CITY OF STOCKTON
STANDARD AGREEMENT

Agreement Number:
423000132

1. This Agreement is entered into between the City of Stockton ("City") and
Open Counter, Inc. ("Contractor") to provide Customer Service Portal Software Services
as set forth in Exhibit A to this Agreement.

2. The term of this Agreement is as follows, unless amended as described in Exhibit A and
Exhibit C section 8:
    Commences on: September 1, 2022   Terminates on: August 31, 2025

3. The maximum not to exceed amount to be paid to Contractor for the term of this Agreement,
including if authorized, reimbursement of expenses, is: $ 636,938

4. The complete Agreement consists of all the following Agreement documents which by
reference are incorporated and made a part of this Agreement. The parties agree to comply with
the terms and conditions of this Agreement.
    (a) Exhibit A – Statement of Work
    (b) Exhibit B – Insurance
    (c) Exhibit C – General Terms & Conditions
    (d) Exhibit D – Information Technology Special Terms and Conditions
    (e) Exhibit E – Compensation Schedule
    (f) Exhibit F – Timeline
    (g) Exhibit G - Special Funding Terms & Conditions ARPA   (If applicable check box) YES ☐

IN WITNESS WHEREOF, the authorized parties have executed this Agreement.
CONTRACTOR

Open Counter Enterprises, Inc.
Contractor's Name (if other than an individual, state whether a corporation, partnership, etc.):

August 16, 2022

Authorized Signature   Date

Joel Mahoney, CEO
Printed Name and Title of Person Signing

131 Dartmouth Street 3rd Floor, Boston MA 02116
Address

CITY OF STOCKTON

9/29/22

Harry Black, City Manager   Date

ATTEST:
for Eliza R. Garza CMC, City Clerk

APPROVED AS TO FORM:
Lori M. Asuncion, Acting City Attorney

BY:

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(Rev. 3.22.22)

EXHIBIT A

STATEMENT OF WORK

1. Project Objectives

The One Page Strategic Plan (OGSP) Strategies includes reducing barriers to entry as a strategy to the goal of making the City of Stockton (City) the best city in America to live, raise a family, and grow a business. Open Counter, Inc. (Contractor) offers a software solution that offers the following features, which will help City departments contribute substantially to that strategy:

1.1. **Location-Specific Permit Scoping** – Through a series of questions, the software will provide a comprehensive list of all permits and licenses required, tailored to the customer's specific location and project details, including information about additional requirements from outside agencies and the City's available economic incentive programs.

1.2. **Intuitive and Dynamic Zoning Map** – The software will be linked to the City's GIS system and provide a simple visual map based on the provided address, indicating if the project is "permitted," "conditional," or "prohibited."

1.3. **Intelligent Land Use Search** – Customers will be able to search in common language terms and phrases, and the system will match the term to the appropriate land use category from the Stockton Municipal Code.

1.4. **Fee Estimate** – The project fee estimate will be updated in real time as the applicant enters project details and include a fee estimate from all City of Stockton permit and license requirements.

1.5. **Project Summary and Application(s) Handoff** – A customer who has finished scoping their project with the software will be directed to the next phase of the permitting process and provide a printed summary of the requirements and the handoff page will contain links to the required application(s).

1.6. **Language Translation** – The software will be available in both English and Spanish.

1.7. **Analytics** – The software will provide administrative dashboards and utilization metrics.

The primary project objectives include providing an online tool for customers to use when seeking information on requirements for their project, which will enhance customer service and access to information, as well as allow staff to spend less time answering general questions and more time processing permit applications.

(Rev. 10.30.18)

2. Project Scope

2.1.   The Contractor shall provide the following software services:
   2.1.1.   ZoningCheck Portal, Business Portal, and Residential Portal software bundle
   2.1.2.   Esri ARC GIS integration
   2.1.3.   Spanish Language Translation for all portals.
2.2.   The Contractor will work with the City's Accela technical Contractor to implement a "deep integration" between Open Counter and Accela for 15 Accela record types.
2.3.   The Contractor shall fully integrate all relevant portions of the Stockton Municipal Code, economic incentive programs through the Economic Development Department, and all prerequisite requirements necessary for permitting and business licensing.
2.4.   The Contractor shall provide three (3) years of service to all portals and software implemented with the option to renew annually thereafter.
2.5.   The Contractor shall provide maintenance services for improvements, adjustments, and enhancements to the implementation for the entire contract duration.
2.6.   Staffing and Roles:
   2.6.1.   Open Counter
      2.6.1.1.   Project Manager
         2.6.1.1.1.   Primary point of contact from project start to project approval
         2.6.1.1.2.   Responsible for understanding regulations, setting up the portals, guiding testing sessions, and obtaining approvals.
      2.6.1.2.   Customer Success Manager
         2.6.1.2.1.   Primary point of contact post project approval
         2.6.1.2.2.   Responsible for assisting with launch, adoption, and ensuring value.
   2.6.2.   City
      2.6.2.1.   Executive Sponsor - Aligns Project vision with City's strategy and allocates resources
      2.6.2.2.   Coordinator/Adoption Lead - Primary point of contact and coordinates requests and resources
      2.6.2.3.   Subject Matter Experts (SMEs) – Zoning & Permits - Responsible for user testing and approval of content, including the validity of information transferred to in-scope Accela record types
      2.6.2.4.   Technical Expert: Accela Integration - Responsible for providing assistance with integration between City's Accela instance and Open Counter, including providing credentials, troubleshooting, and testing.
2.7.   Maintenance and Support
   2.7.1.   Changes to record types in Accela, including associated ACA page flows and scripting, must be communicated to Open Counter so we can

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ensure continued operation of the Accela integration and make any necessary changes to the scoping portals. Minor and major version upgrades to the Accela platform should also follow the above rules.

Open Counter supports changes throughout the duration of the contract, including fee updates and minor zoning updates as well as one (1) major zoning update per year. Minor zoning updates are those that amend existing language, such as changing permissions. Major zoning updates add or remove language from the official zoning ordinance, such as adding or removing zones, land uses, or permissions. All requests for changes and updates after project completion must be sent to support@opencounter.com.

2.8. City Responsibilities

The City is responsible for the following tasks:

2.8.1. Delivery of data request no later than six (6) weeks after contract execution.

2.8.2. Provide and engage the appropriate stakeholders, as defined in section 2.6.2 above.

2.8.3. Schedule meetings, including recurring check-ins and testing sessions.

2.8.4. Conduct individual testing and consolidate testing feedback from staff to ensure standards and correctness.

2.8.5. Lead adoption strategy including branding, messaging, and presence.

3. Specifications

3.1. **City Facing Requirements** - The back-end processes must be compatible with the City's current desktop, laptop, or tablet computing environment.

3.1.1. Workstations are currently running Windows 10 and Office 365. Microsoft Edge, Chrome, or Firefox are the standard Web browser. The city uses SharePoint365 for document collaboration and sharing.

3.1.2. The new software will be required to integrate with 3rd party applications, primarily Accela, and Esri ARC GIS software. Integration tools must be open and support a Microsoft Windows platform, e.g., .NET, Service Oriented Architecture, XML, Web Services, APIs, etc.

3.1.3. The City's preferred integration between systems is via web services. The system must provide tight security controls which meet regulatory, compliance and audit standards. Security must be role-based to the menu, screen, and data field level.

3.1.4. The City requires employee authentication to the application

3.1.5. The City requires Multifactor authentication for employee login.

3.1.6. Data must be encrypted in transport. All connections to the solution will be SSL encrypted. All integrations with other systems will be SSL encrypted.

3.1.7. Any personal data stored on a solution regarding Personally Identifiable Information (PII) for City employees and customers must be encrypted. The DHS's definition of PII will be followed.

3.2. **Customer Facing Components** - The customer-facing components of the portals must be compatible with a wide range of publicly available phone, tablet, and personal computing devices including but not limited to:

3.2.1. Android, iPhone, Apple/Mac, and Windows Operating Systems

3.2.2. All common internet browsers, including Chrome and Safari.

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

3.3.1. Notify the City as soon as practicable but no later than twenty-four (24) hours of being aware of such an occurrence

3.3.2. Cooperate with the 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 the City

3.3.3. In the case of Personally Identifiable Information (PII), at the City's sole election the Contractor shall:

3.3.3.1. Notify the affected individuals who comprise the PII 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

3.3.4. The Contractor shall perform or take any other actions to comply with applicable law as a result of the occurrence; Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain, at a minimum:

3.3.4.1. Name and contact information of the Contractor's representative

3.3.4.2. A description of the nature of the loss

3.3.4.3. A list of the types of data involved

3.3.4.4. The known or approximate date of the loss

3.3.4.5. How such loss may affect the affected individual

3.3.4.6. What steps the Contractor has taken to protect the affected individual

3.3.4.7. What steps the affected individual can take to protect themselves

3.3.5. This section (Exhibit A 3.3 and all subsections beginning with 3.3) shall survive the termination of this agreement.

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4. Major Deliverables

The following outlines the schedule of the implementation of the Zoning, Business, and Residential portals with Accela integration, with the tasks that support those deliverables.

Phase	Description	Deliverable	Duration
Onboarding	Setup project management tools; Send and review data request with relevant subject matter experts; Introduce project teams and roles; Review project schedule with customer and place online.	Customer to submit complete and accurate data in a format that can be used by the Open Counter team.	2-3 weeks
Onboarding - Integration Setup	Setup Accela connection between City ACA and Open Counter.	Customer to provide Accela credentials to support integration.	2-3 weeks
Onboarding - Integration Review	Review of relevant existing Accela records and fields in order to inform Open Counter's configuration.	Customer to provide list of fields used in relevant records and what format data is stored (e.g. address components, standard attributes vs custom forms/tables).	2-3 weeks
Milestone/Deliverable: Data Request Completed Data request is complete and Open Counter team can begin implementation.			
Zoning Setup	Read zoning ordinance to setup unique list of land uses, distinct zones, overlays, and permissions. Configure rules/footnotes as needed. Setup keyword, definitions, and conduct keyword audit. Additional planned or specific developments will take additional time depending on scope and quality of materials provided.		4 weeks
Zoning Testing	Customer tests the ZoningCheck and provides feedback. Open	Documentation of zoning configuration, sources used, assumptions made,	2-3 weeks

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	Counter resolves issues and delivers modifications.	and open questions for staff to resolve during testing.	
Milestone/Deliverable: Zoning Approval Zoning Approval signifies that the work listed under "Zoning Setup" has been completed, that staff have reviewed and tested the site, and that OpenCounter has responded to all feedback.			
Permits Setup	Use permit scoping list provided by Customer to setup permits, conditions, fees, and application instructions.	Business Portal Residential Portal	4-6 weeks
Permit Setup - Additional (Optional)	Inclusion of additional permits over 40		2-3 weeks
Permits Testing	Customer tests the Business/Residential Portal(s) and provides feedback. Open Counter resolves issues and delivers modified Portal(s).	Documentation of permit, license, and fee logic along with any open questions for staff to resolve during testing.	4 weeks
Milestone/Deliverable: Permits Approval Permits approval means that the work listed under "Permits Setup" has been completed, that staff have reviewed and tested the site, and that Open Counter has responded to all feedback.			
ACA Integration	Mapping of OpenCounter requirements to Accela records. Testing to ensure fields are mapped correctly to records.		6-8 Weeks
Milestone/Deliverable: Integration Approval and Implementation Complete Connection between Open Counter and County ACA has been tested successfully and data is mapped to the correct fields and records.			
Online Training	Overview of admin tools, including dashboard, projects view, and inquiry processing		2 weeks
Pre-Launch	Preparation of launch materials, including print collateral, digital assets, and setup of CNAME.		3 weeks
SSO (optional)	Setup of admin users to access Open Counter from your existing login system (e.g. Active Directory).		3 weeks

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Milestone/Deliverable: Launch of site to the public
Portals are made available to the public.

5. Tasks That Support the Deliverables

Tasks are organized into five (5) phases, some of which might run concurrently:

5.1.　Data Gathering: 6-9 weeks: Source needed GIS files, planning documentation, application forms, and fee schedules.

5.2.　Cartography: 6-9 weeks: Configure base layers, overlays, and zoning permissions database.

5.3.　Permit Configuration: 10-19 weeks: Configure permits and fees, queue up localization of site and develop front-end content.

5.4.　ACA Integration: 6-8 weeks: Mapping of Open Counter requirements to Accela records and testing to ensure fields are mapped correctly to records.

5.5.　Launch: 8 weeks: Prepare plan for site integration and marketing of new resource.

6. Criteria of Acceptance for Deliverables

All elements outlined by the project scope must be fully implemented as described there, integrated with the City's software, compatible with the City's hardware, fully incorporating the Development Code, and fully accessible to all widely available computing solutions (Personal Computers, Laptops, Cell Phones, Tablets, etc.) utilized by the public for the entire five-year term of the contract.

6.1.　Testing

6.1.1.　**Site documentation and review**: Open Counter will review how the site has been set up, including any assumptions and discrepancies in order to ensure that testing is starting from a mutually agreed upon baseline.

6.1.2.　**Guided testing sessions**: After reviewing the documentation with staff, Open Counter will host 3 – 4 guided testing sessions for zoning, and 4-6 guided sessions for permits.

6.1.3.　**Individual testing sessions**: After guided testing sessions are complete, Open Counter will make the site available in testing mode for staff to review in their own time. Staff are encouraged to do additional testing and to log all feedback to a shared template. All feedback must be accompanied by documentation specified by the Open Counter team in order to be appropriately addressed. All individual testing must be completed within ten (10) business days after the last group testing session. Open Counter will resolve all requests within the following ten (10) business days of feedback from staff. At the end of this period,

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staff must provide either written approval or steps required to gain approval.

    6.1.4. **Accela testing sessions:** After permits approval, Open Counter will work with Permits SME and Technical Expert in order to make sure that Open Counter record creation includes shared fields from scoping session.

  6.2. Acceptance Criteria / Approval

    6.2.1. **Milestone Approval:** After testing is completed and all feedback resolved, Open Counter will request written approval of that milestone. This milestone indicates that no major issues within that phase will block or delay launch. Additional changes requested after this milestone will be resolved after the site is launched.

7. Notices

Pursuant to Exhibit C – General Terms and Conditions, Paragraph 15 – Notices, the mailing address for all required notices is as follows:

Contractor: Open Counter, Inc.
    131 Dartmouth St.
    3rd Floor
    Boston, MA 02116

City: City of Stockton
    Attn: Permit Center
    425 N. El Dorado Street
    Stockton, CA 95202

8. Key Personnel

  8.1.1. Robert Liddicoat, Gareth Olson, Heather Mompean

9. Option to Renew.

  9.1.1. The original term of the Agreement will be three (3) years. This term may be extended up to two (2) times for one (1) year each by a written amendment executed by both parties. However, the total term of the Agreement including the extended term shall not exceed five (5) years.

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Exhibit B:
Insurance Requirements for Agreements Involving Information Technology

Vendor/Consultant shall procure and maintain for the duration of the contract insurance against claims for security breaches, system failures, injuries to persons, damages to software, or damages to property (including computer equipment) which may arise from or in connection with the performance of the work hereunder by the Vendor, its agents, representatives, or employees. Vendor shall procure and maintain for the duration of the contract insurance claims arising out of their services and including, but not limited to loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data.

MINIMUM SCOPE AND LIMIT OF INSURANCE
Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **$1,000,000** per accident for bodily injury and property damage.

3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **$1,000,000** per accident for bodily injury or disease.
(Not required if consultant provides written verification it has no employees)

4. **Cyber Liability Insurance**, with limits not less than **$2,000,000** per occurrence or claim, **$2,000,000** aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

Technology Professional Liability Errors & Omissions

Technology Professional Liability Errors and Omissions Insurance appropriate to the Consultant's profession and work hereunder, with limits not less than **$2,000,000** per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Vendor in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

a. The Policy shall include, or be endorsed to include, *property damage liability coverage* for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the Agency in the care, custody, or control of the Vendor. If not covered under the Vendor's liability policy, such "property" coverage of the Agency may be endorsed onto the Vendor's Cyber Liability Policy as covered property as follows:

If the Vendor maintains broader coverage and/or higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

Other Insurance Provisions
The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status
The City of Stockton, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Vendor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used). Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.

Primary Coverage

For any claims related to this contract, the **Vendor's insurance coverage shall be primary and non-contributory**. Coverage for commercial liability shall be at least as broad as ISO CG 20 01 04 13 as respects the City of Stockton, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its officers, officials, employees, or volunteers shall be excess of the Vendor's insurance and shall not contribute with it. This requirement shall also apply to any Excess policies. The City of Stockton does not accept endorsements limiting the Vendor's insurance coverage to the sole negligence of the Named Insured.

Umbrella or Excess Policy

The Vendor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Vendor's primary and excess liability policies are exhausted.

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the City of Stockton**.

Waiver of Subrogation

Vendor hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Vendor may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Vendor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City of Stockton. The City of Stockton may require the Vendor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds

$25,000 unless approved in writing by City of Stockton. Any and all deductibles and SIRs shall be the sole responsibility of Vendor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City of Stockton may deduct from any amounts otherwise due Vendor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named Insured. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City of Stockton reserves the right to obtain a copy of any policies and endorsements for verification.

Acceptability of Insurers
Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to the City of Stockton.

Claims Made Policies
If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

2. Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract of work.*

3. If coverage is canceled or non-renewed, and not *replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, the Vendor must purchase "extended reporting" coverage for a minimum of *five (5)* years after completion of contract work.

Verification of Coverage

Vendor shall furnish the City of Stockton with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause **and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements.** All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City of Stockton before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Vendor's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Subcontractors
Vendor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Vendor shall ensure that City of Stockton is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances
City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Certificate Holder Address

The address for mailing certificates, endorsements and notices shall be:

City of Stockton
Its Officers, Officials, Employees and Volunteers
400 E Main Street, 3rd Floor – HR
Stockton, CA 95202

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. **Goods, Equipment and Services.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in Exhibit A of the Agreement. Contractor shall provide said services at the time, place and in the manner specified in Exhibit A of the Agreement.

2. **City Assistance, Facilities, Equipment and Clerical Support.** Except as set forth in Exhibit A, Contractor shall, at its sole cost and expense, furnish and maintain all facilities and equipment that may be required for furnishing services pursuant to this Agreement. If applicable, City shall furnish to Contractor only the facilities and equipment listed in Exhibit A to the Agreement.

3. **Compensation**. City shall pay Contractor for services rendered pursuant to this Agreement as described more particularly in Exhibit A and Exhibit E to the Agreement.

   3.1 Invoices submitted by Contractor to City must contain a brief description of work performed, time spent and City reference number. Within thirty (30) days of receipt of Contractor's invoice, City will review invoice, and if acceptable make payment on approved invoice.

   3.2 Upon completion of work and acceptance by City, Contractor shall have sixty (60) days in which to submit final invoicing for payment. An extension may be granted by City upon receiving a written request thirty (30) days in advance of said time limitation. The City shall have no obligation or liability to pay any invoice for work performed which the Contractor fails or neglects to submit within sixty (60) days, or any extension thereof granted by the City, after the work is accepted by the City.

4. **Sufficiency of Contractor's Work**. All Contractor services, work, and deliverables shall be performed in a good and workmanlike manner with due diligence in accordance with the degree of skill normally exercised by similar contractors supplying services and work of a similar nature, and in conformance with applicable laws, codes and professional standards. Contractor's work shall be adequate and sufficient to meet the purposes of this Agreement.

5. **Ownership of Work**. All reports, work product, all other documents completed or partially completed by Contractor or its approved subcontractors, in performance of this Agreement, and if applicable, drawings, designs, and plan review comments shall become the property of the City. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Contractor

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and its approved subcontractors agree to execute any additional documents that may be necessary to evidence such assignment. All materials shall be delivered to the City upon completion or termination of the work under this Agreement. If any materials are lost, damaged or destroyed before final delivery to the City, the Contractor shall replace them at its own expense. Contractor and its approved subcontractors shall keep materials confidential. Materials shall not be used for purposes other than performance of services under this Agreement and shall not be disclosed to anyone not connected with these services, unless the City provides prior written consent.

6.   **Timeliness.** Time is of the essence in this Agreement. Further, Contractor acknowledges that the failure of Contractor to comply with the time limits described in Exhibit A and Exhibit F may result in economic or other losses to the City.

7.   **Changes**. Both parties to this Agreement understand that it may become desirable or necessary during the term of this Agreement for City to modify the scope of services provided for under this Agreement. Any material extension or change in the scope of work shall be discussed with City and the change and cost shall be memorialized in a written amendment to the original contract prior to the performance of the additional work. Until the amendment is so executed, City will not be responsible to pay any charges Contractor may incur in performing such additional services, and Contractor shall not be required to perform any such additional services.

8.   **Amendment.** No variation of the terms of this Agreement shall be valid unless an amendment is made in writing and signed by both parties.

9.   **Contractor's Status**.

       9.1 In performing the obligations set forth in this Agreement, Contractor shall have the status of an independent contractor and Contractor shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Contractor are its agents and employees and are not agents or employees of City. Contractor by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of City. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the City. No agent, officer or employee of the City is to be considered an employee of the Contractor. It is understood by both Contractor and City that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

10.30.18; Mod 10.28.20 SG)

9.2 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to City only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to City's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of performing the services under this Agreement. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

9.3 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Contractor.

9.4 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's assigned personnel under the terms and conditions of this Agreement.

10.   Subcontractor.

10.1   Subcontractors shall not be recognized as having any direct or contractual relationship with City. Contractor shall be responsible for the work of subcontractors, which shall be subject to the provisions of this Agreement. Subcontractors will be provided with a copy of the Agreement and be bound by its terms. Contractor is responsible to City for the acts and omissions of its subcontractors and persons directly or indirectly employed by them.

10.2   If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages working conditions, discipline, hiring, and discharging or any other term of employment or requirement of law shall be determined by Contractor.

10.3   It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's personnel.

11.   Termination.

11.1   Termination for Convenience of City. The City may terminate this Agreement at any time by mailing a notice in writing to Contractor. The Agreement shall then be deemed terminated, and no further work shall be performed by Contractor. If the

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Agreement is so terminated, the Contractor shall be paid for the work actually completed at the time the notice of termination is received.

11.2   Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

11.3   Funding- Non-Appropriation. It is mutually understood between the Parties that payment to the Contractor for performance shall be dependent upon the availability of appropriations by the City Council for the purposes of this Agreement. No legal liability on the part of the City for any payment may arise under this Agreement until funds are made available and until the Contractor has received funding availability, which will be confirmed in writing. If funding for any fiscal year is reduced or deleted, or if the City loses funding for any reason, the City, in its sole discretion, shall have the option to either (a) cause this Agreement to be canceled or terminated pursuant to applicable provisions of the Agreement; or (b) offer to amend the Agreement to reflect the reduced funding for this Agreement.

12.   **Non-Assignability**. The Contractor shall not assign, sublet, or transfer this Agreement or any interest or obligation in the Agreement without the prior written consent of the City, and then only upon such terms and conditions as City may set forth in writing. Contractor shall be solely responsible for reimbursing subcontractors.

Indemnity and Hold Harmless. To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify City of Stockton and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the City of Stockton. This obligation is independent of, and shall not in any way be limited by, the minimum Insurance obligations contained in this agreement. These obligations shall survive the completion or termination of this agreement.

13.   **Insurance**. During the term of this Agreement, Contractor shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached Exhibit B to this Agreement and shall otherwise comply with the other provisions of Exhibit B to this Agreement.

14.   **Notices**. All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed in Exhibit A to this Agreement.

15. **Conformance to Applicable Laws.** Contractor shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Contractor shall not discriminate in the employment of persons or in the provision of services under this Agreement on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

16. **Licenses, Certifications and Permits.** Prior to the City's execution of this Agreement and prior to the Contractor's engaging in any operation or activity set forth in this Agreement, Contractor shall obtain a City of Stockton business license, which must be kept in effect during the term of this Agreement. Contractor covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Agreement. Such licenses, certificates and permits shall be maintained in full force and effect during the term of this Agreement.

17. **Records and Audits.** Contractor shall maintain all records regarding this Agreement and the services performed for a period of three (3) years from the date that final payment is made. At any time during normal business hours, the records shall be made available to the City to inspect and audit. To the extent Contractor renders services on a time and materials basis, Contractor shall maintain complete and accurate accounting records, in a form prescribed by City or, if not prescribed by City, in accordance with generally accepted accounting principles, such records to include, but not be limited to, payroll records, attendance cards, time sheets, and job summaries.

18. **Confidentiality.** Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

19. **Conflicts of Interest.** Contractor covenants that other than this Agreement, Contractor has no financial interest with any official, employee or other representative of the City. Contractor and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner of degree by the performance of Contractor's services under this Agreement. If such an interest arises, Contractor shall immediately notify the City.

20. **Waiver.** In the event either City or Contractor at any time waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or of any other covenant, condition or obligation. No payment, partial payment, acceptance, or partial acceptance by City shall operate as a waiver on the part of City of any of its rights under this Agreement.

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21. **Governing Law**. California law shall govern any legal action pursuant to this Agreement with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the Federal District Court of California, Eastern District, Sacramento Division.

22. **No Personal Liability**. No official or employee of City shall be personally liable to Contractor in the event of any default or breach by the City or for any amount due Contractor.

23. **Severability.** If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or city statue, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

24. **Non-Discrimination.** During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state, or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition (including genetic characteristics), marital status, age, political affiliation, gender identity, gender expression, sex or sexual orientation, family and medical care leave, pregnancy leave, or disability leave. Contractor and its officers, employees, agents, representative or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the City's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12990 (et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulation or Code of Federal Regulations. Title VI of the Civil Rights Act of 1964 requires that "no person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." (42 USC Section 2000d). http://www.dol.gov/oasam/regs/statutes/titlevi.htm. The City requires compliance with the requirements of Title VI in all of its programs and activities regardless of funding source.

25. **Force Majeure**. Neither party shall be responsible for delays or failures in performance resulting from acts of God, acts of civil or military authority, terrorism, fire, flood, strikes, war, epidemics, pandemics, shortage of power or other acts or causes reasonably beyond the control of that party. The party experiencing the force majeure event agrees to give the other party notice promptly following the occurrence of a force majeure event, and to use diligent efforts to re-commence performance as promptly as commercially practicable.

26. **Taxes and Charges**. Contractor shall be responsible for payment of all taxes, fees, contributions or charges applicable to the conduct of the Contractor's business.

27. **Cumulative Rights**. Any specific right or remedy provided in this Agreement will not be exclusive but will be cumulative of all other rights and remedies to which may be legally entitled.

28. **Advice of Attorney.** Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

29. **Heading Not Controlling.** Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.

30. **Entire Agreement, Integration, and Modification.**

30.1   This Agreement represents the entire integrated agreement between Contractor and the City; supersedes all prior negotiations, representations, or agreements, either written or oral between the parties and may be amended only by a written Amendment signed by the Contractor and City Manager.

30.2   All Exhibits to this Agreement and this Agreement are intended to be construed as a single document.

31. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

32. **Authority.** The individual(s) executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

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EXHIBIT D

PROFESSIONAL IT SERVICES SPECIAL TERMS AND CONDITIONS

1. **Definitions.** The following words and phrases have the following meanings for purposes of this Agreement:

   1.1. "Services" means, collectively, the services, duties and responsibilities described in Exhibit A of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement.

   1.2. "Deliverable" means quantifiable goods or services that will be provided upon completion of a project. A deliverable is any tangible material, work or thing delivered by one party to the other, including associated technical documentation. A deliverable can be tangible or intangible parts of the development process, and often are specified functions or characteristics of the project.

2. **General.** The following terms and conditions are applicable for the Professional IT Services only. The special conditions shall be read in conjunction with the Standard Agreement, General Terms and Conditions ("GTC") Exhibit C, and all other Exhibits identified in the Standard Agreement.

   2.1. Where any portion of the GTC is in conflict to or at variance with any provisions of the Special Conditions of the Agreement, then unless a different intention stated, the provision(s) of the Special Conditions of the Agreement shall be deemed to override the provision(s) of GTC only to the extent that such conflict or variations in the Special Conditions of the Agreement are not possible of being reconciled with the provisions of the GTC.

   2.2. In the case of modification of a part or provision of the GTC, the unaltered part or provision, or both shall remain in effect. The Special Conditions shall relate to a particular project and be peculiar to that project but shall not weaken the character or intent of the GTC.

3. **Ownership of Work.** **SaaS, Software and Hardware.** All right, title and interest, including but not limited to all existing or future copyrights, trademarks, service marks, trade secrets, patents, patent applications, know how, moral rights, contract rights, and proprietary rights, and all registrations, applications, renewals, extensions, and combinations of the foregoing (**"Intellectual Property Rights"**), in and to the following are the exclusive property of Contractor (or, as the case may be, its licensors and suppliers):

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3.1.   SaaS, Software, Leased Hardware, Documentation and all proprietary technology used by Contractor to perform its obligations under this Agreement;

3.2.   All software, tools, routines, programs, designs, technology, ideas, know-how, processes, techniques and inventions that Contractor makes, develops, conceives or reduces to practice, whether alone or jointly with others, in the course of performing the Professional Services;

3.3.   The fully compiled version of any of Software that can be executed by a computer and used without further compilation (the "**Executable Code**");

3.4.   The human readable version of any of Software that can be compiled into Executable Code (the "**Source Code**");

3.5.   All enhancements, modifications, improvements and derivative works of each and any of the foregoing; and

3.6.   All suggestions, recommendations or comments regarding the Intellectual Property, including without limitation, new features or functionality relating thereto ("Contractor Intellectual Property"). If any derivative work is created by City from the Software, SaaS or Hardware, Contractor shall own all right, title and interest in and to such derivative work.

3.7.   City Data. Contractor acknowledges that, as between Contractor and City, City owns all right, title, and interest, including all intellectual property rights, in and to information, data, and other content that is collected, downloaded or otherwise received, directly or indirectly, from City or any employees, consultants, contractors, agents or members of the public authorized by City to access and use the SaaS, Software or Hardware under the rights granted to City pursuant to this Agreement and for whom or which such access and use has been purchased hereunder ("**Authorized Users**") by or through the SaaS, Software or Hardware (the "**City Data**"); provided, however, that

3.7.1.   City hereby grants to Contractor a non-exclusive, royalty-free, worldwide license to reproduce, distribute and otherwise use and display the City Data and perform all acts with respect to the City Data as may be necessary for Contractor to provide the SaaS, Software and Hardware to City;

3.7.2.   City hereby grants to Contractor a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify and otherwise use and display information related to City's use of the SaaS, Software or Hardware in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the SaaS, Software or Hardware ("**Aggregated Statistics**"); and

3.7.3.   Contractor may de-identify and use City Data for any lawful purpose consistent with all applicable law. Each of the software components

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that constitute the SaaS, the Software and the Documentation is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. As a local government agency, City receives those rights with respect to the SaaS, the Software and the Documentation as are granted to all other end users.

4. Time for Performance.

4.1. Contractor shall perform the services according to the schedule contained in Exhibit F.

4.2. Timeliness of Performance i) Contractor shall provide the Services, and Deliverables within the term and within the time limits required under this Agreement, pursuant to the provisions of Exhibit A and Exhibit F. ii) Neither Contractor nor Contractor's agents, employees nor subcontractors are entitled to any damages from the City, nor is any party entitled to be reimbursed by the City, for damages, charges or other losses or expenses incurred by Contractor by reason of delays or hindrances in the performance of the Services, whether or not caused by the City.

5. Applicable Laws. Under guidelines specified in 29 CFR 1910.1200 (f) and (g) City requests that Contractor label applicable Deliverables accordingly and provide associated Safety Data Sheets ("SDS") to City.

Deliverables must conform with all applicable federal, state, and local laws. Such conformity includes compliance with federal sanctions, and Contractor certifies that it has not and will not engage in prohibited transactions with sanctioned persons or entities.

6. Termination

6.1. "The City may terminate this Agreement at any time by mailing a notice in writing to Contractor. Termination shall take effect no earlier than the end of the annual service period in which the cancellation occurs. Contractor shall retain the annual subscription fee for work performed during this service period. No further work shall be performed by Contractor after the end of the annual service period.".

6.2. In addition to any other express termination rights set forth in this Agreement, either party may terminate this Agreement or any Order or Scope of Work if the other party materially defaults in the performance of any of its obligations hereunder and fails to cure such default within 30 days after written notice from the non-defaulting party.

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6.3. Upon expiration or earlier termination of this Agreement or any Order or Scope of Work:

6.3.1. City's right to access or use the SaaS, Software, Leased Hardware or Documentation, and all licensed rights granted, in this Agreement or such Order or SOW (the "Expired or Terminated Document") immediately shall terminate;

6.3.2. If the Expired or Terminated Document expires or is terminated by City without cause or by Contractor with cause, then such expiration or termination will not affect City's obligation to pay all Fees that may have become due before such expiration or entitle City to any refund;

6.3.3. Each party shall promptly return to the other party all copies, whether in written, electronic, or other form or media, of the other party's Confidential Information received under the Expired or Terminated Document, or destroy all such copies;

6.3.4. If City requests in writing within 30 days after the expiration or termination of the Expired or Terminated Document, Contractor shall, within 30 days after such request, deliver to City the most recent version of City Data in a commercially reasonable format maintained by Contractor, provided that City has paid all Fees and reimbursable expenses then outstanding and any amounts payable after or as a result of such expiration or termination; and

6.3.5. City shall erase all copies of Software on City's computers, return at City's expense all Leased Hardware and return at its expense or destroy all copies of the Documentation in City's possession or control provided under such Expired or Terminated Document. Any right or obligation of either party that, by its nature, should survive the termination or expiration of this Agreement will survive any such termination or expiration.

7. Indemnity and Hold Harmless.

7.1. Contractor. Contractor shall indemnify, defend, and hold harmless City and its agents, officers, directors and employees ("City Parties") from and against any and all losses, damages, liabilities, costs, including reasonable attorneys' fees ("Losses") incurred by City Parties resulting from any third-party claim, suit, action or proceeding ("Third Party Claim") that the SaaS, Software or Hardware, or any use of the SaaS, Software or Hardware in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights or for any Third Party Claim based on Contractor's gross negligence or willful misconduct. If such a claim for infringement or misappropriation is made or appears possible, City agrees to permit Contractor, at Contractor's sole discretion, to (i) modify or replace the SaaS, Software or Hardware, or component or part thereof, with a substantially similar product or service to make it non-infringing or avoid misappropriation

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or (ii) obtain the right for City to continue using it. If Contractor determines that neither alternative is reasonably available, Contractor may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to City. This Section 7.1 will not apply to the extent that the alleged infringement or misappropriation arises from: (a) use of the SaaS, Software or Hardware not in accordance with this Agreement, (b) failure of City to implement any replacements, corrections or modifications made available by Contractor for the Software or Hardware, (c) use of the SaaS, Software or Hardware in combination with data, software, hardware, equipment, or technology not provided by Contractor or authorized by Contractor in writing, (d) modifications to the SaaS, Software or Hardware not made by Contractor or (e) City Data.

7.2. Limitations on Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES, SUBCONTRACTORS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR (i) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES; LOSS OF REVENUES, DATA, BUSINESS OR GOODWILL; OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES OR COSTS OR THEY WERE OTHERWISE FORESEEABLE; OR (ii) AN AGGREGATE AMOUNT EXCEEDING THE TOTAL AMOUNTS PAID TO CONTRACTOR UNDER THIS AGREEMENT IN THE 12-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. THE REMEDIES IN THIS AGREEMENT ARE CITY'S SOLE AND EXCLUSIVE REMEDIES.

8. Standard of Performance

In addition to Exhibit C, Section 4 and 17, Contractor agrees as follows:

8.1. Contractor's Services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Contractor's profession currently practicing under similar conditions. Contractor shall comply with the profession's standard of performance, applicable laws, regulations, and industry standards. By delivery of completed work, Contractor certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. If Contractor is retained to perform services requiring a license, certification, registration or other similar requirement under California law, Contractor shall maintain that license,

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certification, registration or other similar requirement throughout the term of this Agreement.

8.2. Contractor acknowledges that it is entrusted with or has access to valuable and confidential information and records of the City and with respect to that information, Contractor agrees to be held to the standard of care of a fiduciary. Contractor shall assure that all services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. Contractor must provide copies of any such licenses. Contractor remains responsible for the professional and technical accuracy of all Services or Deliverables furnished, whether by Contractor or its subcontractors or others on its behalf. All Deliverables must be prepared in a form and content satisfactory to the Using Agency and delivered in a timely manner consistent with the requirements of this Agreement.

8.3. If Contractor fails to comply with the foregoing standards, Contractor must perform again, at its own expense, all Services required to be re-performed as a direct or indirect result of that failure. Any review, approval, acceptance or payment for any of the Services by the City does not relieve Contractor of its responsibility for the professional skill and care and technical accuracy of its Services and Deliverables. This provision in no way limits the City's rights against Contractor either under this Agreement, at law or in equity.

9. Compensation

9.1. In addition to Section 3 Compensation in Exhibit C – GTC, the Contractor shall be compensated for the services provided under this Agreement as follows:

9.1.1. Contractor shall be compensated for services rendered and accepted under this Agreement and shall be paid monthly, in arrears on a not to exceed basis, based upon the rates set forth in Exhibit E attached hereto and made a part of this Agreement. Contractor may vary the compensation for each task in Exhibit E provided that the total project compensation listed in Exhibit E and the Standard Agreement is not exceeded.

10. Personnel

10.1. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or services subcontracted hereunder shall be specified by written agreement and shall be subject to each provision of this Agreement. Contractor shall provide subcontractor a copy of this fully executed Agreement.

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10.2. Contractor agrees to assign only competent personnel according to the reasonable and customary standards of training and experience in the relevant field to perform services under this Agreement. Failure to assign such competent personnel shall constitute grounds for termination of this Agreement. The payment made to Contractor pursuant to this Agreement shall be the full and complete compensation to which Contractor and Contractor's officers, employees, agents, and subcontractors are entitled for performance of any work under this Agreement. Neither Contractor nor Contractor's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the City. The City will not make any federal or state tax withholdings on behalf of Contractor. The City shall not be required to pay any workers' compensation insurance on behalf of Contractor. Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

10.3. <u>Key Personnel</u>: Because of the special skills required to satisfy the requirements of this Agreement, Contractor shall not reassign or replace key personnel without the written consent of the City, which consent the City will not unreasonably withhold. "key personnel" means those job titles and the persons assigned to those positions in accordance with the provisions of this Agreement. The City may at any time in writing notify Contractor that the City will no longer accept performance of Services under this Agreement by one or more Key Personnel listed. Upon that notice Contractor shall immediately suspend the services of the key person or persons and must replace him or them in accordance with the terms of this Agreement. A list of key personnel is found in Exhibit A, Scope of Services.

11. <u>Reports and Information</u>

Contractor shall at such times and in such forms as the City may require furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters are covered by this Agreement as specified in Exhibit A and Exhibit E.

12. <u>Findings Confidential</u>

All of the reports, information, data, et cetera, prepared or assembled by the Contractor under this Agreement are confidential and the Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of the City. Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is required by applicable law or by proper legal or governmental authority, is already rightfully in the Contractor's possession without obligation of confidentiality, is independently developed by Contractor outside the scope of this

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Agreement or is rightfully obtained from third parties. Contractor shall give City prompt notice of any such legal or governmental demand and reasonably cooperate with City in any effort to seek a protective order or otherwise to contest such required disclosure.

13. Copyright

No materials, including but not limited to reports, maps, or documents produced as a result of this Agreement, in whole or in part, shall be available to Contractor for copyright purposes. Any such materials produced as a result of this Agreement that might be subject to copyright shall be the property of the City and all such rights shall belong to the City, and the City shall be sole and exclusive entity who may exercise such rights.

14. Deliverables

Contractor shall prepare or provide to the City various Deliverables. "Deliverables" include work product, such as written reviews, recommendations, reports and analyses, produced by Contractor for the City. The City may reject Deliverables that do not include relevant information or data, or do not include all documents or other materials specified in this Agreement or reasonably necessary for the purpose for which the City made this Agreement or for which the City intends to use the Deliverables. If the City determines that Contractor has failed to comply with the foregoing standards, it has 30 days from the discovery to notify Contractor of its failure. If Contractor does not correct the failure, or if it is possible to do so, within 30 days after receipt of notice from the City specifying the failure, then the City, by written notice, may treat the failure as a default of this Agreement. Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose and when consented to in advance by the City. Such Deliverables will not be considered as satisfying the requirements of this Agreement and partial or incomplete Deliverables in no way relieve Contractor of its commitments under this Agreement.

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EXHIBIT E

COMPENSATION SCHEDULE

The Contractor shall be compensated for the services identified in Exhibit A, Exhibit C, and Exhibit D to this Agreement as follows:

1. **Project Price**

    1.1   The maximum the Contractor shall be paid on this Agreement is $624,438 (hereafter the "not to exceed" amount). The "not to exceed" amount includes all payments to be made pursuant to this Agreement, including City approved reimbursable expenses, if any. Nothing in this Agreement requires the City to pay for work that does not meet the Standard of Performance identified in Exhibit D section 4 or other requirements of this Agreement.

    1.2   Standard Reimbursable Items: Only the reimbursable items identified in Exhibit A, C, and D (Compensation), shall be compensated to the Contractor. Reimbursable expenses will be reimbursed without markup. Fees plus reimbursable expenses shall not exceed the amount set forth in section 1.1 of this Exhibit and a copy of the original invoice for the items listed in i, ii or iii below shall be attached to the invoice submitted to the City for reimbursement. Payments shall be based upon work documents submitted by the Contractor to the City and accepted by the City as being satisfactory to City's needs. The City shall not pay a markup on any of the items listed in i, ii or iii. Additionally, items such a telephone, fax, postage or freight are already included in the billable hourly rate. Contractor shall be reimbursed the direct expenses, which are the actual cost of the following items that are reasonable, necessary and actually incurred, by the Contractor in connection with the services:

    i.   Expenses, fees or charges for printing, reproduction or binding of documents at actual costs with no markup added to the actual cost.

    ii. Any filing fees, permit fees, or other fees paid or advanced by the Contractor at actual costs with no markup added to the actual cost.

    iii. Travel expenses shall be reimbursed in accordance with the City's travel policy, which is incorporated herein by reference. Reimbursement shall be made at actual costs with no markup added to the actual cost.

    1.3   The Contractor shall be entitled to receive payments for its work performed pursuant to the Agreement. The City will pay Contractor based on invoices for acceptable work performed and approved until the "not to exceed" amount is reached. Thereafter, Contractor must complete services based on the Agreement without additional compensation unless there is a material change to the Statement of Work and Scope by a written Amendment.

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1.4   If work is completed before the "not to exceed" amount is reached, the Contractor's compensation will be based on the Contractor's invoices previously submitted for acceptable work performed and approved.

2.   **Task Price**. Below is the price for the services and reimbursable expenses as described in Exhibit A of this Agreement.

Task	Description	Task Price	
1	Open Counter Implementation	$	34,313
2	Business, Residential, and Zoning Check Portals	$	467,875
3	Spanish Language Translation	$	22,250
4	Integration to ArcGIS Local GeoCoder	$	12,500
5	Integration to Accela Citizen Access (15 permit types)	$	87,500
6	SAML 2.0 Single Sign-On (SSO)	$	12,500
	TOTAL PRICE	**$**	**636,938**

3.   **Invoice Schedule.** Invoices will be submitted at the beginning of each year of service. The full implementation cost will be invoiced upon the execution of the contract.

Invoice Schedule	Implementation Services		Annual Software		Total	
Initial Term Start	$	11,437	$	120,525	$	154,838
Upon Zoning Approval	$	11,438				
Upon Permits Approval	$	11,438				
1st Anniversary			$	120,525	$	120,525
2nd Anniversary			$	120,525	$	120,525
3rd Anniversary			$	120,525	$	120,525
4th Anniversary			$	120,525	$	120,525
Total	$	34,313	$	602,625	$	636,938

4.   **Invoice to Address.** Each invoice submitted shall identify the specific task(s) listed in Exhibit A and this Exhibit, and the completed work product/deliverable for the agreed upon price listed in this Exhibit. Invoices shall be submitted to the below address:

City of Stockton Community Development Department
Attention: Permit Center
425 N. El Dorado Street
Stockton, CA 95202

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EXHIBIT F

TIMELINE

1. Consultant shall complete the requested services identified in Exhibit A as follows:

   1.1. **TIMELINE FOR COMPLETION OF SERVICE IMPLEMENTATION**

Some of the following items may occur concurrently:

   1.1.1. Data Gathering   Six to Nine (6-9) weeks

   1.1.2. Cartography   Six to Nine (6-9) weeks

   1.1.3. Permit Configuration   Ten to Nineteen (10-19) weeks

   1.1.4. ACA Integration   Six to Eight (6-8) weeks

   1.1.5. Launch   Eight (8) weeks

   1.2. **FULLY IMPLEMENTED SERVICES**

   1.2.1. Business, Residential, and Zoning Check Portals will be available from the completion of the implementation until the end of the contract duration.
   1.2.2. Spanish Language Translation will be available from the completion of the implementation until the end of the contract duration.
   1.2.3. Integration to ArcGIS Local GeoCoder will be available from the completion of the implementation until the end of the contract duration.
   1.2.4. Integration to Accela Citizen Access (15 permit types) will be available from the completion of the implementation until the end of the contract duration.
   1.2.5. Implementation maintenance and minor optimizations will be available from the completion of the implementation until the end of the contract duration.

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EXHIBIT G

Special Funding Terms and Conditions

This exhibit is intentionally left blank as it does not apply to this project.