

# PROFESSIONAL SERVICES AGREEMENT

City Manager's Office  
701 Laurel St., Menlo Park, CA 94025  
tel 650-330-6620



<b>Agreement #:</b> 2919
<b>AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND GOVINVEST</b>
THIS AGREEMENT made and entered into at Menlo Park, California, this <u>3/3/2020</u> , by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and GOVINVEST, hereinafter referred to as "FIRST PARTY."
<p>WITNESSETH:</p> <p>WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: Pension module SaaS</p> <p>WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.</p> <p>NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:</p>
<b>1. SCOPE OF WORK</b>
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.
<b>2. SCHEDULE FOR WORK</b>
<p>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.</p> <p>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.</p>
<b>3. PROSECUTION OF WORK</b>
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 \$28,125 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:

Lenka Diaz  
 Administrative Services Department  
 City of Menlo Park  
 701 Laurel St.  
 Menlo Park, CA 94025  
 650.330.6677  
 lddiaz@menlopark.org

Notices required to be given to FIRST PARTY shall be addressed as follows:

Jason Huk  
 GovInvest  
 3625 Del Amo Blvd., Suite 200  
 Torrance, CA 90503  
 310.371.7106  
 jason@govinvest.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.

**17. INSPECTION OF WORK**

It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.

**18. COMPLIANCE WITH LAWS**

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.

**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 February 24, 2020 through February 23, 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.

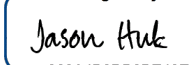
**26. STATEMENT OF ECONOMIC INTEREST**

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.

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

**FOR FIRST PARTY:**

DocuSigned by:  
  
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Signature

Jason Huk

Printed name

47-1141591

Tax ID#

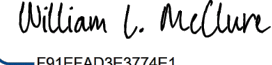
2/27/2020

Date

Director

Title

**APPROVED AS TO FORM:**

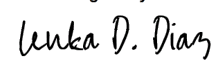
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William L. McClure, City Attorney

2/27/2020

Date

**FOR CITY OF MENLO PARK:**

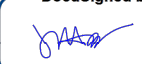
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Lenka Diaz, Administrative Services Director

3/3/2020

Date

**ATTEST:**

DocuSigned by:  
  
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Judi A. Herren, City Clerk

3/3/2020

Date

**EXHIBIT "A" – SCOPE OF SERVICES****A1. SCOPE OF WORK**

FIRST PARTY agrees to provide consultant services for CITY's Administrative Services Department. 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 general consultant services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the consultant shall be referred to as Exhibit A -1, which will become part of this agreement. A notice to proceed will be issued separately for each separate scope of work agreed to between the CITY and FIRST PARTY.

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 hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY's standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.

FIRST PARTY shall be paid within thirty (30) days after approval of billing for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work.

**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 supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the Finance and Budget Manager.



**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 A-1**

Services: Use of the Standard Pension Module of the Total Liability Calculator

Service Level Terms: The Services shall be available 99% of the time, measured monthly, excluding holidays and weekends and scheduled maintenance. If FIRST PARTY requests maintenance during these hours, any uptime or downtime calculation will exclude periods affected by such maintenance. Further, any downtime resulting from outages of third party connections or utilities or other reasons beyond FIRST PARTY's control will also be excluded from any such calculation. City's sole and exclusive remedy, and FIRST PARTY's entire liability, in connection with Service availability shall be that for each period of downtime lasting longer than 12 hours, FIRST PARTY will credit CITY 1% of Service Fees for each period of 30 or more consecutive minutes of downtime; provided that no more than one such credit will accrue per day. Downtime shall begin to accrue as soon as CITY (with notice to FIRST PARTY) recognizes that downtime is taking place, and continues until the availability of the Services is restored. In order to receive downtime credit, CITY must notify FIRST PARTY in writing within 12 hours from the time of downtime, and failure to provide such notice will forfeit the right to receive downtime credit. Such credits may not be redeemed for cash and shall not be cumulative beyond a total of credits for one (1) week of Service Fees in any one (1) calendar month in any event. FIRST PARTY will only apply a credit to the month in which the incident occurred. FIRST PARTY's blocking of data communications or other Service in accordance with its policies shall not be deemed to be a failure of FIRST PARTY to provide adequate service levels under this Agreement.

Support Terms: FIRST PARTY will provide Technical Support to CITY via both telephone and electronic mail on weekdays during the hours of 9:00 a.m. through 5:00 p.m. Pacific Standard Time, with the exclusion of Federal Holidays ("Support Hours"). CITY may initiate a help desk ticket during Support Hours by calling 310-371-7106 or any time by emailing [support@govinvest.com](mailto:support@govinvest.com). FIRST PARTY will use commercially reasonable efforts to respond to all helpdesk tickets within one (1) business day.

Initial Term: Three years from delivery of logins.

Implementation Fee (One-Time): \$4,500 due within 30 days of contract execution

Implementation Services: FIRST PARTY will use commercially reasonable efforts to provide CITY the services described in accordance with the terms herein, and CITY shall pay FIRST PARTY the Implementation Fee in accordance with the terms herein.

Discounted Annual Pricing (Invoiced Annually):

First Year: \$12,375 due within 30 days of delivery of logins

Second Year: \$7,875

Third Year: \$7,875

Discounted Total Contract Value: \$28,125 (savings: \$6,375 for multi-year contract)

**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.