

CONTRACT SERVICES AGREEMENT

By and Between

CITY OF CARSON

and

ACTIVE NETWORK, LLC

EXHIBIT 1

**AGREEMENT FOR CONTRACT SERVICES
BETWEEN THE CITY OF CARSON AND
ACTIVE NETWORK, LLC**

THIS AGREEMENT FOR CONTRACT SERVICES (herein “Agreement”) is made and entered into this ___ day of _____, 2020 by and between the CITY OF CARSON, a California municipal corporation (“City”) and Active Network, LLC, a Delaware Limited Liability Company (“Consultant”). City and Consultant may be referred to, individually or collectively, as “Party” or “Parties.”

RECITALS

A. City sought the performance of the services defined and described particularly in Article 1 of this Agreement.

B. Consultant, following submission of a proposal for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. City’s City Council has determined that the City’s normal bidding requirements set forth in Article II, Chapter 6 of the Carson Municipal Code (“CMC”) may be waived on the basis of applicability of the sole source exception pursuant to CMC Section 2611(e), in that Consultant is the only available source of the services defined and described in Article 1 of this Agreement.

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

E. The Parties desire to formalize the selection of Consultant for performance of the 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, shall not exceed Two Hundred Forty Thousand Dollars (\$240,000) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.8.

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:

(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 Bobby Grove, Recreation Program 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

CONSULTANT:

ACTIVE NETWORK, LLC, a Delaware Limited Liability Company

By: _____
Name: Evan Davies
Title: President
Address: 717 N. Harwood, Suite 2500,
Dallas, TX 75201

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 _____, 2020 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.

<input type="checkbox"/> CAPACITY CLAIMED BY SIGNER <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> CORPORATE OFFICER <input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL <input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> TRUSTEE(S) <input type="checkbox"/> GUARDIAN/CONSERVATOR <input type="checkbox"/> OTHER _____ SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____ _____	DESCRIPTION OF ATTACHED DOCUMENT _____ TITLE OR TYPE OF DOCUMENT _____ NUMBER OF PAGES _____ DATE OF DOCUMENT _____ SIGNER(S) OTHER THAN NAMED ABOVE
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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 _____, 2020 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.

<input type="checkbox"/> CAPACITY CLAIMED BY SIGNER <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> CORPORATE OFFICER <input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL <input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> TRUSTEE(S) <input type="checkbox"/> GUARDIAN/CONSERVATOR <input type="checkbox"/> OTHER _____ SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____ _____	DESCRIPTION OF ATTACHED DOCUMENT _____ TITLE OR TYPE OF DOCUMENT _____ NUMBER OF PAGES _____ DATE OF DOCUMENT _____ SIGNER(S) OTHER THAN NAMED ABOVE
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EXHIBIT “A”
SCOPE OF SERVICES

I. Consultant will perform the following Services:

A. Provide the City with a subscription to “ACTIVE Net,” Consultant’s fully hosted, web-based “Software as a System” (“SaaS”) solution, for use by City on an unlimited number of workstations and by an unlimited number of concurrent users, giving the City on-demand access to its data from any computer with an internet connection. ACTIVE Net will also include an *ACTIVE.com* portal that will allow community members to view and book reservations for use of City facilities or participation in City programs, events, or memberships (including classes and camps) online. Consultant will provide ACTIVE Net to City in accordance with its “Service Package Advanced 6,” which includes Professional Services such as:

1. Onsite business process review (meeting to assess the IT aspects of the implementation);
2. Remote functionality review & data preparation;
3. Remote data collection review;
4. Remote data entry (inventory and policy controls);
5. Onsite & remote user testing and training services;
6. Onsite & remote “train-the-trainer” training services, as set forth in subsection I of this Section;
7. Provision of training materials;
8. Data entry services performed by Consultant’s data analyst team;
9. Login setup and access;
10. Remote hardware configuration
11. Remote preparation for launch and successful use of ACTIVE Net as part of City’s day-to-day operations; and

On-site Services will be conducted in bi-weekly two-day engagements. Senior consulting services will be delivered by Consultant’s Enterprise Consulting team, representing its most seasoned agents.

B. Primary transportation of all ACTIVE Net-related products and equipment to necessary locations for installation and City use;

- C.** Setup and installation to full functionality of ACTIVE Net for use by City staff and community registrants, including:
1. Facility Reservation Functionality;
 2. Activity Registration Functionality;
 3. League Scheduling Functionality;
 4. Equipment Lending Functionality;
 5. Memberships Functionality;
 6. Daycare Functionality.
 7. Fee Payment Functionality.
- D.** Maintenance Services related to ensuring full ongoing availability and functionality of ACTIVE Net, to be provided in accordance with Consultant's "Advanced Support Package," which includes, without limitation:
- (a) Responding to an unlimited number of support requests to Consultant's customer support analysts accessible via phone, messaging, and email;
 - (i) 24/7/365 emergency phone support;
 - (ii) live phone support during business hours;
 - (iii) target email response time of 24 hours;
 - (b) 24/7/365 access to online customer portal and self-service support via searchable databases, user guides & online forums;
 - (c) 24/7/365 web/email case submission;
 - (d) A 15-user learning management system;
 - (e) Rush event support;
 - (f) Technical account manager direct line and monthly review;
 - (g) Phone sync up;
 - (h) Open case review.
- E.** ACTIVE Net Financial Export Technical Services (consisting of remote configuration, testing, and training);

- F. ACTIVE Net ACH (Automated Clearing House) Payment Remittance Technical Services (“Daily” - Every 72 Hours);
- G. ACTIVE Net ACH Payment Remittance Technical Services (Every 2 weeks);
- H. Provide the City with Eight IPP320 Debit Pin Pads in connection with setup and use of ACTIVE Net.
- I. Provide ACTIVE Net “Train the Trainer” training to the following City staff members at the following competency levels, unless otherwise requested by the Contract Officer (and approved by the City Council if additional cost exceeding Contract Officer authority pursuant to Section 1.8 is involved):
 - (1) Two recreation staff members – Administration;
 - (2) Two recreation staff members – Registration;
 - (3) One Finance staff member – All Financial Aspects;
 - (4) One Information Technology staff member – tech support.

Training shall be provided in accordance with the content and 21-week timeline set forth in Consultant’s proposal, unless otherwise set forth herein or requested by the Contract Officer.

II. In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City apprised of the status of performance by delivering the following status reports:

Reports containing all registration information, full calculations with detailed support, and all background information necessary to verify and substantiate such calculations, and full statements including rates, quantities, and totals, for all Fees withheld by Consultant and disbursed to City by Consultant pursuant to this Agreement, shall be available to City within the ACTIVE Net product through the primary reporting modules for the Term of this Agreement.

EXHIBIT “B”
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

The Agreement is hereby amended as follows (deletions shown in ~~strike through~~ and additions shown in ***bold italics***):

I. Section 1.5, Familiarity With Work, is hereby amended to read in its entirety as follows:

“1.5 Familiarity with Work. By executing this Agreement, Consultant ~~warrants~~ ***agrees*** 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~~ ***make commercially reasonable efforts to remedy the defect as swiftly as possible.***”

II. Section 1.6, Care of Work, is hereby amended to read in its entirety as follows:

“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, ***pursuant to the Indemnification and Limitation of Liability provisions of this Agreement,*** 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~~ ***the City.***”

III. Section 1.9, Special Requirements, is hereby amended to read in its entirety as follows:

“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. ***No additional terms and conditions will be added to this Agreement or Exhibit “B” unless mutually agreed upon by both parties in writing.***”

IV. Section 2.1, Contract Sum, is hereby renamed and amended to read in its entirety as follows:

*“2.1 ~~Contract Sum.~~ Fees and Payment Terms. Fees, currency, and payment terms are specified in the Schedule of Compensation (Exhibit “C”). Unless otherwise specified in the Schedule of Compensation, all amounts owed by City that are not directly collected by Consultant are due from City within 30 days from either (a) the end of the remittance cycle during which the fees accrued (if related to registrations or transaction processing), or (b) the date of the applicable invoice. Payment of fees is under no circumstances subject to or conditioned upon the delivery of future Products or functionality. 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, shall not exceed **TWO HUNDRED FORTY THOUSAND DOLLARS (\$240,000) for the initial term of this Agreement, consisting of the following: (1) SIXTY THOUSAND DOLLARS (\$60,000) in Direct Costs, as defined and set forth in Section II of Exhibit “C”; and (2) up to ONE HUNDRED EIGHTY THOUSAND DOLLARS (\$180,000) in Fees, as defined in Section III of Exhibit “C” (collectively, the “Contract Sum”)**, unless additional compensation is approved pursuant to Section 1.8. **In the event City exercises one or both of its options to extend the term of this Agreement as set forth in Section 3.4, the compensation for each such option period shall not exceed ONE HUNDRED EIGHTY THOUSAND DOLLARS (\$180,000) in Fees, and no Direct Costs shall apply.***

Unless otherwise set forth in the Schedule of Compensation, Consultant will charge Fees to individuals who register for the Events or purchase goods or services online, and will process and collect such Fees as a merchant of record according to the card networks. On a bi-weekly basis, Consultant will pay City sums due to City based on the total Event registration revenues collected, net of Consultant’s Fees as set forth in the Schedule of Compensation and any other deductions provided herein. The applicable currency will be U.S. Dollars.”

V. Section 2.2, Method of Compensation, is hereby deleted in its entirety and replaced with the following:

“2.2. Method of Compensation.

(a) Direct Costs. The method of compensation for Direct Costs (as defined in Section II of Exhibit “C”) shall be as follows: City will be invoiced on a quarterly basis commencing upon the date of the first live operational use of the SaaS for the Event(s) (“Go-Live Date”), with Direct Costs being invoiced in increments of 25% of the annual amount, commencing upon the Go-Live Date.

If there are any overdue amounts owed by City, or there are returned charges or items, including those resulting from any error or complaint related to

an Event, Consultant has the right to charge fees owed to Consultant by City by issuing an invoice, or by offsetting the deficiency from any account balance City maintains with Consultant or any payment Consultant owes City.

(b) Fees. Consultant will charge Fees (as defined in Section III of Exhibit “C”) to individuals who register for Events or purchase goods or services using the SaaS pursuant to this Agreement, and will process and collect such fees as a merchant of record according to the card networks in accordance with Section III of Exhibit “C.” Consultant will pay City sums due to City based on the total fees collected, net of Fees, on a bi-weekly basis in accordance with Section 7.3 and Section III of Exhibit “C.” All Fees are in consideration of the SaaS and Services that Consultant provides. Consultant and City acknowledge that certain credit card network rules and laws prohibit imposing a surcharge that is based on the type of payment method used (e.g., having a different fee for the use of a credit card vs. debit card), and therefore, each agrees not to impose such a surcharge on any End User.

(c) It is City’s responsibility to notify End Users of City’s refund policy. City must ensure that City’s refund policies are consistent with the Agreement. City agrees that all fees for a given Event are earned by City only following either the conclusion or delivery of the applicable Event (as applicable) and all amounts ultimately due to City will be net of all service Fees, reversals, refunds, disputed charges, chargebacks, and other deductions, whether due to customer complaints, allegations of fraud, discrepancies related to the applicable Event, or otherwise, as authorized in this Agreement. No payments will be made to City with respect to any Event that is cancelled by City. If payments have already been made by Consultant to City for a cancelled Event or if Consultant is required by law to pay a refund to or honor a chargeback request from an End User, Consultant may issue an invoice or offset an equivalent amount from City’s account or payment owed by Consultant to City and return the value to the End User, and if sufficient funds are not available, City must reimburse Consultant on demand. Consultant will notify City of the amount and date of such offset, and the reason for such offset provided that it is lawful to do so. Except as otherwise provided in this paragraph, refunds to End Users shall be made only by City in accordance with City’s refund policy.”

VI. A new Section 2.3, Taxes, is hereby added to the Agreement, to read in its entirety as follows:

“2.3 Taxes. Consultant’s rates, prices and fees set forth in Exhibit “C” do not include Taxes. City is responsible for and agrees to pay any and all Taxes applicable to City. City is solely responsible for determining which, if any, Taxes apply to City’s use of the Products and for collecting, remitting, and reporting the correct amounts of all such Taxes to the applicable governmental authorities, even if Consultant provides City with tools that assist City in doing so. In the event that a governmental authority requires Consultant to pay any Taxes attributable to City’s use of the Products, City agrees to defend, indemnify, and hold Consultant

harmless from all such Taxes and all costs and expenses related thereto. When Consultant is acting as the merchant of record and City elects to include an additional fee in the End Users' cart that is identified as a "sales tax" or similar designation, then, no more frequently than once per calendar year during the term of the Agreement, Consultant may, upon at least 5 business days' prior written notice, (i) require City to send to Consultant City's books and records related to its sales tax payments, and/or (ii) visit City's premises during City's normal business hours to review City's sales tax payments."

VII. Section 2.3, Reimbursable Expenses, is hereby renumbered to Section 2.4 and amended to read in its entirety as follows:

~~"2.3 2.4~~ 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. *Coordination with City as to the Products provided 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. *The Contract Sum shall include the attendance of Consultant at all project meetings specified in the scope of work, and all meetings mutually deemed necessary by the City and Consultant.*"~~

VIII. Section 2.4, Invoices, is hereby renumbered to Section 2.5 and amended to read in its entirety as follows:

~~"2.4 2.5~~ Invoices. Each month (*except as otherwise provided in Section 2.2(a)*), Consultant shall furnish to City an original invoice for all ~~work~~ *Services* 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.~~ *all charges by the following categories: (1) Direct Costs (per Exhibit C, Section II); and (2) Fees (per Exhibit C, Section III).*

City shall independently review each invoice submitted by ~~the~~ Consultant to determine whether the ~~work~~ *Services* performed and ~~expenses incurred~~ *Products provided* 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 **for all Direct Costs (Fees will be paid as set forth in Section 2.2 and Exhibit "C")** within ~~forty five (45)~~ **thirty (30)** 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 City's payment will occur within this time period.~~ **obligations will at times be delayed and fall outside of the thirty (30) day timeframe stated herein.** In the event any charges or expenses are disputed by City, **in good faith**, 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."

IX. Section 2.5, Waiver, is hereby renumbered to Section 2.6.

X. A new Section 2.7, Fraudulent Charges; Chargeback Requests; Refunds, is hereby added to the Agreement, to read in its entirety as follows:

"2.7 Fraudulent Charges; Chargeback Requests; Refunds. The Parties each hereby disclaim liability for fraudulent or unlawful charges attributable to third parties."

XI. Section 3.1, Time of Essence, is hereby renamed and amended to read in its entirety as follows:

"3.1 Time of Essence ~~Material Importance.~~ Time is of ~~the essence~~ **material importance** in the performance of the Agreement."

XII. Section 3.2, Schedule of Performance, is hereby amended to read in its entirety as follows:

"3.2 Schedule of Performance. Consultant shall commence the ~~services~~ **Services** pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all ~~services~~ **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."

XIII. Section 3.4, Term, is hereby amended to read in its entirety 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~~ **for one (1) years year** from the **effective** date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D"). **At City's option, and upon execution of a written agreement between the**

Parties, the foregoing Term may be extended for up to two (2) one-year extension periods.”

XIV. Section 4.1, Representatives and Personnel of Consultant, is hereby amended to read in its entirety as follows:

~~“4.1 Representatives and Personnel of Consultant. The following principals of Consultant (“Principals”) are hereby designated~~ *will designate a principal (“Principal”)* as being the ~~principals and representatives~~ *representative* of Consultant authorized to act ~~in~~ *on* its behalf with respect to the ~~work~~ *Services* specified herein and make ~~all~~ decisions in connection therewith.

(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~~ *The Principal, which is subject to change over the course of this Agreement,* shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the ~~services~~ *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~~ *The Principal* may not be replaced nor may ~~their~~ *its* responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, *notice to City.* Consultant shall utilize only competent personnel to perform ~~services~~ *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.”~~

XV. Section 4.5, Prohibition Against Subcontracting or Assignment, is hereby amended to read in its entirety as follows:

~~“4.5 Prohibition Against Subcontracting or Assignment. The experience, knowledge, capability and reputation of Consultant, its principals and employees were~~ *was* 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.~~ *Notwithstanding the foregoing, Consultant may assign its rights, claims, interests, or obligations under this Agreement without the consent of City to an affiliate company of Consultant or through any reorganization, merger, consolidation or asset sale of Consultant. Consultant shall make all reasonable efforts to notify the Contract Officer of any such reorganization, merger, consolidation or asset sale as soon as legally possible while accommodating the legal and business requirements of the transaction.*

City may not resell, assign, or transfer any of its rights or obligations hereunder without Consultant's prior written approval, and any attempt to resell, assign, or transfer such rights or obligations without Consultant's prior written approval will be null and void."

XVI. Article 5, Insurance and Indemnification, is hereby renamed to "Insurance, Liability, and Indemnification."

XVII. Section 5.1(e), Subcontractors, is hereby amended to read in its entirety as follows:

*"(e) Subcontractors. Consultant shall include all **any** 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."*

XVIII. Section 5.1(f), Additional Insurance, is hereby deleted in its entirety and replaced with the following:

"(f) 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. The insurance shall include the following coverage:

i. Liability arising from the theft, dissemination and/or use of confidential or personally identifiable information; including credit monitoring

and regulatory fines arising from such theft, dissemination or use of the confidential information.

ii. Network security liability arising from the unauthorized use of, access to, or tampering with computer systems.

iii. Liability arising from the failure of Consultant's proprietary technology products (software) required under the contract for Consultant to properly perform the services intended.

iv. Electronic Media Liability arising from personal injury, plagiarism or misappropriation of ideas, domain name infringement or improper deep-linking or framing, and infringement or violation of intellectual property rights.

v. Liability arising from the failure to render professional services as defined by industry standards appropriate to the technology being used."

XIX. Section 5.2, General Insurance Requirements, is hereby amended to read in its entirety as follows:

"5.2 General Insurance Requirements. All of the above policies of insurance shall be primary insurance and *the general liability and auto liability* 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~~ *Services* 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~~ *The general liability and auto liability* 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.”

XX. Section 5.3, Indemnification, is hereby amended to read in its entirety as follows:

“5.3 Indemnification. To the extent not prohibited by law, City will defend, indemnify, and hold Consultant harmless from and against any third party

claim, demand, cause of action or proceeding (whether threatened, asserted, or filed) (“Claims”) against Consultant to the extent that such Claim is based upon (i) injury or death to a person or damage to property resulting from such person’s participation in an Event operated by City in connection with the Services and/or SaaS; (ii) City’s provision of materials, products, or services, as part of City’s obligations hereunder, that infringe the intellectual property rights of any third party, provided that such materials, products, or services are used by Consultant in accordance with the Agreement; (iii) City’s use, except as necessary to comply with applicable laws including but not limited to any disclosure under the Freedom of Information Act or the Public Records Act of Participant Information during the Term of this Agreement; (iv) unauthorized disclosure of Participant Information by a City employee or third party to whom access is given to Participant Information as provided hereunder, except for any disclosure that is required by applicable law; (v) City’s use of the Services and/or SaaS in violation of this Agreement; or (vi) any claims for refunds, reversals or chargeback requests from End Users, except those created by a failure of Consultant to adhere to the provisions of this Agreement or applicable law.

To the ~~full~~ extent ~~permitted~~ **not prohibited** 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 **directly** 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;~~ **the Services**, 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, **Services**, 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~~ **therefor**, 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."

XXI. A new Section 5.4, Intellectual Property Indemnification, is hereby added to the Agreement, to read in its entirety as follows:

"5.4 Intellectual Property Indemnification. Consultant agrees to defend, indemnify, and hold harmless the City and pay all damages (including reasonable attorneys' fees) relating to any third party claim, demand, cause of action, or proceedings (whether threatened, asserted, or filed) ("Claims") against City to the extent that such Claim is based upon Consultant's Products (excluding Third Party Products) directly infringing a United States patent, registered United States copyright, or registered United States trademark, provided that the Products are used in compliance with this Agreement. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement."

XXII. A new Section 5.5, Disclaimers and Limitation of Liability, is hereby added to the Agreement, to read in its entirety as follows:

"5.5 Disclaimers and Limitation of Liability. Consultant warrants that it will perform the services in a manner consistent with industry standards applicable to the performance thereof, that it will make commercially reasonable efforts to ensure that the Products function properly and continuously, and that it will respond in a timely and diligent manner to all complaints and requests submitted by the City in accordance with Consultant's "Advanced Support" package. Except as otherwise set forth herein and to the extent permitted by applicable law, City acknowledges and agrees that the products are provided on an "as is" and "as

available” basis. The warranties, if any, set forth herein are limited to their express terms and are in lieu of, and Consultant expressly disclaims to the maximum extent permitted by law, all other warranties, express or implied, oral or written, including any (a) warranty that the products are error-free or “bug”-free, accurate, secure, or reliable; (b) warranty that the products will operate without interruption; (c) warranty that all errors will be corrected or that the products will comply with any law, rule, or regulation; (d) implied warranties of merchantability, fitness for a particular purpose, title, or non-infringement; (e) implied warranties arising from statute, course of dealing, course of performance, or usage of trade; and (f) warranty that the products will meet City’s requirements. Neither party will be liable for indirect consequential, punitive, exemplary, or special damages (in contract, statute, tort, or otherwise), including damages for lost profits, cost of replacement services, lost data, or loss of use of information or services, which arise from circumstances beyond such party’s reasonable control, whether or not such party has previously been advised of the possibility of such damages.”

XXIII. Section 5.4, Sufficiency of Insurer, is hereby renumbered to Section 5.6.

XXIV. Section 6.1, Records, is hereby amended to read in its entirety as follows:

“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~~ **reasonable** access to such books and records ~~at all times~~ **upon request** 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 **to the extent** disclosure is required by law, including but not limited to the California Public Records Act.

When Consultant is acting as the merchant of record and City elects to include an additional fee in the End Users’ cart that is identified as a “sales tax” or similar designation, then, no more frequently than once per calendar year during the term of the Agreement, Consultant may, upon at least 5 business days’ prior written notice, (i) require City to send to Consultant copies of City’s books and records related to its sales tax payments, and/or (ii) visit

City's premises during City's normal business hours to review City's sales tax payments."

XXV. Section 6.2, Reports, is hereby deleted in its entirety and replaced with the following:

"6.2 Reports. As part of the Services and within the SaaS, Consultant shall provide City with access to a software called "Basecamp," in which Consultant shall provide the City (including as many stakeholders as the Contract Officer requests) with access to status and progress reports, notes, assignments, account ownership information, and other information relative to the Services and Products. "Basecamp" shall be accessible to the City until thirty (30) days after the "Go Live" date. Prior to closing City access to "Basecamp," Active shall provide City with a zip file backup of the full "Basecamp" project to City."

XXVI. Section 7.1, California Law, is hereby renamed "Governing Law."

XXVII. Section 7.2, Disputes; Default, is hereby amended to read in its entirety as follows:

"7.2 Disputes; Default.

(a) In the event that Consultant is in ~~default~~ **Default** under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant (*whether by payment of Direct Costs or entitlement to Fees*) for any ~~work~~ *services* performed after the date of ~~default~~ **Default**. Instead, the City may give notice to Consultant of the ~~default~~ **Default** and the reasons for the ~~default~~ **Default**. The notice shall include the timeframe in which Consultant may cure the ~~default~~ **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~~ **Default**, the City shall hold all invoices and shall, when the ~~default~~ **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~~ **Default**. If Consultant does not cure the ~~default~~ **Default**, the City may take necessary steps to terminate this Agreement under ~~this Article~~ **Section 7.8**. Any failure on the part of the City to give notice of the Consultant's ~~default~~ **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. *For the purposes of this section, Default is defined as any material violation of or failure to comply with the provisions of this Agreement.*

(b) *In the event that Consultant reasonably believes that City's use of the Services or SaaS constitutes a Default under this Agreement, Consultant may give the City written notice 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. If City does not cure the Default,*

Consultant may take necessary steps to terminate this Agreement under Section 7.8. Any failure on the part of Consultant to give notice of the City's Default shall not be deemed to result in a waiver of Consultant's legal rights or any rights arising out of any provision of this Agreement.

(c) If Consultant reasonably believes that a transaction made using the SaaS or otherwise pursuant to this Agreement may be fraudulent or otherwise contrary to law, Consultant shall provide written notice to the City of the transaction and the reasons Consultant believes it is fraudulent or otherwise contrary to law. Consultant shall maintain the ability to temporarily suspend services in the event of a suspected fraudulent event in accordance with Section 9.11, except that where the fraud is suspected to have been committed by an End User or other third party out of City's control, the cure provisions of Section 9.11 shall not apply, and the suspension shall be in effect for no longer than the minimum time period necessary to ensure the security of the SaaS and the City's account. City shall bear no responsibility for any damages or losses incurred by Consultant or any End User or other person or entity resulting from a fraudulent or unlawful transaction made pursuant to this Agreement unless the City committed the fraud or unlawful conduct underlying the transaction or the same is the result of the City's negligence or willful misconduct. Conversely, Consultant shall bear no responsibility for any damages or losses incurred by City or any End User or other person or entity resulting from a fraudulent or unlawful transaction made pursuant to this Agreement unless Consultant committed the fraud or unlawful conduct underlying the transaction or the same is the result of the Consultant's negligence or willful misconduct."

XXVIII. Section 7.3, Retention of Funds, is hereby deleted in its entirety and replaced with the following:

“7.3 Retention of Funds. The Parties acknowledge that payments made by End Users to register for City Events using the SaaS pursuant to this Agreement will be initially received by Consultant as a merchant of record. Consultant shall convey all such Event registration fees, once received, to City's Finance Department on a weekly or bi-weekly basis, net of the amount of Fees to which Consultant is entitled pursuant to Section III of Exhibit “C.” City hereby authorizes Consultant to deduct from such Event registration revenues only the Fees to which is entitled, or to which it in good faith believes and contends it is entitled, pursuant to Section III of Exhibit “C.” Summary-level fee invoices are generated with each remittance cycle; the calculation and detailed support for all fees withheld and disbursed by Consultant shall be available to the City as reports as set forth in Section II of Exhibit “A.” In the event of a dispute, the Parties hereby agree to meet and confer in good faith to attempt to resolve the dispute without the need for formal legal action, and in the event such dispute is so resolved, the amounts previously withheld pursuant to the dispute shall be released on the next scheduled weekly or bi-weekly remittance date following resolution of the dispute. Except as otherwise stated in this section, Consultant's

obligation to remit Event registration revenues or other monies due to the City shall be absolute and unconditional. Except for Fees, no monies received by Consultant via use of the SaaS by End Users pursuant to this Agreement may be withheld from the City under any circumstances, other than in the event of fraudulent activity as set forth in Section 7.2(c).”

XXIX. Section 7.7, Termination Prior to Expiration of Term, is hereby amended to read in its entirety as follows:

“7.7 Termination Prior to Expiration of Term. This Section shall govern any termination of this ~~Contract Agreement~~ 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) sixty (60) days’ written notice to Consultant, except that where~~ *and payment to Consultant of an early termination is due to fee in the fault of the Consultant, the period amount of notice may be such shorter time as may be determined by the Contract Officer. \$20,000.* 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~~ *plan to* cease all services hereunder ~~except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the~~ *at the end of such sixty (60) day notice period.* 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.”~~

XXX. Section 7.8, Termination for Default of Consultant, is hereby deleted in its entirety and replaced with the following:

“7.8 Termination for Default. Either party may terminate this Agreement, immediately upon written notice: (a) in the event that the other party commits a non-remediable material breach of this Agreement, or fails to cure a Default pursuant to Section 7.2 or provide and comply with a mutually agreed-upon written plan to cure such Default; or (b) in the event of institution of bankruptcy, receivership, insolvency, reorganization, or other similar proceedings by or against either party under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar laws or statutes of the United States or any state thereof, if such proceedings have not been dismissed or discharged within 30 days after they are instituted; or the insolvency or making of an

assignment for the benefit of creditors or the admittance by either party of any involuntary debts as they mature or the institution of any reorganization arrangement or other readjustment of debt plan of either party not involving the United States Bankruptcy Code. Following termination of this Agreement, if requested by Consultant, City will certify that it has returned or destroyed all copies of the applicable Protected Materials, and acknowledges that its rights to use the same are relinquished, except to the extent any such materials were required to be produced pursuant to the California Public Records Act (in which case copies may be retained as necessary to comply with applicable record retention obligations), or are the subject of a dispute or litigation between the Parties pursuant to this Agreement. Termination for any reason will not excuse City's obligation to pay in full any and all amounts due for services rendered prior to the effective date of termination, nor will termination by Consultant result in a refund of fees paid."

XXXI. Section 9.1, Notices, is hereby amended to read in its entirety as follows:

"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)~~ **attention of the Legal Department** 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, ***the next day if sent via overnight mail***, or in seventy-two (72) hours from the time of mailing if mailed as ~~provided in this Section~~ ***certified or registered.***"

XXXII. Section 9.2, Interpretation, is hereby amended to read in its entirety as follows:

"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. ***Any reference to a statutory provision includes a reference to any modification or re-enactment of it from time to time. The headings and pronouns contained herein are for convenience and ease of reference only and will not affect the construction or interpretation of this Agreement. The word "including" in this Agreement means "including, without limitation." All references to days means calendar days.***"

XXXIII. Section 9.3, Counterparts, is hereby amended to read in its entirety as follows:

"9.3 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an ***enforceable*** original, and such counterparts shall constitute one and the same instrument. ***The parties agree that electronic or***

digital signatures, as well as pdf scanned copies of signatures, will be as effective and binding as original signatures.”

XXXIV. Section 9.4, Integration; Amendment, is hereby amended to read in its entirety as follows:

“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. *All pre-printed terms of any City or Consultant purchase order, schedule, business processing document, or on-line terms will have no effect. There have been no material representations or statements by any person or party to this Agreement as an inducement for a party hereto to accept this Agreement other than what is expressly set forth in writing herein.*”

XXXV. A new Section 9.8, Reservation of Rights, is hereby added to the Agreement, to read in its entirety as follows:

“9.8 Reservation of Rights. All rights not expressly granted in this Agreement are reserved by Consultant. City acknowledges that: (a) all Protected Materials are licensed and not sold; (b) City acquires only the right to use the Products in accordance with this Agreement, and Consultant and/or its licensors will retain sole and exclusive ownership of all rights, title, and interests in the Products, including the following: (i) all Intellectual Property embodied or associated with the Products, (ii) all deliverables and work product associated with the Products, and (iii) all copies and derivative works thereof; and (c) the Products, including the source and object codes, logic, and structure, contain and constitute valuable trade secrets of Consultant and/or its licensors.”

XXXVI. A new Section 9.9, Restrictions, is hereby added to the Agreement, to read in its entirety as follows:

“9.9 Restrictions. City will not: (a) sell, resell, distribute, host, lease, rent, license, or sublicense, in whole or in part, the Protected Materials; (b) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer, or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure, or other elements of the Products in whole or in part, for competitive purposes or otherwise; (c) allow access to, provide, divulge, or make available the Protected Materials to any user other than those who are licensed to have such access; (d) write or develop any derivative works based upon the

Products; (e) modify, adapt, translate, or otherwise make any changes to the Products or any part thereof; (f) use the Protected Materials to provide processing services to third parties, or otherwise use the same on a service bureau basis; (g) disclose or publish, without Consultant's prior written consent, and except as required by applicable law, including the California Public Records Act: (i) performance or capacity statistics, or the results of any benchmark test performed on the Products, or (ii) the terms (but not the existence) of this Agreement or other valuable trade secrets of Consultant; (h) without Consultant's prior written consent, and except as required by applicable law, perform or disclose or cause to be performed or disclosed any information related to any security penetration or similar tests; (i) disclose or otherwise use or copy the Protected Materials except as expressly permitted herein or as required applicable by law; (j) remove from any Products identification, patent, copyright, trademark, or other notices or circumvent or disable any security devices' functionality or features; (k) contest or do or aid others in contesting or doing anything which impairs the validity of any proprietary or Intellectual Property rights, title, or interests of Consultant in and to any Products; (l) use the Products for other than authorized and legal purposes, consistent with all applicable laws, regulations, and the rights of others; (m) take any steps to avoid or defeat the purpose of security measures associated with the Products, such as sharing of login and password information, or attempt to circumvent any use restrictions; or (n) except as expressly permitted by this Agreement, use the Protected Materials for hosting purposes."

XXXVII. A new Section 9.10, Enforcement, is hereby added to the Agreement, to read in its entirety as follows:

"9.10 Enforcement. City will: (a) ensure that City's use (including any City contractors or anyone under control of City) of Products complies with the terms and conditions of this Agreement; (b) promptly notify Consultant of any actual or suspected violation thereof by a City official, agent, or employee; and (c) reasonably cooperate with Consultant with respect to any investigation and enforcement of any suspected use of the Products in violation of this Agreement."

XXXVIII. A new Section 9.11, Suspension, is hereby added to the Agreement, to read in its entirety as follows:

"9.11 Suspension. In accordance with this Section, Consultant may suspend its performance of services hereunder, including suspending remittance of payments and temporarily deactivating City's SaaS account, for a reasonable period of time, not to exceed thirty (30) days, in the event Consultant reasonably believes that City's use of the Services or SaaS is fraudulent or otherwise not in compliance with applicable law or this Agreement, or in the event Consultant reasonably and in good faith disputes the legal authority of City or any of its officers, agents, or employees to perform hereunder. Consultant shall provide 10 business days' written notice to City prior to effectuating any suspension, which notice shall describe the issue giving rise to the alleged basis for suspension in sufficient detail to enable the City to cure the issue, and the City shall have the opportunity

to do so during the notice period. No suspension shall be effectuated if City cures the issue to the reasonable satisfaction of Consultant prior to expiration of the notice period. In the event a suspension is effectuated, and the nature of the suspension results in non-accrual of Fees during the suspension period, Consultant shall not be entitled to, and City shall not be liable for, any Fees that would otherwise have been generated or to which Consultant would have become entitled during such period had the suspension not been in effect.”

XXXIX. A new Section 9.12, Export; Anti-Bribery, is hereby added to the Agreement, to read in its entirety as follows:

“9.12 Export; Anti-Bribery. The Products may include encryption software or other encryption technologies that may be controlled for import, transfer, export, or other purposes under Export Laws. City may not export, re-export, transfer, or re-transfer or assist or facilitate in any manner the export, re-export, transfer, or re-transfer of or provide access to any portion of the Products in violation of Export Laws, as determined by the laws of the State of California and Federal Law. City hereby represents and warrants that: (i) City is eligible to access the Products under Export Laws and all other applicable laws; and (ii) City will use or access the Products in accordance with Export Laws and all other applicable laws.”

XL. A new Section 9.13, Relationship, is hereby added to the Agreement, to read in its entirety as follows:

“9.13 Relationship. This Agreement is not intended to create a partnership, franchise, joint venture, agency, or a fiduciary or employment relationship. Neither party may bind the other party or act in a manner which expresses or implies a relationship other than that of independent contractor.”

XLI. A new Section 9.14, License to Intellectual Property/Promotion, is hereby added to the Agreement, to read in its entirety as follows:

“9.14 License to Intellectual Property/Promotion. Consultant hereby grants to City a limited, non-exclusive, non-transferable, non-sublicensable license during the term of this Agreement: (a) to use the SaaS for the purposes of offering, promoting, managing, tracking, and collecting fees in connection with City’s Event(s) solely in accordance with this Agreement; and (b) to display, reproduce, distribute, and transmit in digital form Consultant’s name and logo solely for the purposes set forth in this Section.

City hereby grants to Consultant a limited license to use information provided by City relating to City’s organization and Events, which may include content regarding the Events, City’s name, trademarks, service marks, and logo, seal, or insignia, in connection with the promotion of City’s organization or Events or the Services that Consultant provides, provided that Consultant’s use of

or access to any such materials shall be subject to prior written approval of the Contract Officer on a case-by-case basis.

City will: (a) not use the SaaS to transmit, publish, or distribute any material or information: (i) for which City does not have all necessary rights and licenses, including any material or information that infringes, violates, or misappropriates the intellectual property rights of any third party; (ii) that contains a computer virus or other code, files, or programs designed to disrupt or interfere with the functioning of the SaaS; (iii) that is inaccurate or misleading; (iv) that is or that may reasonably be perceived as being harmful, threatening, offensive, obscene, or otherwise objectionable; (v) that contains a virus or malicious code; or (vi) that includes the private information of another without express permission, including but not limited to contact information, social security numbers, credit card numbers or other information which a reasonable person would consider private in nature; (b) not attempt to gain access to any systems or networks that connect to the Services and SaaS except for the express purpose of using the SaaS for their intended use; (c) not engage in any activity that interferes with or disrupts the SaaS; (d) not use the SaaS in violation of applicable laws pertaining to unsolicited email, SMS, text messaging or other electronic communications.”

XLII. A new Section 9.15, Information Collection; Account Access, is hereby added to the Agreement, to read in its entirety as follows:

“9.15 Information Collection; Account Access.

(a) Information Collection & Access. Consultant collects Participant Information from End Users. Consultant represents and warrants that such collection does not violate the legal rights to privacy of the individuals whose information is collected, and agrees to defend, indemnify and hold harmless the City for claims or liabilities relating to violation of privacy rights in connection with collection of Participant Information, which agreement shall survive termination of this Agreement.

(b) Account Access Notice; Covenant Not to Sue. The Contract Officer will immediately disable a user’s access who is using the SaaS on the City’s behalf or notify Consultant in writing if any such user is no longer authorized or is using such information without City’s consent. Consultant may rely, without independent verification, on such notice, and City covenants not to sue Consultant for any claims arising from Consultant providing, denying, suspending, or modifying access to or use of the SaaS and Services of any individual as directed by the Contract Officer.

(c) Account Ownership Disputes. In the event of any dispute between two or more parties as to end user account ownership, City agrees that Consultant will be the sole arbiter of such dispute in its reasonable discretion and that Consultant’s decision (which may include termination or suspension of any end

user account subject to dispute) will be final and binding on all parties. Restrictions. City agrees not to use the Software or Services to collect or elicit (a) any special categories of data (as defined in the California Consumer Privacy Act, as may be amended from time to time), including, but not limited to, data revealing racial or ethnic origin, political opinions, religious or other beliefs, trade-union membership, as well as personal data concerning health or sexual life or criminal convictions other than as expressly directed by Consultant, and in such event, only in pre-defined fields within the Software that are intended for that purpose; or (b) credit card information other than in pre-defined fields within the Software that are intended for that purpose.

(d) Use of Information Collected. Both parties agree to use the collected information in compliance with: (a) all applicable laws, rules and regulations, including, without limitation, those governing privacy and personal information and the use of credit card data (e.g., using credit card information only for purposes authorized by the cardholder); (b) applicable credit card network rules and Payment Card Industry Data Security Standards; and (c) Consultant's privacy policy, as published on its website or otherwise provided by Consultant from time to time. City will immediately disable a user's access who is using the SaaS on its behalf or notify Consultant in writing if any such user is no longer authorized or is using such information without City's consent. Consultant may rely, without independent verification, on such notice, and City, inclusive of City's parent, subsidiaries, and affiliated entities, as applicable, and each of their respective officers, directors, managers, shareholders, owners, agents, employees, contractors, and representatives covenant not to sue and agree to defend, indemnify, and hold harmless Consultant from any claims arising from Consultant providing, denying, suspending, or modifying access to or use of the SaaS and Services of any individual as directed by City or by someone who Consultant reasonably, under the circumstances, believes is authorized to act on behalf of City. In the event of any dispute between two or more parties as to account ownership, City agrees that Consultant will be the sole arbiter of such dispute in its sole discretion and that Consultant's decision (which may include termination or suspension of any account subject to dispute) will be final and binding on all parties."

XLIII. A new Section 9.16, Existing Agreements; Account Access, is hereby added to the Agreement, to read in its entirety as follows:

"9.16 Existing Agreements. Nothing in this Agreement shall be construed to affect or interfere with any right or obligation of City or any other party under any City contract that is in effect as of the effective date hereof, including (without limitation) with respect to requiring use of Consultant's services in lieu of any City or third party event registration services provided for under such agreements."

XLIV. A new Section 9.17, Third Party Recipients; Account Access, is hereby added to the Agreement, to read in its entirety as follows:

“9.17 Third Party Recipients. City warrants that there will be no Third Party Recipients under this Agreement, provided Consultant complies with this section. Although the Parties acknowledge that City may use the SaaS for the benefit of a third party event, the Parties agree that under such circumstances, Consultant shall remit the event proceeds to City (net of Consultant’s Fees), and City shall subsequently be responsible for remitting such proceeds to the third party host, net of any monies (e.g., license/facility use fees) due to the City from such third party host.”

XLV. A new Article 10, Definitions, is hereby added to the Agreement, to read in its entirety as follows:

“ARTICLE 10. DEFINITIONS.

10.1 **“Agreement”** means this Agreement, inclusive of all exhibits attached hereto and incorporated herein by reference, as defined in the preamble.

10.2 **“City”** means the City of Carson, as defined in the preamble.

10.3 **“Consultant”** means Active Network, LLC, with a principal place of business at 717 N. Harwood St., Suite 2500, Dallas, TX, 75201, as defined in the preamble.

10.4 **“Desktop Software”** means each Consultant-developed and/or Consultant-owned software product in machine readable object code (not source code) that is installed on desktop(s) or server(s) controlled by City, the Documentation for such product, and any Updates and Upgrades thereto.

10.5 **“Documentation”** means the user instructions, release notes, manuals, or on-line help files in the form generally made available by Consultant, regarding the use of the applicable Software or Services, as updated by Consultant from time to time.

10.6 **“Effective Date”** means the date set forth in the Preamble.

10.7 **“End Users”** means third party users who register for, sign up, or otherwise use the SaaS in connection with the Events, including registration therefor.

10.8 **“Events” or “City Events”** means City programs, facilities, events or memberships which are made available (for a cost or fee) to the public or city residents for reservation, registration or participation.

10.9 **“Export Laws”** means federal (U.S.) export control laws and regulations applicable to use, provision or access of the Products.

10.10 “**Hardware**” means computer hardware, equipment, and/or utilities supplied by Consultant pursuant to this Agreement.

10.11 “**Intellectual Property**” means any and all intellectual property and proprietary rights (in whole or in part) recognized by federal law, and whether or not perfected, filed, or recorded, including inventions, technology, patent rights (including patent applications, divisions, and disclosures), copyrights and all works of authorship (whether or not copyrightable), moral rights, trade secrets, trademarks and other indicators of source (and the goodwill associated therewith), service marks, trade dress, logos, methodologies, procedures, processes, know-how, tools, utilities, techniques, protocols, various concepts, ideas, methods, models, templates, software, source code, algorithms, tools, utilities, the generalized features of the structure, sequence and organization of software, user interfaces and screen designs, layouts, general purpose consulting and software tools, utilities and routines, and logic, coherence and methods of operation of systems, training methodology and materials, which Consultant has created, acquired, or otherwise has rights in, and may, in connection with the Products or the performance of Services hereunder, create, employ, provide, modify, create, acquire, or otherwise obtain rights in, and in each case includes any derivative works, alterations, and other modifications using, incorporating, based on, or derived from the foregoing.

10.12 “**Maintenance Services**” means the provision of Updates and Upgrades related to the Software all as more particularly set out in the applicable Exhibit to this Agreement.

10.13 “**Participant Information**” means information collected by Consultant from End Users pursuant to End Users’ use of the SaaS. “Participant Information” does not include any information in the possession, custody or control of City, to the extent such information is obtained and held independently from City’s use of the SaaS pursuant to this Agreement. Participant Information also includes any information input into the SaaS whether or not it was obtained previously or independently from the City’s use of SaaS.

10.14 “**Products**” means, collectively, SaaS, Desktop Software, Services, Hardware, and all other services, products, or materials provided by Consultant to City under the terms of this Agreement.

10.15 “**Professional Services**” means the implementation, site planning, configuration, integration, and deployment of the Software or SaaS, training, project management, and other consulting services.

10.16 “**Protected Materials**” means Products, except for Hardware.

10.17 “**SaaS**” means: (a) the software as a service which is hosted by Consultant or its hosting providers and which is accessed by City and its users via the internet; (b) Consultant’s web sites; and (c) associated services, as more fully

described in the Agreement. SaaS functionality is subject to change from time to time at Consultant's sole discretion.

10.18 "**Services**" means, collectively: (a) Professional Services; (b) Maintenance Services; (c) Support Services; and (d) any other services set forth in Exhibit "A". "Services" also includes the provision of Products.

10.19 "**Software**" means the SaaS and the Desktop Software, collectively.

10.20 "**Support Services**" means the provision of technical assistance for Software or Hardware as further described in the Agreement and/or Exhibit "A".

10.21 "**Taxes**" means any and all applicable taxes, including sales, use, excise, withholding, assessments, stamp, transfer, value-added, duties, tariffs, export charges, import charges, and other taxes or assessments (however designated) imposed by any foreign, federal, provincial, state, or local governmental authority upon or applicable to Products arising out of this Agreement, other than those based on Consultant's net income. "Third Party Products" means those hardware, firmware and/or software products, including updates and enhancements thereto, if any, owned by third parties, together with all user manuals and other documents accompanying the delivery of the Third Party Products.

10.22 "**Third Party Recipient**" means a third party that hosts an event for the benefit of which the City uses the SaaS, and which results in an obligation of Consultant to remit payment of proceeds from the event directly to the third party host.

10.23 "**Updates**" means bug fixes, patches, error corrections, minor releases, or modifications or revisions that enhance existing performance of the Software that are provided as part of Maintenance Services. Updates exclude Upgrades.

10.24 "**Upgrades**" means a new Software release that contains major functionality enhancements or improvements; and which is designated by an incremental increase in the release number to the left of the decimal point (by way of example only, release 5.0 designates an Upgrade from release 4.x). Upgrades exclude new products, modules or functionality for which Consultant generally charges a separate fee."

EXHIBIT “C”
SCHEDULE OF COMPENSATION

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

	TASK	PRODUCT TYPE	RATE	QUANTITY	SUB-BUDGET
A.	ACTIVE Net - Primary Transportation	Service	(to be reimbursed based on actual cost incurred)	1	\$3,495
B.	ACTIVE Net - Service Package Advanced 6	Service	\$51,425	1	\$51,425
C.	ACTIVE Net IPP320 Debit Pin Pad Purchase	Hardware	\$460	8	\$3,680
D.	ACTIVE Net Technical Services: Financial Export	Technical Service	\$1,400	1	\$1,400
E.	All Services and Products		Fee Rates (Section III)	N/A	\$180,000

II. Within the budgeted amounts in tasks A-D of Section I of this Exhibit (the “Direct Costs”), 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. During the Term of this Agreement, as consideration for the Services (in addition to the Direct Costs), Consultant shall be entitled to charge the following fees in connection with all transactions whereby members of the community pay for City Events using ACTIVE Net as provided pursuant to this Agreement (the “Fees”):

	FEE	FEE RATE
A.	Technology Base Fee	2.26%
B.	Additional Payment Processing Fee (Credit Card)	3.00%
C.	Additional Payment Processing Fee (Electronic Check)	0.50%
D.	Credit Card Refunds – Flat Fee	\$0.10

All Fees will be staff-interface fees absorbed by the City rather than passed through to participants, unless otherwise directed by the Contract Officer upon approval from the City Council.

The following are examples of how the Fees will be charged in the absence of an approved pass through to participants:

Technology Fees (Staff Interface)	
Technology Base Fee	2.26%
Additional Fee for Credit Card Processing	3.00% (5.26% total)
Additional Fee for Electronic Check Processing	0.5% (2.76% total)
Cash/Check Transaction Example	
Class/Program Price: \$100	
Standard Technology Fee: \$2.26	
Participant Pays: \$100	
City Nets: \$97.74	
Consultant Collects: \$2.26	
Credit Card Transaction Example	
Class/Program Price: \$100	
Standard Technology Fee: \$2.26	
Additional Credit Card Processing Fee: \$3.00	
Participant Pays: \$100	
City Nets: \$94.74	
Consultant Collects: \$5.26	
Electronic Check Transaction Example	
Class/Program Price: \$100	
Standard Technology Fee: \$2.26	
Additional Electronic Check Processing Fee: \$0.50	

Participant Pays: \$100
City Nets: \$97.24
Consultant Collects: \$2.76

All Fees are in consideration of the Services.

Notwithstanding the foregoing, the total amount of Fees shall not exceed \$180,000 for the initial term of this Agreement. In the event City exercises one or both of its options to extend the term of this Agreement as set forth in Section 3.4, the total amount of Fees for each such one-year extension period shall not exceed \$180,000.

- IV. The City will compensate Consultant for the Services performed upon submission of a valid invoice in accordance with Section 2.5.**

EXHIBIT “D”
SCHEDULE OF PERFORMANCE

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

Days to Perform Deadline Date

A. All tasks

("Go Live" launch to full functionality (including initial transport, setup and training))	Per mutually agreeable timeline established at Project Kickoff Call (defined below)	Effective Date
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B. All tasks

(e.g., service and support, aspects, after "Go Live" Date)	N/A	N/A
	(provided on an ongoing basis, throughout term of Agreement)	

II. Consultant shall deliver the following tangible work products to the City by the following dates.

A. Launch to fully functional use of ACTIVE Net for day-to-day City operations ("Go Live"): Mutually agreed-upon dates shall be established/confirmed at Project Kickoff Call, subject to Section III of this Exhibit ("Go Live Date"). The "Project Kickoff Call" is the initial call between the Parties to introduce all individuals involved with the launch of the services to "Go Live," to review the services and "Go Live" process in totality, and to review and agree upon corresponding timelines, including a timeline to "Go Live" and a "Go Live" Date. The "Project Kickoff Call" shall take place within a reasonable time of the effective date of this Agreement.

III. The "Go Live" Date is contingent upon the Parties timely fulfilling their obligations under this Agreement as necessary to facilitate Consultant's efforts to "go live" by the agreed-upon deadline. If either Party fails to timely fulfill its obligations, the specified deadline shall be re-discussed and extended by a mutually agreeable time period reflecting the minimum time period reasonably necessary to account for the delay. Notwithstanding the foregoing or any other provision of this Agreement, Consultant's failure to timely satisfy any obligation in accordance with the applicable deadline or timeframe established pursuant to Section I.A and/or Section II of this Exhibit within 15 calendar days of such deadline, unless an extension is

approved in advance by the Contract Officer, shall constitute a non-remediable material breach by Consultant entitling City to (without limitation) terminate this Agreement in accordance with Section 7.8.

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