

**CITY OF CARSON  
CONTRACT SERVICES AGREEMENT FOR  
ABTECH TECHNOLOGIES, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT (herein "Agreement") is made and entered into this 23 day of August, 2016, by and between the CITY OF CARSON, a California municipal corporation ("City") and ABTECH TECHNOLOGIES, a California corporation (herein "Consultant").

NOW, THEREFORE, the parties hereto agree as follows:

**1. SERVICES OF CONSULTANT**

1.1 Scope of Services. In compliance with all of the terms and conditions of this Agreement, the Consultant shall perform the work or services set forth in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by reference. Consultant warrants that it has the experience and ability to perform all work and services required hereunder and that it shall diligently perform such work and services in a professional and satisfactory manner.

1.2 Compliance With Law. All work and services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency of competent jurisdiction.

1.3 Licenses, Permits, Fees and Assessments. Consultant shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by the Agreement.

1.4 Special Requirements. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

**2. COMPENSATION**

2.1 Contract Sum. For the services rendered pursuant to this Agreement, Consultant shall be compensated in accordance with the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference, but not exceeding the maximum contract amount of **Twenty Five Thousand Two Hundred and Twelve Dollars (\$25,212.00)** ("Contract Sum").

2.2 Invoices. Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall

detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, City will use its best efforts to cause Consultant to be paid within forty five (45) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by the City of any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

2.3 Additional Services. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum for the actual cost of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to ten percent (10%) of the Contract Sum but not exceeding a total contract amount of Five Thousand Dollars (\$5,000) or in the time to perform of up to ninety (90) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. No claim for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

### **3. PERFORMANCE SCHEDULE**

3.1 Time of Essence. Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance. Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding thirty (30) days cumulatively.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions,

riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Term. Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) year from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

#### 4. COORDINATION OF WORK

4.1 Representative of Consultant. **Dana Collins** is hereby designated as being the representative of Consultant authorized to act on its behalf with respect to the work and services specified herein and make all decisions in connection therewith. All personnel of Consultant and any authorized agents shall be under the exclusive direction of the representative of Consultant. Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, and shall keep City informed of any changes.

4.2 Contract Officer. **Robert Eggleston, the City of Carson Information Technology Manager**, or such person as may be designated by the City Manager is hereby designated as being the representative the City authorized to act in its behalf with respect to the work and services specified herein and to make all decisions in connection therewith ("Contract Officer").

4.3 Prohibition Against Subcontracting or Assignment. Consultant shall not contract with any entity to perform in whole or in part the work or services required hereunder without the express written approval of the City. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City. Any such prohibited assignment or transfer shall be void.

4.4 Independent Consultant. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth. Consultant shall perform all services required herein as an independent contractor of City with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City, or that it is a member of a joint enterprise with City.

#### 5. INSURANCE AND INDEMNIFICATION

5.1 Insurance Coverages. The Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Commercial General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for the Consultant against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than either (i) bodily injury liability limits of \$100,000 per person and \$300,000 per occurrence and property damage liability limits of \$150,000 per occurrence or (ii) combined single limit liability of \$1,000,000. Said policy shall include coverage for owned, non-owned, leased, hired cars, and any other automobile.

(d) Professional Liability. Professional liability insurance appropriate to the Consultant's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

(f) Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

5.2 General Insurance Requirements. All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees



and agents as additional insureds and any insurance maintained by City or its officers, employees or agents may apply in excess of, and not contribute with Consultant's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. The insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Consultant has provided the City with Certificates of Insurance, additional insured endorsement forms or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of and endorsement to all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City's Risk Manager or other designee of the City due to unique circumstances.

5.3 Indemnification. To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, invitees, or any individual or entity for which Consultant is legally liable ("indemnitors"), or arising from Consultant's or indemnitors' reckless or willful misconduct, or arising from Consultant's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, except claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

## **6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

6.1 Records. Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services and shall keep such

records for a period of three years following completion of the services hereunder. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records.

6.2 Reports. Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement or as the Contract Officer shall require.

6.3 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than the City without prior written authorization from the Contract Officer.

(b) Consultant shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives the City notice of such court order or subpoena.

(c) If Consultant provides any information or work product in violation of this Agreement, then the City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify the City should Consultant be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. The City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with the City and to provide the City with the opportunity to review any response to discovery requests provided by Consultant.

6.4 Ownership of Documents. All studies, surveys, data, notes, computer files, reports, records, drawings, specifications, maps, designs, photographs, documents and other materials (the "documents and materials") prepared by Consultant in the performance of this Agreement shall be the property of the City and shall be delivered to the City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by the City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Moreover, Consultant with respect to any documents and materials that may qualify as "works

made for hire” as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed “works made for hire” for the City.

## **7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

7.1 California Law. This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of Los Angeles, State of California.

7.2 Disputes; Default. In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article.

7.3 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant shall file a statutory claim pursuant to Government Code Sections 905 et. seq. and 910 et. seq., in order to pursue any legal action under this Agreement.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.4 Termination Prior to Expiration of Term. This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days’ written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days’ written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically

approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder, but not exceeding the compensation provided therefore in the Schedule of Compensation Exhibit "C". In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.5 Termination for Default of Consultant. If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

## 8. MISCELLANEOUS

8.1 Covenant Against Discrimination. Consultant covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class in the performance of this Agreement. Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class

8.2 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.3 Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer (with her/his name and City title), City of Carson, 701 East Carson, Carson, California 90745 and in the case of the Consultant, to the person(s) at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

8.4 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

8.5 Severability. In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

8.6 Waiver. No delay or omission in the exercise of any right or remedy by non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

8.7 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which any be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.


8.8 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

8.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

8.10 Warranty & Representation of Non-Collusion. No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Consultant warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to,



any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Consultant further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Consultant is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Consultant's Authorized Initials 

8.11 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

[Signatures on the following page.]

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**

CITY OF CARSON, a municipal corporation

\_\_\_\_\_  
Albert Robles, Mayor

ATTEST:

\_\_\_\_\_  
Donesia L. Gause CMC, City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Sunny K. Soltani, City Attorney

**CONSULTANT:**

ABTECH TECHNOLOGIES,  
a California corporation

By: \_\_\_\_\_

Name: Dana Collins  
Title: President

By: \_\_\_\_\_

Name: Jill Twombly  
Title: Controller

Address: 2042 Corte Nogal, Suite D  
Carlsbad, California 92011

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE

INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.

### CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On \_\_\_\_\_, 2016 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

#### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL		
<input checked="" type="checkbox"/> CORPORATE OFFICER		Service Contract
____ President _____	TITLE(S)	TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/> PARTNER(S)	<input type="checkbox"/> LIMITED	_____ 20 _____
	<input type="checkbox"/> GENERAL	NUMBER OF PAGES
<input type="checkbox"/> ATTORNEY-IN-FACT		
<input type="checkbox"/> TRUSTEE(S)		_____ 8/23/16 _____
<input type="checkbox"/> GUARDIAN/CONSERVATOR		DATE OF DOCUMENT
<input type="checkbox"/> OTHER _____		

#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

\_\_\_\_ Abtech Technologies, Inc. \_\_\_\_\_

SIGNER(S) OTHER THAN NAMED ABOVE

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San DiegoOn 08/23/16 before me, N. Hughen Jessee, Notary Public  
Date Here Insert Name and Title of the Officerpersonally appeared Dana Collins

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature

N. Hughen Jessee  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document.**Title or Type of Document: Service Contract Document Date: 8/23/16  
Number of Pages: 20 Signer(s) Other Than Named Above: None**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

☒ Corporate Officer — Title(s): President☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On \_\_\_\_\_, 2016 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

#### CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL  
☒ CORPORATE OFFICER  
    Controller  
    TITLE(S) \_\_\_\_\_
- ☐ PARTNER(S)    ☐ LIMITED  
                    ☐ GENERAL
- ☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER \_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

Service Contract  
TITLE OR TYPE OF DOCUMENT \_\_\_\_\_

20  
NUMBER OF PAGES \_\_\_\_\_

8/23/16  
DATE OF DOCUMENT \_\_\_\_\_

#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

Abtech Technologies, Inc. \_\_\_\_\_

SIGNER(S) OTHER THAN NAMED ABOVE \_\_\_\_\_

PLEASE SEE ATTACHED  
CALIFORNIA CERTIFICATE

N. Hughen jessie  
08/23/16

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**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT****CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

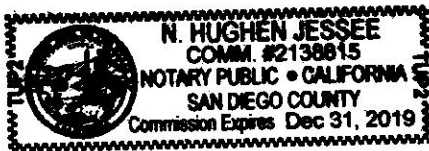
County of San DiegoOn 08/23/16 before me, N. Hughen Jessee, Notary Public  
Date Here Insert Name and Title of the Officerpersonally appeared Jill Twombly

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature

N. Hughen Jessee  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**Title or Type of Document: Service Contract Document Date: 8/23/16  
Number of Pages: 20 Signer(s) Other Than Named Above: None**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

☒ Corporate Officer — Title(s): Controller☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

- I. Consultant will perform the following Services: The services shall be performed at 701 East Carson Street, California and at 2410 East Dominguez Street, Carson, California. The work consists of providing onsite hardware maintenance, repair and support for the City of Carson's mission critical HP servers (RP5479) and its peripheral system (development/backup system server). Consultant shall perform the tasks described below, as requested by the Contract Officer.**
- A. Maintenance and repairs of the equipment described in the Section II below (i.e. First Server is known as the Production Server, serial number: DEH4624XLS; Second Server is known as the Development Server, serial number: DEH4624XLE):**
1. Consultant shall return calls from the Abtech field engineer within 30 minutes of service initiation.
  2. B. The Consultant shall provide 7 day, 24 hour, maximum 4-hour response.
  3. Consultant shall repair equipment as expeditiously as possible (MTTR).
  4. Field engineers are to arrive on-site with tested parts in-hand.
  5. Hewlett-Packard UniX (HPUX) software support shall be by Consultant's HPUX Certified Professionals who can provide operating system support and remote access functions.
  6. Consultant shall provide on-site, telephone and remote software assistance on both of the HP 9000 systems (i.e. both server systems) on a 24 hour, 365 day per year basis.
  7. Consultant shall provide general systems administration services, including support for HP-UX Operating Systems support, HP Utilities, HP Tools, and MirrorDisk/UX.
  8. Consultant shall provide 7 day, 24 hour, 4 hour response on the Production Server (First Server).
  9. Consultant shall provide 5 day, 8 hour, 4 hour response on the Development Server (Second Server).
- B. Consultant staff has knowledge of Production Server and Development Server and knowledge of additional equipment, including HP Authorized Certification and Knowledge of HP UNIX.**

C. Description of Equipment:

1. First Server:

ITEM	MFG	MODEL	DESCRIPTION	QTY
1	HP	A6144A	HP server rp5470	1
2	HP	A6152A	PA8700+ 875MHz CPU for server rp54X0	4
3	HP	A6799A	Processor Support Module for PA8700 CPU	2
4	HP	A6115A	2048MB High Density SyncDRAM Mem Module	8
5	HP	A6155A	HP srvr rp5430 & rp5470 memory extender	1
6	HP	A6110A	36GB HotPlug Ultra2 SCSI HH disk drive	2
7	HP	A7080A	146GB 10K HotPlug Ultra320 disk, rp54X0	1
8	HP	A5557A	DVD ROM Device for HP Svr rp54X0 systems	1
9	HP	A4926A	1000BaseSX PCI LAN Adapter	2
10	HP	A6795A	PCI 2GB Fibre Channel Adapter	2
11	HP	A5527A	HotSwap Power Supply, Redundant System	1
12	HP	A5581A	Factory Rack Kit, slides	1
13	HP	C5687A	SureStore DAT 40e 40GB Ext UNIX comp	1

2. Second Server:

ITEM	MFG	MODEL	DESCRIPTION	QTY
1	HP	A6144A	HP server rp5470	1
2	HP	A6152A	PA8700+ 875MHz CPU for HP server rp54X0	4
3	HP	A6799A	Processor Support Module for PA8700 CPU	2
4	HP	A6115A	2048MB High Density SyncDRAM Mem Module	8
5	HP	A6155A	HP srvr rp5430 & rp5470 memory extender	1
6	HP	A6110A	36GB HotPlug Ultra2 SCSI HH disk drive	2
7	HP	A5557A	DVD ROM Device for HP Svr rp54X0 systems	1

8	HP	A4926A	1000BaseSX PCI LAN Adapter	2
9	HP	A6795A	PCI 2GB Fibre Channel Adapter	2
10	HP	A5527A	HotSwap Power Supply, Redundant System	1
11	HP	A5581A	Factory Rack Kit, slides	1
12	HP	C5687A	SureStore DAT 40e 40GB Ext UNIX comp	1

4. Additional Equipment:

- (a) HP Authorized/Certification.
- (b) Knowledge of HP UNIX.

**II. All work is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.**

**III. Consultant will utilize the following personnel to accomplish the Services:**

- A. Bill Anderson**
- B. Tommy Nguyen**
- C.**

## **EXHIBIT "B"**

### **SPECIAL REQUIREMENTS**

**(Superseding Contract Boilerplate)**

**[Changes to contractual provisions are indicated by double underlined insertions for new language and strike through for deletions]**

**1. Section 2.2 shall be amended as follows:**

2.2 Invoices. By the first day of each month, Each month Consultant shall furnish to City an original invoice ("First Invoice") for all work to be performed and expenses incurred during the month in a form approved by City's Director of Finance. In addition, Consultant shall submit a second invoice ("Second Invoice") within 15 days of the end of each month detailing the actual work performed during the month, if any. This invoice shall detail all the work performed subject to the monthly fee. By submitting a First Invoice ~~an invoice~~ for payment under this Agreement and by submitting a Second Invoice showing the detailed work, Consultant is certifying compliance with all provisions of the Agreement. The First Invoice shall detail the monthly fee. The Second Invoice ~~invoice~~ shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, time periods, response time, type of work and other relevant information ~~and sub-contractor contracts.~~ Sub-contractor charges shall also be detailed by such categories. Consultant shall ~~not invoice City for any duplicate services performed by more than one person.~~

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, City will use its best efforts to cause Consultant to be paid within forty five (45) days of receipt of Consultant's correct and undisputed First Invoice ~~invoice~~; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the ~~original invoice~~ Second Invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by the City of any First Invoice ~~invoice~~ provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law or any disputes of City related to the Second Invoice.

**2. Section 8.12, Infringement On Patent Rights, Copyrights or Trademarks, is hereby added to the Agreement as follows:**

8.12 Infringement On Patent Rights, Copyrights or Trademarks: The Consultant must save, keep, hold harmless and fully indemnify the City and its officers and employees, and agents from all damages, or claims for damages, costs or expenses, in law or equity that at any time arises or be set up for any infringement of patent rights, copyrights or trademark on any person or persons in consequence of the use by the City, or by any of its officers, employees, or



agents, of articles to be supplied under the Agreement with respect to the Services, and of which the Consultant is not the patentee or assignee or has not the lawful right to sell same.

**Section 8.13, Safety Requirements, is hereby added to the Agreement as follows:**

8.13 Safety Requirements: The equipment Consultant supplies to the City shall comply with all requirements and standards as specified by the Occupational Safety and Health Act (OSHA). All guards and protectors as well as appropriate markings will be in place before delivery. Items not meeting any OSHA specifications will be refused. Consultant may be required at its expense to provide training to City employees in the operation of the equipment, and its maintenance at the convenience of the City.

**EXHIBIT "C"**

**SCHEDULE OF COMPENSATION**

- I. Consultant shall be paid a monthly amount of \$2,101, which payment is due on the first day of the each month for all of the services required under this Agreement. Consultant may provide an invoice to the City each month with respect to the monthly services at least 15 days prior to the due date of the payment. Invoices will be submitted, and payments made, in accordance with Section 2.2.**
- II. Consultant shall provide a breakdown invoice of the work performed for each month within 15 days of the end of the month for the services actually performed during the month upon submission of a second invoice showing the work performed. Each report is to include:**
  - A. Line items for all personnel describing the work performed, the number of hours worked, and the time periods involved in the response.**
  - B. Line items for all materials and equipment properly charged to the Services.**
  - C. Line items for all other approved reimbursable expenses claimed, if any, with supporting documentation, if any.**
- IV. The total compensation for the services shall not exceed the Contract Sum as provided in Section 2.1 of this Agreement.**

## **EXHIBIT "D"**

### **SCHEDULE OF PERFORMANCE**

- I. Consultant shall perform all Services in a timely manner and in accordance with the time periods set forth herein. Any alternative schedule shall to be developed by Consultant and subject to the written approval of the Contract Officer and the City Attorney's office.**
  - A. Consultant shall return calls from the Abtech field engineer within 30 minutes of service initiation.
  - B. The Consultant shall provide 7 day, 24 hour, maximum 4-hour response.
  - C. Consultant shall repair equipment as expeditiously as possible (MTTR).
  - D. Consultant shall provide on-site, telephone and remote software assistance on both of the HP 9000 systems (i.e. both server systems) on a 24 hour, 365 day per year basis.
  - E. Consultant shall provide general systems administration services, including support for HP-UX Operating Systems support, HP Utilities, HP Tools, and MirrorDisk/UX.
  - F. Consultant shall provide 7 day, 24 hour, 4 hour response on the Production Server (First Server).
  - G. Consultant shall provide 5 day, 8 hour, 4 hour response on the Development Server (Second Server).
- II. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**