

CONTRACT SERVICES AGREEMENT

By and Between

CITY OF CARSON

and

GOVERNMENTJOBS.COM, INC.

**AGREEMENT FOR CONTRACT SERVICES
BETWEEN THE CITY OF CARSON AND
GOVERNMENTJOBS.COM, INC.**

THIS AGREEMENT FOR CONTRACT SERVICES (herein “Agreement”) is made and entered into this 15th day of August, 2019 by and between the CITY OF CARSON, a California municipal corporation (“City”) and GOVERNMENTJOBS.COM, INC. (d/b/a “NEOGOV”), a California corporation (“Consultant”). City and Consultant may be referred to, individually or collectively, as “Party” or “Parties.”

RECITALS

A. Consultant provides certain software services relating to recruitment and selection of employment candidates by government agencies.

B. On August 15, 2014, City and Consultant entered into a “Service Agreement” whereby Consultant commenced providing specified services to City (the “2014 Service Agreement”), and Consultant has continued to provide such services to City pursuant to the 2014 Service Agreement until the date of effectiveness of this Agreement, as set forth in the preamble above.

C. City’s City Council has determined that the foregoing services provided by Consultant are unique due to their particular quality and the fact that they are only provided by one source, and as such has chosen to dispense with the bidding requirements of the City’s purchasing ordinance, Chapter 6 of Article 2 of the Carson Municipal Code (“CMC”), with respect to this Agreement pursuant to the Sole Source Purchasing exception found in CMC Section 2611(e).

D. Pursuant to the CMC, City has authority to enter into and execute this Agreement.

E. This Agreement is intended to supersede the 2014 Service Agreement.

F. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. SERVICES OF CONSULTANT

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by this reference, which may be referred to herein as the “services” or “work” hereunder. As a

material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Consultant’s Proposal.

The Scope of Service shall include the Consultant’s scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 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 this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant’s performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant’s risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.8 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 costs 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 or \$25,000, whichever is less; or, in the time to perform of up to one hundred eighty (180) days, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors. No claims for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

1.9 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.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and

incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, for the initial three-year term of this Agreement, from August 15, 2019 to August 14, 2022, shall not exceed Forty-Four Thousand, One Hundred Five Dollars and Seventy-Six Cents (\$44,105.76) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.8. In the event the City exercises its option to extend the term of the Agreement for the additional two-year period pursuant to Section 3.4, the total compensation, including reimbursement for actual expenses, for said two-year option period shall not exceed Twenty-Nine Thousand, Four Hundred Three Dollars and Eighty-Four Cents (\$29,403.84).

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the services, less contract retention; (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained, and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

2.4 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 subcontractor contracts. Subcontractor 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, or as provided in Section 7.3, 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 City for any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

2.5 Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

ARTICLE 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 one hundred eighty (180) 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) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Consultant.

The following principals of Consultant (“Principals”) are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

<u>John Closs</u>	<u>Controller</u>
(Name)	(Title)
_____	_____
(Name)	(Title)
_____	_____
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, 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, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant’s staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Consultant.

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant’s officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant’s officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City’s employees. Consultant expressly waives any claim Consultant may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be Kevin Kennedy, Information Technologies Manager, or such other person as may be designated by the City Manager. It shall be the Consultant’s responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City

Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

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 herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor 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. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

ARTICLE 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) 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, then 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 \$1,000,000. Said policy shall include coverage for owned, non-owned, leased, hired cars and any 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) 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 include all of the requirements stated herein.

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

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. Moreover, 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 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 endorsements 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.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following “cancellation” notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

Consultant Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or any automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Consultant’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Consultant agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages to any persons or property resulting from the Consultant’s activities or the activities of any person or persons for which the Consultant is otherwise responsible nor shall it limit the Consultant’s indemnification liabilities as provided in Section 5.3.

In the event the Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

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, or 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, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys’ fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys’ fees.

Consultant shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City’s sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City’s negligence, except that design professionals’ indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

5.4 Sufficiency of Insurer.

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 Risk Manager of the City (“Risk Manager”) due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the risk manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the

minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the Risk Manager.

ARTICLE 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. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. 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. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant’s business, custody of the books and records may be given to City, and access shall be provided by Consultant’s successor in interest. Notwithstanding the above, the Consultant shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

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 as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the “documents and materials”) prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to 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 City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City’s sole risk and without

liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. 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.

6.4 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 City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, 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 City notice of such court order or subpoena.

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

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors 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 there under. 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 City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 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, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal

jurisdiction of such court in the event of such action. 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, though not reduced, 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. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. 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.

7.5 Rights and Remedies are Cumulative.

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.

7.6 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 a legal action under this Agreement.

7.7 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, except as provided in Section 7.3. 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. 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.

7.8 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.

7.9 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 may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 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.

8.2 Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects her/his financial interest or the financial interest of any corporation, partnership or association in which (s)he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 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 insure 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.

8.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

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.

9.2 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.

9.3 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.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. 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. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in 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 phrases, sentences, clauses, paragraphs, or sections 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.

9.6 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 "non-interests" 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 _____

9.7 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 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 Gause-Aldana, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
[BRJ]

CONSULTANT:

GOVERNMENTJOBS.COM, Inc., a California Corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____
Address: _____

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 _____, 2019 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 type="checkbox"/> CORPORATE OFFICER	
<div style="display: flex; align-items: center;"><div style="flex: 1;"><input type="checkbox"/> PARTNER(S)</div><div style="flex: 1; text-align: center;">TITLE(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL</div></div>	_____ TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/> ATTORNEY-IN-FACT	
<input type="checkbox"/> TRUSTEE(S)	
<input type="checkbox"/> GUARDIAN/CONSERVATOR	_____ NUMBER OF PAGES
<input type="checkbox"/> OTHER _____	
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____	_____ DATE OF DOCUMENT
	_____ SIGNER(S) OTHER THAN NAMED ABOVE

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 _____, 2019 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 type="checkbox"/> CORPORATE OFFICER	
<div style="display: flex; justify-content: space-between;"><div><input type="checkbox"/> PARTNER(S)</div><div style="text-align: center;">TITLE(S) _____ <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL</div></div>	_____ TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/> ATTORNEY-IN-FACT	
<input type="checkbox"/> TRUSTEE(S)	
<input type="checkbox"/> GUARDIAN/CONSERVATOR	_____ NUMBER OF PAGES
<input type="checkbox"/> OTHER _____	
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____ _____	_____ DATE OF DOCUMENT
	_____ SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT “A”
SCOPE OF SERVICES

I. Consultant will perform the following Services:

A. Provide the City with subscriptions to the following software programs of Consultant:

1. Insight Enterprise Edition (“IN”)
2. Governmentjobs.com Job Posting (“GJC”)
3. Perform (“PE”)
4. Onboard (“ON”)
5. Learn (“LE”)
6. NEOGOV Integrations

B. Description of Services

1. Insight Enterprise (IN). IN is designed to address five major areas of human resource activities including recruitment, selection, applicant tracking, reporting and analysis, and HR automation. As described below, IN enables agencies to post class specifications online, post job announcements on customer websites, accept online applications, conduct applicant tracking including EEO and other statistical analysis, create email/hardcopy applicant notices, complete item analysis, create/route/approve requisitions and hire actions online, and certify eligible lists electronically. A subscription to IN will include the following:

- Recruitment
 - Online job application.
 - Configurable career site.
 - Automatic online job interest cards.
 - Recruitment and examination planning.
- Applicant Tracking
 - Email and hardcopy notifications.
 - EEO data collection and reports.

- Selection
 - Configurable supplemental questions.
 - Define unique automatic scoring plans.
 - Test analysis and pass-point setting.
 - Score, rank and refer applicants.
- Reporting and Analysis
 - 90 standard system reports.
 - Ad hoc reporting tool.
 - Track Applicants by step/hurdle.
 - Schedule written, oral and other exams.
 - Candidate self-service portal for scheduling and application status.
- Career Pages
 - Consultant will provide the URLs for the Career Pages, which City will use to advertise on its website.
 - Job openings.
 - Promotional job openings.
 - Transfer job openings.
 - Class specifications.
 - Job interest cards.
- HR Automation
 - Automatically route job requisitions and hire actions for approval.
 - Automatically scope and pass/fail applicants based on scoring plans.
 - Automatically email user when there are candidates sent to them for review.

- Automatically email jobseeker job interest and card notices for jobs posted on the main job openings page.
 - Insight Training (to the extent applicable based on degree to which training has already been conducted pursuant to the 2014 Service Agreement)
 - Consultant will create a City-specific training environment for Insight Enterprise, which is used by City during training and afterwards to train in prior to moving into production.
 - City will have full access to the demo/training environment setup for Insight Enterprise.
 - NEOGOV training is available online at all times (web-based, pre-built content).
 - Consultant's pre-built, online training consists of a series of web courses as well as a series of hands-on exercises designed to introduce the standard features and functions and may be used as reference material by City staff following training to conduct day-to-day activities. The pre-built, online training includes exercises that are designed to be flexible enough to allow City-led training sessions internally to introduce user-specific requirements and processes for City staff to learn the system as closely as possible to the City's actual recruitment processes after go-live.
2. Governmentjobs.com Job Posting (GJC). A subscription to GovernmentJobs.com Job Posting Subscription will include the following functionality:
- Enable City to advertise its job postings created in Insight Enterprise on the GovernmentJobs.com website.
 - May add an unlimited number of job postings.
 - Note: jobs advertised on promotional and transfer webpages are not advertised on Governmentjobs.com, as these are typically for internal employees.
3. Perform (PE). PE is designed to address the major areas of human resource activities centered around employee performance management . As described below, PE includes built-in workflow for business processes, configurable tasks, performance elevations and reports. A subscription to PE will include the following:

- Configurable performance evaluations.
 - Ability to build library of goals, competencies, and writing assistants.
 - Shareable competency content.
 - Development plans.
 - Configurable process workflows.
 - Scored and non-scored rating scales.
 - Log of performance evaluations throughout the year.
 - Peer reviews and multi-rater capability.
 - Configurable email notifications.
 - Automatic evaluation creation.
 - Ability to perform actions in bulk for employees & evaluations.
4. Onboard (ON). ON is designed to facilitate the onboarding process for new hires. As described below, Consultant maintains standard forms as part of the annual subscription. City shall maintain any custom forms created by City. A subscription to ON will include the following functionality:
- Electronic employee file of Onboard forms.
 - Federal I9 and W4 forms.
 - Checklists of tasks to create specific Onboard process by position, department, division or class spec.
 - Configurable new hire portal.
 - Ability to promote, rehire and offboard employees (task assignments based on new position).
 - Global form bank.
 - Configurable email notifications.
 - Automation of Onboard process.
 - Build your own Onboarding forms. ON includes Federal I9 and W4 forms which are updated as new versions are released.

5. Learn (LE). LE is designed to provide a seamless experience for organizations to train and develop employees. LE addresses the critical need of organizations to ensure completion of required trainings. By tracking both in-person and online training in one central phase, organizations can improve employee performance and safety and reduce risk and liability claims. A subscription to LE includes the following:
- Create, schedule and enroll learners in, and track completion of online and in-person, classroom trainings.
 - Ability to upload SCORM course content files.
 - Certificates after course completion.
 - Learner transcripts and class rosters.
 - Course catalog with configurable categories for learners to browse.
 - Centralized dashboard that displays all required and elective trainings (online and in-person) that employees are enrolled in.
 - Hundreds of “off-the-shelf” online courses.
 - Consultant will work with City staff to understand the existing processes, as well as other workforce business practices, where applicable.
 - Consultant will establish City’s production environment.
 - All NEOGOV products will be implemented off-site.
6. NEOGOV Integrations. Consultant offers Standard Integrations as well as platform API’s for third party system integrations. A subscription to Standard Integrations includes the following:
- Conduct project scope, review integration plan, discuss timeline, and set schedule for required meetings.
 - Annual maintenance by Consultant.
 - Employee import and export.
 - Department division position import and export.
 - Note: NEOGOV APIs are to be configured directly by City staff using NEOGOV documentation. If required, professional services may be included by Consultant to help define and validate scope, business requirements, timelines, and associated costs (if applicable).

7. NEOGOV Training; Customer Support.

- NEOGOV training shall be available to City at all times online (web-based, pre-built, content).
- Consultant's pre-built, online training consists of a series of tutorials to introduce the standard features and functions, and may be used as reference material by City staff conducting day-to-day activities.
- Consultant shall provide available unlimited customer support to City both online and by telephone, Monday through Friday, 6:00 a.m. to 6:00 p.m. PT (excluding holidays). The parties acknowledge that customer support requests by City staff may involve remote access to the requestor's City computer being granted to Consultant's customer support representatives as necessary to resolve such requests.

8. NEOGOV Implementation. The following activities will be conducted as a part of the Services (to the extent applicable based on degree to which implementation has already been conducted pursuant to the 2014 Service Agreement):

- City to review project kick-off tutorial for information on the project timeline, deliverables, and establish project expectations.
- Consultant will work with City staff to understand the existing processes as well as other workforce business practices where applicable.
- Consultant will establish City's production environment.
- All NEOGOV products will be implemented off-site. City may integrate NEOGOV solutions with other systems using standard NEOGOV integration tools, export data from IN using web services and/or flat files to integrate with other systems, but the specifications and scope must be defined prior to agreeing to a timeline or price.
- Following NEOGOV project rollout, Consultant and City will confirm the rollout was completed successfully and that any production questions are addressed promptly.

9. Consultant shall provide all required hosting and operations support for the programs and applications provided pursuant to this Agreement.

II. All work product 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.

EXHIBIT “B”
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

(Additions shown in ***bold italics***, deletions shown in ~~striketrough~~)

I. Section 1.1 (Scope of Services) of the Agreement is hereby amended as follows:

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by this reference, which may be referred to herein as the “services” or “work” hereunder. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by ~~one or more~~ first-class firms performing similar work under similar circumstances.

II. Section 1.6 (Care of Work) of the Agreement is hereby amended as follows:

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damage, and shall be responsible for all such damages, to persons or property, ***as stated in the indemnification and limitation of liability provisions of this Agreement.*** ~~until acceptance of the work by City, except such losses or damages as may be caused by City’s own negligence.~~

III. A new Section 1.10 (Consultant Representations and Warranties) is hereby added to the Agreement, to read in its entirety as follows:

“1.10 Consultant Representations and Warranties.

(a) Consultant warrants that it will perform the Services in a manner consistent with industry standards reasonably applicable to the performance thereof, and that it will make commercially reasonable efforts to ensure that the software programs and subscriptions provided to City pursuant to this Agreement function properly and continuously and to the satisfaction of the Contract Officer throughout the Term of this Agreement, and that it will respond in a timely and diligent manner to all complaints and requests submitted by the Contract Officer related thereto.

(b) No Other Warranty. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS WARRANTY SECTION, THE SERVICES ARE PROVIDED ON AN “AS IS” BASIS, AND CUSTOMER’S USE OF THE SERVICES IS AT ITS OWN RISK.

CONSULTANT DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. CONSULTANT DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE, OR THAT ANY ERROR WILL BE CORRECTED.

(c) Disclaimer of Actions Caused by and/or Under the Control of Third Parties. CONSULTANT DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE CONSULTANT SYSTEM AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH CONSULTANT WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, CONSULTANT CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, CONSULTANT DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

(d) Configurable Services. The Services can be used in ways that do not comply with applicable laws and it is City's sole responsibility to monitor the use of the Services to ensure that such use complies with and is in accordance with applicable law. In no event shall Consultant be responsible or liable for City failure to comply with applicable law in connection with your use of the Services. Consultant is not responsible for any harm caused by users who were not authorized to have access to the Services but who were able to gain access because usernames, passwords, or accounts were not terminated on a timely basis by City.

(e) Services Do Not Constitute Advice or Credit Reporting. Consultant does not provide its customers with legal advice regarding compliance, data privacy, or other relevant applicable laws in the jurisdictions in which you use the Services. YOU ACKNOWLEDGE AND AGREE THAT THE SERVICES PROVIDED HEREUNDER ARE NOT INTENDED TO BE AND WILL NOT BE RELIED UPON BY YOU AS EITHER LEGAL, FINANCIAL, INSURANCE, OR TAX ADVICE. TO THE EXTENT YOU REQUIRE ANY SUCH ADVICE, YOU REPRESENT THAT YOU WILL SEEK SUCH ADVICE FROM QUALIFIED LEGAL, FINANCIAL, INSURANCE, ACCOUNTING, OR OTHER PROFESSIONALS. YOU SHOULD REVIEW APPLICABLE LAW IN ALL JURISDICTIONS WHERE YOU OPERATE AND HAVE EMPLOYEES AND CONSULT EXPERIENCED COUNSEL FOR LEGAL ADVICE. YOU ACKNOWLEDGE THAT Consultant IS NOT A "CONSUMER REPORTING AGENCY" AS THAT TERM IS DEFINED IN THE FAIR CREDIT REPORTING ACT AS AMENDED.

(f) No Control of HR Practices. You acknowledge that Consultant exercises no control over your specific human resource practices implemented using the Service or your decisions as to employment, promotion, termination, or compensation of any Personnel or Authorized User of the Service. You further agree and acknowledge that Consultant does not have a direct relationship with your employees and that you are responsible for all contact, questions, City Data updates and collection, with your employees. In addition, you are responsible for the privacy (including your own privacy policies governing your processing of City Data), collection, use, retention and processing of your City Data, and providing any and all notices and information to your employees regarding the foregoing, in compliance with all applicable laws. Consultant hereby disclaims all liability arising from your decisions and from harmful data or code uploaded to the Service by you and/or your employees, contractors or agents.”

IV. Section 2.4 (Invoices) of the Agreement is hereby amended as follows:

“Excluding invoices for subscription services which shall be invoiced on an annual basis, 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 subcontractor contracts. Subcontractor 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, or as provided in Section 7.3, 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 City for any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.”

V. Section 3.4 (Term) of the Agreement is hereby amended as follows:

“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)~~ ***three (3)*** years from the date hereof, ~~except as otherwise provided in the Schedule of Performance (Exhibit “D”).~~ ***City, at its sole option, may elect to extend the term of this Agreement for one additional two-year extension***

period, by delivering written notice to Consultant of such election not less than thirty (30) days prior to expiration of the initial term of this Agreement.”

VI. Section 5.1 (a) 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:~~

Section 5.1(e) (Subcontractors) of the Agreement is hereby removed in its entirety.

VII. Section 5.1(f) is hereby removed and replaced with the following:

“Cyber Liability. Technology professional liability errors & omissions insurance appropriate to Consultant’s profession and the Services hereunder with limits not less than \$5,000,000 per claim/loss, and \$5,000,000 in the aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations undertaken by Consultant pursuant to this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information or data breach, theft, loss, damage or misuse, release of private information, extortion and network security. If coverage is maintained on a claims-made basis, Consultant shall maintain such coverage for an additional period of three (3) years following termination of the contract. Technology errors & omissions insurance shall include the following coverage, without limitation:

VIII. Section 5.2 (General Insurance Requirements) of the Agreement is hereby amended as follows:

“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. Moreover, 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 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 endorsements 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.

~~All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following “cancellation” notice:~~

~~CANCELLATION:~~

~~SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30) DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.~~

~~[to be initialed]~~ _____

Consultant Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds under Consultants General Liability and Automobile policies, as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or any automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Consultant’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.



~~Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Consultant agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages to any persons or property resulting from the Consultant’s activities or the activities of any person or persons for which the Consultant is otherwise responsible nor shall it limit the Consultant’s indemnification liabilities as provided in Section 5.3.~~

In the event the Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.”

IX. Subsection (c) of Section 5.3 (Indemnification) of the Agreement is hereby amended as follows:

“In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its

officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities ***related to arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the any theft, loss, damage or breach of information or data, or any release of private information or data, arising from Consultant's*** performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.


X. A new Section 5.5 (Intellectual Property Infringement Indemnification) is hereby added to the Agreement, to read as follows:

"5.5 Intellectual Property Infringement Indemnification.

Consultant and indemnitors will defend, indemnify and hold harmless Indemnified Parties from and against any and all claims and liabilities relating to alleged infringement of a United States patent, copyright or trademark right of a third party by Consultant's Services, products or applications, provided that City shall notify Consultant in writing within a reasonable time of any such claim received. The indemnity obligation shall be binding on successors and assigns of Consultant and indemnitors and shall survive termination of this Agreement."

XI. Section 6.3 (Ownership of Documents) is hereby replaced with the following:

"6.3 Ownership, Protection and Security.

 (a) The parties agree that Consultant's marks and City's marks shall both be displayed on and through Consultant's programs and/or systems used pursuant to this Agreement, provided that use of the City's marks shall be subject to prior approval of the Contract Officer.

(b) Ownership of any graphics, text, data or other information or content materials and all records or databases supplied or furnished by City under this Agreement for incorporation into or delivery through the products or applications described in this Agreement shall remain with City, and Consultant shall cease use of all such material upon termination of this Agreement.

(c) City acknowledges and agrees that nothing in this Agreement or any other agreement grants City any licenses or other rights with respect to Consultant's

software system (source code or object code) other than the right to receive Services as expressly provided in this Agreement. Consultant shall retain all ownership in the intellectual property and all other proprietary rights and interests associated with Consultant's software system and Services and all components thereof and associated documentation, except as expressly provided herein.

(d) Consultant grants to City a limited license during the term of this Agreement to use and reproduce Consultant's trademarks and logos for purposes of including such trademarks and logos in advertising and publicity materials and links subject to consent of Consultant on a case-by-case basis."

XII. Section 6.4 (Confidentiality and Release of Information) of the Agreement is hereby amended as follows:

"6.4 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 City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, 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 City notice of such court order or subpoena.

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

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors 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 there under. 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 City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response."

XIII. A new Section 6.5 (Nondisclosure) is hereby added to the Agreement to read in its entirety as follows:

“6.5 Nondisclosure.

Through exercise of its rights under this Agreement, the City may be exposed to Consultant’s technical, financial, business, marketing, planning, and other information and data, in written, oral, electronic magnetic, photographic, and/or other forms, including but not limited to: (i) oral and written communications which are marked or identified as confidential or secret or similarly marked or identified; and (ii) other circumstances which a reasonable person would recognize from the surrounding facts and circumstances to be confidential or secret (“Confidential Information”) and trade secrets. In recognition of Consultant’s need to protect its legitimate business interests, City hereby covenants and agrees that it shall regard and treat each item of information or data constituting a trade secret or Confidential Information of the other party as strictly confidential or wholly owned by Consultant and that it will not, without the express prior written consent of Consultant, except as required by law including the California Public Records Act, redistribute, market, publish, disclose or divulge to any other person, firm or entity, or use or modify for use, directly or indirectly in any way for any person or entity: (i) any of Consultant’s Confidential Information during the term of this Agreement and for a period of three (3) years after the termination of this Agreement, or, if later, from the last date the Services are performed by Consultant; and (ii) any Consultant’s trade secrets at any time during which such information shall constitute a trade secret under applicable law.”

XIV. Section 7.2 (Disputes; Default) of the Agreement is hereby amended as follows:

“Section 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 ~~the proportion of any~~ **work performed claimed to be in default**, 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, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall **retain unpaid fees** ~~hold all invoices related to and in proportion of the default~~ and shall, when the default is cured, proceed with payment on the invoices. ~~In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default.~~ If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant’s default shall not be deemed to result in a waiver of the City’s legal rights or any rights arising out of any provision of this Agreement.”

XV. A new Section 9.8 (Data Processing and Privacy) is hereby added to the Agreement, to read as follows:

“9.8 Data Processing and Privacy.

City Data. “City Data” shall mean all data that is owned or developed by City, whether provided to Consultant by City or provided by a third party to Consultant in connection with Consultant’s provision of Services to City, including Personnel or Job Seeker Profile Data collected, loaded into, or located in City data files maintained by Consultant. Consultant intellectual property, including but not limited to the Services and all derivative works thereof, Consultant Confidential Information, and Platform Data do not fall within the meaning of the term “City Data”. City exclusively own all right, title, and interest in and to all City Data. City grants Consultant a license to host, use, process, display, create non-personal derivative works of, and transmit City Data to provide the Services.

“Platform Data” shall mean any data reflecting the access or use of the Services by or on behalf of City or any Authorized User, including any end user visit, session, impression, clickthrough or click stream data, non-personal Usage Data, Account, Log, Device, Publication, Tracking, and Transaction Data as defined in Consultant’s Privacy Policy, and any statistical or other analysis, information, or data based on or derived from any of the foregoing. Consultant shall exclusively own all right, title and interest in and to all Platform Data. Consultant grants to City a limited, non-perpetual, non-exclusive, non-transferable, and non-sublicensable license during the Term to use and access, and to permit Authorized Users to use and access, Platform Data of which Consultant makes available through the SaaS Applications solely for City’s internal purposes.

Data Responsibilities. Consultant will have no responsibility or liability for the accuracy of the City Data prior to receipt of such data into the Services. City shall be solely responsible for and shall comply with all applicable laws and regulations relating to (i) the accuracy and completeness of all information input, submitted, or uploaded to the Services, (ii) the privacy of users of the Services, including, without limitation, providing appropriate notices to and obtaining appropriate consents from any individuals to whom City Data relates; and (iii) the collection, use, modification, alteration, extraction, retention, copying, storage, security, disclosure, transfer, disposal, and other processing of any City Data inside and outside the Services (including any personally identifiable information), and (iv) City database(s). Consultant is not responsible for lost data caused by the action or inaction of City or Authorized Users. Consultant recommends City backup their City Data outside the Services if necessary. Unless vital to provide the Services or otherwise mutually agreed in writing, City shall not maintain any health, payment card, or similarly sensitive data that imposes specific data security or data protection obligations within the Services.”

XVI. A new Section 9.9 (Limitations of Liability) is hereby added to the Agreement, to read as follows:

“9.9 Limitations of Liability.

Waiver. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY ARISING OUT OF THIS

AGREEMENT FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS OPPORTUNITY OR PROFIT, LOSS OF USE, LOSS OF GOODWILL OR BUSINESS STOPPAGE, EVEN IF A PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

Limitation. WITHOUT LIMITATION OF THE PREVIOUS SECTION, EXCEPT FOR DAMAGES ARISING OUT OF LIABILITY WHICH CANNOT BE LAWFULLY EXCLUDED OR LIMITED, CUSTOMER'S OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, THE TOTAL LIABILITY OF EITHER PARTY FOR ANY AND ALL CLAIMS AGAINST THE OTHER PARTY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF ALL PAYMENTS ACTUALLY RECEIVED BY CONSULTANT FROM CUSTOMER DURING THE RELEVANT YEAR OF THIS AGREEMENT DURING WHICH THE CAUSE OF ACTION AROSE. THE FOREGOING LIMITATION OF LIABILITY IS CUMULATIVE WITH ALL PAYMENTS FOR CLAIMS OR DAMAGES IN CONNECTION WITH THIS AGREEMENT BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS LIMITATION OF LIABILITY IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY REFLECTS AN INFORMED, VOLUNTARY ALLOCATION BETWEEN THE PARTIES OF THE RISKS (KNOWN AND UNKNOWN) THAT MAY EXIST IN CONNECTION WITH THIS AGREEMENT AND HAS BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.

Exclusion. NOTHING IN THIS SECTION SHALL LIMIT THE CITY'S RIGHT OR ENTITLEMENT TO COLLECT OR RECEIVE THE BENEFIT OF ANY INSURANCE COVERAGE PROVIDED BY CONSULTANT PURSUANT TO SECTION 5.1."

EXHIBIT “C”
SCHEDULE OF COMPENSATION

I. Consultant shall perform the following tasks at the following rates:

	TASK	RATE (ANNUAL)	SUB-BUDGET (INITIAL 3 YEAR TERM)
A.	IN SUBSCRIPTION	\$13,389.42	\$40,168.26
B.	GJC SUBSCRIPTION	\$1,312.50	\$3,937.50
C.	ON SUBSCRIPTION	INCLUDED	N/A
D.	PE SUBSCRIPTION	INCLUDED	N/A
E.	LE SUBSCRIPTION	INCLUDED	N/A
F.	NEOGOV INTEGRATIONS SUBSCRIPTION	INCLUDED	N/A

II. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub-budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.8.

III. The total compensation for the Services shall not exceed the following annual amounts:

Contract Year	Not-to-Exceed Amount
1 (August 15, 2019 – August 14, 2020)	\$14,701.92
2 (August 15, 2020 – August 14, 2021)	\$14,701.92
3 (August 15, 2021 – August 14, 2022)	\$14,701.92
<i>Total (Initial Three Year Term)</i>	<i>\$44,105.76</i>
(Optional) Extension Period Year	Not-to-Exceed Amount
1 (August 15, 2022 – August 14, 2023)	\$14,701.92
2 (August 15, 2023 – August 14, 2024)	\$14,701.92
<i>Total (Optional Extension Period)</i>	<i>\$29,403.84</i>

IV. The City will compensate Consultant for the Services upon submission of a valid invoice. Each invoice is to include line items for all fees and charges (as set forth in Section II of this Exhibit “C”) for the applicable subscriptions and services set forth in Exhibit A, including the time period covered. Consultant will submit an invoice to City, within thirty (30) days of effectiveness of this Agreement, containing the charges for Contract Year 1, as set forth in Section II of this Exhibit “C,” and City’s payment processing obligations shall be as set forth in Section 2.4 of this Agreement. Fees and

charges for subsequent contract years, as set forth in Section II of this Exhibit “C,” shall be invoiced within thirty (30) days of commencement of the applicable contract year, and otherwise shall be subject to the provisions of this Section.

- V. The total compensation for the Services shall not exceed \$44,105.76 as provided in Section 2.1 of this Agreement.**

EXHIBIT “D”
SCHEDULE OF PERFORMANCE

I. Consultant shall perform all Services timely in accordance with the following schedule:

	<u>Task</u>	<u>Days to Perform</u>	<u>Deadline Date</u>
A.	Setup and Implementation to Full Functionality (IN, GJC, PE, ON, LE, NEOGOV Integrations)	N/A	Immediately Upon Effectiveness of Agreement
B.	NEOGOV Training, Customer Support	N/A	Ongoing, throughout Term of Agreement

II. The Contract Officer may approve extensions for performance of the Services in accordance with Section 3.2.