during the life of this agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY's operations under this agreement, whether such operations be by FIRST PARTY or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than one million dollars ($1,000,000) per occurrence and one million dollars ($1,000,000) in aggregate, or one million dollars ($1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this agreement in an amount of not less than one million dollars ($1,000,000) for each accident combined single limit or not less than one million dollars ($1,000,000) for any one (1) person, and one million dollars ($1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, ($300,000) property damage.

3. Professional liability insurance:
   FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this agreement, in the amount of not less than one million dollars ($1,000,000) per claim and in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.

C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the Professional Liability and workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.

D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.

E. Before the execution of this agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.
## 12. PAYMENT OF PERMITS/LICENSES

Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, before commencement of said work/services or forfeit any right to compensation under this agreement.

## 13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its sub-consultants and/or subcontractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

## 14. OWNERSHIP OF WORK PRODUCT

Work products of FIRST PARTY for this project, which are delivered under this agreement or which are developed, produced and paid for under this agreement, shall become the property of CITY. The reuse of FIRST PARTY’s work products by City for purposes other than intended by this agreement shall be at no risk to FIRST PARTY.

## 15. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A."

## 16. TERMINATION OF AGREEMENT

A. CITY may give thirty (30) days written notice to FIRST PARTY, terminating this agreement in whole or in part at any time, either for CITY’s convenience or because of the failure of FIRST PARTY to fulfill its contractual obligations or because of FIRST PARTY’s change of its assigned personnel on the project without prior CITY approval. Upon receipt of such notice, FIRST PARTY shall:

1. Immediately discontinue all services affected (unless the notice directs otherwise); and
2. Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this agreement, whether completed or in process.

B. If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

C. If the termination is due to the failure of FIRST PARTY to fulfill its agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional cost occasioned to the CITY thereby.

D. If, after notice of termination for failure to fulfill agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this Section.

E. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this agreement.

F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.
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<th>Clause</th>
<th>Description</th>
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<tr>
<td>17. INSPECTION OF WORK</td>
<td>It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.</td>
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<tr>
<td>18. COMPLIANCE WITH LAWS</td>
<td>It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this agreement, including but not limited to compliance with prevailing wage laws, if applicable.</td>
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| 19. BREACH OF AGREEMENT | **A.** This agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this agreement, shall constitute a breach of this agreement and may be cause for termination at the election of the CITY.  
**B.** The CITY reserves the right to waive any and all breaches of this agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of agreement. |
| 20. SEVERABILITY | The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties. |
| 21. CAPTIONS | The captions of this agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this agreement. |
| 22. LITIGATION OR ARBITRATION | In the event that suit or arbitration is brought to enforce the terms of this agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B," 'Dispute Resolution' attached hereto and by this reference incorporated herein. |
| 23. RETENTION OF RECORDS | Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the City, a federal agency, and the state of California. |
| 24. TERM OF AGREEMENT | This agreement shall remain in effect for the period of July 1, 2020 through June 30, 2023 unless extended, amended, or terminated in writing by CITY. |
25. ENTIRE AGREEMENT

This document constitutes the sole agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties to this agreement.

The terms and conditions of Exhibit A-1 shall also apply and are incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit A-1 and the provisions of this Professional Services Agreement, the provisions of this Professional Services Agreement shall control, except that (i) Section 16 is deleted and replaced by Section 6 of Exhibit A-1; (ii) Section 10 and Exhibit B, Section C2 are deleted and replaced by Sections 4 and 5 of Exhibit A-1; and (iii) Exhibit A, Section A2 is deleted and replaced by Exhibit A to Exhibit A-1.

26. STATEMENT OF ECONOMIC INTEREST

Consultants, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract.

Based upon review of the Consultant's Scope of Work and determination by the City Manager, it is determined that Consultant IS NOT required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk’s office no later than 30 days after the execution of the agreement.

Signatures on the next page.
IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

FOR FIRST PARTY:

Signature  Date
Alan Zavian  8/4/2020
Printed name
Alan Zavian
Tax ID#
95-4785128

APPROVED AS TO FORM:

Cara E. Silver, Interim City Attorney  8/5/2020

FOR CITY OF MENLO PARK:

Starla Jerome-Robinson, City Manager  8/5/2020

ATTEST:

Judi A. Herren, City Clerk  8/5/2020
# EXHIBIT “A” – SCOPE OF SERVICES

## A1. SCOPE OF WORK

FIRST PARTY agrees to provide consultant services for CITY’s Public Works. In the event of any discrepancy between any of the terms of the FIRST PARTY’s proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:

Provide consultant services set forth in Exhibit A-1, attached hereto.

FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY’s satisfaction.

## A2. COMPENSATION

CITY shall pay FIRST PARTY an all-inclusive fee of $59,175 extra services as needed up to City manager's contract signing authority as described in Exhibit "A," Scope of Services. All payments, shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.

FIRST PARTY’s fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.

Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.

Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

## A3. SCHEDULE OF WORK

FIRST PARTY'S proposed schedule for the various services required will be set forth in Exhibit A-1.

## A4. CHANGES IN WORK -- EXTRA WORK

In addition to services described in Section A1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:

- Change in the services because of changes in scope of the work.
- Additional tasks not specified herein as required by the CITY.

The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY’s services before the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. The CITY shall make a determination as to whether such work is in fact beyond the scope of this agreement and constitutes extra work. In the event that the CITY determines that such work does constitute extra work, it shall provide compensation to the FIRST PARTY in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and FIRST PARTY. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such
A supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the Public Works Director.

**A5. BILLINGS**

FIRST PARTY’s bills shall include the following information: A brief description of services performed, project title and the agreement number; the date the services were performed; the number of hours spent and by whom; the current contract amount; the current invoice amount; Except as specifically authorized by CITY, FIRST PARTY shall not bill CITY for duplicate services performed by more than one person. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this agreement shall be incurred at the FIRST PARTY’s discretion. Such expenses shall be FIRST PARTY’s sole financial responsibility.
EXHIBIT “B” - DISPUTE RESOLUTION

B1.0 All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:

B2.0 Mediation
B2.1 The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator’s fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph B3.1.

B3.0 Arbitration
B3.1 Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the agreement.

B3.2 The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:
B3.3 Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.
B3.4 The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years’ experience in construction litigation.
B3.5 All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.
B3.6 The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.
B3.7 Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.
B3.8 The prevailing party shall be awarded reasonable attorneys’ fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.
B3.9 Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.
B3.10 The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.
EXHIBIT “C” – SOFTWARE AS A SERVICE (SaaS)

C1.0 City Data

a. **Ownership of City Data.** The FIRST PARTY agrees that, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data shall remain the exclusive property of the City. The FIRST PARTY hereby warrants that the SaaS Application does not maintain, store, or export the City Data using a database structure, data model, entity relationship diagram or equivalent which is itself a trade secret or which would cause substantial injury to the competitive position of the FIRST PARTY if published.

b. **Data Security.** FIRST PARTY shall at all times during the Term provide and maintain up-to-date security with respect to (a) the Services, (b) the FIRST PARTY’s Website, (c) FIRST PARTY’s physical facilities, and (d) FIRST PARTY’s networks, to prevent unauthorized access or "hacking" of City's Data. FIRST PARTY shall provide security for its networks and all Internet connections consistent with best practices observed by well-managed SaaS’s working in the financial services industry, and will promptly install all patches, fixes, upgrades, updates and new versions of any security software it employs. FIRST PARTY will maintain appropriate safeguards to restrict access to City's Data to those employees, agents or service providers of FIRST PARTY who need the information to carry out the purposes for which it was disclosed to FIRST PARTY. For information disclosed in electronic form, FIRST PARTY agrees that appropriate safeguards include electronic barriers (e.g., "firewalls", Transport Layer Security (TLS), Secure Socket Layer [SSL] encryption, or most current industry standard encryption, intrusion prevention/detection or similar barriers) and secure authentication (e.g. password protected) access to the City’s Confidential Information and hosted City Data. For information disclosed in written form, FIRST PARTY agrees that appropriate safeguards include secured storage of City’s Data. City’s Data classified as Confidential Information shall be encrypted at rest and in transit with controlled access. FIRST PARTY also will establish and maintain any additional physical, electronic, administrative, technical and procedural controls and safeguards to protect the City’s Data that are no less rigorous than accepted industry practices (including, as periodically amended or updated, the International Organization for Standardization’s standards: ISO/IEC 27001:2005 – Information Security Management Systems – Requirements and ISO-IEC 27002:2005 – Code of Practice for International Security Management, NIST Special Publication 800-53 Revision 4 or its successor, the Information Technology Library (ITIL) standards, the Control Objectives for Information and related Technology (COBIT) standards or other applicable industry standards for information security), and shall ensure that all such controls and safeguards, including the manner in which Confidential Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement.

c. **Use of City Data.** FIRST PARTY is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for FIRST PARTY’S own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data, including user tracking and exception City Data within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of City Data by FIRST PARTY or third parties is prohibited. For purpose of this requirement, the phrase “unauthorized use” means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized.
d. **Access to and Extraction of City Data.** City shall have access to City’s Data 24-hours a day, 7 days a week. The SaaS Application shall be capable of creating a digital, reusable copy of the City Data, in whole and in parts, as a platform independent and machine readable file. Such file formats include, without limitation, plain text files such as comma delimited tables, extensible markup language, and JavaScript object notation. City Data which is stored in binary formats, including without limitation portable document format, JPEG, and portable network graphics files, shall instead be reproducible in the same format in which it was loaded into the SaaS Application. This reusable copy must be made available in a publicly documented and non-proprietary format, with a clearly-defined data structure and a data dictionary for all terms of art contained in the data. For purposes of this section, non-proprietary formats include formats for which royalty-free codecs are available to end-users. FIRST PARTY warrants that City shall be able to extract City Data from the SaaS Application on demand, but no later than 24-hours of City’s request, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to FIRST PARTY).

e. **Backup and Recovery of City Data.** As a part of the SaaS Services, FIRST PARTY is responsible for maintaining a backup of City Data and for an orderly and timely recovery of such data in the event of data corruption or interruption of the SaaS Services. FIRST PARTY shall maintain a contemporaneous backup of City Data that can be recovered within the requirements in this Agreement and maintaining the security of City Data as further described herein. FIRST PARTY’s backup of City Data shall not be considered in calculating storage used by City.

f. **Data Breach; Loss of City Data.** In the event of any Data Breach, act, error, omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of City Data or the physical, technical, administrative, or organizational safeguards put in place by FIRST PARTY that relate to the protection of the security, confidentiality, or integrity of City Data, FIRST PARTY shall, as applicable:

i. Notify City immediately following discovery, but no later than twenty-four (24) hours, of becoming aware of such occurrence or suspected occurrence. FIRST PARTY’S report shall identify:

1. the nature of the unauthorized access, use or disclosure;
2. the Confidential Information accessed, used or disclosed;
3. the person(s) who accessed, used and disclosed and/or received protected information (if known);
4. what FIRST PARTY has done or will do to mitigate any deleterious effect of the unauthorized access, use or disclosure; and
5. what corrective action FIRST PARTY has taken or will take to prevent future unauthorized access, use or disclosure.

ii. In the event of a suspected Breach, FIRST PARTY shall keep the City informed regularly of the progress of its investigation until the uncertainty is resolved;

iii. FIRST PARTY shall coordinate with the City in its breach response activities including without limitation:

1. immediately preserve any potential forensic evidence relating to the breach, and remedy the breach as quickly as circumstances permit;
2. Promptly (within 2 business days) designate a contact person to whom the City will direct inquiries, and who will communicate FIRST PARTY responses to City inquiries;
3. As rapidly as circumstances permit, apply appropriate resources to remedy the breach condition, investigate, document, restore City service(s) as directed by the City, and undertake appropriate response activities;
4. Provide status reports to the City on Breach response activities, either on a daily basis or a frequency approved by the City; e. Make all reasonable efforts to assist and cooperate with the City in its Breach response efforts;

5. Ensure that knowledgeable FIRST PARTY staff are available on short notice, if needed, to participate in City-initiated meetings and/or conference calls regarding the Breach; and

6. Cooperate with City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by City.

iv. In the case of personally identifiable information (PII), at City’s sole election, (a) notify the affected individuals as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or, (b) reimburse City for any costs in notifying the affected individuals;

v. In the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no fewer than eighteen (18) months following the date of notification to such individuals;

vi. Perform or take any other actions required to comply with applicable law as a result of the occurrence;

vii. Without limiting FIRST PARTY’s obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless City for any and all claims, including reasonable attorneys’ fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from City in connection with the occurrence;

viii. Recreate lost City Data in the manner and on the schedule set by City without charge to City; and

ix. Provide to City a detailed plan within ten (10) calendar days of the occurrence describing the measures FIRST PARTY will undertake to prevent a future occurrence.

x. Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain (at the City’s election) information that may include: name and contact information of FIRST PARTY’S (or City’s) representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps FIRST PARTY has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by FIRST PARTY.

xi. FIRST PARTY shall retain and preserve City Data in accordance with the City’s instruction and requests, including without limitation any retention schedules and/or litigation hold orders provided by the City to FIRST PARTY, independent of where the City Data is stored.
xii. City shall conduct all media communications, unless at its sole discretion directs FIRST PARTY to do so, related to such Data Breach.

C2.0 Indemnification.

a. General Indemnification. FIRST PARTY shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, “Claims”), arising from or in any way connected with FIRST PARTY performance of the Agreement, including but not limited to, any: (i) injury to or death of a person, including employees of City or FIRST PARTY; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from FIRST PARTY execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; except where such Claims are the result of the sole active negligence or willful misconduct of City. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City’s costs of investigating any claims against the City. In addition to FIRST PARTY’s obligation to indemnify City, FIRST PARTY specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such Claim is tendered to FIRST PARTY by City and continues at all times thereafter.

b. Infringement Indemnification. If notified promptly in writing of any judicial action brought against City based on an allegation that City’s use of the SaaS Application and Services infringes a patent, copyright, or any right of a third party or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (Infringement), FIRST PARTY will hold City harmless and defend such action at its own expense. FIRST PARTY will pay the costs and damages awarded in any such action or the cost of settling such action, provided that FIRST PARTY shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City’s use of the SaaS Application and/or Services constitutes Infringement, FIRST PARTY will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that FIRST PARTY shall have sole control of the resolution of any such claim and all negotiations for its settlement. In the event a final injunction is obtained against City’s use of the SaaS Application and Services by reason of Infringement, or in FIRST PARTY’s opinion City’s use of the SaaS Application and Services is likely to become the subject of Infringement, FIRST PARTY may at its option and expense: (a) procure for City the right to continue to use the SaaS Application and Services as contemplated hereunder, (b) replace the SaaS Application and Services with a non-infringing, functionally equivalent substitute SaaS Application and Services, or (c) suitably modify the SaaS Application and Services to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the SaaS Application and Services. If none of these options is reasonably available to FIRST PARTY, then the applicable Authorization Document or relevant part of such Authorization Document may be terminated at the option of either Party hereto and FIRST PARTY shall refund to City all amounts paid under this Agreement for the license of such infringing SaaS Application and/or Services. Any unauthorized modification or attempted modification of the SaaS Application and Services by City or any failure by City to implement any improvements or updates to the SaaS Application and Services, as
supplied by FIRST PARTY, shall void this indemnity unless City has obtained prior written authorization from FIRST PARTY permitting such modification, attempted modification or failure to implement. FIRST PARTY shall have no liability for any claim of Infringement based on City's use or combination of the SaaS Application and Services with products or data of the type for which the SaaS Application and Services was neither designed nor intended to be used.

C3.0 Transition Services and Disposition of Content.

Upon expiration or termination of the SaaS Services under this Agreement:

a. FIRST PARTY may immediately discontinue the SaaS Services and City shall immediately cease accessing the SaaS Application and Services. FIRST PARTY shall within five (5) calendar days of the expiration or termination of the SaaS Services return City's data in an agreed-upon machine readable format. This provision shall also apply to all City Data that is in the possession of subcontractors, agents or auditors of FIRST PARTY. Such data transfer shall be done at no cost to the City. Once FIRST PARTY has received written confirmation from City that City's Data has been successfully transferred to City, FIRST PARTY shall within thirty (30) calendar days purge or physically destroy all City Data from its hosted servers or files and provide City with written certification within five (5) calendar days that such purge and/or physical destruction has occurred. Secure disposal shall be accomplished by “purging” or “physical destruction,” in accordance with National Institute of Standards and Technology (NIST) Special Publication 80088 or most current industry standard.

b. FIRST PARTY shall provide to City and/or Successor Service Provider assistance requested by City to effect the orderly transition of the SaaS Services, in whole or in part, to City or to Successor Service Provider. During the transition period, SaaS and City Data access shall continue to be made available to City without alteration. Such Transition Services shall be provided on a time and materials basis if the City opts to return to its own servers or City chooses a Successor Service Provider. Transition costs may include:
   (a) developing a plan for the orderly transition of the terminated SaaS Services from FIRST PARTY to Successor Service Provider; (b) if required, transferring the City Data to Successor Service Provider; (c) using commercially reasonable efforts to assist City in acquiring any necessary rights to legally and physically access and use any third-party technologies and documentation then being used by FIRST PARTY in connection with the Services; (d) using commercially reasonable efforts to make available to City, pursuant to mutually agreeable terms and conditions, any third-party services then being used by FIRST PARTY in connection with the SaaS Services; and, (e) such other activities upon which the Parties may agree. Notwithstanding the foregoing, should City terminate this Agreement due to FIRST PARTY'S material breach, City may elect to use the Services for a period of no greater than six (6) months from the date of termination at a reduced rate of twenty (20%) percent off of the then-current Services Fees for the terminated Services. All applicable terms and conditions of this Agreement shall apply to the Transition Services. This Section shall survive the termination of this Agreement.
PB System™
SUPPORT SERVICES AGREEMENT

This SUPPORT SERVICES AGREEMENT ("Agreement"), which describes the terms and conditions applicable to your use of the PlanetBids Online Support Services, is made and entered as of into the 9th day of June 2020, by and between PLANETBIDS, INC., a California corporation, ("PlanetBids") and the following customer ("Customer") for the period from 07-01-20 to 06-30-23:

Customer Name: City of Menlo Park
Street Address: 701 Laurel Street
City, State ZIP: Menlo Park, CA 94025
Department: Public Works
Principal Contact: Eren Romero
Title: Business Manager
Phone & Email: 650.330.6755, eromero@menlopark.org
Method of Payment: Net 30 days

THEREFORE, PlanetBids and the Customer agree as follows:

1. PlanetBids Services. Upon acceptance of this Agreement, PlanetBids shall provide the following Support Services to Customer, subject to the terms and conditions of this Agreement and as more fully described in Exhibit "A".

   a) "Services" shall include one or more of the following PlanetBids PB System™ modules or features if, and only if, listed in Exhibit "A" hereto:

      (i) use of the PlanetBids "PB System™" by a specific number of Customer licensed System users
      (ii) Additional Customer licensed module users
      (iii) Vendor management and Bid management modules for vendor registration, posting and tracking Bid Requests and other information on Customer's website or private internet network, and, at Customer's option, to process and distribute Bid Requests to additionally available PlanetBids suppliers within their selected categories;
      (iv) Advanced eBidding for Public Works add-on module;
      (v) Evaluation Management add-on module;
      (vi) Business Certification module;
         - Prequalification Management (CUPCCAA or Standard version)
         - Business Forms
      (vii) Contract Management module;
(viii) Insurance Certificate Management module;
(ix) Insurance Certificate Management with My Insurance module;
(x) Emergency Operations module (agency-wide access);
(xi) an optional Reverse Auction feature that enables licensed Systems users to solicit bids from prospective suppliers selected by Customer in a price only based blind bidding process, which can be activated by giving notice thereof to PlanetBids in writing or by email
(xii) access and use of the PlanetBids “Outreach” database.

Customer shall not have access or use of any modules or features not listed in Exhibit “A”

b) PlanetBids shall have access and the right to market or otherwise promote its services to any vendor or supplier of Customer that registers with PB System™ via Customer’s site on the PlanetBids PB System™. PlanetBids will not sell any Customer data to any third parties without a written consent from Customer.

c) Internet related equipment by its nature, is not fault tolerant, but PlanetBids (1 will use reasonable efforts to make the Services available 24 hours per day, 7 days per week, excluding downtime for scheduled and unscheduled maintenance, and (2) will promptly investigate any technical problems that Customer reports. **PlanetBids cannot, however, guarantee continuous service, service at any particular time or the integrity of data transmitted via the Internet.** Further, PlanetBids shall not be responsible for the inadvertent disclosure, corruption or erasure of data transmitted, received or stored on the PB System™.

d) PlanetBids may make improvements and/or amendments to the PB System™ at any time, and may provide other optional services, including enhanced versions of standard features or functions, for an additional fee as agreed in advance by the Customer. Any and all relevant portions of these terms and conditions will automatically apply to all such improvements, amendments and/or optional services as they appear.

**PlanetBids does not guarantee that use of the Services will produce any quotes, business opportunities or other information helpful to the business of Customer, nor does it guarantee that any contact provided will be adequate or best suited for any transaction.**

2. Fees and Payments.
   Support Fees. Customer agrees to pay PlanetBids set up and services fees as set forth in Exhibit “B” hereto.

   a) Additional Services; Fees. If requested by Customer, PlanetBids will provide any or all of the following additional services at the fees set forth in Exhibit “B”:

   1) Customization work in addition to standard set-up shall be contracted in the following manner and at PlanetBids’ current standard rates: (a) Customer shall submit a written request describing the proposed project; (b) PlanetBids conduct a feasibility and assessment of the project and the work required, (c) if the project is technically feasible, PlanetBids will submit to Customer a written estimate setting forth the price, estimated schedule and any conditions of the project. PlanetBids shall not proceed until approval is received in writing from Customer.

   2) Training to Customer’s designated users, in addition to that provided pursuant to Section 2(a)(1), is available at rates set in Exhibit “B”.

   3) For its own internal retrieval and restoration purposes, PlanetBids will record and maintain for a limited time a back-up of all data appearing on
Customer’s website on a daily basis. The duration of such data retained will be for a minimum of 7 years and determined by PlanetBids in its sole discretion thereafter. However, Customer may, during the term of this Agreement, access and retrieve data in text delimited Microsoft Excel format and documents, at no cost. Additional Services related to the retrieval or restoration of any of Customer’s data from such back-up files are available if necessary, at rates set forth in Exhibit “B”.

b) **Purchase Orders/Billing.** Purchase orders, billing or any related matters must be emailed to alan@planetbids.com or mailed to the following address;

PlanetBids, Inc.
13263 Ventura Blvd., Suite 101
Studio City, CA 91604
Attn: Alan Zavian

3. **Use of Services.**

   a) The compilations of data and content contained in the PlanetBids “Outreach” database is the proprietary information of PlanetBids. PlanetBids grants to Customer a non-exclusive right to use Outreach compilations solely in connection with bids and procurements solicited using the PlanetBids PB System™ Vendor Management and Bid Management. Customer agrees that it will not copy, use or access the Outreach compilations for any other purpose or for use in connection with any other bid or procurement solicitation service. In addition, Customer agrees to use information obtained through the Services only as necessary to the transaction of Customer and shall not use the Services for the benefit of any third party.

   b) PlanetBids is not responsible for the content and/or transactions that Customer post on or through the Services. Notwithstanding the foregoing, PlanetBids reserves the right to monitor content that uses the Services and, in addition to other remedies for breach provided in this Agreement, to remove content which PlanetBids determines to be illegal, offensive, harmful or otherwise in violation of its operation policies.

   1) Customer agrees to comply with all applicable laws, ordinances and regulations and prudent business practices related to the use of Services; and not make any unauthorized commercial use of the Services or of the PlanetBids name, marks or logos. Further, Customer agrees to not use the PlanetBids websites to (i) post information anonymously or under a false name; (ii) post any unlawful, threatening, abusive, harassing, libelous, defamatory, obscene, pornographic, profane or otherwise objectionable information of any kind, such as inducements to conduct that would constitute a criminal offense or give rise to civil or other liability, (iii) post the name of or otherwise identify or reference any service or entity that provides a service competitive to the Services.

   2) If Customer uses standard identification codes, PlanetBids shall have the right to request for inspection an original copy of such codes and any necessary authorizations for use. If such identification codes are proprietary codes of third parties, such as NIGP, SIC or CSI, it shall be the responsibility of Customer to obtain the necessary licenses and Customer indemnifies and holds harmless PlanetBids from the unauthorized use or publication of any such identification codes with respect to the Services.

   3) It shall be the responsibility of Customer to collect and pay any taxes, duties, imposts or tariffs that are applicable to sales via the Services.
c) Although the Customer’s solicitation, bid and contract information is collected, processed, managed and stored on the PlanetBids PB System™, PlanetBids does not control or monitor any of such information or processes and is not aware of the specific uses thereof by the Services, Customer hereby releases, indemnifies, and holds harmless PlanetBids and its agents, employees, and affiliates from all claims, demands, costs and damages (actual and consequential) of every kind and nature arising out of or related to the communications or Bid Requests and the completed or uncompleted transactions of Customer utilizing the Services.

4. Warranty.

   a) PlanetBids warrants that (i) the performance of Services by PlanetBids shall comply with all applicable federal, state, county and local laws and ordinances, and the PlanetBids PB System™ will comply with all applicable safety regulations and codes, (ii) all Services to be performed hereunder will be performed in a professional and workmanlike fashion and will comply with industry standards, (iii) the PlanetBids PB System™ does not infringe or violate any third party patent, copyright or other intellectual property, (iv) the PlanetBids PB System™ will be free from any liens, encumbrances or claims, and for a period of 90 days initial access by Customer, will conform in all material respects to applicable specifications and product descriptions. Further, PlanetBids will not knowingly include therein any malicious code designed to disrupt or otherwise impair the operation of the Services or to permit any surreptitious collection of information.

   b) PLANETBIDS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY OR OTHER VIOLATION OF RIGHTS, EVEN IF PLANETBIDS HAS BEEN MADE AWARE IN ADVANCE OF SUCH POTENTIAL RISK, NOR ANY WARRANTY REGARDING THE ACCURACY, LIKELY RESULTS, OR THE RELIABILITY OF ANY SITES LINKED INTO THE SERVICES. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF PLANETBIDS EXCEED THE TOTAL FEES PAID BY CUSTOMER TO PLANETBIDS DURING THE SIX-MONTH PERIOD IMMEDIATELY PRECEEDING THE DATE OF THE APPLICABLE CLAIM.

   c) Customer represents and warrants (a) the Customer information provided is current, complete and accurate, (b) that the person signing this Agreement is authorized to bind Customer, (c) Customer will update the information (including credit card information, if applicable) as required to keep such information current, complete and accurate. PlanetBids may, in its sole discretion, cancel or terminate this Agreement if Customer has willfully violated its obligations hereunder.

5. Indemnity. Each party will indemnify and defend and hold harmless the other party from and against all claims, liabilities, damages and expenses, including reasonable attorney fees, arising out of any property damage, personal injury or death, sustained by such other party as a result of the gross negligence or willful misconduct of the indemnifying party or its agents or employees.

6. Termination.

   a) Termination for Cause. This Agreement may be terminated by either party by providing the non-terminating party with no less than forty-five (45) business days written notice (and reasonable opportunity to cure) upon the occurrence of any breach of any material term or condition of this Agreement or any representation or warranty herein.

   b) Termination Other Than for Cause. Customer may terminate this Agreement without cause by giving PlanetBids no less than sixty (60) days written notice before the effective date of such termination. In such case, the effective date of termination shall be the anniversary of the date for Year 3 and optional Year 4 of this Agreement that first occurs
following the end of the foregoing notice period each consecutive year. PlanetBids shall have no obligation to refund or prorate any fees or charges paid by Customer.

7. Confidentiality.

a) PlanetBids will take reasonable measures not to disclose website communications or information about its Customers, except to the extent that PlanetBids believes in good faith that such action is within the scope of the Services or reasonably necessary to (a) comply with the law or the directives of courts or governmental agencies; (b) enforce this Agreement; (c) respond to claims of any third party; or (d) protect the legitimate interests of PlanetBids or its customers. Notwithstanding the foregoing, all communications directed to PlanetBids via the website such as questions, comments, inquiries, shall be deemed to be not confidential, unless specifically agreed otherwise in advance by PlanetBids.

b) Notwithstanding the foregoing, PlanetBids will have the right to use Customer’s name in the performance of the Services, as a prospective user of products and services in the PlanetBids "Outreach" database, and to identify Customer as a customer and/or user of the Services for advertising, promotion and other reasonable business purposes. Further, PlanetBids may use any voluntary feedback of Customer for any reasonable business purpose that is not injurious to Customer.

8. Copyright Protection. The PB System™ and PlanetBids’ date formats and compilations are protected by worldwide copyright laws and related international treaties, and may not be copied, reproduced, modified, published, uploaded, posted, transmitted, or distributed in any form or by any means other than as described herein. All rights not expressly granted herein are reserved. Any unauthorized use of the materials appearing on PlanetBids website may violate copyright, trademark and other applicable laws and could result in criminal or civil penalties.

a) Customer shall not reproduce, duplicate, copy, sell, resell or exploit for any commercial purpose the Services, website content, the PB System™ or any other PlanetBids tools. Customer shall not reverse engineer, decompile, or otherwise attempt to derive source code from any software or tools accessible or available through the Services.

b) Special use requests should be sent to customerservice@PlanetBids.com. Permission to use shall be granted in the sole discretion of PlanetBids.


(a) The PlanetBids ordering and posting processes are protected by the Secure Sockets Layer (SSL) protocol, which encrypts your information and confirms the identity of the PlanetBids server before allowing a transaction to be completed. It is recommended that Customer use the latest browsers to ensure that the SSL protocol is acceptable and you are protected by advances in security technology. For more detailed information, please refer to the PlanetBids Privacy Policy.

(b) Password-protection techniques will be provided to restrict access under Customer’s account to authorized individuals. REGISTRANT ACKNOWLEDGES, HOWEVER, THAT ACCESS RESTRICTIONS, BY THEIR NATURE, ARE CAPABLE OF BYPASS AND PLANETBIDS DOES NOT GUARANTEE THAT THE SERVICES CANNOT BE ACCESSED BY UNAUTHORIZED PERSONS. Customer shall at all times maintain as confidential its user names and passwords. If Customer is a corporation or other business entity, then it may allow employees to use its user name and password, but the Customer shall be responsible for all activity and charges incurred by such employees and any fees resulting from the activation of
the Reverse Auction feature. Permitting third parties to use the Services is prohibited and a violation of this Agreement.

(c) If a security breach occurs with respect to any account, the Customer must immediately change its password and notify PlanetBids at customerservice@PlanetBids.com. Customer shall be liable for any unauthorized use of the Services until PlanetBids is notified of the security breach.


   a) Notices. PlanetBids shall provide notice to Customer via email, or (at its discretion) via certified U.S. Mail, to the address provided in this Agreement or such other address provided by Customer to PlanetBids. Customer shall provide notice to PlanetBids via email to customerservice@PlanetBids.com, with a copy sent via certified U.S. Mail to the address on the membership registration. Notices will be effective 6 hours after sending if sent via email (unless the sender receives a response indicating that the message was undelivered) or 3 business days after the mailing date, whether or not received.

   b) Assignment. Customer shall not assign this Agreement or any of its rights or obligations without the prior written consent of PlanetBids, and any such attempted assignment will be void. Subject to the above, this Agreement will be binding upon the parties' respective successors and permitted assigns.

   c) No Waiver. The failure of PlanetBids to exercise or enforce any right or provision under this Agreement will not constitute a waiver of such right or provision. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the terms and conditions shall remain in full force and effect.

   d) Governing Law. The interpretation and enforcement of this Agreement shall be governed by laws of the United States of America and the State of California, excluding its choice of law rules and subject to the exclusive jurisdiction of the court located in Los Angeles County, California.

   e) Force Majeure. PlanetBids will not be liable in any amount for failure to perform any obligation under this Agreement if such failure is caused by Internet outages or delays, unauthorized access (hacking), earthquakes, communications outages, fire, flood, war, an act of God, or the occurrence of any other unforeseen contingency beyond the reasonable control of PlanetBids.

- Signature Page on Next Page -
AGREED effective as of the date first written above.

PLANETBIDS, INC.                                      City of Menlo Park

By: ________________________________________________  By: ________________________________________________
    Alan Zavian, Chief Executive Officer               Starla Jerome-Robinson, City Manager

__________________________ (Date)                      ____________________________ (Date)
EXHIBIT "A"

STATEMENT OF WORK
FOR SETUP, IMPLEMENTATION AND TRAINING

1. Customer System Configuration:

Services available to Customer shall include:

A. Access for up to two (2) full licensed users of Customer to the following module(s) of the PlanetBids “PB System™”:
   (i) Vendor management and Bid management modules
   (ii) Advanced eBidding for Public Works add-on module
   (iii) Insurance Certificate Management with My Insurance module

B. Access for up to one (1) licensed user of Customer to the following module(s) of the PlanetBids “PB System™”:
   (i) Quick Quote (limited access to Bid management module)

C. Access for up to two (2) licensed users of Customer to the following module(s) of the PlanetBids “PB System™”:
   (i) Read-Only

D. Access and use of the PlanetBids “Outreach” database.

2. PB System™ Access Services:

PlanetBids rate for maintaining the PB System™ vendor and bid management is based upon an unlimited number of monthly transactions (Bids) and up the number of user licenses acquired by Customer. PB System™ Access Services include the following:

   • System Administration – PlanetBids will be responsible for system and data back-ups, disaster recovery, system reliability, availability, privacy, and security
   • Hosting Infrastructure – PlanetBids will be responsible for hosting PB System™, maintaining the network, hardware and software infrastructure
   • Customer Service – Is available from 8:00 a.m. to 5:00 p.m. PST, Monday through Friday (see Help Desk definition below)
   • Account Management – PlanetBids will provide a dedicated Account Manager for post-sales support, PB System™ questions.

3. PB System™ Set-up, Implementation and Training:

   • PlanetBids will initially install for Customer the specified number of licensed System users
   • PlanetBids will provide a 2.5-hour training online for PB System™ Vendor Management and Bid Management modules and Advanced eBidding for Public Works add-on module
   • PlanetBids will provide a 1-hour training online for PB System™ Insurance Certificate Management with My Insurance module
   • PlanetBids will provide a 1-hour training online for PB System™ Contract Management module
4. **PB System™ set-up, implementation and training consists of the following:**

   **A. Initial program definition**
   The PlanetBids implementation manager will work with one (1) designated Customer project manager to develop a roadmap for system implementation. The implementation manager will define and present a project management schedule to the Customer project manager. Customer will be required to submit information according with the project management schedule. Upon completion and review of the PB System™ by Customer, online training will be scheduled and performed.

   **B. System implementation and administration**
   PlanetBids will enter and configure Customer requirements into PB System™ for each licensed user access for Customer.

   The following implementation services will be provided:

   a. Link from and to Customer's procurement web page.
   b. Online customized vendor registration form and ability to have vendors maintain their profiles.
   c. Complete management tools access to all users (i.e. buyers, project managers…).
   d. Customer specific database.
   e. Complete bid management from bid submission to awarding.
   f. Electronic bidding - Vendors submit bid quotes/responses online; Buyers analyze bid responses and award.
   g. Daily backups.
   h. PB System™ users and vendor support for the duration of the contract.

5. **Professional Services**

   PlanetBids will provide consulting services for custom reports or PB System™ customizations, specific to Customer, not covered by this Statement of Work at an additional charge. Additional consulting services requested in writing by Customer will be billed at the rates set forth in Exhibit “B”. No work will begin on professional services before a mutually agreed-upon statement of work is completed.

6. **Help Desk**

   The PlanetBids Help Desk is available for support (as defined below) via our telephone number (818) 992-1771, from 8:00am to 5:00pm PST, Monday through Friday. Email Support, support@PlanetBids.com as well as on-line help services are also available.

   To provide instant service to vendors and contractors, PlanetBids recommends Customer to initiate or provide basic “Level 1” support although PlanetBids will provide Level 1 or Level 2 support at any time:

   - A Level 1 support representative will attempt to answer most or all questions, including help to vendors with simple problems (edit profile, etc.) or general “how-to” questions (search functionality, bidding, etc.). PB System™ related questions by Vendors/Contractors that cannot be answered or supported by Customer should be directed to a PlanetBids support representative. More complex, technical questions should be directed to a Level 2 PlanetBids support representative.
• A Level 2 support is more technical in nature. Level 2 questions may, for example, deal with Customer users (i.e. PB System™ administrative users including buyers, project administrators, etc.) or with password issues requiring special assistance, or with possible product bugs or failures. In this case, some research and investigation may be required.

7. **User License(s) Management**

It is the responsibility of Customer to monitor and maintain usernames and passwords if and when a licensed user of the PB System™ needs to be reassigned to a new user within the Customer’s organization.
EXHIBIT "B"

FEES AND PAYMENTS

a. Support Fees. Customer agrees to pay PlanetBids a total of $19,725.00 for Year 1. Payment for Year 1 shall be due and payable 30 days from the time of execution of this Agreement. The fees for each Year 2, Year 3, optional Year 4 and optional Year 5, as outlined in Table (A) below and are payable in advance within 30 days of the first day of each such year:

1) **Set-Up Fee.** Set-up fees have been waived as a special help to Customer due to Covid-19 situation. Customer shall pay no set-up fee for the PB System™ installation, customization and testing of the PB System™ portal link to Customer’s website, plus administrator set-up and one-time online user training for up to the number of user licenses and additional modules as outlined in this Agreement and Exhibit “A”.

2) **Service Fee Payment.** Customer agrees to pay for the use of the PB System™ modules; a service fee of $19,725.00 for Year 1 of this Agreement, and for each Year 2, Year 3, optional Year 4 and optional Year 5 as outlined in Table (A). A two and a half (2.5) percent increase in fees applies upon renewal each year for optional Year 4 and optional Year 5, as outlined in Table (A).

### Table (A)

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<th>PB System™ MODULES</th>
<th>SETUP</th>
<th>YEAR 1</th>
<th>YEAR 2</th>
<th>YEAR 3</th>
<th>YEAR 4</th>
<th>YEAR 5</th>
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<td>$4,500.00</td>
<td>$4,500.00</td>
<td>$4,500.00</td>
<td>$4,612.50</td>
<td>$4,727.81</td>
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<td>Quick Quote (1 User License)</td>
<td>$0.00</td>
<td>$575.00</td>
<td>$575.00</td>
<td>$575.00</td>
<td>$589.38</td>
<td>$604.11</td>
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<td>Read-Only (Up to 2 User Licenses)</td>
<td>$0.00</td>
<td>$650.00</td>
<td>$650.00</td>
<td>$650.00</td>
<td>$666.25</td>
<td>$682.91</td>
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<td>Insurance Certificate Management with My Insurance (Up to 2 User Licenses)</td>
<td>$0.00</td>
<td>$4,625.00</td>
<td>$4,625.00</td>
<td>$4,625.00</td>
<td>$4,740.63</td>
<td>$4,859.14</td>
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<td>Contract Management</td>
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<td>$3,677.19</td>
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<td><strong>Sub-Total</strong></td>
<td>$0.00</td>
<td>$19,725.00</td>
<td>$19,725.00</td>
<td>$19,725.00</td>
<td>$20,218.14</td>
<td>$20,723.58</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td>$19,725.00</td>
<td>$19,725.00</td>
<td>$19,725.00</td>
<td>$20,218.14</td>
<td>$20,723.58</td>
<td></td>
</tr>
</tbody>
</table>

b. Additional Services. If requested by Customer in writing, PlanetBids will provide any or all of the following additional services. The following rates are current as of the date of this Agreement but are subject to an increase of not more than 10% per year after the first year of this Agreement.

1) Training: $650.00, for a single online training session of up to 2 hours.
2) Data Retrieval and Restoration: $125.00 per hour, unless otherwise quoted for a specific project.
3) Travel: If available, all on-site travel expenses will be passed-through to Customer. No travel will be expensed without the prior approval of Customer.