

**CITY OF PALO ALTO CONTRACT NO. C21181846**

**AGREEMENT FOR PROFESSIONAL SERVICES**

**BETWEEN THE CITY OF PALO ALTO AND CAD MASTERS, INC.**

This Agreement for Professional Services (this “Agreement”) is entered into as of the 1st day of July, 2021 (the “Effective Date”), by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and **CAD MASTERS, INC.**, a California corporation, located at 201 North Civic Drive, Suite 182, Walnut Creek, CA 94596 (“CONSULTANT”).

The following recitals are a substantive portion of this Agreement and are fully incorporated herein by this reference:

**RECITALS**

A. CITY intends to develop, support, and maintain the City’s Enterprise Geographical Information System (GIS) asset management database (the “Project”) and desires to engage a consultant to provide these services in connection with the Project (the “Services”, as detailed more fully in Exhibit A).

B. CONSULTANT represents that it, its employees and subconsultants, if any, possess the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.

C. CITY, in reliance on these representations, desires to engage CONSULTANT to provide the Services as more fully described in Exhibit A, entitled “SCOPE OF SERVICES”.

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

**SECTION 1. SCOPE OF SERVICES.** CONSULTANT shall perform the Services described in Exhibit A in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY.

**SECTION 2. TERM.**

The term of this Agreement shall be from the date of its full execution through June 30, 2026 unless terminated earlier pursuant to Section 19 (Termination) of this Agreement.

**SECTION 3. SCHEDULE OF PERFORMANCE.** Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit B, entitled “SCHEDULE OF PERFORMANCE”. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CITY’s agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

**SECTION 4. NOT TO EXCEED COMPENSATION.** The compensation to be paid to CONSULTANT for performance of the Services shall be based on the compensation structure

detailed in Exhibit C, entitled "COMPENSATION," including any reimbursable expenses specified therein, and the maximum total compensation shall not exceed **One Million Nine Hundred Fifty Thousand Dollars (\$1,950,000)**. The hourly schedule of rates, if applicable, is set out in Exhibit C-1, entitled "SCHEDULE OF RATES." Any work performed or expenses incurred for which payment would result in a total exceeding the maximum compensation set forth in this Section 4 shall be at no cost to the CITY.

**SECTION 5. INVOICES.** In order to request payment, CONSULTANT shall submit monthly invoices to the CITY describing the Services performed and the applicable charges (including, if applicable, an identification of personnel who performed the Services, hours worked, hourly rates, and reimbursable expenses), based upon Exhibit C or, as applicable, CONSULTANT's schedule of rates set forth in Exhibit C-1. If applicable, the invoice shall also describe the percentage of completion of each task. The information in CONSULTANT's invoices shall be subject to verification by CITY. CONSULTANT shall send all invoices to CITY's Project Manager at the address specified in Section 13 (Project Management) below. CITY will generally process and pay invoices within thirty (30) days of receipt of an acceptable invoice.

**SECTION 6. QUALIFICATIONS/STANDARD OF CARE.** All Services shall be performed by CONSULTANT or under CONSULTANT's supervision. CONSULTANT represents that it, its employees and subcontractors, if any, possess the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and subcontractors, if any, have and shall maintain during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services. All Services to be furnished by CONSULTANT under this Agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

**SECTION 7. COMPLIANCE WITH LAWS.** CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement, as amended from time to time. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

**SECTION 8. ERRORS/OMISSIONS.** CONSULTANT is solely responsible for costs, including, but not limited to, increases in the cost of Services, arising from or caused by CONSULTANT's errors and omissions, including, but not limited to, the costs of corrections such errors and omissions, any change order markup costs, or costs arising from delay caused by the errors and omissions or unreasonable delay in correcting the errors and omissions.

**SECTION 9. COST ESTIMATES.** If this Agreement pertains to the design of a public works project, CONSULTANT shall submit estimates of probable construction costs at each phase of design submittal. If the total estimated construction cost at any submittal exceeds the CITY's stated construction budget by ten percent (10%) or more, CONSULTANT shall make recommendations to CITY for aligning the Project design with the budget, incorporate CITY approved recommendations, and revise the design to meet the Project budget, at no additional cost to CITY.

**SECTION 10. INDEPENDENT CONTRACTOR.** CONSULTANT acknowledges and agrees

that CONSULTANT and any agent or employee of CONSULTANT will act as and shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which CONSULTANT performs the Services requested by CITY under this Agreement. CONSULTANT and any agent or employee of CONSULTANT will not have employee status with CITY, nor be entitled to participate in any plans, arrangements, or distributions by CITY pertaining to or in connection with any retirement, health or other benefits that CITY may offer its employees. CONSULTANT will be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, workers' compensation, unemployment compensation, insurance, and other similar responsibilities related to CONSULTANT's performance of the Services, or any agent or employee of CONSULTANT providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between CITY and CONSULTANT or any agent or employee of CONSULTANT. Any terms in this Agreement referring to direction from CITY shall be construed as providing for direction as to policy and the result of CONSULTANT's provision of the Services only, and not as to the means by which such a result is obtained.

**SECTION 11. ASSIGNMENT.** The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT's obligations hereunder without the prior written approval of the City Manager. Any purported assignment made without the prior written approval of the City Manager will be void and without effect. Subject to the foregoing, the covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators and assignees of the parties.

**SECTION 12. SUBCONTRACTING.**

CONSULTANT shall not subcontract any portion of the Services to be performed under this Agreement without the prior written authorization of the City Manager or designee. In the event CONSULTANT does subcontract any portion of the work to be performed under this Agreement, CONSULTANT shall be fully responsible for all acts and omissions of subcontractors.

**SECTION 13. PROJECT MANAGEMENT.** CONSULTANT will assign Drew Burgasser as the CONSULTANT's Project Manager to have supervisory responsibility for the performance, progress, and execution of the Services and represent CONSULTANT during the day-to-day performance of the Services. If circumstances cause the substitution of the CONSULTANT's Project Manager or any other of CONSULTANT's key personnel for any reason, the appointment of a substitute Project Manager and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY's Project Manager. CONSULTANT, at CITY's request, shall promptly remove CONSULTANT personnel who CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Services or a threat to the safety of persons or property.

CITY's Project Manager is Tuan Nguyen, Utilities Department, Engineering Division, 1007 Elwell Court, Palo Alto, CA, 94303, Telephone: (650) 566-4547. CITY's Project Manager will be CONSULTANT's point of contact with respect to performance, progress and execution of the Services. CITY may designate an alternate Project Manager from time to time.

**SECTION 14. OWNERSHIP OF MATERIALS.** All work product, including without limitation, all writings, drawings, studies, sketches, photographs, plans, reports, specifications, computations, models, recordings, data, documents, and other materials and copyright interests developed under this Agreement, in any form or media, shall be and remain the exclusive property of CITY without

restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of the work product pursuant to this Agreement are vested in CITY, and CONSULTANT hereby waives and relinquishes all claims to copyright or other intellectual property rights in favor of CITY. Neither CONSULTANT nor its subcontractors, if any, shall make any of such work product available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the Scope of Services.

**SECTION 15. AUDITS.** CONSULTANT agrees to permit CITY and its authorized representatives to audit, at any reasonable time during the term of this Agreement and for four (4) years from the date of final payment, CONSULTANT's records pertaining to matters covered by this Agreement, including without limitation records demonstrating compliance with the requirements of Section 10 (Independent Contractor). CONSULTANT further agrees to maintain and retain accurate books and records in accordance with generally accepted accounting principles for at least four (4) years after the expiration or earlier termination of this Agreement or the completion of any audit hereunder, whichever is later.

**SECTION 16. INDEMNITY.**

16.1 To the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorney's fees, experts fees, court costs and disbursements ("Claims") resulting from, arising out of or in any manner related to performance or nonperformance by CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from a Claim arising from the active negligence or willful misconduct of an Indemnified Party that is not contributed to by any act of, or by any omission to perform a duty imposed by law or agreement by, CONSULTANT, its officers, employees, agents or contractors under this Agreement.

16.3. The acceptance of CONSULTANT's Services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

**SECTION 17. WAIVERS.** No waiver of a condition or nonperformance of an obligation under this Agreement is effective unless it is in writing in accordance with Section 28.4 of this Agreement. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted shall apply solely to the specific instance expressly stated. No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy.

**SECTION 18. INSURANCE.**

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit D, entitled "INSURANCE REQUIREMENTS". CONSULTANT and its contractors, if any, shall obtain

a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required hereunder shall be provided through carriers with AM Best's Key Rating Guide ratings of A:VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification. If the insurer cancels or modifies the insurance and provides less than thirty (30) days' notice to CONSULTANT, CONSULTANT shall provide the Purchasing Manager written notice of the cancellation or modification within two (2) business days of the CONSULTANT's receipt of such notice. CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Chief Procurement Officer during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

## **SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.**

19.1. The City Manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. If CONSULTANT fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided under this Agreement or at law, the City Manager may terminate this Agreement sooner upon written notice of termination. Upon receipt of any notice of suspension or termination, CONSULTANT will discontinue its performance of the Services on the effective date in the notice of suspension or termination.

19.2. In event of suspension or termination, CONSULTANT will deliver to the City Manager on or before the effective date in the notice of suspension or termination, any and all work product, as detailed in Section 14 (Ownership of Materials), whether or not completed, prepared by CONSULTANT or its contractors, if any, in the performance of this Agreement. Such work product is the property of CITY, as detailed in Section 14 (Ownership of Materials).

19.3. In event of suspension or termination, CONSULTANT will be paid for the Services rendered and work products delivered to CITY in accordance with the Scope of Services up to the effective date in the notice of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT's Services provided in material conformity with this Agreement as such determination is made by the City Manager acting in the

reasonable exercise of his/her discretion. The following Sections will survive any expiration or termination of this Agreement: 14, 15, 16, 17, 19.2, 19.3, 19.4, 20, 25, 27, 28 and 29.

19.4. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement, unless made in accordance with Section 17 (Waivers).

## **SECTION 20. NOTICES.**

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY:                      Office of the City Clerk  
                                    City of Palo Alto  
                                    Post Office Box 10250  
                                    Palo Alto, CA 94303

With a copy to the Purchasing Manager

To CONSULTANT: Attention of the Project Manager at the address of  
CONSULTANT recited on the first page of this Agreement.

CONSULTANT shall provide written notice to CITY of any change of address.

## **SECTION 21. CONFLICT OF INTEREST.**

21.1. In executing this Agreement, CONSULTANT covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

21.2. CONSULTANT further covenants that, in the performance of this Agreement, it will not employ subcontractors or other persons or parties having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California, as amended from time to time. CONSULTANT agrees to notify CITY if any conflict arises.

21.3. If the CONSULTANT meets the definition of a "Consultant" as defined by the Regulations of the Fair Political Practices Commission, CONSULTANT will file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act of 1974, as amended from time to time.

## **SECTION 22. NONDISCRIMINATION; COMPLIANCE WITH ADA.**

22.1. As set forth in Palo Alto Municipal Code Section 2.30.510, as amended from time to time, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person due to that person's race, skin color, gender, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, pregnancy, genetic information or condition, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section

2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

22.2. CONSULTANT understands and agrees that pursuant to the Americans Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor or subcontractor, are required to be accessible to the disabled public. CONSULTANT will provide the Services specified in this Agreement in a manner that complies with the ADA and any other applicable federal, state and local disability rights laws and regulations, as amended from time to time. CONSULTANT will not discriminate against persons with disabilities in the provision of services, benefits or activities provided under this Agreement.

**SECTION 23. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS.** CONSULTANT shall comply with the CITY's Environmentally Preferred Purchasing policies which are available at CITY's Purchasing Department, hereby incorporated by reference and as amended from time to time. CONSULTANT shall comply with waste reduction, reuse, recycling and disposal requirements of CITY's Zero Waste Program. Zero Waste best practices include, first, minimizing and reducing waste; second, reusing waste; and, third, recycling or composting waste. In particular, CONSULTANT shall comply with the following Zero Waste requirements:

(a) All printed materials provided by CONSULTANT to CITY generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by CITY's Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable-based inks.

(b) Goods purchased by CONSULTANT on behalf of CITY shall be purchased in accordance with CITY's Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Department's office.

(c) Reusable/returnable pallets shall be taken back by CONSULTANT, at no additional cost to CITY, for reuse or recycling. CONSULTANT shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

**SECTION 24. COMPLIANCE WITH PALO ALTO MINIMUM WAGE ORDINANCE.** CONSULTANT shall comply with all requirements of the Palo Alto Municipal Code Chapter 4.62 (Citywide Minimum Wage), as amended from time to time. In particular, for any employee otherwise entitled to the State minimum wage, who performs at least two (2) hours of work in a calendar week within the geographic boundaries of the City, CONSULTANT shall pay such employees no less than the minimum wage set forth in Palo Alto Municipal Code Section 4.62.030 for each hour worked within the geographic boundaries of the City of Palo Alto. In addition, CONSULTANT shall post notices regarding the Palo Alto Minimum Wage Ordinance in accordance with Palo Alto Municipal Code Section 4.62.060.

**SECTION 25. NON-APPROPRIATION.** This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code, as amended from time to time. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This Section shall take precedence in the event of a conflict with any other

covenant, term, condition, or provision of this Agreement.

## **SECTION 26. PREVAILING WAGES AND DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS.**

☒ 26.1. **This Project is not subject to prevailing wages and related requirements.** CONSULTANT is not required to pay prevailing wages and meet related requirements under the California Labor Code and California Code of Regulations in the performance and implementation of the Project if the contract:

- (1) is not a public works contract;
- (2) is for a public works construction project of \$25,000 or less, per California Labor Code Sections 1782(d)(1), 1725.5(f) and 1773.3(j); or
- (3) is for a public works alteration, demolition, repair, or maintenance project of \$15,000 or less, per California Labor Code Sections 1782(d)(1), 1725.5(f) and 1773.3(j).

**SECTION 27. CLAIMS PROCEDURE FOR “9204 PUBLIC WORKS PROJECTS”.** For purposes of this Section 27, a “9204 Public Works Project” means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind. (Cal. Pub. Cont. Code § 9204.) Per California Public Contract Code Section 9204, for Public Works Projects, certain claims procedures shall apply, as set forth in Exhibit F, entitled “Claims for Public Contract Code Section 9204 Public Works Projects”.

☐ **This Project is a 9204 Public Works Project** and is required to comply with the claims procedures set forth in Exhibit F, entitled “Claims for Public Contract Code Section 9204 Public Works Projects”.

**OR**

☒ **This Project is not a 9204 Public Works Project.**

## **SECTION 28. MISCELLANEOUS PROVISIONS.**

28.1. This Agreement will be governed by California law, without regard to its conflict of law provisions.

28.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

28.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys’ fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys’ fees paid to third parties.

28.4. This Agreement, including all exhibits, constitutes the entire and integrated agreement between the parties with respect to the subject matter of this Agreement, and supersedes all prior agreements, negotiations, representations, statements and undertakings, either oral or written. This Agreement may be amended only by a written instrument, which is signed by the authorized representatives of the parties and approved as required under Palo Alto Municipal Code, as amended



from time to time.

28.5. If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the unaffected provisions of this Agreement will remain in full force and effect.

28.6. In the event of a conflict between the terms of this Agreement and the exhibits hereto (per Section 29) or CONSULTANT's proposal (if any), the Agreement shall control. In the event of a conflict between the exhibits hereto and CONSULTANT's proposal (if any), the exhibits shall control.

28.7. The provisions of all checked boxes in this Agreement shall apply to this Agreement; the provisions of any unchecked boxes shall not apply to this Agreement.

28.8. All section headings contained in this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provision of this Agreement.

28.9. This Agreement may be signed in multiple counterparts, which, when executed by the authorized representatives of the parties, shall together constitute a single binding agreement.

**SECTION 29. EXHIBITS.** Each of the following exhibits, if the check box for such exhibit is selected below, is hereby attached and incorporated into this Agreement by reference as though fully set forth herein:

- ☒ EXHIBIT A: SCOPE OF SERVICES
- ☒ EXHIBIT B: SCHEDULE OF PERFORMANCE
- ☒ EXHIBIT C: COMPENSATION
- ☒ EXHIBIT C-1: SCHEDULE OF RATES
- ☒ EXHIBIT D: INSURANCE REQUIREMENTS
- ☒ EXHIBIT E: OBLIGATIONS REGARDING NON-DISCLOSURE OF  
CONFIDENTIAL INFORMATION
- ☒ EXHIBIT F: INFORMATION PRIVACY POLICY
- ☒ EXHIBIT G: CYBERSECURITY TERMS AND CONDITIONS

***THIS AGREEMENT IS NOT COMPLETE UNLESS ALL SELECTED EXHIBITS ARE ATTACHED.***

**CONTRACT No. C21181846 SIGNATURE PAGE**

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement as of the date first above written.

**CITY OF PALO ALTO**

\_\_\_\_\_  
City Manager

**CAD MASTERS, INC.**

DocuSigned by:  
By:   
Name: Drew Burgasser  
Title: vice-President

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney or designee

## **EXHIBIT A SCOPE OF SERVICES**

### **5-Year Support, Maintenance, Development, and Enhancement Contract to Utility Design and Asset Management System (FY'22 to FY'27)**

#### **INTRODUCTION:**

This project is to support, maintain, develop, and enhance the City's Enterprise Geographical Information System (GIS) asset management database on a fixed hourly rate and as-needed basis during the upcoming five years (FY2022 through FY2027).

#### **BACKGROUND INFORMATION (DATA ENGINES AND EXISTING APPLICATIONS):**

The City currently uses the following database engines, software applications, custom applications, and workflows:

##### **I. Database Engines:**

- a. Oracle
- b. Microsoft SQL Server
- c. Microsoft Access (for maintenance of legacy applications)

##### **II. Primary Software Applications:**

- a. Autodesk AutoCAD Map 3D
- b. Autodesk AutoCAD Civil 3D
- c. Autodesk Utility Design (AUD)
- d. ESRI ArcGIS
- e. CMI Standards Manager
- f. Encompass GIST
- g. Sedaru
- h. Feature Manipulation Engine (FME)

##### **III. Custom Applications:**

- a. Electric data model (Oracle) and front-end application (Map 3D)
- b. Fiber data model (Oracle) and front-end application (Map 3D)
- c. Dark Fiber data model (Oracle) and front-end application (Map 3D)
- d. Water data model (Oracle) and front-end application (Map 3D)
- e. Gas data model (Oracle) and front-end application (Map 3D)
- f. Wastewater data model (Oracle) and front-end application (Map 3D)
- g. Traffic Signals data model (Oracle) and front-end application (Map 3D)
- h. Street Lights data model (Oracle) and front-end application (Map 3D)
- i. WGW Service Order Generation (SOGEN)
- j. Electric Equipment and Maintenance data model (Oracle) front-end application (EEM) Electric Autodesk Utility Design (AUD)
- k. Document Management System (DMS)
- l. Drawing Generation (DWGGEN) for creating AutoCAD and AUD entities from GIS
- m. Map Locator (custom Google Maps interface on top of AutoCAD)

##### **IV. Workflows:**

- a. FME Workspaces for import from and export to SAP, ESRI SHP, DWG and Excel
- b. Encompass GIST/Oracle data synchronization
- c. WaterCAD data export

- d. Gas Works data export
- e. Sedaru data export
- f. Transformer Purchasing DB data export
- g. SAP data import and export

## **SCOPE OF WORK**

### **1. User Support and Maintenance of Existing Applications and Workflows.**

#### **1.1 Oracle Database Administration**

- a. Install and configure Oracle software.
- b. Configure and monitor data backups.
- c. Troubleshoot performance issues.

#### **1.2 AutoCAD Map 3D Enterprise**

- a. Install and configure software and software upgrades, provide training, and troubleshoot problems. Assist IT department when directed by City.
- b. Modify and configure utility data models including water, gas, wastewater, electric, cathodic protection, fiber, streetlights, and traffic signals.
- c. Modify and configure display models.
- d. Write, configure, and monitor business rules and workflows.
- e. Write, configure, and monitor software (DWGGEN) to export Oracle utility data to AutoCAD for capital improvement projects.
- f. Configure reports for the various utilities.
- g. Add document linking, query, and viewing capability.

#### **1.3 Service Order Generation (SOGEN)**

- a. Write, configure, and monitor service order generation (SOGEN) software.
- b. Provide programming and support for mobile SOGEN.

#### **1.4 Automated Utility Design (AUD)**

- a. Install and configure software and software upgrades, provide training, and troubleshoot problems. Assist IT department when directed by City.
- b. Provide customization services for import and export to SAP and report generation.
- c. Write, configure and monitor software to update material catalog prices from SAP.
- d. Write, configure and monitor software to output work order data to Excel.

#### **1.5 Outage Management**

- a. Configure and monitor FME workspaces to export electric and base data from Oracle to ESRI ArcGIS for use in the outage management system.
- b. Write, configure, and monitor software to output electric connectivity data for use in the outage management system.

#### **1.6 Electric Equipment Management Database**

- a. Write, configure, and monitor database (Oracle) and front-end application (EEM) for electric equipment maintenance.

#### **1.7 Dark Fiber**

- a. Write, configure, and monitor database (Oracle) and front-end application (AutoCAD

Map 3D) for dark fiber.

#### 1.8 ArcGIS

- a. Assist with implementation of ArcGIS applications including ArcGIS Pro, ArcGIS Server, ArcGIS Online, and ArcGIS Collector.
- b. Provide tools to update data models in ArcGIS based on pre-existing data models in AME and Encompass.
- c. Provide FME workspaces to synchronize data between ArcGIS and AME/Encompass.
- d. Provide services as needed to create ArcGIS workflows, business rules, maps, analysis, data updates, and reports.
- e. Provide services as needed to export and import data for Automated Utility Design and the Electric Outage Management System.

### **2. Data Synchronization, Import, Export**

2.1 Write, configure, and monitor software to synchronize Encompass GIST (City's current GIS platform) utility data with Oracle.

2.2 Configure and support FME workspaces for export to ESRI SHP, AutoCAD DWG, and Excel.

2.3 Configure and support data export to WaterCAD.

2.4 Write, configure, and monitor software to import SAP utility meter data (installation numbers) into Oracle.

2.5 Configure and support FME workspaces to import SAP consumption data (via a middleware Excel file) for any desired utility into Oracle.

2.6 Configure and support data synchronization for asset management application like Sedaru for wastewater. Provide support for document linking to assets for these applications.

### **3. Develop New Applications, Incorporate New Data, Enhance and Broaden Access to the GIS.**

3.1 Create new applications, workflows, reports, etc.

3.2 On-board new assets, departments, divisions, and users.

3.3 Develop and enhance web-based access to the GIS.

3.4 Develop and enhance field access to the GIS

**EXHIBIT B**  
**SCHEDULE OF PERFORMANCE**

CONSULTANT shall perform the Services so as to complete each milestone within the number of days/weeks specified below. The time to complete each milestone may be increased or decreased by mutual written agreement of the Project Managers for CONSULTANT and CITY so long as all work is completed within the term of the Agreement. CONSULTANT shall provide a detailed schedule of work consistent with the schedule below within 2 weeks of receipt of the notice to proceed (“NTP”) from the CITY.

<b>Milestones</b>	<b>Completion Number of Days/Weeks (as specified below) from NTP</b>
Scope Category 1: User Support & Maintenance of Existing Applications & Workflows	Services to be provided on an ongoing basis as directed by City
Scope Category 2: Data Synchronization, Import, and Export	Services to be provided on an ongoing basis as directed by City
Scope Category 3: Develop New Applications, Incorporate New Data, and Enhance and Broaden Access to the GIS	Services to be provided on an ongoing basis as directed by City

## EXHIBIT C COMPENSATION

CITY agrees to compensate CONSULTANT for the Services performed in accordance with the terms and conditions of this Agreement, including Services, any specified reimbursable expenses, and Additional Services (if any, per Section 4 of the Agreement), based on the hourly rate schedule attached as Exhibit C-1.

The compensation to be paid to CONSULTANT under this Agreement for all Services, any specified reimbursable expenses, and Additional Services (if any, per Section 4), shall not exceed the amount(s) stated in Section 4 of this Agreement. CONSULTANT agrees to complete all Services, any specified reimbursable expenses, and Additional Services (if any, per Section 4), within this/these amount(s). Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth in this Agreement shall be at no cost to the CITY.

	Estimated Annual Budget:	5 Year Contract Total:
<b>TASK DESCRIPTIONS</b>		
<b>Category 1 – User Support &amp; Maintenance of Existing Applications &amp; Workflows</b>	<b>\$150,000</b>	<b>\$750,000</b>
Task 1.1 - Oracle Database Administration		
Task 1.2 - AutoCAD Map 3D Enterprise		
Task 1.3 - Service Order Generation (SOGEN)		
Task 1.4 - Automated Utility Design (AUD)		
Task 1.5 - Outage Management		
Task 1.6 - Electric Equipment Management Database		
Task 1.7 - Dark Fiber		
Task 1.8 - ArcGIS		
<b>Category 2 – Data Synchronization, Import and Export</b>	<b>\$90,000</b>	<b>\$450,000</b>
Task 2.1 – Write, configure, and monitor software to synchronize Encompass utility data with Oracle		
Task 2.2 - Configure and support FME workspaces for export to ESRI SHP, AutoCAD DWG, and Excel		
Task 2.3 - Configure and support data export to WaterCAD		
Task 2.4 - Write, configure, and monitor software to import SAP utility meter data (installation numbers) into Oracle		
Task 2.5 - Configure and support FME workspaces to import SAP consumption data (via a middleware Excel file) for any desired utility into Oracle		
Task 2.6 - Configure and support data synchronization for asset management application like Sedaru for wastewater. Provide support for document linking to assets for these applications.		
<b>Category 3 – Develop New Applications, Incorporate New Data and Enhance Access to the GIS</b>	<b>\$150,000</b>	<b>\$750,000</b>
Task 3.1 – Develop new applications, workflows, reports, etc.		
Task 3.2 - On-board new assets, departments, divisions and users.		
Task 3.3 - Develop and enhance web-based access to the GIS		
Task 3.4 - Develop and enhance field access to the GIS		
<b>Total:</b>	<b>\$390,000</b>	<b>\$1,950,000</b>

Sub-total Basic Services	\$1,950,000.00
Total Basic Services and Reimbursable expenses	\$1,950,000.00
Maximum Total Compensation	\$1,950,000.00

**REIMBURSABLE EXPENSES**

CONSULTANT'S ordinary business expenses, such as administrative, overhead, administrative support time/overtime, information systems, software and hardware, photocopying, telecommunications (telephone, internet), in-house printing, insurance and other ordinary business expenses, are included within the scope of payment for Services and are not reimbursable expenses hereunder.

Reimbursable expenses, if any are specified as reimbursable under this section, will be reimbursed at actual cost. The expenses (by type, e.g. travel) for which CONSULTANT will be reimbursed are: **NONE** up to the not-to-exceed amount of: **\$0.00**.

A. Travel outside the San Francisco Bay Area, including transportation and meals, if specified as reimbursable, will be reimbursed at actual cost subject to the City of Palo Alto's policy for reimbursement of travel and meal expenses.

B. Long distance telephone service charges, cellular phone service charges, facsimile transmission and postage charges, if specified as reimbursable, will be reimbursed at actual cost.

All requests for reimbursement of expenses, if any are specified as reimbursable under this section, shall be accompanied by appropriate backup documentation and information.



**EXHIBIT C-1**  
**SCHEDULE OF RATES**

CONSULTANT's schedule of rates is as follows:

**Rate Sheet (for all 5 years)**

Junior Engineer:      \$ 160 per hour

Project Engineer:      \$ 190 per hour

Senior Engineer:      \$ 220 per hour

## EXHIBIT D INSURANCE REQUIREMENTS

CONSULTANTS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A-:VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS AS SPECIFIED HEREIN.

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY	STATUTORY	STATUTORY
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		EACH PERSON	\$1,000,000	\$1,000,000
		EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
YES	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	\$1,000,000	
YES	<b>THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED:</b> CONSULTANT, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONSULTANT AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, <b>NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.</b>			

INSURANCE COVERAGE MUST INCLUDE:

A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONSULTANT'S AGREEMENT TO INDEMNIFY CITY.

THE CONSULTANT MUST SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE AT THE FOLLOWING URL: <https://www.planetbids.com/portal/portal.cfm?companyid=25569>

ENDORSEMENT PROVISIONS WITH RESPECT TO THE INSURANCE AFFORDED TO ADDITIONAL INSURED:

### PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSURED.

### CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURED UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS

ENDORSEMENT, AND THE NAMING OF MULTIPLE INSURED, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

NOTICE OF CANCELLATION

IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

**EVIDENCE OF INSURANCE AND OTHER RELATED NOTICES ARE REQUIRED TO BE FILED WITH THE CITY OF PALO ALTO AT THE FOLLOWING URL:**

**<HTTPS://WWW.PLANETBIDS.COM/PORTAL/PORTAL.CFM?COMPANYID=25569>**

**OR**

**[HTTP://WWW.CITYOFPALOALTO.ORG/GOV/DEPTS/ASD/PLANET\\_BIDS\\_HOW\\_TO.ASP](HTTP://WWW.CITYOFPALOALTO.ORG/GOV/DEPTS/ASD/PLANET_BIDS_HOW_TO.ASP)**

## **EXHIBIT E**

### **OBLIGATIONS REGARDING NON-DISCLOSURE OF CONFIDENTIAL INFORMATION**

#### **PURPOSE**

1.1 In its performance of Services under this Agreement, CONSULTANT and its directors, officers, partners, managers, members, employees, advisors, agents, sub-contractors and other representatives of CONSULTANT and their subsidiaries and affiliates, including, without limitation, attorneys, accountants, consultants, and financial advisors (collectively, the “Representatives”) may acquire and otherwise gain access to Confidential Information, as defined in Section 1 of this Exhibit “E”, which is exempt from public disclosure under the California Public Records Act, Cal. Gov. Code section 6250 *et seq.*

1.2 In accordance with the terms and conditions of this Agreement, CONSULTANT agrees to take reasonable precautions to ensure that Confidential Information of CITY, as defined in this Exhibit, is safeguarded against disclosure to unauthorized employees or third parties.

1.3 CITY would not share or disclose any Confidential Information to CONSULTANT but for the legal protections against unauthorized disclosures intended to be afforded by California law and this Agreement, and is relying on this Agreement in disclosing such Confidential Information to CONSULTANT.

#### **CONFIDENTIAL INFORMATION, DEFINED**

2.1 “Confidential Information”, defined: “Confidential Information” means any and all information which is of a non-public, proprietary or confidential nature, in any form or medium, written or oral, (whether prepared by the CITY, its employees, or agents, and irrespective of the form or means of communication and whether it is labeled or otherwise identified as confidential) that is furnished to the Receiving Party by the CITY, and any other proprietary business and utility data or information consisting of research and development, intellectual property, technical information, computer programs, software, maps, methodologies, innovations, software tools, know-how, knowledge, designs, drawings, specifications, concepts, data, reports, processes, techniques, documentation, pricing, marketing plans and customer lists. Confidential Information shall also include notes, copies, printouts, analysis, discussion or summaries of or regarding Confidential Information prepared by the CONSULTANT or its directors, officers, partners, managers, members, employees, advisors, agents, sub-contractors and other representatives of the CONSULTANT and their subsidiaries and affiliates, including without limitation attorneys, accountants, consultants, and financial advisors (collectively, “Representatives”).

2.2 Exceptions. “Confidential Information” shall exclude (and the CONSULTANT shall not be under any obligation to maintain in confidence) any information (or any portion thereof) disclosed to CONSULTANT by CITY to the extent that such information:

- (a) is in the public domain at the time of disclosure; or
- (b) at the time of or following disclosure, becomes generally known or available through no act or omission on the part of CITY; or

- (c) is known, or becomes known, to CONSULTANT from a source other than CITY or its Representatives (as defined herein), provided that disclosure by such source is not in breach of a confidentiality agreement CITY; or
- (d) is independently developed by CONSULTANT without violating any of its obligations under this Agreement or any other agreement between the Parties; or
- (e) is legally required to be disclosed by judicial or other governmental action; provided, however, that prompt notice of such judicial or other governmental action shall have been first given to CITY, which shall be afforded the opportunity to exhaust all reasonable legal remedies to maintain the Confidential Information in confidence; or
- (f) is permitted to be disclosed by a formal written agreement executed by and between the Parties.

Specific information shall not fall within the exceptions of Sections (a) through (f) above merely because it is embraced by more general information falling within such exceptions.

## **CALIFORNIA PUBLIC RECORDS ACT**

3.1 CONSULTANT acknowledges that CITY is a public agency subject to the requirements of the California Constitution, Article 1, Section 3 and California Public Records Act Cal. Gov. Code section 6250 *et seq.* CONSULTANT acknowledges that CITY may submit to or otherwise provide access to CONSULTANT Confidential Information that CITY or any utility customer of CITY considers to be protected from disclosure pursuant to exemptions granted by applicable California law.

3.2 Whether or not there is a request or demand of any third party not a Party to this Agreement (the "Requestor") for the production, inspection and/or copying of information designated by CITY as Confidential Information, CONSULTANT shall be solely responsible for taking whatever legal steps CITY deems necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor (including the release of such information by CONSULTANT).

3.3 Under no circumstances will CONSULTANT be permitted to comply with the Requestor's demand for disclosure of such Confidential Information that CITY deems confidential and not intended for disclosure to the general public, or otherwise publicly disclose the Confidential Information to any person not authorized by law to receive such information.

## **CONFIDENTIAL INFORMATION DESIGNATION**

4.1 As practicable, the Confidential Information shall be marked with the words "Confidential" or "Confidential Material" or with words of similar import. CITY shall instruct CONSULTANT that information of a financial, personal, or proprietary nature being conveyed orally and intended by CITY to be covered by the terms of this Agreement, is deemed Confidential Information. To the extent possible, CITY shall endeavor to mark any electronic document intended to be covered by the terms of this Agreement with the words "Confidential" or similar words, or, if that is not possible or would be exceedingly difficult, CITY shall notify CONSULTANT (for example, by

covering e-mail transmitting the electronic document) that the electronic document is Confidential Information.

4.2 CITY's failure, for whatever reason, to mark any material at the time it is produced to CONSULTANT, or to notify it that oral or electronic material is Confidential Information at the time it is provided, shall not take the material out of the coverage of this Agreement for all time, and CONSULTANT shall treat the material as Confidential Information once CITY has notified it that the material is to be covered by this Agreement.

## **DUTY TO KEEP CONFIDENTIAL**

5.1 CONSULTANT agrees to maintain as confidential, to the extent permitted or required by applicable law, all Confidential Information furnished or otherwise made available to the CONSULTANT, or its Representatives by CITY. CONSULTANT acknowledges that the Confidential Information is proprietary and a valuable asset of CITY and agrees that CONSULTANT shall take reasonable precautions to ensure that such Confidential Information is safeguarded against disclosure to unauthorized employees, Representatives or third parties.

(a) CONSULTANT shall use the Confidential Information solely as permitted by the Contract and shall not sell Confidential Information or otherwise disclose such Confidential Information under any circumstances and without the prior written consent of CITY. CONSULTANT shall not disclose the Confidential Information, or portions thereof, to any of its Representatives, except to those who need to know such information for the purpose of advising CITY and who agree to the terms of this Agreement.

(b) CONSULTANT agrees that any of the Representatives to whom the Confidential Information is disclosed will be informed of the confidential or proprietary nature of such information and of CONSULTANT's obligations under this Agreement. CONSULTANT is responsible for any use of Confidential Information by any of its Representatives.

(c) CONSULTANT shall ensure that:

(i) any Representatives with whom CONSULTANT shares such Confidential Information or who acquire knowledge of such Confidential Information from or through CONSULTANT regard and treat such Confidential Information of CITY as strictly confidential and wholly owned by CITY, and

(ii) CONSULTANT shall not (and CONSULTANT shall ensure that any Representatives with whom CONSULTANT shares such Confidential Information or who acquire knowledge of such Confidential Information from or through CONSULTANT do not) for any reason, in any fashion, either directly or indirectly, sell, lend, lease, distribute, license, give, transfer, assign, show, disclose, disseminate, or otherwise communicate any such Confidential Information to any third party, or misappropriate, reproduce, copy or use any such Confidential Information, in either case, for any purpose other than in accordance with this Agreement.

(d) If CONSULTANT or any of its Representatives are requested or required to disclose any Confidential Information by law, regulation, the applicable rules of any national securities exchange or other market or reporting system, oral questions, interrogatories, requests for information or other documents in legal proceedings, subpoena, civil investigative demand or any other similar process,

CONSULTANT shall provide CITY with prompt written notice of any such request or requirement so that CITY has an opportunity to seek a protective order via writ of mandate or other appropriate remedy, or waive compliance with the provisions of this Agreement.

(e) If CITY waives compliance with the provisions of this Agreement with respect to a specific request or requirement, CONSULTANT and its Representatives shall disclose only that portion of the Confidential Information that is expressly covered by such waiver and which is necessary to disclose in order to comply with such request or requirement. CONSULTANT and its Representatives shall cooperate in a reasonable manner with CITY in attempting to preserve the confidentiality of the Confidential Information.

(f) If (in the absence of a waiver by CITY) CONSULTANT has not secured a protective order or other appropriate remedy despite attempting to do so, and CONSULTANT or one of its Representatives is nonetheless then legally compelled to disclose any Confidential Information, CONSULTANT or such Representative may, without liability hereunder, disclose only that portion of the Confidential Information that is necessary to be disclosed. In the event that disclosure is made in accordance with this subsection, CONSULTANT shall exercise, and cause its Representatives to exercise, reasonable efforts to preserve the confidentiality of the Confidential Information, including obtaining reliable assurance at the sole expense of CONSULTANT that confidential treatment shall be accorded any Confidential Information so furnished.

## **NO LIABILITY, RELEASE, OR OBLIGATION**

Except as set forth in any formal written agreement executed by and between the parties, neither CONSULTANT nor any of its Representatives shall be entitled to rely on any statement, promise, agreement or understanding, whether written or oral, or any custom, usage of trade, course of dealing or conduct. In addition, each Party understands and acknowledges that neither CITY nor any of its representatives, employees or agents makes any representation or warranty, express or implied, as to the accuracy or completeness of any Confidential Information, and that neither CITY nor any of its representatives, employees or agents shall have any liability whatsoever to CONSULTANT or to any of its Representatives relating to or resulting from the Confidential Information or any errors therein or omissions therefrom.

## **REMEDIES**

In recognition that an irreparable injury may result to CITY, if any provision of this Exhibit E is violated, CONSULTANT agrees that upon any breach or threatened breach of any provision of this Exhibit E by CONSULTANT or any of its Representatives, that CITY shall be entitled to seek an injunction or specific performance prohibiting such conduct or any other relief as may be permitted by law.

## **RETURN OF CONFIDENTIAL INFORMATION**

8.1 CONSULTANT shall have access to the Confidential Information provided by CITY only during the term of this Agreement, and shall return all Confidential Information provided under this Agreement upon its termination, or at any time upon request of CITY, as described in Section 8.2 of this Exhibit E.

8.2 CITY may at any time request that CONSULTANT promptly return to CITY or destroy any or all documents or other materials containing Confidential Information of CITY, and CONSULTANT shall immediately comply with any such request. Notwithstanding the return or destruction of the Confidential Information as contemplated by this section 8 of this Exhibit E, the CONSULTANT and its Representatives will continue to be bound by the terms of this Agreement with respect thereto, including all obligations of confidentiality.

## **SURVIVAL**

CONSULTANT's obligations of confidentiality and non-circumvention under this Exhibit E shall survive the termination of this Agreement.

## **WAIVER; AMENDMENT**

None of the terms or conditions of this Exhibit E may be amended or waived except in writing signed by the parties. The parties agree that no waiver, amendment, or modification of this Exhibit E shall be established by conduct, custom, or course of dealing. The failure by any party at any time or times to require performance of any provision hereof will in no manner affect its right at a later time to enforce the same.

## **OWNERSHIP RIGHTS NOT CREATED**

The transfer of Confidential Information hereunder shall not be construed as granting a license of any kind or any right of ownership in the Confidential Information to CONSULTANT.

## **NO OBLIGATION TO DISCLOSE**

Nothing in this Section shall obligate CITY to disclose specific Confidential Information to CONSULTANT. Such disclosures shall be at the CITY's sole discretion.



**POLICY AND PROCEDURES 1-64/IT**

Revised: December 2017

**EXHIBIT F****INFORMATION PRIVACY POLICY****POLICY STATEMENT**

The City of Palo Alto (the "City") strives to promote and sustain a superior quality of life for persons in Palo Alto. In promoting the quality of life of these persons, it is the policy of the City, consistent with the provisions of the California Public Records Act, California Government Code §§ 6250 - 6270, to take appropriate measures to safeguard the security and privacy of the personal (including, without limitation, financial) information of persons, collected in the ordinary course and scope of conducting the City's business as a local government agency. These measures are generally observed by federal, state and local authorities and reflected in federal and California laws, the City's rules and regulations, and industry best practices, including, without limitation, the provisions of California Civil Code §§ 1798.3(a), 1798.24, 1798.79.8(b), 1798.80(e), 1798.81.5, 1798.82(e), 1798.83(e)(7), and 1798.92(c). Though some of these provisions do not apply to local government agencies like the City, the City will conduct business in a manner which promotes the privacy of personal information, as reflected in federal and California laws. The objective of this Policy is to describe the City's data security goals and objectives, to ensure the ongoing protection of the Personal Information, Personally Identifiable Information, Protected Critical Infrastructure Information and Personally Identifying Information of persons doing business with the City and receiving services from the City or a third party under contract to the City to provide services. The terms "Personal Information," "Protected Critical Infrastructure Information", "Personally Identifiable Information" and "Personally Identifying Information" (collectively, the "Information") are defined in the California Civil Code sections, referred to above, and are incorporated in this Policy by reference.

**PURPOSE**

The City, acting in its governmental and proprietary capacities, collects the Information pertaining to persons who do business with or receive services from the City. The Information is collected by a variety of means, including, without limitation, from persons applying to receive services provided by the City, persons accessing the City's website, and persons who access other information portals maintained by the City's staff and/or authorized third-party contractors. The City is committed to protecting the privacy and security of the Information collected by the City. The City acknowledges federal and California laws, policies, rules, regulations and procedures, and industry best practices are dedicated to ensuring the Information is collected, stored and utilized in compliance with applicable laws.

The goals and objectives of the Policy are: (a) a safe, productive, and inoffensive work environment for all users having access to the City's applications and databases; (b) the appropriate maintenance and security of database information assets owned by, or entrusted to, the City; (c) the controlled access and security of the Information provided to the City's staff and third party contractors; and (d) faithful compliance with legal and regulatory requirements.

**SCOPE**

The Policy will guide the City's staff and, indirectly, third party contractors, which are by contract required to protect the confidentiality and privacy of the Information of the persons whose personal information data are intended to be covered by the Policy and which will be advised by City staff to conform their performances to the Policy should they enjoy conditional access to that information.

## CONSEQUENCES

The City's employees shall comply with the Policy in the execution of their official duties to the extent their work implicates access to the Information referred to in this Policy. A failure to comply may result in employment and/or legal consequences.

## EXCEPTIONS

In the event that a City employee cannot fully comply with one or more element(s) described in this Policy, the employee may request an exception by submitting Security Exception Request. The exception request will be reviewed and administered by the City's Information Security Manager (the "ISM"). The employee, with the approval of his or her supervisor, will provide any additional information as may be requested by the ISM. The ISM will conduct a risk assessment of the requested exception in accordance with guidelines approved by the City's Chief Information Officer ("CIO") and approved as to form by the City Attorney. The Policy's guidelines will include at a minimum: purpose, source, collection, storage, access, retention, usage, and protection of the Information identified in the request. The ISM will consult with the CIO to approve or deny the exception request. After due consideration is given to the request, the exception request disposition will be communicated, in writing, to the City employee and his or her supervisor. The approval of any request may be subject to countermeasures established by the CIO, acting by the ISM.

## MUNICIPAL ORDINANCE

This Policy will supersede any City policy, rule, regulation or procedure regarding information privacy.

## RESPONSIBILITIES OF CITY STAFF

### A. RESPONSIBILITY OF CIO AND ISM

The CIO, acting by the ISM, will establish an information security management framework to initiate and coordinate the implementation of information security measures by the City's government.

The City's employees, in particular, software application users and database users, and, indirectly, third party contractors under contract to the City to provide services, shall be guided by this Policy in the performance of their job responsibilities.

The ISM will be responsible for: (a) developing and updating the Policy; (b) enforcing compliance with and the effectiveness of the Policy; (c) the development of privacy standards that will manifest the Policy in detailed, auditable technical requirements, which will be designed and maintained by the persons responsible for the City's IT environments; (d) assisting the City's staff in evaluating security and privacy incidents that arise in regard to potential violations of the Policy; (e) reviewing and approving department-specific policies and procedures which fall under the purview of this Policy; and (f) reviewing Non-Disclosure Agreements (NDAs) signed by third party contractors, which will provide services, including, without limitation, local or 'cloud-based' software services to the City.

### B. RESPONSIBILITY OF INFORMATION SECURITY STEERING COMMITTEE

The Information Security Steering Committee (the "ISSC"), which is comprised of the City's employees, drawn from the various City departments, will provide the primary direction, prioritization and approval for all information security efforts, including key information security and privacy risks, programs, initiatives and activities. The ISSC will provide input to the information security and privacy strategic planning processes to ensure that information security risks are adequately considered, assessed and addressed at the appropriate City department level.

### C. RESPONSIBILITY OF USERS

All authorized users of the Information will be responsible for complying with information privacy processes and technologies within the scope of responsibility of each user.

#### D. RESPONSIBILITY OF INFORMATION TECHNOLOGY (IT) MANAGERS

The City's IT Managers, who are responsible for internal, external, direct and indirect connections to the City's networks, will be responsible for configuring, maintaining and securing the City's IT networks in compliance with the City's information security and privacy policies. They are also responsible for timely internal reporting of events that may have compromised network, system or data security.

#### E. RESPONSIBILITY OF AUTHORIZATION COORDINATION

The ISM will ensure that the City's employees secure the execution of Non-Disclosure Agreements (NDA), whenever access to the Information will be granted to third party contractors, in conjunction with the Software as a Service (SaaS) Security and Privacy Terms and Conditions. An NDA must be executed prior to the sharing of the Information of persons covered by this Policy with third party contractors. The City's approach to managing information security and its implementation (i.e. objectives, policies, processes, and procedures for information security) will be reviewed independently by the ISM at planned intervals, or whenever significant changes to security implementation have occurred.

The CIO, acting by the ISM, will review and recommend changes to the Policy annually, or as appropriate, commencing from the date of its adoption.

### GENERAL PROCEDURE FOR INFORMATION PRIVACY

#### A. OVERVIEW

The Policy applies to activities that involve the use of the City's information assets, namely, the Information of persons doing business with the City or receiving services from the City, which are owned by, or entrusted to, the City and will be made available to the City's employees and third party contractors under contract to the City to provide Software as a Service consulting services. These activities include, without limitation, accessing the Internet, using e-mail, accessing the City's intranet or other networks, systems, or devices.

The term "information assets" also includes the personal information of the City's employees and any other related organizations while those assets are under the City's control. Security measures will be designed, implemented, and maintained to ensure that only authorized persons will enjoy access to the information assets. The City's staff will act to protect its information assets from theft, damage, loss, compromise, and inappropriate disclosure or alteration. The City will plan, design, implement and maintain information management systems, networks and processes in order to assure the appropriate confidentiality, integrity, and availability of its information assets to the City's employees and authorized third parties.

#### B. PERSONAL INFORMATION AND CHOICE

Except as permitted or provided by applicable laws, the City will not share the Information of any person doing business with the City, or receiving services from the City, in violation of this Policy, unless that person has consented in writing to the City's sharing of such information during the conduct of the City's business as a local government agency with third parties under contract to the City to provide services.

#### C. METHODS OF COLLECTION OF PERSONAL INFORMATION

The City may gather the Information from a variety of sources and resources, provided that the collection of such information is both necessary and appropriate in order for the City to conduct business as a local government agency in its governmental and proprietary capacities. That information may be gathered at service windows and contact centers as well as at web sites, by mobile applications, and with other technologies, wherever the City may interact with persons who need to share such formation in order to secure the City's services.

The City's staff will inform the persons whose Information are covered by this Policy that the City's web site may use "cookies" to customize the browsing experience with the City of Palo Alto web site. The City will note that a cookie contains unique information that a web site can use to track, among others, the Internet Protocol address of the computer used to access the City's web sites, the identification of the browser

software and operating systems used, the date and time a user accessed the site, and the Internet address of the website from which the user linked to the City's web sites. Cookies created on the user's computer by using the City's web site do not contain the Information, and thus do not compromise the user's privacy or security. Users can refuse the cookies or delete the cookie files from their computers by using any of the widely available methods. If the user chooses not to accept a cookie on his or her computer, it will not prevent or prohibit the user from gaining access to or using the City's sites.

#### D. UTILITIES SERVICE

In the provision of utility services to persons located within Palo Alto, the City of Palo Alto Utilities Department ("CPAU") will collect the Information in order to initiate and manage utility services to customers. To the extent the management of that information is not specifically addressed in the Utilities Rules and Regulations or other ordinances, rules, regulations or procedures, this Policy will apply; provided, however, any such Rules and Regulations must conform to this Policy, unless otherwise directed or approved by the Council. This includes the sharing of CPAU-collected Information with other City departments except as may be required by law.

Businesses and residents with standard utility meters and/or having non-metered monthly services will have secure access through a CPAU website to their Information, including, without limitation, their monthly utility usage and billing data. In addition to their regular monthly utilities billing, businesses and residents with non-standard or experimental electric, water or natural gas meters may have their usage and/or billing data provided to them through non-City electronic portals at different intervals than with the standard monthly billing.

Businesses and residents with such non-standard or experimental metering will have their Information covered by the same privacy protections and personal information exchange rules applicable to Information under applicable federal and California laws.

#### E. PUBLIC DISCLOSURE

The Information that is collected by the City in the ordinary course and scope of conducting its business could be incorporated in a public record that may be subject to inspection and copying by the public, unless such information is exempt from disclosure to the public by relevant Federal and California law.

#### F. ACCESS TO PERSONAL INFORMATION

The City will take reasonable steps to verify a person's identity before the City will grant anyone online access to that person's Information. Each City department that collects Information will afford access to affected persons who can review and update that information at reasonable times.

#### G. SECURITY, CONFIDENTIALITY AND NON-DISCLOSURE

Except as otherwise provided by applicable law or this Policy, the City will treat the Information of persons covered by this Policy as confidential and will not disclose it, or permit it to be disclosed, to third parties without the express written consent of the person affected. The City will develop and maintain reasonable controls that are designed to protect the confidentiality and security of the Information of persons covered by this Policy.

The City may authorize the City's employee and or third party contractors to access and/or use the Information of persons who do business with the City or receive services from the City. In those instances, the City will require the City's employee and/or the third party contractors to agree to use such Information only in furtherance of City-related business and in accordance with the Policy.

If the City becomes aware of a breach, or has reasonable grounds to believe that a security breach has occurred, with respect to the Information of a person, the City will notify the affected person of such breach in accordance with applicable laws. The notice of breach will include the date(s) or estimated date(s) of the known or suspected breach, the nature of the Information that is the subject of the breach, and the proposed action to be taken or the responsive action taken by the City.

#### H. DATA RETENTION / INFORMATION RETENTION

The City will store and secure all Information for a period of time as may be required by law, or if no period is established by law, for seven (7) years, and thereafter such information will be scheduled for destruction.

#### I. SOFTWARE AS A SERVICE (SAAS) OVERSIGHT

The City may engage third party contractors and vendors to provide software application and database services, commonly known as Software-as-a-Service (SaaS).

In order to assure the privacy and security of the Information of those who do business with the City and those who received services from the City, as a condition of selling goods and/or services to the City, the SaaS services provider and its subcontractors, if any, including any IT infrastructure services provider, shall design, install, provide, and maintain a secure IT environment, while it performs such services and/or furnishes goods to the City, to the extent any scope of work or services implicates the confidentiality and privacy of the Information.

These requirements include information security directives pertaining to: (a) the IT infrastructure, by which the services are provided to the City, including connection to the City's IT systems; (b) the SaaS services provider's operations and maintenance processes needed to support the IT environment, including disaster recovery and business continuity planning; and (c) the IT infrastructure performance monitoring services to ensure a secure and reliable environment and service availability to the City. The term "IT infrastructure" refers to the integrated framework, including, without limitation, data centers, computers, and database management devices, upon which digital networks operate.

Prior to entering into an agreement to provide services to the City, the City's staff will require the SaaS services provider to complete and submit an Information Security and Privacy Questionnaire. In the event that the SaaS services provider reasonably determines that it cannot fulfill the information security requirements during the course of providing services, the City will require the SaaS services provider to promptly inform the ISM.

#### J FAIR AND ACCURATE CREDIT TRANSACTION ACT OF 2003

CPAU will require utility customers to provide their Information in order for the City to initiate and manage utility services to them.

Federal regulations, implementing the Fair and Accurate Credit Transactions Act of 2003 (Public Law 108-159), including the Red Flag Rules, require that CPAU, as a "covered financial institution or creditor" which provides services in advance of payment and which can affect consumer credit, develop and implement procedures for an identity theft program for new and existing accounts to detect, prevent, respond and mitigate potential identity theft of its customers' Information.

CPAU procedures for potential identity theft will be reviewed independently by the ISM annually or whenever significant changes to security implementation have occurred. The ISM will recommend changes to CPAU identity theft procedures, or as appropriate, so as to conform to this Policy.

There are California laws which are applicable to identity theft; they are set forth in California Civil Code § 1798.92.

NOTE: Questions regarding this policy should be referred to the Information Technology Department, as appropriate.

Recommended:

DocuSigned by  
*Jonathan Reichental*  
20170505170202

12/5/2017

Director Information Technology/CIO

\_\_\_\_\_  
Date

Approved:

DocuSigned by:  
  
264 7298f162004111

12/13/2017

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Date

DocuSign Envelope ID: EDD01731-45F7-42C2-AC00-3DECDAB97182

City of Palo Alto  
 Information Security  
 Document Version: V2.7  
 Doc: InfoSec 110

## EXHIBIT G

**VENDOR CYBERSECURITY TERMS AND CONDITIONS**

In order to assure the privacy and security of the personal information of the City's customers and people who do business with the City, including, without limitation, vendors, utility customers, library patrons and other individuals and businesses, who are required to share such information with the City, as a condition of receiving services from the City or selling goods and services to the City, including, without limitation, the Software as a Service services provider (the "Consultant") and its subcontractors, if any, including, without limitation, any Information Technology ("IT") infrastructure services provider, shall design, install, provide, and maintain a secure IT environment, described below, while it renders and performs the Services and furnishes goods, if any, described in the Statement of Work, Exhibit A, to the extent any scope of work implicates the confidentiality and privacy of the personal information of the City's customers. The Consultant shall fulfill the data and information security requirements (the "Requirements") set forth in Part A below.

A "secure IT environment" includes: (a) the IT infrastructure, by which the Services are provided to the City, including connection to the City's IT systems; (b) the Consultant's operations and maintenance processes needed to support the environment, including disaster recovery and business continuity planning; and (c) the IT infrastructure performance monitoring services to ensure a secure and reliable environment and service availability to the City. "IT infrastructure" refers to the integrated framework, including, without limitation, data centers, computers, and database management devices, upon which digital networks operate.

In the event that, after the Effective Date, the Consultant reasonably determines that it cannot fulfill the Requirements, the Consultant shall promptly inform the City of its determination and submit, in writing, one or more alternate countermeasure options to the Requirements (the "Alternate Requirements" as set forth in Part B), which may be accepted or rejected in the reasonable satisfaction of the Information Security Manager (the "ISM").

**Part A. Requirements:**

The Consultant shall at all times during the term of any contract between the City and the Consultant:

- (a) Appoint or designate an employee, preferably an executive officer, as the security liaison to the City with respect to the Services to be performed under this Agreement.
- (b) Comply with the City's Information Privacy Policy:
- (c) Have adopted and implemented information security and privacy policies that are documented, are accessible to the City and conform to ISO 27001/2 – Information Security Management Systems (ISMS) Standards or other substantially similar industry standards such as NIST Cybersecurity framework. See the following:  
[http://www.iso.org/iso/home/store/catalogue\\_tc/catalogue\\_detail.htm?csnumber=42103](http://www.iso.org/iso/home/store/catalogue_tc/catalogue_detail.htm?csnumber=42103)  
[http://www.iso.org/iso/catalogue/catalogue\\_tc/catalogue\\_detail.htm?csnumber=50297](http://www.iso.org/iso/catalogue/catalogue_tc/catalogue_detail.htm?csnumber=50297)  
<https://www.nist.gov/cyberframework>
- (d) Conduct routine data and information security compliance training of its personnel that is appropriate to their role.

- (e) Develop and maintain detailed documentation of the IT infrastructure, including software versions and patch levels.
- (f) Develop an independently verifiable process, consistent with industry standards, for performing professional and criminal background checks of its employees performing Services that (1) would permit verification of employees' personal identity and employment status, and (2) would enable the immediate denial of access to the City's confidential data and information by any of its employees who no longer would require access to that information or who are terminated.
- (g) Subject to the NDA between the parties, provide a list of IT infrastructure components in order to verify whether the Consultant has met or has failed to meet any objective terms and conditions.
- (h) Implement access accountability (identification and authentication) architecture and support role-based access control ("RBAC") and segregation of duties ("SoD") mechanisms for all personnel, systems, and software used to provide the Services. "RBAC" refers to a computer systems security approach to restricting access only to authorized users. "SoD" is an approach that would require more than one individual to complete a security task in order to promote the detection and prevention of fraud and errors.
- (i) Assist the City in undertaking annually an assessment to assure that: (1) all elements of the Services' environment design and deployment are known to the City, and (2) it has implemented measures in accordance with industry best practices applicable to secure coding and secure IT architecture.
- (j) Provide and maintain secure intersystem communication paths that would ensure the confidentiality, integrity, and availability of the City's information.
- (k) Deploy and maintain IT system upgrades, patches and configurations conforming to industry standards: Security patches to be applied within 30 days of release and all other patches to be applied within 90 days of release. . Emergency security patches must be installed within 24 hours after its date of release.
- (l) Provide for the timely detection of, response to, and the reporting of security breaches, including on-going incident monitoring with logging.
- (m) Notify the City within twenty-four (24) hours of discovery of a security breach that results in the unauthorized access to or the misuse of the City's confidential data and information.
- (n) Inform the City that any third party service provider(s) meet(s) all of the Requirements.
- (o) Perform security self-audits on a regular basis and not less frequently than on a quarterly basis,.
- (p) Subject to the NDA, accommodate, as practicable, and upon reasonable prior notice by the City, provide relevant documentation evidencing Consultant's and its third party service provider(s)' awareness of security policies and practices, including access authentication and authorization, and incident detection and response.
- (q) Cooperate with the City to ensure that to the extent required by applicable laws, rules and regulations, the Confidential Information will be accessible only by the Consultant and any authorized third party service provider's personnel.
- (r) Perform regular, reliable secured backups of all data needed to maximize the availability of the Services.
- (s) Maintain claim records relating to the Services for a period of three (3) years after the expiration or earlier termination of this Agreement and in a mutually agreeable storage medium. Within thirty (30) days after the effective date of expiration or earlier termination of this Agreement, all of those records relating to the performance of the Services shall be provided to the ISM.
- (t) Maintain the Confidential Information in accordance with applicable federal, state and local data and information privacy laws, rules, and regulations.
- (u) Encrypt the Confidential Information before delivering the same by electronic mail to the City and or any authorized recipient.
- (v) Unless otherwise addressed in the Agreement, shall not hold the City liable for any direct, indirect or punitive damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the City's IT environment, including, without limitation, IT infrastructure communications.

**Part B. Alternate Requirements: N/A**

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