

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is made, entered into, and shall become effective this ____ day of ____, 2010, by and between the City of San Juan Capistrano (hereinafter referred to as the "City") and _____ (hereinafter referred to as the "Consultant").

RECITALS:

WHEREAS, City desires to retain the services of Consultant regarding the City's proposal to _____; and

WHEREAS, Consultant is qualified by virtue of experience, training, education and expertise to accomplish such services.

NOW, THEREFORE, City and Consultant mutually agree as follows:

Section 1. Scope of Work.

The scope of work to be performed by Consultant shall consist of those tasks as set forth in Exhibit "A," attached and incorporated herein by reference. To the extent that there are any conflicts between the provisions described in Exhibit "A" and those provisions contained within this Agreement, the provisions in this Agreement shall control.

Section 2. Term.

[OPTION 1: ONGOING SERVICES, NO END DATE] This Agreement shall commence on the effective date of this Agreement and services required hereunder shall continue until notified that said services are no longer required, subject to 15 days notice of termination.

[OPTION2: SPECIFIC TERM] This Agreement shall commence on the effective date and shall terminate, and all services required hereunder shall be completed, no later than _____.

Section 3. Compensation.

3.1 Amount.

Total compensation for the services hereunder shall not exceed \$_____ [either, total contract amount, or amount per month or per fiscal year; also specify whether the total compensation includes expenses, etc.], [as set forth in Exhibit "B," attached and incorporated herein by reference [if Consultant provides a cost proposal or rate schedule]].

3.2 Method of Payment.

Subject to Section 3.1, Consultant shall submit monthly invoices based on total services which have been satisfactorily completed for such monthly period. The City will pay monthly progress payments based on approved invoices in accordance with this Section.

3.3 Records of Expenses.

Consultant shall keep complete and accurate records of all costs and expenses incidental to services covered by this Agreement. These records will be made available at reasonable times to City.

Section 4. Independent Contractor.

It is agreed that Consultant shall act and be an independent contractor and not an agent or employee of City, and shall obtain no rights to any benefits which accrue to City's employees.

Section 5. Limitations Upon Subcontracting and Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for City to enter into this Agreement. Consultant shall not contract with any other entity to perform the services required without written approval of the City. This Agreement may not be assigned, voluntarily or by operation of law, without the prior written approval of the City. If Consultant is permitted to subcontract any part of this Agreement by City, Consultant shall be responsible to City for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and City. All persons engaged in the work will be considered employees of Consultant. City will deal directly with and will make all payments to Consultant.

Section 6. Changes to Scope of Work.

For extra work not part of this Agreement, a written authorization from City is required prior to Consultant undertaking any extra work. In the event of a change in the Scope of Work provided for in the contract documents as requested by the City, the Parties hereto shall execute an addendum to this Agreement setting forth with particularity all terms of the new agreement, including but not limited to any additional Consultant's fees.

Section 7. Familiarity with Work and/or Construction Site.

By executing this Agreement, Consultant warrants that: (1) it has investigated the work to be performed; (2) if applicable, it has investigated the work site(s), and is

aware of all conditions there; and (3) it understands the facilities, difficulties and restrictions of the work to be performed under this Agreement. Should Consultant discover any latent or unknown conditions materially differing from those inherent in the work or as represented by City, it shall immediately inform the City of this and shall not proceed with further work under this Agreement until written instructions are received from the City.

Section 8. Time of Essence.

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

Section 9. Compliance with Law; E-Verify.

9.1. Compliance with Law.

Consultant shall comply with all applicable laws, ordinances, codes and regulations of federal, state and local government.

9.2. E-Verify.

If Consultant is not already enrolled in the U.S. Department of Homeland Security's E-Verify program, Consultant shall enroll in the E-Verify program within fifteen days of the effective date of this Agreement to verify the employment authorization of new employees assigned to perform work hereunder. Consultant shall verify employment authorization within three days of hiring a new employee to perform work under this Agreement. Information pertaining to the E-Verify program can be found at <http://www.uscis.gov>, or access the registration page at <https://www.vis-dhs.com/employerregistration>. Consultant shall certify its registration with E-Verify and provide its registration number within sixteen days of the effective date of this Agreement. Failure to provide certification will result in withholding payment until full compliance is demonstrated.

Section 10. Conflicts of Interest.

Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the services contemplated by this Agreement. No person having such interest shall be employed by or associated with Consultant.

Section 11. Copies of Work Product.

At the completion of the work, Consultant shall have delivered to City at least one (1) copy of any final reports and/or notes or drawings containing Consultant's findings, conclusions, and recommendations with any supporting documentation. All reports submitted to the City shall be in reproducible format, or in the format otherwise approved by the City in writing.

Section 12. Ownership of Documents.

All reports, information, data and exhibits prepared or assembled by Consultant in connection with the performance of its services pursuant to this Agreement are confidential to the extent permitted by law, and Consultant agrees that they shall not be made available to any individual or organization without prior written consent of the City. All such reports, information, data, and exhibits shall be the property of the City and shall be delivered to the City upon demand without additional costs or expense to the City. The City acknowledges such documents are instruments of Consultant's professional services.

Section 13. Indemnity.

To the fullest extent permitted by law, Consultant agrees to protect, defend, and hold harmless the City and its elective and appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damages of any nature, including interference with use of property, arising out of, or in any way connected with the negligence, recklessness and/or intentional wrongful conduct of Consultant, Consultant's agents, officers, employees, subcontractors, or independent contractors hired by Consultant in the performance of the Agreement. The only exception to Consultant's responsibility to protect, defend, and hold harmless the City, is due to the negligence, recklessness and/or wrongful conduct of the City, or any of its elective or appointive boards, officers, agents, or employees.

This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant.

Section 14. Insurance.

On or before beginning any of the services or work called for by any term of this Agreement, Consultant, at its own cost and expense, shall carry, maintain for the duration of the agreement, and provide proof thereof that is acceptable to the City, the insurance specified below with insurers and under forms of insurance satisfactory in all respects to the City. Consultant shall not allow any subcontractor to commence work on any subcontract until all insurance required of the Consultant has also been obtained for the subcontractor. Insurance required herein shall be provided by Insurers in good standing with the State of California and having a minimum Best's Guide Rating of A- Class VII or better.

14.1 Comprehensive General Liability.

Throughout the term of this Agreement, Consultant shall maintain in full force and effect Comprehensive General Liability coverage in an amount not less than

one million dollars per occurrence (\$1,000,000.00), combined single limit coverage for risks associated with the work contemplated by this agreement. If a Commercial General Liability Insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this agreement or the general aggregate limit shall be at least twice the required occurrence limit.

14.2 Comprehensive Automobile Liability.

Throughout the term of this Agreement, Consultant shall maintain in full force and effect Comprehensive Automobile Liability coverage, including owned, hired and non-owned vehicles in an amount not less than one million dollars per occurrence (\$1,000,000.00).

14.3 Worker's Compensation.

If Consultant intends to employ employees to perform services under this Agreement, Consultant shall obtain and maintain, during the term of this Agreement, Worker's Compensation Employer's Liability Insurance in the statutory amount as required by state law.

14.4 Proof of Insurance Requirements/Endorsement.

Prior to beginning any work under this Agreement, Consultant shall submit the insurance certificates, including the deductible or self-retention amount, and an additional insured endorsement naming City, its officers, employees, agents, and volunteers as additional insureds as respects each of the following: Liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded City, its officers, employees, agents, or volunteers.

14.5 Errors and Omissions Coverage [FOR PROFESSIONS/WORK EXCLUDED FROM GENERAL LIABILITY]

Throughout the term of this Agreement, Consultant shall maintain Errors and Omissions Coverage (professional liability coverage) in an amount of not less than One Million Dollars (\$1,000,000). Prior to beginning any work under this Agreement, Consultant shall submit an insurance certificate to the City's General Counsel for certification that the insurance requirements of this Agreement have been satisfied.

14.6 Notice of Cancellation/Termination of Insurance.

The above policy/policies shall not terminate, nor shall they be cancelled, nor the coverages reduced, until after thirty (30) days' written notice is given to City, except that ten (10) days' notice shall be given if there is a cancellation due to failure to pay a premium.

14.7 Terms of Compensation.

Consultant shall not receive any compensation until all insurance provisions have been satisfied.

14.8 Notice to Proceed.

Consultant shall not proceed with any work under this Agreement until the City has issued a written "Notice to Proceed" verifying that Consultant has complied with all insurance requirements of this Agreement.

Section 15. Termination.

City shall have the right to terminate this Agreement without cause by giving thirty (30) days' advance written notice of termination to Consultant.

In addition, this Agreement may be terminated by any party for cause by providing ten (10) days' notice to the other party of a material breach of contract. If the other party does not cure the breach of contract, then the agreement may be terminated subsequent to the ten (10) day cure period.

Section 16. Notice.

All notices shall be personally delivered or mailed to the below listed addresses, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process:

To City: City of San Juan Capistrano
 32400 Paseo Adelanto
 San Juan Capistrano, CA 92675
 Attn: _____

To Consultant: _____

Section 17. Attorneys' Fees.

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which he may be

entitled.

Section 18. Dispute Resolution.

In the event of a dispute arising between the parties regarding performance or interpretation of this Agreement, the dispute shall be resolved by binding arbitration under the auspices of the Judicial Arbitration and Mediation Service ("JAMS").

Section 19. Entire Agreement.

This Agreement constitutes the entire understanding and agreement between the parties and supersedes all previous negotiations between them pertaining to the subject matter thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

CITY OF SAN JUAN CAPISTRANO

By: _____
Joe Tait, City Manager

CONSULTANT

By: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

SUPPORT INFORMATION

1. Contact Information. The support staff at <Vendor Name> may be contacted by the Client at its mailing address, general and support-only telephone numbers, and via e-mail or the Internet.

(a) Mailing Address. Mail may be sent to the support staff at <Vendor Name> headquarters, located at <address>.

(b) Telephone Numbers. <support/afterhours>

(c) Internet and E-mail Contact Information. The website for <Vendor Name> is <website>. E-mail may be sent to the support staff at <email>.

3. Recognized Client Representatives. <Vendor Name> strives to provide unparalleled support to its Clients by ensuring that Client staff is properly educated and is prepared to maximize its <Vendor Name> Solution. Any Client Representative who wishes to participate and receive <Vendor Name> customer advocacy services shall participate in and complete the training program that is suited for the <Vendor Name> Solution. Once a Client Representative completes the training, that Representative will be recognized in <Vendor Name>' internal system as qualified to receive support and ongoing education services. All Client Representatives are eligible to receive technical support services, regardless of participation in the training program.

4. Scheduled Maintenance. Scheduled maintenance of the <Vendor Name> Solution will not be counted as downtime. <Vendor Name> will clearly post that the site is down for maintenance and the expected duration of the maintenance. <Vendor Name> will provide the Client with at least five (5) days prior notice for any scheduled maintenance. All system maintenance will only be performed during these times, except in the case of an emergency. In the case that emergency maintenance is required, the Client will be provided as much advance notice, if any, as possible under the circumstances.

5. Software Enhancements or Modifications. The Client may, from time to time, request that <Vendor Name> incorporate certain features, enhancements or modifications into the licensed <Vendor Name> Software. Subject to the terms and conditions to this exhibit and the Service Agreement, <Vendor Name> and Client will use commercially reasonable efforts to perform all tasks in the Statement of Work ("**SOW**"). Upon the Client's request for such enhancements/modifications, the Client shall prepare a SOW for the specific project that shall define in detail the Services to be performed. Each such SOW signed by both parties is deemed incorporated in this

exhibit by reference. <Vendor Name> shall submit a cost proposal including all costs pertaining to furnishing the Client with the enhancements/modifications.

5.1 Documentation. After the SOW has been executed by each party, a detailed requirements and detailed design document shall be submitted illustrating the complete financial terms that govern the SOW, proposed project staffing, anticipated project schedule, and other information relevant to the project. Such enhancements or modifications shall become part of the licensed <Vendor Name> Software.

5.2 Acceptance. Client understands that all work contemplated by this exhibit is on a "time-and-materials" basis unless otherwise stated in the SOW. Within ten (10) business days of <Vendor Name>' completion of the milestones specified in the SOW and delivery of the applicable enhancement/modification to Client, Client will provide <Vendor Name> with written notice of its acceptance or rejection of the enhancement/modification, based on the acceptance criteria set forth in the SOW. Client agrees that it will not reject any enhancement/modification so long as it substantially complies with the acceptance criteria.

5.3 Title to Modifications. All such modifications or enhancements shall be the sole property of the <Vendor Name>.

6. Support Policy. In an effort to assign resources to incoming services calls from Client as effectively as possible, three types of response priorities have been identified. The criteria used to establish guidelines for these priorities are as follows:

A. CLASSIFICATION OF ERRORS. Errors are classified as follows:

Service Level 1: An Error, for which there is no means of circumvention, causing (i) unrecoverable "crashes" of the <Vendor Name> Software, (ii) ongoing unrecoverable loss or corruption of data or (iii) loss of essential <Vendor Name> Software functionality that prevents Client use for which there is no means of circumvention. (A Service Level 1 Error is sometimes referred to as "**Critical**".)

Service Level 2: An Error causing (i) ongoing recoverable loss or corruption of data for which there is no means of circumvention, (ii) loss of essential <Vendor Name> Software functionality that prevents Client use that can be circumvented, or (iii) loss of non-essential <Vendor Name> Software functionality that cannot be circumvented. (A Service Level 2 Error is sometimes referred to as "**Urgent**".)

Service Level 3: An Error causing (i) loss of non-essential <Vendor Name> Software functionality that can be circumvented or (ii) difficulties in the user interface. (A Service Level 3 Error is sometimes referred to as "**Minor**".)

B. ERROR CORRECTION. <Vendor Name> agrees to correct reported errors in

accordance with the following provisions. All time references below are clock hours or calendar days, unless otherwise specified.

1. Service Level 1 Errors

a. <Vendor Name> shall provide Client with a telephone number for emergency support to be used by Client at any time on a 5 day a week, 8 hours a day basis to report Level 1 Errors, which Client may use at any time.

b. <Vendor Name> shall provide an initial response to all Service Level 1 Errors within one (1) hour following the report of Error.

c. <Vendor Name> shall use commercially reasonable efforts to resolve Service Level 1 Errors within twenty-four (24) hours following the report of Error.

2. Service Level 2 Errors

a. <Vendor Name> shall provide Client with a telephone number for emergency support to be used by <Vendor Name> during normal business hours (9 a.m. to 5 p.m., Pacific Time, Monday through Friday, excluding Client holidays).

b. <Vendor Name> shall provide an initial response to all Service Level 2 Errors within four (4) working hours following the report of Error.

c. <Vendor Name> shall use commercially reasonable efforts to resolve Service Level 2 Errors within five (5) working days following the report of Error.

3. Service Level 3 Errors

a. <Vendor Name> shall provide Client with a telephone number for emergency support to be used by Client during normal business hours (9 a.m. to 5 p.m., Pacific Time, Monday through Friday, excluding Client holidays).

b. <Vendor Name> shall provide Client a tracking number for all Service Level 3 Errors within five (5) business days following the report of Error, and respond further as part of <Vendor Name>' normal error tracking system.

c. <Vendor Name> shall use commercially reasonable efforts to resolve Service Level 3 Errors by means of a future scheduled update or release, as mutually agreed.

C. ESCALATION PROCEDURE. In the event <Vendor Name> has been unable to provide either a permanent or a mutually acceptable temporary resolution within the applicable timeframes set forth in Section B above, <Vendor Name> shall initiate the

following escalation procedures. All procedures shall be undertaken at <Vendor Name>' sole expense except where the Error is determined to be due to hardware malfunctions, utility failures, air conditioning malfunctions, operating system problems, communications malfunctions, environmental problems, user errors or any other cause outside the reasonable control of <Vendor Name>, provided however, the Parties agree <Vendor Name> shall have the unconditional obligation to take the actions described below even where the Parties may not agree on the cause of the problem or corresponding financial responsibility, subject to the Parties' resolution of the Parties' disagreement after the Error has been corrected. All time references below are clock hours or calendar days, unless otherwise specified.

1. Escalation Stage 1.

- a. **Service Level 1 Errors:** If a Service Level 1 Error is not corrected within twelve (12) hours following the report of the error, <Vendor Name> technicians attempting to correct the situation shall notify <Vendor Name>'s manager responsible for software maintenance and/or support who will immediately become personally involved in resolving the problem, which will include a determination, in his/her reasonable discretion following consultation with Client, whether it is necessary to locate a technician onsite at Client's location to correct the error. <Vendor Name> shall keep Client apprised of the status of its efforts to correct the Error at no less than four (4) hour intervals.
- b. **Service Level 2 Errors:** If a Service Level 2 Error is not corrected within five (5) days following the report of the error, <Vendor Name> technicians attempting to correct the situation shall notify <Vendor Name>'s manager responsible for software maintenance and/or support who will immediately become personally involved in resolving the problem, which will include a determination, in his/her reasonable discretion following in consultation with Client, whether it is necessary to locate a technician onsite at Client's location to correct the error. <Vendor Name> shall keep Client apprised of the status of its efforts to correct the error at no less than twice-daily intervals.

2. Escalation Stage 2

- a. **Service Level 1 Errors:** If a Service Level 1 Error has not been corrected after twenty four (24) hours since the initial report of the error, <Vendor Name> shall involve its Chief Technology Officer in directing the resolution of the problem, which will include a determination, in his/her reasonable discretion following consultation with Client, whether it is necessary to locate a technician onsite at Client's location to correct the error. <Vendor Name> shall keep Client apprised of the status of its efforts to correct the error at no less than four (4) hour intervals.
- b. **Service Level 2 Errors:** If a Service Level 2 Error has not been corrected after seven (7) days since the initial report of the error, <Vendor Name> shall involve its Chief Technology Officer in directing the resolution of the problem, which will include a

determination, in his/her reasonable discretion following consultation with Client, whether it is necessary to locate a technician onsite at Client's location to correct the error. <Vendor Name> shall keep Client apprised of the status of its efforts to correct the Error at no less than twice-daily intervals.

3. Escalation Stage 3.

a. **Service Level 1 Error:** If the error has not been corrected after forty eight (48) hours since the initial report of the error, <Vendor Name> shall immediately assign its President and Chief Executive Officer to directly oversee <Vendor Name>'s efforts to remedy the error, including, in his/her reasonable determination following consultation with Client, assigning a technician to work onsite at Client's location, until such Error is resolved.

b. **Service Level 2 Error:** If the error has not been corrected after ten (10) days since the initial report of the error to <Vendor Name>, <Vendor Name> shall immediately assign its President and Chief Executive Officer to directly oversee <Vendor Name>'s efforts to remedy the error, including in his/her reasonable determination following consultation with Client assigning a technician to work onsite at Client's location, until such Error is resolved.

c. **Service Level 1 or 2 Errors:** If, at any time, after the specified periods above, the error has not been corrected, <Vendor Name> shall advise Client of the steps it intends to take to correct the error and the corresponding schedule of such steps. <Vendor Name> shall consider, in good faith, such measures that it has not taken to date, including without limitation, placement of <Vendor Name> personnel onsite at Client and/or retention of third party technical services to resolve the error at <Vendor Name>' cost.

D. Failure to Correct Errors. Client shall be entitled to receive a ten percent (10%) reduction of the Monthly Managed Services Fee for the affected software, up to a maximum of 100% of such Fee for the current month, for each twenty four (24) hour period (excluding weekends and Client holidays) during which the error is not corrected following the stated deadline, provided however, such reductions shall not apply where the cause of the error is not within the reasonable control of <Vendor Name>, which includes hardware malfunctions, utility failures, air conditioning malfunctions, system software problems, communications malfunctions, environmental problems, and errors due to errors by the Client or non-<Vendor Name> personnel. Except where specifically provided otherwise, the time reference below is clock hours or calendar days.

Table of Service Level Requirements.

By way of example, but not by limitation, a compilation of the deadlines stated herein is included below for convenience of reference by the parties. These deadlines may be modified in instances of specific issues when mutually agreed to by the parties.

Service Level Required	Level 1 “Urgent” Error	Level 2 “Non-Urgent” Error
	Time measured from initial report of Error to Contractor.	
Initial Response Due	1 hour	1hour
Correction identified and a mutually agreeable correction plan will be developed within	24 hours	7 days
Escalation Stage 1 (Support Supervisor/Group Lead.)	12 hours	7 days
<i>Stage 1 Status Report Intervals</i>	<i>every 4 hours during standard business hours</i>	<i>daily</i>
Escalation Stage 2 (Dir. of Support)	24 hours	7 days
<i>Stage 2 Status Report Intervals</i>	<i>Every 4 hours during standard business hours</i>	<i>daily</i>
Escalation Stage 3 (VP of Support/COO)	72 hours	10 days
Maintenance and Support Fee Reduction (10%/day to a max of 50% of the monthly fee for the affected application or module of software)	after 72 hours	N/A

Holiday Schedule

Below is a listing of statutory holidays. Please note that support services will be closed on designated days as outlined below; however, <Vendor Name> will respond to items left in the Customer Care voicemail box and defined as “Urgent” as outlined above.

New Year's Day	Closed
Memorial Day	Closed
Independence Day	Closed
Labor Day	Closed
Thanksgiving	Closed
Day after Thanksgiving Day	Closed
Christmas Eve	Early Closure
Christmas Day	Closed
Day after Christmas Day	Closed
New Year's Eve	Early Closure

Connection Methods

To ensure Contractor can effectively support the City, a communication link is established and maintained between the parties' two sites. It is the City's

responsibility to ensure the connection is valid at its location so that Contractor can connect to the City's site and resolve any issues. The preferred methods of connection are Direct Internet or Virtual Private Network (VPN) and other supported methods of connection are: Remote Access Server (RAS), Direct Connection (modem) and Terminal Services (a backup connection may be required for file transfers). To the extent that the City does not provide such a communication link or such link is unreliable or unavailable at the time Contractor is attempting to correct an issue, Contractor will not be held responsible for any delays in issue resolution resulting from its inability to connect to the City's environment.