



CONTRACT/AGREEMENT APPROVAL FORM

Date: 2/3/22
Name of Contract/Agreement 1st Amendment to Consulting Services Agreement
Originating Department/Responsible Person, ext. Public Works / Marissa Garren, ext. 8549
Vendor e-Builder, Inc.
Routing Instructions: Eunejune > City Attorney > City Manager > City Clerk

TYPE OF CONTRACT: Consulting / Design Professional
 Amendment Additional Funds
 Have there been any changes to the Contract Template? ☒ No ☐ Yes

CONTRACT AMOUNTS: Specified Amount(s) indicated below

	DATE	AMOUNT	DATE	AMOUNT
Original	11/8/17	616,316.00	3rd Amendment	
1st Amendment	2/3/22	373,352.00	4th Amendment	
2nd Amendment			TOTAL	989,668.00

APPROVAL AUTHORITY: Council

INSURANCE REQUIREMENTS:

Waivers requested ☒ No ☐ Yes (If Yes, Route to Risk Manager for signature first)

BUDGETARY: ☒ Included in Budget (Simpler report attached showing amounts)

Amount	Project String	Accounting String
989,668.00		

ATTACHMENTS:

☒ Agreement and all Exhibits ☒ Resolution (all contracts over \$150k) ☐ SIR Questionnaire
☐ Certificate of Insurance, naming City of South San Francisco as an Additional Insured

DEPARTMENT HEAD ACKNOWLEDGEMENT:

DocuSigned by:

Eunejune Kim

The contract, amendments, exhibits, insurance requirements/waivers and attachments have been reviewed and included.

RISK MANAGER APPROVAL OF INSURANCE WAIVER:

DocuSigned by:

Alexandra Wolf

4BB0B505FE9C45B...

CITY ATTORNEY APPROVAL OF ENTIRE AGREEMENT:

Comments: _____

☐ Approval of Agreement ☐ Approval of Insurance ☐ Add Agreement to Contract Tracker

ASSISTANT CITY MANAGER'S APPROVAL:

DocuSigned by:

SHARON KANALS

8A40B2F... DocuSigned by: Only if amount is over \$25,000

FINAL APPROVAL:

Mike Putrell

City Manager on behalf of Council

CITY CLERK:

☐ Please attest, keep a copy for your files, and return to Originating Department
☐ Please upload to Laserfiche and return to Originating Department

COPY SENT TO VENDOR: _____

**FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF SOUTH
SAN FRANCISCO AND E-BUILDER, INC.**

THIS FIRST AMENDMENT TO THE CONSULTING SERVICES AGREEMENT is made at South San Francisco, California, as of February 3, 2022, by and between THE CITY OF SOUTH SAN FRANCISCO (“City”), a municipal corporation, and E-Builder, Inc. (“Contractor”), (sometimes referred together as the “Parties”) who agree as follows:

RECITALS

A. On November 8, 2017, City and Contractor entered that certain Consulting Services Agreement (“Agreement”) whereby Contractor agreed to providing project management software implementation and services. A true and correct copy of the Agreement and its exhibits is attached as Exhibit A.

B. City and Contractor now desire to amend the Agreement.

NOW, THEREFORE, for and in consideration of the promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Contractor hereby agree as follows:

1. All terms which are defined in the Agreement shall have the same meaning when used in this Amendment, unless specifically provided herein to the contrary.
2. Section 1: Term. The November 7, 2022, end date for the term of services identified in Section 1 of the Agreement is hereby replaced with November 7, 2025.
3. Section 2: Compensation. Section 2 of the Agreement shall be amended such that the City agrees to pay Contractor a sum not to exceed \$989,668, with the understanding that up to \$599,890.35 has already been paid to Contractor.

Contractor agrees this is the City’s total contribution for payment of costs under the Agreement unless additional payments are authorized in accordance with the terms of the Agreement and said terms of payment are mutually agreed to by and between the parties in writing.

4. Scope of Services. The Scope of services is amended and attached as Exhibit B to this Amendment.

All other terms, conditions and provisions in the Agreement remain in full force and effect. If there is a conflict between the terms of this Amendment and the Agreement, the terms of the Agreement will control unless specifically modified by this Amendment.

[SIGNATURES ON THE FOLLOWING PAGE]

Dated: February 9, 2022 | 7:23:07 AM PST

CITY OF SOUTH SAN FRANCISCO:

DocuSigned by:
By: Mike Putrell
Mike Putrell
City Manager

E-BUILDER, INC.:

DocuSigned by:
By: Jeanne Prayther
Jeanne Prayther
Chief Financial Officer

Approved as to Form:

DocuSigned by:
By: Alexandra Wolf
Alexandra Wolf
City Attorney

Attest by City Clerk:

DocuSigned by:
By: Rosa Gomez Acosta
Rosa Gomez Acosta
City Clerk Signature and Seal

Exhibit B

CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF SOUTH SAN FRANCISCO AND *E-BUILDER, INC.*

THIS AGREEMENT for consulting services is made by and between the City of South San Francisco ("City") and e-Builder, Inc. ("Consultant") (together sometimes referred to as the "Parties") as of November 8, 2017 (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement and Exhibit E, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A, attached hereto and incorporated herein, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and any Exhibits, (unless otherwise provided below) the document higher on this list shall prevail: (1) This Agreement; (2) Exhibit A; (3) Exhibit B; (4) Exhibit C; and (5) Exhibit E.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on the sixty (60) month anniversary thereof, and Consultant shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Sections 1.1 and 1.2 above and to satisfy Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed six hundred sixteen thousand three hundred sixteen dollars (**\$616,316.00**), notwithstanding any contrary indications that may be contained in the Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, or Consultant's compensation schedule attached as Exhibit B, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered

pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for the milestones met pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices in accordance with **Exhibit B**, not more often than once per month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills (i.e., Progress Bill No. 1 for the first invoice, etc.);
- The beginning and ending dates of the billing period;
- A task summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- The amount and purpose of actual expenditures for which reimbursement is sought;
- The Consultant's signature.

2.2 Payment of Exhibit B. City shall make payments in accordance with the milestone and instructions found in **Exhibit B**, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 Reserved.

2.4 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

- 2.5 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto and incorporated herein as **Exhibit B.**
- 2.6 **Reimbursable Expenses.** The following constitute reimbursable expenses authorized by this Agreement: Travel and Expenses. Reimbursable expenses shall not exceed \$20,700. Expenses not listed above are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under Section 2 of this Agreement that shall not be exceeded.
- 2.7 **Payment of Taxes, Tax Withholding.** Unless otherwise provided herein or by law, pricing provided in this Agreement and Exhibits does not include California state sales or use tax. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. To be exempt from tax withholding, Consultant must provide City with a valid California Franchise Tax Board form 590 ("Form 590"), as may be amended and such Form 590 shall be attached hereto and incorporated herein as **Exhibit D.** Unless Consultant provides City with a valid Form 590 or other valid, written evidence of an exemption or waiver from withholding, City may withhold California taxes from payments to Consultant as required by law. Consultant shall obtain, and maintain on file for three (3) years after the termination of this Agreement, Form 590s (or other written evidence of exemptions or waivers) from all subcontractors. Consultant accepts sole responsibility for withholding taxes from any non-California resident subcontractor and shall submit written documentation of compliance with Consultant's withholding duty to City upon request. .
- 2.8 **Payment upon Termination.** See Termination provisions in Section 8.
- 2.9 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until the execution of this Agreement by both Parties.
- 2.10 **Reserved.**

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide Certificates of Insurance, attached hereto and incorporated herein as **Exhibit C**, indicating that Consultant has obtained or currently maintains insurance that meets the requirements of this section and under forms of insurance satisfactory, in all respects, to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s).

4.1 Workers' Compensation. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator (as defined in Section 10.9). The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability 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. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting there from, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form

CG 0001 or GL 0002 (most recent editions) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 8 and 9. No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

4.3 Professional Liability Insurance.

4.3.1 General requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed TWENTY FIVE THOUSAND DOLLARS \$25,000 per claim.

4.3.2 Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of three (3) years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

- 4.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.
- 4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with ACCORD certificate of insurance.
- 4.4.3 Notice of Reduction in or Cancellation of Coverage.** Consultant shall not be suspend, void, cancel , or reduce in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. In the event that any coverage required by this section is reduced, limited, cancelled, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than ten (10) working days after Consultant is notified of the change in coverage.
- 4.4.4 Additional insured; primary insurance.** City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to 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, as applicable; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant in the course of providing services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.

A certified endorsement must be attached to all policies stating that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

- 4.4.5 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. Further, if the Consultant's insurance policy includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this agreement so as to not prevent any of the parties to this agreement from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability.

Additionally, the certificates of insurance must note whether the policy does or does not include any self-insured retention and also must disclose the deductible.

During the period covered by this Agreement, only upon the prior express written authorization of Contract Administrator, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

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

4.4.7 Wasting Policy. No insurance policy required by Section 4 shall include a "wasting" policy limit.

4.4.8 Variation. The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- a. Reserved.
- b. Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- c. Terminate this Agreement.

Section 5. INDEMNIFICATION, LIMITATION OF LIABILITY AND AND CONSULTANT'S RESPONSIBILITIES. To the fullest extent permitted by law, Consultant shall indemnify, defend with counsel selected by the City, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful

misconduct or grossly negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the gross negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. Only the limitation of liability provision found herein shall limit liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

EXCEPT FOR BREACH OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, FOR ANY ONE OR MORE BREACHES OF THIS AGREEMENT OR DEFAULTS HEREUNDER, THE ENTIRE LIABILITY OF THE PARTY IN BREACH OR DEFAULT, AND THE EXCLUSIVE REMEDY OF THE OTHER PARTY, SHALL BE PAYMENT OF THE ACTUAL DAMAGES PROXIMATELY CAUSED BY SUCH BREACH OR DEFAULT, WHICH SHALL NOT EXCEED THE AMOUNT OF SIX (6) MONTH'S SUBSCRIPTION FEES PAID BY CUSTOMER FOR THE PRODUCT OR SERVICE GIVING RISE TO THE CLAIM. EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, LOSSES, OR EXPENSES INCLUDING, WITHOUT LIMITATION, LOST PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS OR ANY OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND ARISING OUT OF OR RELATED TO THIS MSA. THESE LIMITATIONS ON THE LIABILITY OF EITHER PARTY SHALL APPLY TO ANY AND ALL CAUSES OF ACTION THAT EITHER PARTY MAY HAVE AGAINST THE OTHER, IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION UNDERLYING A CLAIM, DEMAND OR ACTION, INCLUDING, WITHOUT LIMITATION, WHETHER IT SOUNDS IN CONTRACT OR TORT.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall, subject to the Limitation of Liability provision found herein, indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant

accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent or to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program. Consultant will be afforded the opportunity to review the terms of the fiscal assistance, and provide City any change in price or schedule those terms may cause Consultant.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals, including from City, of what-so-ever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this

Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination for Cause.** Either Party may terminate this Agreement for cause on not less than thirty (30) days' written notice to the other Party hereto. Upon a termination under this Paragraph for non-payment, Consultant may seek remedies for all sums earned but unpaid as of the date of termination. If City terminated this Agreement for cause, it shall be entitled to a refund of any prepaid, but unused fees.
- 8.2 Termination for Convenience.** Either Party may terminate this Agreement for convenience on not less than sixty (60) days' written notice to the other Party hereto. If City terminates this Agreement under this Paragraph, all previously paid subscription fees (both used and unused) for the current contract year shall be non-refundable and forfeited. Furthermore, all earned, but unpaid, fees for Professional Services must be paid in full before the termination becomes effective, however, the City may condition payment of such compensation upon Consultant delivering to City all materials described in Section 9.1.
- 8.3 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in the resulting Amendment. Similarly, unless authorized by the Contract Administrator via the resulting Amendment, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period. Upon any Extension, Consultant has the right to increase Subscription Fees up to 5%.
- 8.4 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.5 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written

approval of the Contract Administrator. Consultant shall not assign or subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, generated by the Consultant's Software pursuant to this Agreement;

8.6.3 Retain a different consultant to complete the work described in **Exhibit A** not finished by Consultant.

8.6.4 Reserved.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Consultant's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that the City inputs into Consultant's system and/or are generated by the Consultant's system pursuant to this Agreement shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties unless required by law.

9.2 Consultant's Books and Records. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 Inspection and Audit of Records. Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit,

and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

- 9.4 Records Submitted in Response to an Invitation to Bid or Request for Proposals.** All responses to a Request for Proposals (RFP) or invitation to bid issued by the City become the exclusive property of the City. At such time as the City selects a bid, all proposals received become a matter of public record, and shall be regarded as public records, with the exception of those elements in each proposal that are defined by Consultant and plainly marked as "Confidential," "Business Secret" or "Trade Secret."

The City shall not be liable or in any way responsible for the disclosure of any such proposal or portions thereof, if Consultant has not plainly marked it as a "Trade Secret" or "Business Secret," or if disclosure is required under the Public Records Act.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City may not be in a position to establish that the information that a prospective bidder submits is a trade secret. If a request is made for information marked "Trade Secret" or "Business Secret," and the requester takes legal action seeking release of the materials it believes does not constitute trade secret information, by submitting a proposal, Consultant agrees to indemnify, defend and hold harmless the City, its agents and employees, from any judgment, fines, penalties, and award of attorneys fees awarded against the City in favor of the party requesting the information, and any and all costs connected with that defense. This obligation to indemnify survives the City's award of the contract. Consultant agrees that this indemnification survives as long as the trade secret information is in the City's possession, which includes a minimum retention period for such documents.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including arbitration or an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County San Mateo or in the United States District Court for the Northern District of California.

- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve (12) months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by Justin Lovell ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

- 10.10 Notices.** All notices and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given (i) when received if personally delivered; (ii) when received if transmitted by telecopy, if received during normal business hours on a business day (or if not, the next business day after delivery) provided that such facsimile is legible and that at the time such facsimile is sent the sending Party receives written confirmation of receipt; (iii) if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express); and (iv) upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice shall be sent to the respective Parties as follows:

Consultant:

Jeanne Prayther
CFO
1800 NW 69th Ave., Suite 201
Plantation, FL, 33313

City:

City Clerk
City of South San Francisco
400 Grand Avenue
South San Francisco, CA 94080

- 10.11 Professional Seal.** Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



- 10.12 Integration.** This Agreement, including all Exhibits attached hereto, and incorporated herein, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral pertaining to the matters herein.
- 10.13 Counterparts.** This Agreement may be executed in counterparts and/or by facsimile or other electronic means, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterpart, shall constitute one Agreement, which shall be binding upon and effective as to all Parties..

10.14 Construction. The headings in this Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms of this Agreement. The parties have had an equal opportunity to participate in the drafting of this Agreement; therefore any construction as against the drafting party shall not apply to this Agreement.

The Parties have executed this Agreement as of the Effective Date.

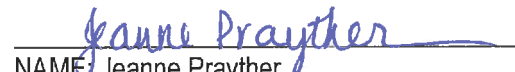
Exhibit A - Original Contract and Attachments

CITY OF SOUTH SAN FRANCISCO

e-Builder



City Manager



NAME: Jeanne Prayther
TITLE: CFO

Attest:


City Clerk

Approved as to Form:



City Attorney

2876765.1

EXHIBIT A

SCOPE OF SERVICES

Phase & Deliverables	Scope	Comments
Project Kickoff & Discovery		
Kick-off Meeting	Included	2-4 weeks after contract execution
Implementation Goals	Included	Defined during Kickoff
Success Matrix	Included	Defined during Kickoff
Initial Project Schedule	Included	Defined during Discovery
Data Gathering Guide	Included	Defined during Discovery
Project Design & Requirements		
Solution Document	Included	Requirements & Solution Design
Project Configuration & Testing		
Core Modules	Home Projects Calendar Contacts Setup	
Planning Module	1-Template	
Cost & Funding Module	1-Template	
Portfolio Level Cost		Enhancement to Cost Module
Process Module	5-Processes	Structured Workflow(s) (TBD)
Forms Module	1-Forms	+60 Standard Forms
Document Module	1-Template	
Dashboard Module	3-Dashboards	1- Program, 1- Project, 1- Admin Dashboard
Reports Module	5-Reports	5 Workflow logs +120 Standard Reports
Import Toolkit	Standard	+Use Training
EZ File Transfer Tool	Standard	+Use Training
Project Training & Adoption		
Admin Training	1- Session Onsite	3 days Duration/ 5 Users Maximum
End User Training	2- Sessions Onsite	3 days Duration Each/15 Users Maximum
Train-the-Trainer	1- Session Onsite	2-days Duration/8 Users Maximum
Onsite Support	Hands On	1- Session /4 Days Duration
Adoption Calls	4-Calls	

Easy File Transfer Tool (EZ-File)

EZ File is a supported file transfer service built into the e-Builder Enterprise architecture. It provides a "doorway" into the folders and files stored on the e-Builder servers. Using the e-Builder EZ File, the City can upload and download files and folders between e-Builder and their computers without having to work directly within the e-Builder application in a browser. EZ File utilizes an industry standard file transfer method called WebDAV (Web-based Distributed Authoring and Versioning). WebDAV is commonly used to publish and manage files and directories on a remote web server. EZ File requires the client to use a 3rd party WebDAV user interface client to manage the upload and download process. For both manual uploads and automated using the EZ File, the folder location(s) is determined by the City.

Customer Responsibilities & Implementation Assumptions

The following responsibilities and assumptions are necessary for the successful completion of this implementation. In the event that an item below does not occur in the manner or time frame defined, Consultant may request to meet with the City and mutually agree upon an adjustment to the schedule, work activities and fees.

- The City will make best efforts to ensure the committed participation of all appropriate technical and user personnel throughout the project, including but not limited to periodic status reviews. The City resources provided during the technical and functional sessions must be empowered to make decisions on project direction.
- The Consultant's implementation team will work jointly with the City team to resolve all issues including those impacting the scope and timeline. Issues that may impact the progress and the schedule will be documented. If the issue is critical, Consultant will present the issue to the City in writing as quickly as possible. Once the issue is presented in writing, the City is expected to respond within two (2) business days. If the issue cannot be resolved within two days, they will notify Consultant and arrange a meeting with all relevant personnel to resolve this issue. Failure to do so could impact the cost and schedule of the implementation project.
- All necessary content (data, text and graphics) will be provided to Consultant prior to the creative processes (if applicable).
- Unless specifically identified as deliverables within this document, the City will enter any historical data from past projects to enable historical analysis.
- Unless specifically identified as deliverables within this document, data migration, system integrations or custom development of any kind is not included within the scope of the implementation project. These items can be included through the change management process if identified as required items.
- All change requests received and approved will be listed on a contract Addendum or Work Order. Each Addendum or Work Order must be signed and accepted prior to initiating additional work by Consultant.

EXHIBIT B

COMPENSATION SCHEDULE

Annual Software Subscription

Annual Item	Scope Variable	Annual Price
Number of Users	Unlimited	\$79,396.00
EZ File Transfer Tool	Annual Maintenance	\$2,995.00
Total Annual Software Subscription		\$82,391.00

One-Time Implementation Services

Item	Scope Variable	Price
e-Builder Enterprise Implementation, Setup, Deployment & Training	Per the Exhibit A Scope of Services	\$146,075.00
Travel Expenses	Nine Trips at \$2,300 per trip	\$20,700.00
Total Implementation Services		\$166,775.00

Total e-Builder Enterprise Investment – Year 1

Item	Price
Total Annual Software Subscription	\$82,391.00
Total Implementation Services	\$166,775.00
Total Year 1 Investment	\$249,166.00

Total e-Builder Enterprise Costs – Initial Term

Item	Price
Year 1 Annual Software Subscription and Implementation	\$249,166.00
Year 2 Annual Software Subscription	\$82,391.00
Year 3 Annual Software Subscription	\$82,391.00
Year 4 Annual Software Subscription	\$86,510.00
Year 5 Annual Software Subscription	\$86,510.00
Five year Costs	\$586,968.00
Contingency 5%	\$29,348.00
Total Initial Term Costs	\$616,316.00

Payment Terms

- **Payment of the first (1st) year's Annual Software Subscription** is due upon signing of this Agreement. Subsequent Annual Software Subscriptions will be invoiced thirty days prior to the anniversary date of the execution of this Agreement, and payment is due upon the anniversary date of the execution of this Agreement.
- **Payment for Implementation Services** is as follows: (i) fifty (50%) percent on the Effective Date hereof; (ii) twenty-five (25%) percent within sixty (60) days of the Effective Date; and (iii) twenty-five (25%) percent upon commencement of training on use of the SaaS Service.
- **Travel and Expenses** - Travel expenses and course material reproduction (if requested) are not included in the above investment. These expenses are billed as incurred as actuals and are not to exceed \$ 20,700.00

Annual Subscription Includes

- Unlimited Projects
- Unlimited Document Storage
- 24x7 Technical Support
- Quarterly Enhancement/Upgrades
- Maintenance Releases

Unlimited User License

The proposed annual subscription fees for unlimited e-Builder Enterprise Users is based on the City's estimated average annual capital construction spending of \$35,000,000. e-Builder reserves the right to adjust the fee accordingly to align with the Customer's actual average annual capital construction spending.

Hourly Rate

Any Amendment for additional work shall be performed by Consultant with the following hourly rates:

Project Manager: \$200.00 per hour

Business Analyst: \$175.00 per hour

Development: \$200.00 per hour

EXHIBIT C
INSURANCE CERTIFICATES

EXHIBIT D
FORM 590

TAXABLE YEAR	CALIFORNIA FORM
2017	590
Withholding Exemption Certificate	
The payee completes this form and submits it to the withholding agent. The withholding agent keeps this form with their records.	
Withholding Agent Information	
Name	
City of South San Francisco	
Payee Information	
Name	
e-Builder, Inc.	
☐ SSN or EIN ☐ FEIN ☒ CA Corp no. ☐ CA SOS file no.	
3 7 8 3 8 7 7	
Address (apt./ste., room, PO box, or PMB no.)	
1800 NW 89th Ave, Suite 201	
City (If you have a foreign address, see instructions.)	
Plantation	
State	ZIP code
FL	3 3 3 1 3 4 5 8 3
Exemption Reason	
Check only one box.	
By checking the appropriate box below, the payee certifies the reason for the exemption from the California income tax withholding requirements on payment(s) made to the entity or individual.	
☐ Individuals — Certification of Residency: I am a resident of California and I reside at the address shown above. If I become a nonresident at any time, I will promptly notify the withholding agent. See instructions for General Information D, Definitions.	
☒ Corporations: The corporation has a permanent place of business in California at the address shown above or is qualified through the California Secretary of State (SOS) to do business in California. The corporation will file a California tax return. If this corporation ceases to have a permanent place of business in California or ceases to do any of the above, I will promptly notify the withholding agent. See instructions for General Information D, Definitions.	
☐ Partnerships or Limited Liability Companies (LLCs): The partnership or LLC has a permanent place of business in California at the address shown above or is registered with the California SOS, and is subject to the laws of California. The partnership or LLC will file a California tax return. If the partnership or LLC ceases to do any of the above, I will promptly inform the withholding agent. For withholding purposes, a limited liability partnership (LLP) is treated like any other partnership.	
☐ Tax-Exempt Entities: The entity is exempt from tax under California Revenue and Taxation Code (R&TC) Section 23701 _____ (insert letter) or Internal Revenue Code Section 501(c) _____ (insert number). If this entity ceases to be exempt from tax, I will promptly notify the withholding agent. Individuals cannot be tax-exempt entities.	
☐ Insurance Companies, Individual Retirement Arrangements (IRAs), or Qualified Pension/Profit-Sharing Plans: The entity is an insurance company, IRA, or a federally qualified pension or profit-sharing plan.	
☐ California Trusts: At least one trustee and one noncontingent beneficiary of the above-named trust is a California resident. The trust will file a California fiduciary tax return. If the trustee or noncontingent beneficiary becomes a nonresident at any time, I will promptly notify the withholding agent.	
☐ Estates — Certification of Residency of Deceased Person: I am the executor of the above-named person's estate or trust. The decedent was a California resident at the time of death. The estate will file a California fiduciary tax return.	
☐ Nonmilitary Spouse of a Military Servicemember: I am a nonmilitary spouse of a military servicemember and I meet the Military Spouse Residency Relief Act (MSRRA) requirements. See instructions for General Information E, MSRRA.	
CERTIFICATE OF PAYEE: Payee must complete and sign below.	
To learn about your privacy rights, how we may use your information, and the consequences for not providing the requested information, go to ftb.ca.gov and search for privacy notice . To request this notice by mail, call 800.852.5711.	
Under penalties of perjury, I declare that I have examined the information on this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. I further declare under penalties of perjury that if the facts upon which this form are based change, I will promptly notify the withholding agent.	
Type or print payee's name and title	Telephone
Jeanne Prayther	(954) 5133015
Payee's signature	Date
<i>Jeanne Prayther</i>	09/21/2017

7061173

Form 590 c2 2016



E-BUINC-02

SANDYPRUKA

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/10/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER NFP Property & Casualty Services, Inc. 500 West Madison Street Suite 2700 Chicago, IL 60661	CONTACT NAME: PHONE (A/C, No, Ext): (312) 630-0800 FAX (A/C, No): (312) 630-0833 E-MAIL ADDRESS:														
INSURED e-Builder, Inc. 1800 NW 69th Avenue Suite 201 Plantation, FL 33313	<table border="1"> <thead> <tr> <th data-bbox="812 451 1404 483">INSURER(S) AFFORDING COVERAGE</th> <th data-bbox="1404 451 1534 483">NAIC #</th> </tr> </thead> <tbody> <tr> <td data-bbox="812 483 1404 514">INSURER A: National Fire Insurance Company of Hartford</td> <td data-bbox="1404 483 1534 514">20478</td> </tr> <tr> <td data-bbox="812 514 1404 546">INSURER B: Continental Insurance Co</td> <td data-bbox="1404 514 1534 546">35289</td> </tr> <tr> <td data-bbox="812 546 1404 577">INSURER C: Travelers Casualty and Surety Co. of America</td> <td data-bbox="1404 546 1534 577">31194</td> </tr> <tr> <td data-bbox="812 577 1404 609">INSURER D:</td> <td data-bbox="1404 577 1534 609"></td> </tr> <tr> <td data-bbox="812 609 1404 640">INSURER E:</td> <td data-bbox="1404 609 1534 640"></td> </tr> <tr> <td data-bbox="812 640 1404 655">INSURER F:</td> <td data-bbox="1404 640 1534 655"></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: National Fire Insurance Company of Hartford	20478	INSURER B: Continental Insurance Co	35289	INSURER C: Travelers Casualty and Surety Co. of America	31194	INSURER D:		INSURER E:		INSURER F:	
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A: National Fire Insurance Company of Hartford	20478														
INSURER B: Continental Insurance Co	35289														
INSURER C: Travelers Casualty and Surety Co. of America	31194														
INSURER D:															
INSURER E:															
INSURER F:															

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY ☐ PROJECT ☒ LOC OTHER:	X		6042590313 <i>Approved as to form</i> <i>Date: 11/30/17</i> <i>By: [Signature]</i>	06/19/2017	06/19/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	X AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS X HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			C6042590294 <i>City Attorney</i>	06/19/2017	06/19/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	X UMBRELLA LIAB ☒ OCCUR EXCESS LIAB CLAIMS-MADE DED X RETENTION \$ 10,000			CUE6042590344	06/19/2017	06/19/2018	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000
B	X WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☒ If yes, describe under DESCRIPTION OF OPERATIONS below	N	N/A	WC642590327	06/19/2017	06/19/2018	X PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Professional/Cyber			6042590313	06/19/2017	06/19/2018	Each Claim/Agg. 5,000,000
C	Theft of Client Prop			106535941	06/19/2017	06/19/2018	Each Loss 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of South San Francisco, its officers, employees, agents and volunteers are named as an additional insured on the General Liability policy on a primary and non-contributory basis as per written contract.

Professional Liability has a retro date of 6/1/2001.

CERTIFICATE HOLDER

CANCELLATION

City of South San Francisco 400 Grand Avenue South San Francisco, CA 94080	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>[Signature]</i>
---	---

Exhibit A - Original Contract and Attachments

EXHIBIT E

E-BUILDER MASTER SERVICES AND LICENSE AGREEMENT

This **MASTER LICENSE AND SERVICES AGREEMENT**, (the "**MSA**"), is made and entered by the City of South San Francisco], ("**Customer**"); and **e-BUILDER, INC.**, 1800 NW 69th Avenue, Suite 201, Plantation, Florida 33313 ("**e-Builder**") Hereinafter, e-Builder or Customer may be referred to individually as a "**Party**," or collectively as the "**Parties**." All terms not in this MSA are governed by the terms of the main Consulting Services Agreement.

1. **INTRODUCTION** Under this MSA, e-Builder will provide Customer with access (over the internet) to its proprietary multi-user software and system developed, maintained and owned by e-Builder for use by customers including, without limitation, the architecture, databases, infrastructure, software, basic software support, technology and web services deployed by e-Builder. This MSA governs the terms of the relationship between e-Builder and Customer.

2. **DEFINITIONS** The following terms (used in this MSA) will have the meanings specified below:

2.1 **"Confidential Information"** means: (i) any non-public information of a Party; (ii) all information relating to the e-Builder Offerings, as well as e-Builder's current or planned products and services, technology, techniques, know-how, research, engineering, designs, finances, accounts, procurement requirements, manufacturing, customer lists, business forecasts and marketing plans; (iii) Customer information received by e-Builder; (iv) other information of a Party that is disclosed in writing and is conspicuously designated or disclosed orally as "Confidential" at the time of disclosure; and (v) the terms and conditions of this MSA. Notwithstanding the foregoing, Confidential Information shall not include information that: (i) is or becomes generally known or available by publication, commercial use or otherwise through no fault of the receiving Party; (ii) was in the receiving party's possession at the time of disclosure without violation of any confidentiality restriction and without any restriction on the receiving Party's further use or disclosure; (iii) is required to be disclosed pursuant to law, including without limitation the California Public Records Act; or (iv) is independently developed by the receiving Party without use of the disclosing Party's Confidential Information. For purposes of clarity, Confidential Information shall mean information in any median including hard copy, electronically stored or stored in any other means or manner.

2.2 **"e-Builder Offerings"** means the products and services provided by e-Builder to Customer as defined in Paragraph.9 and shall include, without limitation, any software or hardware configurations created by e-Builder for Customer.

2.3 **"Effective Date"** is as defined in the Consultant Services Agreement between e-Builder and Customer.

2.4 Reserved.

2.5 **"Materials"** means all manuals, specifications, instructions, training documents and content provided by e-Builder in connection with the e-Builder Offerings, whether in written form or on a URL.

2.6 **"Order Form"** means a form in which the specific services obtained from e-Builder will be identified, as well as the pricing thereof. The Order Form is Exhibit A and B of the Consultant Services Agreement.

2.7 **"Professional Services"** means services provided by e-Builder as defined in the Consultant Services Agreement and any Order Form as mutually agreed to by e-Builder and Customer for, among other things, consulting

services, technical assessment, system configuration, system setup, data conversion, data migration, interface development, user training and applicable travel-related expenses.

2.8 Reserved

2.9 "**SaaS Service(s)**" means software-as-a-service, consisting of e-Builder's proprietary multi-user system developed, maintained and owned by e-Builder for use by customers including, without limitation, the architecture, databases, infrastructure, software, basic software support, technology and web services deployed by e-Builder.

2.10 "**Term**" means the duration of this MSA as inclusive of the Initial Term and each Renewal Term, as applicable.

3. **EXHIBITS.** Exhibits that are annexed hereto are incorporated by reference, and shall constitute a material part of the Agreement.

4. **TERM, TERMINATION** e-Builder will provide the e-Builder Offerings as described in an Order Form for the prices set forth therein.

4.1 **Term.**

4.1.1 **Seat Subscription.** Reserved.

4.1.2 **Construction Capital.** The Term shall be as set forth in the Consulting Services Agreement. e-Builder reserves the right to adjust the fee accordingly to align with the actual average annual capital spend. For purposes of clarity, annual capital spend are the expenses incurred to demolish, build, repair, remodel and furnish a building or site over a period of one year. The calculation of annual capital spend is the total net payments made from the e-Builder system. The Average annual capital spend is an average of the five previous and completed fiscal years of the customers annual capital spend. Any increase in fees is subject to the not to exceed amount specified in Section 2 of the Consultant Services Agreement.

4.1.3 **Reserved.**

4.2 **Reserved.**

4.3 **Return of Data.** After termination of this MSA, e-Builder shall export for Customer all Customer data in the e-Builder database format, along with all Customer files uploaded to the Customer's document libraries.

5. **PAYMENTS; SUSPENSION; FEE CHANGES**

5.1 **Pro-Rated Purchases:** If Customer increases its usage of one or more of the e-Builder Offerings (including software licenses) during the Term, the increased usage fees shall be pro-rated for the remainder of the then current Term.

5.2 **Disputed Amounts.** If Customer objects to an item on an e-Builder invoice, it shall deliver a written objection thereof by no later than thirty (30) days after invoice transmission (the "**Objection Notice**"). If the Objection Notice is not timely delivered, Customer shall waive its right to object. Notwithstanding delivery of an Objection Notice, Customer will make payment of the undisputed invoice amount as specified in the invoice. If, after reasonable

investigation, e-Builder agrees (in whole or in part) with a dispute included within an Objection Notice, it shall credit such amount against subsequent invoices issued to Customer. The notice shall detail the dispute and explain what amounts owed are disputed and why. A hard copy shall be also be sent by overnight mail to the following address: e-Builder, Attn.: Billings and Collections, e-Builder, Inc., 1800 NW 69th Avenue, Suite 201, Plantation, Florida 33313.

5.3 Reserved.

5.4 Suspension of Service. e-Builder may suspend access to the e-Builder Offerings if Customer fails to timely remit payment or is otherwise in material default hereunder, and fails to timely cure such default. Any notices of default/termination and suspension may be combined.

5.5 5.6 Customer Delays. Any material failure to perform, or any material delays caused by Customer, in permitting or assisting e-Builder in the configuration or implementation of the Professional Services, shall be deemed to be a material breach of this MSA by Customer. e-Builder shall be excused from project deadline commitments if any delays are due to Customer's failure to fulfill its obligations hereunder or under any exhibits hereto. E-Builder shall give customer ten days to fulfill its obligations. After ten days, e-Builder may suspend the SaaS Services and terminate this MSA . Notwithstanding any such delays, Customer shall continue to remit payment to e-Builder hereunder on a timely basis. For purposes of clarity, the delays covered by this Paragraph include only those for which Customer has discretion and control, and specifically excludes matters that are beyond Customer's discretion and control.

5.6 No Pricing Options: e-Builder cannot provide pricing commitments for e-Builder Offerings that Customer may acquire in the future. Notwithstanding, when Customer determines to acquire additional e-Builder Offerings, e-Builder will attempt to provide Customer with favorable pricing based on Customer's usage, purchasing history, purchasing needs and other factors. Notwithstanding, this Paragraph does not prohibit e-Builder and Customer from agreeing on phased purchases or acquisitions of e-Builder Offerings for which there is an initial purchase by Customer of an e-Builder Offering.

6. SYSTEM ACCESS AND USE; SUPPORT; UPDATES

6.1 License of Software. Customer's use of the e-Builder Offerings includes a limited license to e-Builder software, subject to the restrictions contained herein. Customer acknowledges that title to and copyright in the software applications supplied by e-Builder (including but not limited to the e-Builder Enterprise™, e-Builder Professional™, e-Builder mobile applications, and other e-Builder add on software) are reserved by e-Builder. Customer acquires no right in any software, copyrights, patents or any other intellectual property belonging to or licensed by e-Builder, other than the limited rights to use the e-Builder Offerings. e-Builder is and shall remain the sole owner of all copyrights, trademarks, patents and other proprietary rights in and to all aspects of the SaaS Offerings (including, without limitation, all software, code, business process and designs used in providing the SaaS Offerings). Customer acknowledges that the e-Builder software may be modified or upgraded from time to time, and that the e-Builder Offerings shall include the most recent version thereof.

6.2 Limited Rights. Customer's use of the e-Builder Offerings is provided on a limited, non-exclusive, non-transferable basis during the Term. Except as authorized by e-Builder in writing, Customer will **NOT**: (i) access or use the e-Builder Offerings to provide any products or services to third parties; (ii) access or use the e-Builder Offerings, except through the terms hereof including only for the specific number of seats outlined in the Capital Spend Model or Subscription Seat Model; (iii) resell, sublicense, lease, encumber, copy, distribute, publish, exhibit, transmit, provide access to, or provide use of the e-Builder Offerings to any third party, nor use or allow them to be used in any public system, public electronic bulletin board (unless agreed by e-Builder), multiple computer or user arrangement or

network that includes access by any third party; (iv) derive specifications from, reverse engineer, reverse compile, disassemble, translate, record or create derivative works based on the e-Builder Offerings; or (v) use the e-Builder Offerings, or any part or aspect thereof, for any unlawful purpose or to mislead or harass anyone. Use of or access to the e-Builder Offerings in violation of the terms hereof is strictly prohibited. Permission to access or use the e-Builder Offerings may be limited or suspended immediately if, in e-Builder's discretion, this Section has been violated. Customer agrees that a violation of this Section will cause e-Builder irreparable and immediate harm, and that e-Builder is entitled to injunctive relief to prevent such violation. For purposes of this Paragraph, a third party shall not include consultants, lawyers, accountants, and part-time or temporary workers.

6.3 **Support:** e-Builder maintains and staffs a customer service help desk ("**Customer Care Team**") that provides 24x7 customer support from the e-Builder Customer Care Team. The Customer will also be assigned business and technical account managers within to ensure continued success.

6.4 **SaaS License Updates.** During the Term, e-Builder will provide Customer with the latest new releases, updates, patches, fixes and changes to the e-Builder Enterprise™ software used to operate the SaaS Offerings at no additional charge. The updates referenced herein do not include any new or different products provided by e-Builder to its customer base for which additional fees apply.

7. **CONFIDENTIAL INFORMATION**

7.1 **General Confidentiality Terms.** Each Party, to the extent that it receives Confidential Information of the other Party under this MSA, will take reasonable steps, and exercise reasonable care, to hold such Confidential Information in confidence, and to not use it or disclose it (or willingly allow it to be used or disclosed) to any other person or entity, except as may be required by law.

7.2 **Customer Data.** e-Builder collects data from clients and third parties in the course of delivering the SaaS Service (the "**Customer Data**"). e-Builder aggregates the Customer Data that it collects from clients (the "**Aggregated Data**") to perform market analysis and to improve the SaaS Services (the "**Data Purpose**"). Customer authorizes e-Builder to incorporate any Customer Data obtained in providing the SaaS Service to Customer into the Aggregate Data, as long as the Customer Data and Aggregate Data are both in a de-identified and anonymized form, and provided further that: (i) no confidential information (including the identity of Customer or its suppliers, customers or employees) will be disclosed by e-Builder or be otherwise used or processed by e-Builder in a manner that enables the identity of Customer to be deduced or extracted; and (ii) the Customer Data shall be used exclusively for the incorporation into the Aggregate Data, which shall be used exclusively for the Data Purpose.

7.3 **Press Releases.** Customer acknowledges that e-Builder will market the solution to other organizations digitally and in print. Specific to a Press Release, e-Builder may request that the customer participate in a joint press release or case study and will seek mutual, written authorization before issuing a press release or case study containing a description of the implementation or any success metrics.

8. **CUSTOMER NON-SOLICITATION** During the Term and for a period of two (2) years thereafter, Customer will not, directly or indirectly, employ, offer employment to, or otherwise retain the services of, any officers, agents, representatives or employees of e-Builder, without the prior written consent of the Chief Executive Officer of e-Builder.

USAGE, OWNERSHIP Except for the limited right to use the "e-Builder Offerings" subject to the terms and conditions contained herein, this MSA does not confer upon Customer a license or interest in, or ownership of, the e-Builder Offerings. The e-Builder Offerings were developed exclusively at private expense by e-Builder. Customer agrees

that the e-Builder Offerings include, without limitation, enhancements, edits, improvements, additions, modifications and derivations thereto, and will remain the exclusive property of e-Builder. e-Builder will have the unrestricted and permanent right to use and implement all ideas, advice, recommendations or proposals of Customer with respect to the e-Builder Offerings in any manner and in any media, which e-Builder shall own. . Should e-Builder provide Professional Services to Customer that results in the creation of derivative works from the e-Builder Offerings or any new technology, e-Builder shall own all right, title and interest therein, which Customer hereby assigns to e-Builder

9. REPRESENTATIONS, WARRANTIES AND LIMITATIONS

9.1 Reserved.

9.2 Customer Representations and Warranties. Customer represents, warrants and covenants the following to e-Builder, that: (i) it currently possesses all necessary licenses, permits, insurance and approvals required to execute, deliver and perform its duties under this MSA, and is qualified to do business in all jurisdictions where such qualification is required for Customer's performance of its duties under this MSA; (ii) to the best of its knowledge and ability, Customer will comply with, and will use its best efforts to cause each employee or subcontractor it may engage to comply with all applicable federal and state laws and regulations in performing its and their respective responsibilities under this MSA and any subcontracts; and (iii) no information provided to e-Builder or disseminated through its software or systems shall infringe on or violate any trademark, copyright, trade secret, right of publicity or privacy (including but not limited to defamation), patent or other proprietary right of any third party.

9.3 Joint Representations and Warranties.

9.3.1 No Disqualification. Customer and e-Builder each represent and warrant that neither they, nor any of their personnel: (i) has been convicted of any crime arising from claims or other transactions, financial relationships or financial dealings; or (ii) has been excluded from any federal or state program. Customer agrees to notify e-Builder immediately upon Customer's receipt of notice regarding an impending audit or review by government agencies.

9.3.2 Laws and Regulations. Customer and e-Builder each represent and warrant that they and their agents, servants, employees, representatives and contractors, shall fulfill their obligations hereunder in compliance with all applicable laws, rules and regulations to which they are subject.

9.4 e-Builder Disclaimers. E-BUILDER DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM ITS NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH E-BUILDER WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, E-BUILDER CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, E-BUILDER DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS. EXCEPT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF E-BUILDER AND FOR THE WARRANTIES SPECIFICALLY AND EXPRESSLY MADE HEREIN, E-BUILDER MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR WARRANTIES OF FITNESS, AND ALL SUCH WARRANTIES ARE DISCLAIMED.

12. FORCE MAJEURE No failure, delay or default in performance of any obligation under this MSA will constitute a breach hereof if it is caused by strike, fire, shortage of materials, act of a public authority, unavoidable casualty, civil disorder, riot, insurrection, vandalism, war, severe weather, natural disaster or other act of God, failure of the Internet, failure or error of an Internet services provider or other provider of connectivity, any lines of transmission, any other third party equipment or software through which Internet transmissions occur, or any telecommunications carrier; hacking or electronic vandalism; terrorism; or other cause that is beyond the reasonable control of the Party otherwise chargeable, for so long as such cause continues and for a reasonable period of time thereafter.

13. AUDIT RIGHTS e-Builder will have the right, during normal business hours and upon at least five (5) days' prior written notice, to have an independent firm audit the number of authorized users that the Customer has compared to the licenses contracted or in a construction capital spend model the amount of Annual Capital Spend that the customer has incurred. The audit will be conducted at e-Builder's expense. If the audit reveals that Customer has not complied with its authorized user requirements, Customer will pay e-Builder any annual license fee underpayment disclosed by the audit.

14. MISCELLANEOUS

14.1 Piggy-Back Rights. e-Builder does business with many government institutions whose state laws permit them to join an existing contract between another state agency and vendor to acquire goods and services thereunder. If applicable, e-Builder shall allow other agencies with whom Customer has a joint purchasing relationship to join this MSA and order e-Builder Offerings hereunder, subject to applicable pricing of the e-Builder Offerings.

E-BUILDER WORK ORDER

THIS ADDENDUM dated: December 22, 2021

BETWEEN:

e-BUILDER, INC.

("e-Builder")

– and –

City of South San Francisco, CA

("Customer")

WHEREAS, Customer wishes to amend their Master Services Agreement with e-Builder, Inc. dated 11/8/2017 to amend the Products and/or Services described below in this Work Order and Exhibit A to this Work Order. The terms of the Master Service Agreement apply to this Work Order unless otherwise stated below. In the event there is a conflict between the terms and conditions of any Associated Customer Purchase Order (PO) and this Work Order, the terms of this Work Order will take precedence.

DESCRIPTION OF PRODUCTS AND/OR SERVICES

One-Time Professional Services Scope:

Phase & Deliverables	Scope	Comments
Project Kickoff & Discovery		
Kickoff Discussion	Included	1-2 weeks after Work Order execution
Deliverable Schedule	Included	Defined during Kickoff Discussion The Parties agree at the time of this execution, the Project Configuration & Testing and Training below will be completed within ninety (90) days from the date of execution of this Work Order.
Project Configuration & Testing		
Business Intelligence (BI)	6-BI Reports	6 Reports TBD During Discovery See Business Intelligence section found in Exhibit A of this Work Order for further information on Business Intelligence
Redeployment of 1 Code Step	1 Code Step	Funding Source Scheduled Task
Training		
Business Intelligence Training	1- Session Remote	4 days Duration/4 Users Maximum

Exhibit B - Revised Scope of Services

		Per the Business Intelligence Quick Start Training section found in Exhibit A of this Work Order
--	--	---

INVESTMENT SUMMARY:

The following details the Investment Summary for the One-Time Services fee and the additional fee to be added to Customer's Annual Software Subscription.

One-Time Professional Services Scope: \$29,148.00

Additional Annual Software Subscription

Item	Annual Price
Business Intelligence	\$10,000.00
Code Step Maintenance	\$582.00
Total Additional Annual Software Subscription	\$10,582.00

PAYMENT TERMS:

Payment for One-Time Professional Services Scope shall be invoiced, and due and payable NET 45 days, as follows: (i) 50% due upon signed Work Order and (ii) 50% due upon completion of BI Training.

Travel and Expenses: Travel is not expected for the scope of work described above. Thus, all work will be done by e-Builder remotely. If Customer requires that e-Builder travel, a separate Work Order will be executed to reflect the updated scope and pricing.

Payment for Additional Annual Software Subscription is as follows: The Year 1 Fee for the Additional Annual Software Subscription in the amount of \$10,582.00 will be pro-rated from 2/8/2022 through 11/7/2022 in the amount of \$7,936.50 to coincide with the November anniversary date of the Customer's existing Annual Software Subscription and is due and payable NET 45 days with the execution of this Work Order. The Year 2 Additional Annual Software Subscription will be invoiced with the Customer's existing Annual Software Subscription upon the next renewal date of 11/8/2022.

DESCRIPTION OF SUBSCRIPTION RENEWAL

License Renewal: Customer will renew their existing unlimited e-Builder Enterprise licenses subscription at a cost of \$85,095.78 based on an "Average Annual Capital Spend" of \$35 million. "Annual Capital Spend" are the expenses incurred to demolish, plan, design, build, repair, remodel and furnish a building or site over a period of one year. The "Average Annual Capital Spend" is an average of the estimated next three completed fiscal years of the customers annual capital spend. e-Builder reserves the right to adjust the fee accordingly to align with the Customer's actual average annual capital spend.

Renewal of License Add-Ons: Customer will also renew their existing product add-on subscription of Business Intelligence.

Exhibit B - Revised Scope of Services**Total Annual Software Subscription:**

Customer's Total Annual Software Subscription shall include:

	Year 1 11/8/2022 – 11/7/2023	Year 2 11/8/2023 – 11/7/2024	Year 3 11/8/2024 – 11/7/2025
Unlimited Licenses	\$85,706.88	\$89,992.23	\$94,491.84
Business Intelligence	\$10,500.00	\$11,025.00	\$11,576.25
Total Annual Software Subscription:	\$96,206.88	\$101,017.23	\$106,068.09

Term: The Renewal Term will be from 11/8/2022 to 11/7/2025

3 Year Term Fees

Year 1 Total Subscription Fee	\$96,206.88
Year 2 Total Subscription Fee	\$101,017.23
Year 3 Total Subscription Fee	\$106,068.09
Total 3 Year Costs	\$303,292.20
Contingency 10%*	\$30,329.22
Total	\$333,621.42

*Customer wishes to add a Contingency amount for any follow up work during the Renewal Term. The Contingency amount shall not be used until a mutually agreed upon work order describing a scope of work and pricing is executed.

Renewal Terms: The Annual Software Subscription will automatically renew at the end of each license term in increments of one-year periods unless e-Builder or Customer provides written notice of non-renewal at least sixty (60) days prior to expiration of the then-current term. Upon renewal, e-Builder has a right to increase license fees up to the greater of CPI plus two (2%) percent or five (5%) percent if the Annual Capital Spend stays constant. If the Annual Capital Spend increases, the Annual Software Subscription amount will change based on the tier level of Annual Capital Spend.

Payment Terms: Payment for Year 1 is due on 11/8/2022, Payment for Year 2 is due on 11/8/2023, and Payment for Year 3 is due on 11/8/2024.

Audit Rights: e-Builder will have the right, during normal business hours and upon at least five (5) days' prior written notice, to have an independent firm audit the amount of Annual Capital Spend that the customer has incurred. The audit will be conducted at e-Builder's expense, unless it reveals that Customer has not complied in which case Customer will (i) reimburse e-Builder for all reasonable costs and expenses incurred by e-Builder regarding such audit; and (ii) pay e-Builder any annual license fee underpayment disclosed by the audit.

Validity: This Work Order is effective until 2/28/2022. e-Builder has the right to not offer the products presented at the prices in this Work Order after 2/28/2022

Roadmap Disclaimer. CUSTOMER AGREES THAT IT'S PURCHASES ARE NOT CONTINGENT ON THE DELIVERY OF ANY FUTURE FUNCTIONALITY OR FEATURES, OR DEPENDENT ON ANY ORAL OR WRITTEN PUBLIC COMMENTS MADE BY TRIMBLE REGARDING FUTURE FUNCTIONALITY OR FEATURES.

Termination: Customer may terminate the Annual Software Subscription for convenience on not less than sixty (60) days' written notice to the other Party hereto. If Customer terminates for convenience, all fees

Exhibit B - Revised Scope of Services

properly due, but not paid, and all previously paid subscription fees (both used and unused) for the current contract year shall be non-refundable and forfeited.