

SERVICES AGREEMENT

THIS SERVICES AGREEMENT (“Agreement”) is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **W. J. DICKENSHEET & ASSOCIATES, INC.**, a Colorado corporation whose address is 1501 W. Wesley Ave, Denver, CO 80223 (the “Contractor”), individually a “Party” and jointly “the Parties.”

RECITALS

The City is desirous of engaging an on-premises and a web-hosted third-party solution provider to aid the City in vehicle auctioneering services and the Contractor has agreed to provide the hosted solution, services and other deliverables under the terms and conditions as set out below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Contractor agree as follows:

1. DEFINITIONS. Whenever used herein, or in any schedules, exhibits, order forms, or addenda to this Agreement, the following terms shall have the meanings assigned below unless otherwise defined therein. Other capitalized terms used in this Agreement are defined in the context in which they are used.

1.1. “**Acceptance**” means the Deliverable demonstrates to the City's reasonable satisfaction that the Deliverable conforms to and operates in all material respects according to the Acceptance Criteria, and if required, has successfully completed Acceptance Testing in all material respects, and for Deliverables not requiring Acceptance Testing that the Deliverable reasonably conforms in all material respects to the Acceptance Criteria or the City's requirements.

1.2. “**Acceptance Certificate**” means a written instrument by which the City promptly notifies the Contractor that a Deliverable has been Accepted or Accepted with exceptions, and Acceptance Criteria have been met or waived, in whole or in part.

1.3. “**Acceptance Criteria**” means functionality and performance requirements determined by the City and set forth on the Order Form for the applicable Product or Service, based upon the Specifications, which must be satisfied prior to the City's Acceptance of a Deliverable, or the System. The City and Contractor shall agree upon written Acceptance Criteria in the Order Form for the applicable Product or Service.

1.4. “**Acceptance Date**” means the date on which the City issues an Acceptance Certificate for the System or a Deliverable.

1.5. “**Acceptance Test**” means the evaluation and testing method, procedures, or both, that are set forth in the Order Form for the applicable Product or Service and are used to determine whether or not the System or a Deliverable requiring Acceptance Testing performs in accordance with the Acceptance Criteria.

1.6. “**City Data**” means all information, whether in oral or written (including electronic) form, created by or in any way originating with the City and all information that is the output of any computer processing, or other electronic manipulation, of any information that

was created by or in any way originating with the City, in the course of using and configuring the Services provided under this Agreement, and includes all records relating to the City's use of Contractor Services. City Data also includes Confidential Information disclosed to Contractor.

1.7. **"Confidential Information"** means all records or data that is disclosed in written, graphic or machine recognizable form and is marked, designated, labeled or identified at the time of disclosure as being confidential or its equivalent, or, if the information is in verbal form, it is identified as confidential or proprietary at the time of disclosure and is confirmed in writing within thirty (30) Calendar Days of the disclosure and is not subject to disclosure under CORA. Confidential Information shall include, but is not limited to, PII, PHI, PCI, federal or state tax information ("Tax Information"), Criminal Justice Information (CJI), personnel records, financial, statistical, personnel, human resources data or Personally Identifiable Information and/or Personal Information as described in the C.R.S 24-73-101, *et seq*; attorney/client privileged communications; information which is exempt per federal laws (including but not limited to copyright or HIPPA), all of which is not subject to disclosure under CORA. Confidential Information does not include information which: (a) is public or becomes public through no breach of the confidentiality obligations herein; (b) is disclosed by the party that has received Confidential Information (the "Receiving Party") with the prior written approval of the other party; (c) was known by the Receiving Party at the time of disclosure; (d) was developed independently by the Receiving Party without use of the Confidential Information; (e) becomes known to the Receiving Party from a source other than the disclosing party through lawful means; (f) is disclosed by the disclosing party to others without confidentiality obligations; or (g) is required by law to be disclosed.

1.8. **"CORA"** means the Colorado Open Records Act, §§ 24-72-200.1, *et seq.*, C.R.S.

1.9. **"Data Incident"** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the City. Data Incidents include, without limitation (i) successful attempts to gain unauthorized access to a City system or the City information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a City system for the processing or storage of data; or (iv) changes to the City system hardware, firmware, or software characteristics without the City's knowledge, instruction, or consent. It shall also include any actual or reasonably suspected unauthorized access to or acquisition of computerized City Data that compromises the security, confidentiality, or integrity of City Data, or the ability of the City to access City Data.

1.10. **"Deliverable"** means the Products or Services or documents or tangible work products described in an Order Form to be provided to the City by the Contractor or the outcome to be achieved or output to be provided, in the form of a tangible object or software that is produced as a result of the Contractor's work that is intended to be delivered to the City by the Contractor under this Agreement.

1.11. **"Documentation"** means, collectively: (a) all materials published or otherwise made available to the City by the Contractor that relate to the functional, operational and/or performance capabilities of the Services; (b) all user, operator, system administration, technical, support and other manuals and all other materials published or otherwise made available by the Contractor, including marketing materials that describe the functional, operational and/or

performance capabilities of the Services; (c) any Requests for Information and/or Requests for Proposals (or documents of similar effect) issued by the City, and the responses thereto from the Contractor, and any document which purports to update or revise any of the foregoing; and (d) the results of any Contractor “Use Cases Presentation,” “Proof of Concept” or similar type presentations or tests provided by the Contractor to the City or as required to be produced by the Contractor subject to the terms of this Agreement.

1.12. “**Downtime**” means any period of time of any duration that the Services are not made available by the Contractor to the City for any reason, including scheduled maintenance or Enhancements.

1.13. “**Effective Date**” means the date on which this Agreement is fully approved and signed by the City as shown on the Signature Page for this Agreement. The Effective Date for Services may be set out in an Order Form or similar exhibit.

1.14. “**Enhancements**” means any improvements, modifications, upgrades, updates, fixes, revisions and/or expansions to the Services that the Contractor may develop or acquire and incorporate into its standard version of the Services or which the Contractor has elected to make generally available to its customers.

1.15. “**Equipment**” means any hardware, machinery, device, tool, computer, computer component, computer system, including add-ons, or peripherals of tangible form together with the necessary supplies for upkeep and maintenance, and other apparatus, to be provided to the City by the Contractor under this Agreement.

1.16. “**Error**” means any defect, problem, condition, bug, or other partial or complete inability of a Product to operate in accordance with the applicable Specifications.

1.17. “**Intellectual Property Rights**” includes without limitation all right, title, and interest in and to all (a) Patent and all filed, pending, or potential applications for Patent, including any reissue, reexamination, division, continuation, or continuation in part applications throughout the world now or hereafter filed; (b) trade secret rights and equivalent rights arising under the common law, state law, and federal law; (c) copyrights, other literary property or authors rights, whether or not protected by copyright or as a mask work, under common law, state law, and federal law; and (d) proprietary indicia, trademarks, trade names, symbols, logos, and/or brand names under common law, state law, and federal law.

1.18. “**Order Form**” means a quote in the form attached hereto as an exhibit, setting forth certain Products and/or Services to be provided pursuant to this Agreement. Any reference to an “Order Form” in this Agreement includes Products and/or Services purchased by the City pursuant to the Contractor’s online ordering process. An Order Form can also be a statement of work or scope of work if attached to this Agreement.

1.19. “**PCI**” means payment card information including any data related to credit card holders’ names, credit card numbers, or other credit card information as may be protected by state or federal law.

1.20. “**PII**” means personally identifiable information including, without limitation, any information maintained by the City about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records. PII includes, but is not limited to, all information defined as personally identifiable information in §§ 24-72-501 and 24-73-101, C.R.S.

1.21. “**PHI**” means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: (i) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act. If this Agreement involves the transmission of PHI a separate Business Associates Agreement will become a part of this Agreement.

1.22. “**Product(s)**” means software, Equipment, and supplies delivered, or to be delivered, pursuant to an Order Form.

1.23. “**Protected Information**” includes, but is not limited to, PII, student records, protected health information, criminal justice information or individual financial information and other data defined under § 24-72-101 *et seq.*, and personal information that is subject to local, state or federal statute, regulatory oversight or industry standard restricting the use and disclosure of such information. The loss of such Protected Information would constitute a direct damage to the City.

1.24. “**IFB Response**” means any proposal submitted by Contractor to City in response to the City’s Invitation for Bid (“IFB”) titled 1015A Auction Services for Impounded Vehicles, 8/27/2025.

1.25. “**Services**” means the Contractor’s computing solutions, provided to the City pursuant to this Agreement, that provide the functionality and/or produce the results described in the Documentation, including without limitation all Enhancements thereto and all interfaces.

1.26. “**Scope of Work**” means the provisions set forth on **Exhibit A** attached hereto, which are incorporated into this Agreement by this reference.

1.27. “**Specifications**” means the most current cumulative statement of capabilities, functionality, and performance requirements for the Products or Services as set out in the Acceptance Criteria, Order Forms, Documentation, Contractor’s representations, Contractor’s proposal, and the City’s Invitation for Bid.

1.28. “**Subcontractor**” means any third party engaged by the Contractor to aid in performance of the work or the Service. The Contractor shall provide to the City upon request a list of Subcontractors providing material services to the Service.

1.29. “**System**” means the operational combination of all Products and Services to be provided by the Contractor to the City under this Agreement.

1.30. “**Third Party**” means persons, corporations and entities other than the Contractor, the City or any of their employees, contractors or agents.

1.31. “**Third-Party Host**” means the entity where the physical location of the server(s) of the Contractor’s software resides.

2. RIGHTS AND LICENSE IN AND TO DATA

2.1. The Parties agree that as between them, all rights in and to City Data shall remain the exclusive property of the City, and the Contractor has a limited, nonexclusive license to access

and use City Data as provided in this Agreement solely for the purpose of performing its obligations hereunder.

2.2. All City Data created and/or processed by the Service is and shall remain the property of the City and shall in no way become attached to the Service, nor shall the Contractor have any rights in or to the City Data without the express written permission of the City and may not include Protected Information.

2.3. This Agreement does not give a party any rights, implied or otherwise, to the other's data, content, or intellectual property, except as expressly stated in this Agreement.

2.4. The City retains the right to use the Service to access and retrieve data stored on the Contractor's Service infrastructure at any time during the term of this Agreement at its sole discretion.

3. DATA PRIVACY

3.1. The Contractor will use City Data only for the purpose of fulfilling its duties under this Agreement and for the City's sole benefit and will not share City Data with or disclose it to any Third Party without the prior written consent of the City or as otherwise required by law. By way of illustration and not of limitation, the Contractor will not use City Data for the Contractor's own benefit and, in particular, will not engage in "data mining" of City Data or communications, whether through automated or human means, except as specifically and expressly required by law or authorized in writing by the City.

3.2. The Contractor will provide access to City Data only to those Contractor employees, contractors and Subcontractors ("Contractor Staff") who need to access City Data to fulfill the Contractor's obligations under this Agreement. The Contractor will ensure that, prior to being granted access to City Data, Contractor Staff who perform work under this Agreement have all undergone and passed criminal background screenings; have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all data protection provisions of this Agreement; and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of City Data they will be handling.

3.3. If the Contractor receives Protected Information of a Colorado resident under this Agreement, the Contractor shall implement and maintain reasonable written security procedures and practices that are appropriate to the nature of the personal identifying information and the nature and size of the Contractor's business and its operations. Unless the Contractor agrees to provide its own security protections for the information it discloses to a third-party service provider, the Contractor shall require all its third-party service providers to implement and maintain reasonable written security procedures and practices that are appropriate to the nature of the personal identifying information disclosed and reasonably designed to help protect the personal identifying information subject to this Agreement from unauthorized access, use, modification, disclosure, or destruction. The Contractor and its third-party service providers that maintain electronic or paper documents that contain Protected Information under this Agreement shall develop a written policy for the destruction of such records by shredding, erasing, or otherwise modifying the Protected Information to make it unreadable or indecipherable when the records are no longer needed.

3.4. The Contractor may provide City Data to its agents, employees, assigns, and Subcontractors as necessary to perform the work under this Agreement, but shall restrict access to

Confidential Information to those agents, employees, assigns, and Subcontractors who require access to perform their obligations under this Agreement. The Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign, or have signed, agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign, or Subcontractor has access to any Confidential Information. The Contractor shall provide copies of those signed nondisclosure provisions to the City upon execution of the nondisclosure provisions if requested by the City.

4. DATA SECURITY AND INTEGRITY

4.1. All facilities, whether Contractor-hosted or Third-Party Hosted, used to store and process City Data will implement and maintain administrative, physical, technical, and procedural safeguards and best practices at a level sufficient to provide the requested Service availability and to secure City Data from unauthorized access, destruction, use, modification, or disclosure appropriate for City Data. Such measures, when applicable due to the presence of Protected Information, include, but are not limited to, all applicable laws, rules, policies, publications, and guidelines including, without limitation: (i) the most recently promulgated IRS Publication 1075 for all Tax Information, (ii) the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, (iii) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, (iv) the Colorado Consumer Protection Act, (v) the Children's Online Privacy Protection Act (COPPA), (vi) the Family Education Rights and Privacy Act (FERPA), (vii) §24-72-101 et seq., (viii) the Telecommunications Industry Association (TIA) Telecommunications Infrastructure Standard for Data Centers (TIA-942); (ix) the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Addendum attached to this Agreement, if applicable. The Contractor shall submit to the Manager, within fifteen (15) days of the Manager's written request, copies of the Contractor's policies and procedures to maintain the confidentiality of protected health information to which the Contractor has access, and if applicable, the Contractor shall comply with all HIPAA requirements contained herein or attached as an exhibit.

4.2. The Contractor warrants that all City Data will be encrypted in transmission (including via web interface) and in storage by a mutually agreed upon National Institute of Standards and Technology (NIST) approved strong encryption method and standard.

4.3. The Contractor shall use industry-standard and up-to-date security tools, technologies and procedures including, but not limited to anti-virus and anti-malware protections and intrusion detection and reporting in providing Services under this Agreement. The Contractor shall ensure that any underlying or integrated software employed by the Service is updated on a regular basis and does not pose a threat to the security of the Service.

4.4. The Contractor shall, and shall cause its Subcontractors, to do all of the following:

4.4.1. Provide physical and logical protection for all hardware, software, applications, and data that meets or exceeds industry standards and the requirements of this Agreement.

4.4.2. Maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), annual security testing,

and improvements or enhancements consistent with evolving industry standards.

4.4.3. Comply with State and federal rules and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing.

4.4.4. Provide that security is not compromised by unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments.

4.4.5. Promptly report all Data Incidents, including Data Incidents that do not result in unauthorized disclosure or loss of data integrity.

4.4.6. Comply with all rules, policies, procedures, and standards issued by the City's Technology Services Security Section.

4.4.7. Subject to the Contractor's reasonable access security requirements and upon reasonable prior notice, the Contractor shall provide the City with scheduled access for the purpose of inspecting and monitoring access and use of City Data, maintaining City systems, and evaluating physical and logical security control effectiveness.

4.4.8. The Contractor shall perform current background checks in a form reasonably acceptable to the City on all of its respective employees and agents performing services or having access to City Data provided under this Agreement, including any Subcontractors or the employees of Subcontractors. A background check performed within 30 days prior to the date such employee or agent begins performance or obtains access to City Data shall be deemed to be current.

4.4.9. The Contractor will provide notice to the security and compliance representative for the City indicating that background checks have been performed. Such notice will inform the City of any action taken in response to such background checks, including any decisions not to take action in response to negative information revealed by a background check.

4.4.10. If the Contractor will have access to Tax Information under the Agreement, the Contractor shall comply with the background check requirements defined in IRS Publication 1075 and § 24-50-1002, C.R.S.

4.5. If applicable, the Contractor shall use, hold, and maintain Confidential and Protected Information in compliance with all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all Confidential and Protected Information.

4.6. Prior to the Effective Date of this Agreement, the Contractor will, at its expense, conduct or have conducted the following, and thereafter, the Contractor will at its expense conduct or have conducted the following at least once per year, and immediately after any actual or reasonably suspected Data Incident:

4.6.1. An SSAE 16/SOC 2 or other mutually agreed upon audit of the Contractor's security policies, procedures and controls;

4.6.2. A quarterly external and internal vulnerability scan of the Contractor's systems and facilities, to include public facing websites, that are used in any way to deliver Services under this Agreement. The report must include the vulnerability, age and remediation plan for all issues identified as critical or high;

4.6.3. A formal penetration test, performed by a process and qualified personnel of the Contractor's systems and facilities that are used in any way to deliver Services under this Agreement.

4.7. The Contractor will provide the City the reports or other documentation resulting from the above audits, certifications, scans and tests within seven (7) business days of the Contractor's receipt of such results.

4.8. Based on the results and recommendations of the above audits, certifications, scans and tests, the Contractor will, within thirty (30) calendar days of receipt of such results, promptly modify its security measures to meet its obligations under this Agreement and provide the City with written evidence of remediation.

4.9. The City may require, at its expense, that the Contractor perform additional audits and tests, the results of which will be provided to the City within seven (7) business days of the Contractor's receipt of such results.

4.10. The Contractor shall protect data against deterioration or degradation of data quality and authenticity, including, but not limited to annual Third Party data integrity audits. The Contractor will provide the City the results of the above audits.

5. RESPONSE TO LEGAL ORDERS, DEMANDS OR REQUESTS FOR DATA

5.1. Except as otherwise expressly prohibited by law, the Contractor will:

5.1.1. If required by a court of competent jurisdiction or an administrative body to disclose City Data, the Contractor will notify the City in writing immediately upon receiving notice of such requirement and prior to any such disclosure;

5.1.2. Consult with the City regarding its response;

5.1.3. Cooperate with the City's reasonable requests in connection with efforts by City to intervene and quash or modify the legal order, demand or request; and

5.1.4. Upon request, provide the City with a copy of its response.

5.2. If the City receives a subpoena, warrant, or other legal order, demand or request seeking data maintained by the Contractor, the City will promptly provide a copy to the Contractor. The Contractor will supply the City with copies of data required for the City to respond within forty-eight (48) hours after receipt of copy from the City and will cooperate with the City's reasonable requests in connection with its response.

6. DATA INCIDENT RESPONSE

6.1. The Contractor shall maintain documented policies and procedures for Data Incident and breach reporting, notification, and mitigation. If the Contractor becomes aware of any Data Incident, it shall notify the City immediately and cooperate with the City regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the City. If there is a Data Incident impacting residents of Colorado or any other jurisdiction, the Contractor shall cooperate with the City to satisfy notification requirements as currently defined in either federal, state, or local law. Unless the Contractor can establish that neither the Contractor nor any of its agents, employees, assigns or Subcontractors are the cause or source of the Data Incident, the Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Data Incident as required by law. After a Data Incident, the Contractor shall take steps to

reduce the risk of incurring a similar type of Data Incident in the future as directed by the City, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the City at no additional cost to the City.

6.2. The Contractor shall report, either orally or in writing, to the City any Data Incident involving City Data, or circumstances that could have resulted in unauthorized access to or disclosure or use of City Data, not authorized by this Agreement or in writing by the City, including any reasonable belief that an unauthorized individual has accessed City Data. The Contractor shall make the report to the City immediately upon discovery of the unauthorized disclosure, but in no event more than forty-eight (48) hours after the Contractor reasonably believes there has been such unauthorized use or disclosure. Oral reports by the Contractor regarding Data Incidents will be reduced to writing and supplied to the City as soon as reasonably practicable, but in no event more than forty-eight (48) hours after oral report.

6.3. Immediately upon becoming aware of any such Data Incident, the Contractor shall fully investigate the circumstances, extent and causes of the Data Incident, and report the results to the City and continue to keep the City informed daily of the progress of its investigation until the issue has been effectively resolved.

6.4. The Contractor's report discussed herein shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the data used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure (if known), (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.

6.5. Within five (5) calendar days of the date the Contractor becomes aware of any such Data Incident, the Contractor shall have completed implementation of corrective actions to remedy the Data Incident, restore the City's access to the Services as directed by the City, and prevent further similar unauthorized use or disclosure.

6.6. The Contractor, at its expense, shall cooperate fully with the City's investigation of and response to any such Data Incident.

6.7. Except as otherwise required by law, the Contractor will not disclose or otherwise provide notice of the incident directly to any person, regulatory agencies, or other entities, without prior written permission from the City.

6.8. Notwithstanding any other provision of this Agreement, and in addition to any other remedies available to the City under law or equity, the Contractor will promptly reimburse the City in full for all costs incurred by the City in any investigation, remediation or litigation resulting from any such Data Incident, including but not limited to providing notification to Third Parties whose data were compromised and to regulatory bodies, law-enforcement agencies or other entities as required by law or contract; establishing and monitoring call center(s), and credit monitoring and/or identity restoration services to assist each person impacted by a Data Incident in such a fashion that, in the City's sole discretion, could lead to identity theft; and the payment of legal fees and expenses, audit costs, fines and penalties, and other fees imposed by regulatory agencies, courts of law, or contracting partners as a result of the Data Incident.

7. DATA RETENTION AND DISPOSAL

7.1. Using appropriate and reliable storage media, the Contractor will regularly backup data and retain such backup copies consistent with the City's data retention policies.

7.2. At the City's election, the Contractor will either securely destroy or transmit to the City repository any backup copies of City Data. The Contractor will supply the City a certificate indicating the records disposed of, the date disposed of, and the method of disposition used.

7.3. The Contractor will immediately preserve the state of the data at the time of the request and place a "hold" on data destruction or disposal under its usual records retention policies of records that include data, in response to an oral or written request from the City indicating that those records may be relevant to litigation that the City reasonably anticipates. Oral requests by the City for a hold on record destruction will be reduced to writing and supplied to the Contractor for its records as soon as reasonably practicable under the circumstances. The City will promptly coordinate with the Contractor regarding the preservation and disposition of these records. The Contractor shall continue to preserve the records until further notice by the City.

8. DATA TRANSFER UPON TERMINATION OR EXPIRATION

8.1. Upon expiration or earlier termination of this Agreement or any Services provided in this Agreement, the Contractor shall accomplish a complete transition of the Services from the Contractor to the City or any replacement provider designated solely by the City without any interruption of or adverse impact on the Services or any other services provided by third parties in this Agreement. The Contractor shall cooperate fully with the City or such replacement provider and promptly take all steps required to assist in effecting a complete transition of the Services designated by the City. All services related to such transition shall be performed at no additional cost beyond what would be paid for the Services in this Agreement. The Contractor shall extend this Agreement monthly if additional time is required beyond the termination of this Agreement, if necessary, to effectuate the transition and the City shall pay a proration of the subscription fee.

8.2. Upon the expiration or termination of this Agreement, the Contractor shall return City Data provided to the Contractor in a common and readily usable format if requested by the City or destroy City Data and certify to the City that it has done so, as directed by the City. If the Contractor is prevented by law or regulation from returning or destroying Confidential Information, the Contractor warrants it will guarantee the confidentiality of, and cease to use, such Confidential Information. To the extent that the Contractor is requested to perform any services beyond the return of the City's Data in connection with termination assistance, the same shall be performed pursuant to a written statement of work under this Agreement and paid for by the City, applying the Contractor's then-current rates for daily/hourly work, as the case may be.

9. SCOPE OF WORK; INTERRUPTIONS IN SERVICE; SUSPENSION AND TERMINATION OF SERVICE; CHANGES TO SERVICE. See Exhibit A.

10. COMPLIANCE WITH APPLICABLE LAWS AND CITY POLICIES.

10.1. The Contractor will comply with all applicable laws in performing the Services under this Agreement. Any Contractor personnel visiting the City's facilities will comply with all applicable City policies regarding access to, use of, and conduct within such facilities. The City will provide copies of such policies to the Contractor upon request.

10.2. ADA Website Compliance:

10.2.1. Compliance and Testing. All Contractor managed or operated public-facing digital experiences (*e.g.*, websites and webpages) must be compliant with Section 508 of the Rehabilitation Act of 1973 and the WCAG 2.0 Level AA guidelines (collectively, “Guidelines”). Prior to launching to the public, the Contractor shall test all public-facing digital experiences, both manually and in an automated fashion, as applicable, to confirm and maintain compliance with the Guidelines, and then subsequently, no more than once per each term year thereafter. Such manual and automated testing may only be performed by a third party vendor approved by the Department of Justice. The City has a list of approved third party vendors. The City does not warrant the work of any third-party vendor. All testing under this section shall be performed by third party vendors at the Contractor’s expense.

10.2.2. Validation, Review and Remediation. The Contractor will notify the City when its digital experience is ready for City review and validation. The City will then validate, prior to launch and each term year thereafter, to confirm that the digital experience is compliant with the Guidelines. Manual testing of the Contractor’s digital experience will be verified by the City with approved vendors and individuals of varying disabilities which shall include individuals who are blind, deaf or hard of hearing, and who have mobility or dexterity limitations. Upon completion of all testing, a review will be performed by the City’s web accessibility coordinator to confirm completion of all accessibility requirements. In the event that any deficiencies are discovered in the Contractor’s digital experience, the City will promptly notify the Contractor, and the Contractor will remediate prior to launch. A digital experience will not launch until all deficiencies are remediated. All digital experiences must include a statement on the site that the experience is accessible, will maintain accessibility, and will provide a mechanism for users to submit feedback about accessibility issues.

10.2.3. In the event that the digital experience fails compliance at any time, the Contractor shall bring the digital experience into compliance within ninety (90) days, which may be extended by mutual written agreement of the Parties. Failure to bring the digital experience into compliance for any reason within such time, except as may be mutually extended by the written agreement of the parties, shall be a breach of this Agreement.

11. WARRANTIES, REPRESENTATIONS AND COVENANTS. The Contractor represents and warrants that:

11.1. The Service will conform to applicable specifications, and operate and produce results substantially in accordance with the Documentation and the Exhibits attached hereto, and will be free from deficiencies and defects in materials, workmanship, design and/or performance during the Term of this Agreement;

11.2. All technology related services will be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards;

11.3. The Contractor has the requisite ownership, rights and licenses to perform its obligations under this Agreement fully as contemplated hereby and to grant to the City all rights with respect to the software and Services free and clear from all liens, adverse claims, encumbrances and interests of any Third Party;

11.4. There are no pending or threatened lawsuits, claims, disputes or actions: (i) alleging that any software or service infringes, violates or misappropriates any Third-Party rights; or (ii) adversely affecting any software, service or supplier's ability to perform its obligations hereunder;

11.5. The Service will not violate, infringe, or misappropriate any patent, copyright, trademark, trade secret, or other intellectual property or proprietary right of any Third Party;

11.6. The software and Services will contain no malicious or disabling code that is intended to damage, destroy or destructively alter software, hardware, systems or data. The Contractor's obligations for breach of the Services warranty shall be limited to using its best efforts, at its own expense, to correct or replace that portion of the Services which fails to conform to such warranty, and, if the Contractor is unable to correct any breach in the Services Warranty by the date which is sixty (60) calendar days after the City provides notice of such breach, the City may, in its sole discretion, either extend the time for the Contractor to cure the breach or terminate this Agreement and receive a full refund of all amounts paid to the Contractor under this Agreement.

11.7. Disabling Code Warranty. The Contractor represents, warrants and agrees that the Services do not contain and the City will not receive from the Contractor any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design, or other malicious, illicit or similar unrequested code, including surveillance software or routines which may, or is designed to, permit access by any person, or on its own, to erase, or otherwise harm or modify any City system or Data (a "Disabling Code"). In the event a Disabling Code is identified, the Contractor shall take all steps necessary, at no additional cost to the City, to: (a) restore and/or reconstruct all City Data lost by the City as a result of Disabling Code; (b) furnish to the City a corrected version of the Services without the presence of Disabling Codes; and, (c) as needed, re-implement the Services at no additional cost to the City. This warranty shall remain in full force and effect as long as this Agreement remains in effect.

11.8. Third-Party Warranties and Indemnities. The Contractor will assign to the City all Third-Party warranties and indemnities that the Contractor receives in connection with any products provided to the City. To the extent that the Contractor is not permitted to assign any warranties or indemnities through to the City, the Contractor agrees to specifically identify and enforce those warranties and indemnities on behalf of the City to the extent the Contractor is permitted to do so under the terms of the applicable Third Party agreements.

11.9. The Contractor warrants it has complied and shall comply with all applicable federal, state, and local laws and regulations of its domicile and wherever performance occurs during the term of this Agreement.

11.10. Delivery of Products shall not be construed to represent Acceptance nor shall Delivery of Products relieve the Contractor from its responsibility under any representation or warranty. If the City makes a payment for a Product prior to Acceptance, the payment does not grant a waiver of any representation or warranty by the Contractor.

12. CONFIDENTIALITY

12.1. The Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all City Data, unless the City Data is publicly available. The Contractor shall not, without prior written approval of the City, use, publish, copy, disclose to any third party, or permit the use by any third party of any City Data, except as otherwise stated in this Agreement, permitted

by law, or approved in writing by the City. The Contractor shall provide for the security of all Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines.

12.2. The Receiving Party agrees to exercise the same degree of care and protection with respect to the Confidential Information that it exercises with respect to its own similar Confidential Information and not to directly or indirectly provide, disclose, copy, distribute, republish or otherwise allow any Third Party to have access to any Confidential Information without prior written permission from the disclosing party. However, (a) either party may disclose Confidential Information to its employees and authorized agents who have a need to know; (b) either party may disclose Confidential Information if so required to perform any obligations under this Agreement; and (c) either party may disclose Confidential Information if so required by law (including court order or subpoena). Nothing in this Agreement shall in any way limit the ability of the City to comply with any laws or legal process concerning disclosures by public entities. The Contractor acknowledges that any responses, materials, correspondence, documents or other information provided to the City are subject to applicable state and federal law, including the Colorado Open Records Act, and that the release of Confidential Information in compliance with those acts or any other law will not constitute a breach or threatened breach of this Agreement.

12.3. The Receiving Party will inform its employees and officers of the obligations under this Agreement, and all requirements and obligations of the Receiving Party under this Agreement shall survive the expiration or earlier termination of this Agreement. The Receiving Party shall not disclose City Data or Confidential Information to Subcontractors unless such Subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement.

13. COLORADO OPEN RECORDS ACT. The Parties understand that all the material provided or produced under this Agreement, including items marked Proprietary or Confidential, may be subject to the Colorado Open Records Act., § 24-72-201, *et seq.*, C.R.S. In the event of a request to the City for disclosure of such information, the City shall advise the Contractor of such request in order to give the Contractor the opportunity to object to the disclosure of any of its documents which it marked as proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. The Contractor further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of the Contractor's intervention to protect and assert its claim of privilege against disclosure under this Article including but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

14. SOFTWARE AS A SERVICE, SUPPORT AND SERVICES TO BE PERFORMED

14.1. The Contractor, under the general direction of, and in coordination with, the City's Chief Information Officer or other designated supervisory personnel (the "Manager") agrees to provide and perform the technology related services described on attached **Exhibit A** (the "Statement of Work" or "SOW"). The Services, when fully accepted, shall conform to the functionality matrix set out from the IFB Response. The Parties acknowledge that Contractor and the City may work to further define the SOW, in which case that work product ("Follow-Up

SOW”) will become a part of this Agreement by incorporation. If the Follow-Up SOW materially alters the attached SOW, the Parties agree to amend this Agreement in writing.

14.2. As the Manager directs, the Contractor shall diligently undertake, perform, and complete all of the technology related services and produce all the deliverables set forth on **Exhibit A** to the City’s satisfaction.

14.3. The Contractor is ready, willing, and able to provide the technology related services and the Services required by this Agreement.

14.4. The Contractor shall faithfully perform the technology related services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in this Agreement and in accordance with the terms of this Agreement.

14.5. User ID Credentials. Internal corporate or customer (tenant) user account credentials shall be restricted as per the following, ensuring appropriate identity, entitlement, and access management and in accordance with established policies and procedures:

14.5.1. Identity trust verification and service-to-service application (API) and information processing interoperability (e.g., SSO and Federation);

14.5.2. Account credential lifecycle management from instantiation through revocation;

14.5.3. Account credential and/or identity store minimization or re-use when feasible; and

14.5.4. Adherence to industry acceptable and/or regulatory compliant authentication, authorization, and accounting (AAA) rules (e.g., strong/multi-factor, expire able, non-shared authentication secrets).

14.6. Vendor Supported Releases. The Contractor shall maintain the currency all third-party software used in the development and execution or use of the Service including, but not limited to: all code libraries, frameworks, components, and other products (e.g., Java JRE, code signing certificates, .NET, jQuery plugins, etc.), whether commercial, free, open-source, or closed-source; with third-party vendor approved and supported releases.

14.7. Identity Management. The City’s Identity and Access Management (IdM) system is an integrated infrastructure solution that enables many of the City’s services and online resources to operate more efficiently, effectively, economically and securely. All new and proposed applications must utilize the authentication and authorization functions and components of the IdM. Strong authentication is required for privileged accounts or accounts with access to sensitive information. This technical requirement applies to all solutions, regardless to where the application is hosted.

15. GRANT OF LICENSE; RESTRICTIONS

15.1. The Contractor hereby grants to the City a right and license to display, perform, and use the Services and use all intellectual property rights necessary to use the Services as authorized.

15.2. Title to and ownership of the Service will remain with the Contractor. The City will not reverse engineer or reverse compile any part of the Service. The City will not remove, obscure

or deface any proprietary notice or legend contained in the Service or Documentation without Contractor's prior written consent.

16. DELIVERY AND ACCEPTANCE

16.1. Right to Perform Acceptance Testing. Prior to accepting Deliverables, the City shall have the right to perform Acceptance Testing to evaluate the Deliverable(s) to ensure they meet Acceptance Criteria, if any, set forth on the applicable Order Form or Scope of Work. The Contractor shall cooperate with the City in the development of Acceptance Criteria that shall be codified in the applicable Order Form or Scope of Work that will set forth the location, date, and other specifications of the Acceptance Testing, if any. Acceptance Testing may occur in one or more phases, depending on the integration of contingent products, scalability, performance tuning or other measurable features or milestones.

16.2. After an Acceptance Test and if at any time the Service does not conform, the City will notify the Contractor in writing within sixty (60) days and will specify in reasonable detail the identified failures and possible reasons for failure. The Contractor will, at its expense, repair or replace the nonconforming product within fifteen (15) days after receipt of the City's notice of deficiency.

16.3. If the City issues an Acceptance Certificate for an "Acceptance with Exception(s)" the City will list the exception(s) and the date for Contractor's correction of the Error(s). If Error(s) are corrected by the listed date(s) the City agrees to commence further Acceptance Testing of the Deliverable or affected portion(s). If the Deliverable passes the Acceptance Tests, the City will issue an Acceptance Certificate.

16.4. If a Deliverable fails a second or subsequent Acceptance Test (or in the event of a single Acceptance Test, the Acceptance Test) in no event shall there be an increase to the original price agreed to by the Parties for the Deliverable.

16.5. The foregoing procedure will be repeated until the City accepts or finally rejects the Deliverable, in whole or part, in its sole discretion. In the event that the Service does not perform to the City's satisfaction, the City reserves the right to repudiate acceptance. If the City finally rejects the Service, or repudiates acceptance of it, the Contractor will refund to the City all fees paid, if any, by the City with respect to the Service.

16.6. If the City is not satisfied with the Contractor's performance of the technology related services described in the Statement of Work, the City will so notify the Contractor within thirty (30) days after the Contractor's performance thereof. The Contractor will, at its own expense, re-perform the service within fifteen (15) days after receipt of City's notice of deficiency. The foregoing procedure will be repeated until the City accepts or finally rejects the technology related service in its sole discretion. If City finally rejects any technology related service, the Contractor will refund to the City all fees paid by the City with respect to such technology related service.

16.7. The Contractor warrants that during the term of this Agreement that the Service and any associated components will not materially diminish during the subscription Term.

17. TERM. The term of the Agreement is from August 1, 2026, through July 31, 2031 (the "Term").

18. COMPENSATION AND PAYMENT

18.1. Fee: The fee for the Services and technology related services is described in the attached **Exhibit B** (the “Fee”). The Fee shall be paid pursuant to the City’s Prompt Payment Ordinance and in accordance with any payment milestones in **Exhibit B**.

18.2. Reimbursement Expenses: The fees specified above include all expenses, and no other expenses shall be separately reimbursed or incurred hereunder for the provision of the Service(s).

18.3. Invoicing: The Contractor must submit an invoice which shall include the City contract number, clear identification of the deliverable that has been completed, and other information reasonably requested by the City. Payment on all uncontested amounts shall be made in accordance with the City’s Prompt Payment Ordinance.

18.4. Maximum Agreement Liability:

18.4.1. Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed the Fee. The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by the Contractor beyond that specifically described in the attached Exhibits. Any services performed beyond those in the attached Exhibits are performed at the Contractor’s risk and without authorization under this Agreement.

18.4.2. The City’s payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. This Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

19. STATUS OF CONTRACTOR. The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

20. TERMINATION

20.1. The City has the right to terminate this Agreement, or a product under this Agreement, with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to the Contractor. However, nothing gives the Contractor the right to perform services under this Agreement beyond the time when its services become unsatisfactory to the Manager.

20.2. Notwithstanding the preceding paragraph, the City may terminate this Agreement if the Contractor or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with the Contractor’s business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

20.3. Upon termination of this Agreement, with or without cause, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in this Agreement and shall refund to the City any prepaid cost or expenses.

21. EXAMINATION OF RECORDS AND AUDITS. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at the City's election in paper or electronic form, any pertinent books, documents, papers and records related to the Contractor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. The Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under this Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require the Contractor to make disclosures in violation of state or federal privacy laws. The Contractor shall at all times comply with D.R.M.C. 20-276.

22. WHEN RIGHTS AND REMEDIES NOT WAIVED. In no event shall any action by either Party hereunder constitute or be construed to be a waiver by the other Party of any breach of covenant or default which may then exist on the part of the Party alleged to be in breach, and the non-breaching Party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to that Party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

23. INSURANCE

23.1. General Conditions: The Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. The Contractor shall keep the required insurance coverage in force at all times during the term of this Agreement, including any extension thereof, and during any warranty period. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, the Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. The Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements,

and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

23.2. Proof of Insurance: The Contractor may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. The Contractor certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD form, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of the Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

23.3. Additional Insureds: For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), the Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

23.4. Waiver of Subrogation: For all coverages required under this Agreement, the Contractor's insurer shall waive subrogation rights against the City.

23.5. Subcontractors and Subconsultants: The Contractor shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by the Contractor and appropriate to their respective primary business risks considering the nature and scope of services provided.

23.6. Workers' Compensation and Employer's Liability Insurance: The Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

23.7. Commercial General Liability: the Contractor shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.

23.8. Automobile Liability: The Contractor shall maintain Automobile Liability with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

23.9. Commercial Crime: The Contractor shall maintain minimum limits of \$1,000,000 in commercial crime insurance coverage. Coverage shall include theft of City's money, securities or valuable property by the Contractor's employees, including any extended definition of employee. The City and County of Denver shall be named as Loss Payee as its interest may appear.

24. DEFENSE AND INDEMNIFICATION.

24.1. The Contractor hereby agrees to defend, indemnify, reimburse and hold harmless the City, its appointed and elected officials, agents and employees for, from and against all

liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify the City for any acts or omissions of the Contractor or its subcontractors either passive or active, irrespective of fault, including the City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

24.2. The Contractor’s duty to defend and indemnify the City shall arise at the time written notice of the Claim is first provided to the City regardless of whether Claimant has filed suit on the Claim. The Contractor’s duty to defend and indemnify the City shall arise even if the City is the only party sued by claimant and/or claimant alleges that the City’s negligence or willful misconduct was the sole cause of claimant’s damages.

24.3. The Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of the City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to the City and shall not be considered the City’s exclusive remedy.

24.4. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

24.5. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

24.6. The Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys’ fees and costs) incurred by the Indemnified Parties in relation to any claim that any Deliverable, Service, software, or work product provided by the Contractor under this Agreement (collectively, “IP Deliverables”), or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

25. COLORADO GOVERNMENTAL IMMUNITY ACT. The Parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, *et seq.*, C.R.S. (2003).

26. TAXES, CHARGES AND PENALTIES. The City shall not be liable for the payment of taxes, late charges or penalties of any nature other than the compensation stated herein, except for any additional amounts which the City may be required to pay under D.R.M.C. § 20-107 to § 20-115.

27. ASSIGNMENT; SUBCONTRACTING. The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations under this Agreement without obtaining the General Services’ Executive Director’s (the “Executive Director”) prior written consent. The Contractor shall not subcontract performance obligations under this Agreement without obtaining the Executive Director’s or the Executive Director’s designated representative’s prior written

consent. Any assignment or subcontracting without such consent will be ineffective and void, and will be cause for termination of this Agreement by the City. The Executive Director (in the case of an assignment) and the Representative (in the case of a subcontract) has absolute discretion whether to consent to any assignment or subcontracting. The Executive Director has sole and absolute discretion to terminate this Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

28. NO THIRD-PARTY BENEFICIARY. Enforcement of the terms of this Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in this Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to this Agreement is an incidental beneficiary only.

29. NO AUTHORITY TO BIND CITY TO CONTRACTS. The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City’s Charter and the Denver Revised Municipal Code.

30. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS. Except for the functional requirements provided in response to a request for proposal and/or any subsequent enhancement of the SOW or other implementation documentation that may be developed after execution of this Agreement, this Agreement is the complete integration of all understandings between the Parties as to the subject matter of this Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in this Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of this Agreement or any written amendment to this Agreement will have any force or effect or bind the City.

31. SEVERABILITY. Except for the provisions of this Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of this Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

32. CONFLICT OF INTEREST.

32.1. No employee of the City shall have any personal or beneficial interest in the services or property described in this Agreement. The Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City’s Code of Ethics, D.R.M.C. § 2-51, *et seq.* or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

32.2. The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor’s own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will

determine the existence of a conflict of interest and may terminate this Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

33. NOTICES. All notices required by the terms of this Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:

Executive Director of General Services or Designee
201 West Colfax Avenue, Dept. 1110
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

34. DISPUTES. All disputes between the City and the Contractor arising out of or regarding this Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Manager as defined in this Agreement.

35. GOVERNING LAW; VENUE. The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into this Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to this Agreement will be in the District Court of the State of Colorado, Second Judicial District. The Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

36. NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.

37. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS. The Contractor shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto

concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring the Contractor from City facilities or participating in City operations.

38. LEGAL AUTHORITY. The Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement. Each person signing and executing this Agreement on behalf of the Contractor represents and warrants that he has been fully authorized by the Contractor to execute this Agreement on behalf of the Contractor and to validly and legally bind the Contractor to all the terms, performances and provisions of this Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either the Contractor or the person signing this Agreement to enter into this Agreement.

39. NO CONSTRUCTION AGAINST DRAFTING PARTY. The Parties and their respective counsel have had the opportunity to review this Agreement, and this Agreement will not be construed against any party merely because any provisions of this Agreement were prepared by a particular party.

40. ORDER OF PRECEDENCE. In the event of an irreconcilable conflict (i) between a provision of this Agreement and any of the listed exhibits or attachments or (ii) among provisions of any exhibits or attachments, such that it is impossible to give reasonable effect to all, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

Exhibit D; Agreement Text; Exhibit A; Exhibit B; Exhibit C.

41. SURVIVAL OF CERTAIN PROVISIONS. The terms of this Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of this Agreement survive this Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

42. INUREMENT. The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.

43. TIME IS OF THE ESSENCE. The Parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.

44. PARAGRAPH HEADINGS. The captions and headings set forth herein are for convenience of reference only and shall not be construed to define or limit the terms and provisions hereof.

45. CITY EXECUTION OF AGREEMENT. This Agreement is expressly subject to and shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.

46. COUNTERPARTS OF THIS AGREEMENT. This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

47. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS. The Contractor consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

48. ADVERTISING AND PUBLIC DISCLOSURE. The Contractor shall not include any reference to this Agreement or to services performed pursuant to this Agreement in any of the Contractor's advertising or public relations materials without first obtaining the written approval of the Manager. Any oral presentation or written materials related to services performed under this Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the Manager in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

49. COMPLIANCE FOR IN-SCOPE SERVICES. The Contractor covenants and agrees to comply with all information security and privacy obligations imposed by any federal, state, or local statute or regulation, or by any industry standards or guidelines, as applicable based on the classification of the data relevant to the Contractor's performance under the Agreement. Such obligations may arise from:

- Health Information Portability and Accountability Act (HIPAA)
- IRS Publication 1075
- Payment Card Industry Data Security Standard (PCI-DSS)
- FBI Criminal Justice Information Service Security Addendum

CMS Minimum Acceptable Risk Standards for Exchanges and further covenants and agrees to maintain compliance with the same when appropriate for the data and Services provided under this Agreement. The Contractor further agrees to exercise reasonable due diligence to ensure that all of its service providers, agents, business partners, contractors, Subcontractors and any person or entity that may have access to City Data under this Agreement maintain compliance with and comply in full with the terms and conditions set out in this Section. The respective processing, handling, and security standards and guidelines referenced by this section may be revised or changed from time to time or City Data may be utilized within the Services that change the compliance requirements. If compliance requirements change, the Contractor and the City shall collaborate in good faith and use all reasonable efforts to become or remain compliant as necessary under this section. If compliance is required or statutory and no reasonable efforts are available, the City at its discretion may terminate the agreement for cause.

50. ON-LINE AGREEMENT DISCLAIMER. Notwithstanding anything to the contrary herein, the City shall not be subject to any provision included in any terms, conditions, or agreements appearing on the Contractor's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the work unless that provision is specifically referenced in this Agreement.

51. PROHIBITED TERMS. Any term included in this Agreement that requires the City to indemnify or hold the Contractor harmless; requires the City to agree to binding arbitration; limits

the Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of § 24-106-109 C.R.S.

52. ON-CALL SERVICES. This Agreement or the SOW may contain hourly or daily rates and the Contractor and the Manager may enter into work orders for ongoing services. The City may authorize specific assignments for the Contractor by placing a written work order signed by the Manager and the Contractor (the "Order") describing in sufficient details the services and/or deliverables at the rates provided or as a flat rate. The Contractor agrees that during the term of this Agreement it shall fully coordinate its provision of the services with any person or firm under contract with the City doing work or providing services which affect the Contractor's services. The Contractor shall faithfully perform the work in accordance with the standards of care, skill, training, diligence and judgment provided by highly competent individuals and entities that perform services of a similar nature to those described in this Agreement. The Contractor represents and warrants that all services will be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards; all services will conform to applicable specifications and as attached to the Order, if any; and, it has the requisite ownership, rights and licenses to perform its obligations under this Agreement fully as contemplated hereby and to grant to the City all rights with respect to any software and services free and clear from any and all liens, adverse claims, encumbrances and interests of any third party.

53. PCI DSS COMPLIANCE ONLY FOR CREDIT CARD INTERFACE.

53.1. If the Contractor is directly involved in the processing, storage, or transmission of cardholder data on behalf of the City as part of this Agreement, this Section applies. Any Contractor who provides or has access to software, systems, hardware, or devices which process and/or interact with payment card information or payment cardholder data must be compliant with the current version of the Payment Card Industry Data Security Standard (PCI DSS).

53.2. The Contractor covenants and agrees to comply with Visa's Cardholder Information Security Program (CISP), MasterCard's Site Data Protection Rules (SDP), and with all other credit card association or National Automated Clearing House Association (NACHA) rules or rules of member organizations ("Association"), and further covenants and agrees to maintain compliance with the PCI DSS, SDP, and (where applicable) the Payment Application Data Security Standard (PA-DSS) (collectively, the "Security Guidelines"). The Contractor represents and warrants that all of the hardware and software components utilized for the City or used under this Agreement is now, and will be PCI DSS compliant during the term of this Agreement. All service providers that the Contractor uses under this Agreement must be recognized by Visa as PCI DSS compliant. The Contractor further agrees to exercise reasonable due diligence to ensure that all of its service providers (as defined by the PCI Security Council), agents, business partners, contractors, Subcontractors and any person or entity that may have access to credit card information under this Agreement maintain compliance with the Security Guidelines and comply in full with the terms and conditions set out in this Section. The Contractor further certifies that the equipment, as described herein, will be deployed in a manner that meets or exceeds the PA DSS and/or PCI certification and will be deployed on a network that meets or exceeds PCI standards. The Contractor shall demonstrate its compliance with PCI DSS by annually providing the City an executed Attestation of Compliance (AOC). The Contractor must provide verification to the City, prior to start up and ongoing annually during the term of this Agreement, that all modules of Contractor's system(s) that interface with or utilize credit card information in

any manner or form of collection are PCI DSS compliant. If the Contractor is a service provider involved in the processing, storage or transmission of cardholder data or sensitive authentication data (collectively "Data Handling") on behalf of the City that would result in Data Handling being included in the City's PCI scope through connected software or components, then the Contractor must provide a PCI Responsibility Matrix ("Matrix") to be attached to this Agreement as an exhibit. The Matrix must identify where responsibility resides for each PCI control requirement, whether it be with the Contractor, the City or shared by both. Any PCI control requirements that do not apply should be indicated along with any pertinent notes.

53.3. The Contractor shall not retain or store CAV2/CVC2/CVV2/CID or such data prohibited by PCI DSS subsequent to authorization of a credit card transaction, shall prohibit disclosure of any and all cardholder information, and in the event of a compromise of credit card information of any kind, the Contractor shall notify the City in writing consistent with the Data Incident response notification requirements of this Agreement, and shall provide, at the Contractor's sole expense, all necessary and appropriate notification to parties and persons affected by such disclosure and compromise.

53.4. If any Association requires an audit of the Contractor or any of the Contractor's Service Providers, agents, business partners, contractors or Subcontractors due to a data security compromise event related to this Agreement, the Contractor agrees to cooperate with such audit. If as a result of an audit of the City it is determined that any loss of information is attributable to the Contractor, the Contractor shall pay the City's reasonable costs relating to such audit, including attorney's fees. No review, approval, or audit by the City shall relieve the Contractor from liability under this section or under other provisions of this Agreement.

53.5. In addition to all other defense and indemnity obligations undertaken by the Contractor under this Agreement, the Contractor, to the extent that its performance of this Agreement includes the allowance or utilization by members of the public of credit cards to pay monetary obligations to the City or the Contractor, or includes the utilization, processing, transmittal and/or storage of credit card data by the Contractor, shall defend, release, indemnify and save and hold harmless the City against any and all fines, penalties, assessments, costs, damages or other financial obligations, however denominated, assessed against the City and/or the Contractor by credit card company(s), financial institution(s) or by the National Automated Clearing House Association (NACHA) or successor or related entity, including but not limited to, any credit card company fines, regardless of whether considered to be consequential, special, incidental or punitive damages, costs of notifying parties and persons affected by credit card information disclosure, the cost of replacing active credit cards, and any losses associated with fraudulent transaction(s) occurring after a security breach or loss of information with respect to credit card information, and shall defend, release, indemnify, and save and hold harmless the City from any and all claims, demands, suits, actions, liabilities, causes of action or legal or equitable proceedings of any kind or nature, of or by anyone whomsoever, in any way affected by such credit card data or utilizing a credit card in the performance by the Contractor of this Agreement. In furtherance of this, the Contractor covenants to defend and indemnify the City and the Contractor shall maintain compliance with PCI DSS and with all other requirements and obligations related to credit card data or utilization set out in this Agreement.

54. COMPLIANCE WITH DENVER WAGE LAWS. To the extent applicable to the Contractor's provision of Services hereunder, the Contractor shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the

City's Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Contractor expressly acknowledges that the Contractor is aware of the requirements of the City's Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

55. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS. The Contractor shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.

ATTACHED EXHIBITS

EXHIBIT A – SCOPE OF WORK AND TECHNICAL REQUIREMENTS

EXHIBIT B – FEES

EXHIBIT C – CERTIFICATE OF INSURANCE

EXHIBIT D – INFORMATION TECHNOLOGY PROVISIONS

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK;
SIGNATURE PAGES FOLLOW.]**

Contract Control Number: GENRL-202581757-00
Contractor Name: W.J. DICKENSHEET & ASSOCIATES, INC.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

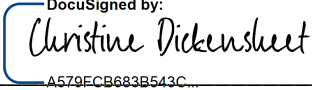
By:

By:

By:

Contract Control Number:
Contractor Name:

GENRL-202581757-00
W.J. DICKENSHEET & ASSOCIATES, INC.

By:  _____
A579FCB683B543C...

Name: Christine Dickensheet
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Exhibit A

SCOPE OF WORK AND TECHNICAL REQUIREMENTS

SCOPE OF SERVICES

Contractor shall provide auction services specifically for the sale of impounded vehicles, which shall include but not be limited to the online auction platform, auction site set-up, producing item descriptions (text, photos, videos, etc.), bidder registration, paperwork/bill of sale completion, collection and remittance of proceeds, collection and remittance of taxes, customer service and any further responsibilities and duties, as required.

NON-EXCLUSIVE AGREEMENT

This is a non-exclusive AGREEMENT. The City reserves the right to obtain similar services through other procurements or manners of sale if, in the opinion of the City, it is in the best interest of the City and County of Denver to do so. Other manners of disposition may include, but are not limited to, the following methods: sealed bids, phone bids, intergovernmental sales, donations, posted prices, other online auction platforms, other auctioneers, and etcetera. Further, the Contractor hereunder shall have no right to any compensation pursuant to any alternate method of sale determined to be in the best interests of the City and County of Denver.

AUCTION REVENUE HISTORY

The City's approximate gross revenue from the sale of impounded vehicles at auction for the period of January 2022 through December 2024 are noted below. The City neither states nor implies that auctions of impounded vehicles conducted pursuant to this solicitation shall equal or exceed revenues noted below. The data below is for informational purposes only.

Auction Description	Auction Totals 2022 through 2024	# of Auctions
Abandoned/Confiscated/Impounded Vehicles and Vehicular Equipment	Revenue = \$20,171,746.65 Vehicles Sold = 11,613	78

SCOPE OF WORK

SERVICE REQUIREMENTS

Contractor shall provide, or subcontract for, a fully hosted and secure web-based auction platform. Auction platform shall not interact with any City computer hardware, software, or database systems. City access to auction platform shall come through a common web browser only. The City shall have the ability to have a link (optional), which is seamless to the bidding community, from its auction domain name to the Contractor's website and/or auction platform, which allows bidders direct access to City auctions with minimal clicks.

Contractor shall provide a minimum of five (5) full-time employees, who are based in the State of Colorado, who shall manage the preparatory work (vehicle prep, descriptions, photographs, videos, etc.), auction creation, payment collection, paperwork completion, removal scheduling, removal coordination, customer service, and any further responsibilities and duties required to successfully manage impounded vehicle auctions.

Contractor shall have a presence in the Denver metro area, which shall include an office space that is open to the public Monday through Friday from 9am to 5pm and has the capability to provide in-person customer service, which shall include but not be limited to the collection of proceeds and paperwork/bill of sale completion.

Contractor shall provide highly responsive customer service throughout the duration of an active auction, from initial posting through property removal. Contractor will endeavor to respond within one-hour, and absolutely shall respond within one business day, to all inquiries from the City and bidders/buyers. The City shall have access to an account manager after hours by cell phone to resolve any unforeseen support issues. In addition, technical issues identified by the Contractor, which have the potential to disrupt business, shall be relayed to the City within one business day of issue identification. Any significant scheduled upgrades or changes to the website or platform shall be communicated to the City at least five (5) business days prior to implementation.

City shall have the ability to sell vehicles/equipment/property online, 24 hours a day, 7 days a week.

City shall have the ability to review all aspects of the auction process online via a common web browser.

Contractor shall require that bidders register and agree to City terms and conditions, creating a binding digital signature, prior to placing a bid. Contractor shall not charge bidders a registration fee to participate in online auctions. Bid deposits and/or bidder probationary policies may be required for items deemed high value at the City's sole discretion.

City shall have the ability to block bidders from participating in City auctions at the City's sole discretion.

Auctions shall use a soft close format where timeframe shall extend for an additional one minute if a bid is received within the last one minute of auction close. These extensions shall continue until no additional bids are received within one minute remaining of auction close.

Contractor shall provide an auction tool where the City may offer an auction item to the next highest bidder in cases where the highest bidder defaults. Contractor must receive approval from the City representative prior to making any offers to subsequent bidders.

The City reserves the right to set reserve prices on any auction item. The City reserves the right to accept or reject any or all bids and to add to or remove from items currently scheduled to be auctioned. All items will be sold "AS IS, WHERE IS" with no warranty or guarantee expressed or implied.

Contractor shall collect payments from buyers and remit net proceeds (less commission) to the City.

Contractor shall be responsible for the manner and terms in which payments are accepted for items sold.

Regardless of the manner in which the Contractor accepts payment for items sold at auction and regardless of default or non-payment by buyers pursuant to same, the City shall require payment in full from Contractor, less commission, once an item is marked "PAID" by Contractor.

Contractor shall be required to collect and remit appropriate sales tax on all taxable items as required by law.

Contractor shall be required to process and provide buyer refunds, as requested and authorized by City representative, with amounts deducted from future payments to the City.

Contractor shall remit payment to the City by ACH within two (2) business days of auction completion. Contractor shall notify the City representative that payment has been made and provide a consignor report detailing each payment.

Contractor shall be responsible to manually complete the prepopulated bills of sale and other sale documents with buyer information once buyer payment has been received. Other sale documents include salvage forms, seizure compliance statements, and/or any additional paperwork as required by law.

Contractor shall be responsible to schedule and coordinate buyer removal of vehicles, equipment, and/or property.

Contractor shall actively market City auctions to prospective bidders to maximize participation and revenue.

Contractor shall keep, maintain, and provide City representatives access to detailed City auction records for seven (7) years.

Auction requirements, methods and processes may be subject to revision in the best interests of the City per directives of the Surplus Manager and/or per mutual agreement between the Contractor and the Surplus Manager.

AUCTION SPECIFIC DETAILS & SERVICE REQUIREMENTS

- A. Client Agency:**
The Department of General Services, Surplus
- B. Where:**
Denver Sheriff Vehicle Impound Facility, 5160 York St, Denver, CO 80216
- C. When:**
Every Week (typically Wednesday's), throughout the year. (26 auctions per year)
- Pictures/descriptions compiled on a Wednesday with online auctions posted no later than 7 P.M. that same evening.
 - Auctions close on the following Sunday at times agreed upon between City and Contractor.
 - Buyer payments collected and vehicle paperwork completed the following Monday and Tuesday.
 - Buyer removal the following Wednesday from 8:00 A.M to 3:00 P.M.
 - Please see Exhibit E for example of the tentative 2026 Impound Auction Schedule.

NOTE!!! Auctions will not be canceled. Contractor and their staff shall be able and prepared to work during rain, shine or blizzard.

- D. Arrival Time:**
- 7:30 A.M. each Wednesday.
- E. Departure Time:**
- Conclusion of pictures/descriptions (typically 1:00 P.M.).
 - Conclusion of vehicle removal (typically 3:30 P.M.).
- F. Personnel Required (minimum):**
- Four (4) - General employees to prepare/manage online auction and manage/coordinate removal of sold vehicles.
 - One (1) - City Contract Manager
- G. Equipment Required:**
- Five (5) – Cameras/phones/tablets to capture photos and descriptions.
 - One (1) – Computer and printer to generate invoices and/or paperwork as needed.
 - One (1) – Mobile Internet Hotspot Device
- H. Auction Specific Duties Required:**

Snow/Ice: Contractor shall clear vehicles of snow and ice prior to the photographing or removal of vehicles scheduled to be sold.

Mileage: Contractor shall assist in verifying mileages for vehicles twenty (20) years or newer beginning with the model year 2011.

Sale Order: Contractor shall inspect the sale yard to ensure vehicles are in proper order and there are no unexpected additions or deletions.

Keys/Remotes: Contractor shall search each vehicle for ignition keys and/or remotes. Contractor shall place ignition keys/remotes found into an envelope and mark the envelope with the appropriate lot number. If an ignition key/remote is found, Contractor shall attempt to start vehicle. Contractor shall clearly announce and/or post which vehicles have keys/remotes and of which vehicles have started prior to the selling of such vehicles. If a key/remote is lost or mislabeled in anyway by Contractor, it shall be the responsibility of the Contractor to resolve the situation with the buyer, which shall include paying for a replacement key/remote if necessary.

Online Auction Pictures/Descriptions: Contractor shall produce detailed, accurate, honest descriptions and pictures. (minimum online auction standards shall be required by the City).

Terms & Conditions: Contractor shall ensure that all City terms & conditions of sale are clearly announced, posted, and accepted by any bidder wishing to participate in the auction process.

Special Vehicle Designations: Contractor shall clearly announce and/or post information regarding vehicles that have special designations as assigned by the City or State prior to the selling of such vehicles. Such designations include, but are not limited to salvage, rebuilt from salvage, parts only, seizure, assigned id, odometer discrepancy and others as required.

Bidder Registration: Contractor shall require that bidders register and agree to City terms and conditions, creating a binding digital signature, prior to placing a bid. Contractor shall not charge bidders a registration fee to participate in auctions.

Deposits: Bid deposits may be required by the City. If required, Contractor shall be responsible for the collection and reimbursement of said deposits.

Security: Contractor shall assist the City and/or City provided security vendor in maintaining the security of the auction yard and deterring theft while performing auction duties.

Auction Completion: Contractor shall make every effort to ensure that all vehicles scheduled for auction are in fact sold, unless it is obvious that "fair market value" has not been achieved and this "no sale" has been approved by City representatives. Re-sales can be common, and City representative oversight of re-sales shall be required.

Paperwork/Bills of Sale: Contractor shall be responsible to manually complete the prepopulated bills of sale and other sale documents with buyer information once buyer payment has been received. Other sale documents include salvage forms, seizure compliance statements, and/or any additional paperwork as required by law.

- Contractor shall be required to pick-up prepopulated bills of sale and other sale documents from a designated City facility no later than the Friday following the Wednesday picture/description day.
- All “goldenrod” copies of completed Bills of Sale shall be retained and provided to the City representative immediately following auction or vehicle removal day.

Buyer Removal: Contractor shall schedule vehicle removals using designated time slots to ensure a safe and controlled environment. Contractor shall make every effort to ensure that all sold vehicles are removed within the allowed timeframe. Contractor shall verify that vehicles are removed by confirmed buyer or authorized individual.

Waste Management: Contractor shall make every effort to ensure that buyer removes all contents of the vehicle. Garbage/debris/waste shall not be left behind by buyer. Contractor shall assist City personnel in picking up garbage/debris/waste to ensure a clean sale yard while performing auction duties.

I. Receipt of Proceeds:

Contractor shall be responsible for the receipt, safekeeping, and deposit of all proceeds generated at the sale.

J. Remittance of Proceeds:

Contractor shall remit payment to the City by ACH within two (2) business days following auction completion.

Contractor shall notify the City representative that payment has been made and provide a consignor report detailing each payment.

Consigner report shall include a detailed listing of all items sold (including proceeds received and fees charged) and a detailed listing of all registered bidders.

Separate physical checks are sometimes required. Contractor will be notified by a City representative if a separate check is required and payee of said check.

CONTRACT COMPLIANCE CONDITIONS

Conflict of Interest

Contractor and/or their employees are prohibited from registering as bidders and/or bidding on items offered for sale at City auction events serviced by the Contractor.

Substantiated evidence of the Contractor and/or their employees being registered as bidders and/or offering bids shall be a conflict of interest and shall be cause for cancellation of this contract.

Further, it shall be a conflict of interest and cause for cancellation of this contract for the Contractor and/or their employees to have a collusive relationship with any registered auction bidder.

Inappropriate Personnel

Employees of the Contractor shall be able to perform assigned tasks in a competent manner and be willing to perform related tasks as needed.

Misconduct or incompetence on the part of any employee(s) of Contractor may be considered a deficiency and may result in the issuance of a Contractor Deficiency Report to Contractor.

Further, the City reserves the right to request replacement of personnel deemed unable or unwilling to adequately perform assigned tasks.

Continual staffing of deficient personnel may be grounds for cancellation of contract.

Auction Requirements

Contractor shall make every effort to minimize buyer defaults. Continual or excessive buyer defaults may be grounds for cancellation of contract.

Pictures, descriptions, terms and conditions used shall be of a professional level up to City standards. Continual use of poor or inaccurate pictures, descriptions, terms and conditions may be grounds for cancellation of contract.

Deficiency

Contractor shall respond in full with a corrective action plan to Contractor Deficiency Report sent by the City within five (5) business days.

ENVIRONMENTAL MANAGEMENT SYSTEM, ENVIRONMENTAL POLICY, AWARENESS, AND COMPLIANCE

Some City operations can pose risks to human health and the environment. Proactive environmental management can reduce risk and prevent harm. The Denver Environmental Performance Program (DEPP) is the City's ISO 14001 Environmental Management System (EMS). The DEPP ensures all aspects of City operations with the potential to cause environmental impacts are proactively managed. The DEPP reinforces the City's position that the City's business partners are aware of the City's Environmental Policy, and are responsible for supplying goods and services in a manner consistent with this policy. The DEPP also requires business partners ensure the competency of their staff with respect to the environmental impacts of their duties.

The Environmental Policy of the City & County of Denver, may be found at:

<https://denvergov.org/files/assets/public/v/2/public-health-and-environment/documents/eq/2024-denver-environmental-policy.pdf>

All City business partners are required to comply with federal, state, and local environmental regulations. The DEPP requires all City business partners to be aware of the impacts their products and services have on the environment and implement practices to minimize impacts, prevent pollution, and align outcomes with the City's environmental performance goals.

The Contractor shall provide products and services under this agreement consistent with the City's Environmental Policy and any environmental performance goals identified by the agency for whom the contractor is performing work.

A.1.a Environmentally Preferable Purchasing (EPP) Guidance

The City defines Environmentally Preferable products and services as those having a lesser or reduced effect on human health and the environment when compared with competing products and services serving the same purpose. The City's EPP evaluation may extend to materials of manufacture, packaging, transport, recycled content, energy consumption, local recyclability, waste disposal, and other factors.

Vendors are encouraged to describe any EPP attributes of the goods or services they offer to the City. Applicable EPP considerations may factor in product and service evaluations.

PRICING INFORMATION:

This section shall include a description of the proposed costs and prices. All pricing information shall be limited solely to this section of your bid. This section should address all requirements set forth in Section B as well as any other items pertinent to your bid pricing such as additional discounts for increased quantities, etc. The requirements have been developed to allow the City to uniformly evaluate prices submitted for the work. Accordingly, you should follow these instructions carefully and provide all data requested in the formats specified herein and in any referenced attachments.

Any omissions in this bid shall be identified by each Vendor and incorporated into their bid including any omissions for software, hardware, support etc. which is necessary to the success of the project and must be identified as a separate line item with pricing and included as part of this bid. The City will not increase the contract or any purchase order (either dollar amount or time) for items not included in the submitted bid documents. The City reserves the right to purchase part or the entire bid.

PRICING INFORMATION:

All prices quoted shall be firm and fixed. Pricing shall be in the format contained in the IFB. Do not include cost or price figures anywhere except in the cost and pricing section.

All prices, and premiums quoted shall be firm and fixed for the specified contract period.

Contractor shall receive their fee from a premium charged to buyers based upon the final selling price of auction items.

- Buyer's premium shall be charged only on the actual auction sale price. Sales taxes shall not be used as a component of the buyer's premium.

Buyer's premium shall be the only compensation allowed to the Contractor. All costs to the Contractor shall be included in this buyer's premium. No additional fees or charges are allowed pursuant to this service (e.g. listing fee, minimum auction fee, training fee, technical support fee, etc.). The Contractor shall not request, and the City or buyers shall not provide additional remuneration other than that set out above as a Buyer's Premium.

Contractor will only be paid its auction premium on items that have sold and been paid for.

Contractor may impose a credit card service fee where the terms of sale include the use of credit cards. Credit card service fee shall be in accordance with Colorado law.

Contractor shall ensure that all auction fees (i.e. buyer's premium, credit card service fee, tax rate, etc.) are clearly announced, posted and accepted by any bidder wishing to participate in the auction process.

Exhibit B		
Bid Item #	Description	Cost (%)
1	Buyer's Premium to Contractor	4.00%
2	Rebate Returned to City	0.00%
Vendor Retainage		4%

EXHIBIT D, INFORMATION TECHNOLOGY PROVISIONS

This Exhibit regarding Information Technology Provisions (this “Exhibit”) is a material part of the Agreement between the Parties to which this Exhibit is attached. In addition to the requirements of the main body of this Agreement, the Contractor shall protect the City’s information technology resources and City Data in accordance with this Exhibit. All provisions of this Exhibit that refer to the Contractor shall apply equally to any Subcontractor performing work in connection with this Agreement. Unless the context clearly requires a distinction between the Agreement and this Exhibit, all references to “Agreement” shall include this Exhibit.

1. **TECHNOLOGY SERVICES SPECIFICATIONS**

1.1. User ID Credentials: Internal corporate or customer (tenant) user account credentials shall be restricted, ensuring appropriate identity, entitlement, and access management and in accordance with established policies and procedures, as follows:

1.1.1. Identity trust verification and service-to-service application (API) and information processing interoperability (e.g., SSO and Federation);

1.1.2. Account credential lifecycle management from instantiation through revocation;

1.1.3. Account credential and/or identity store minimization or re-use when feasible; and

1.1.4. Adherence to industry acceptable and/or regulatory compliant authentication, authorization, and accounting (AAA) rules (e.g., strong/multi-factor, expire able, non-shared authentication secrets).

1.2. Identity Management: The City’s Identity and Access Management (“IdM”) system is an integrated infrastructure solution that enables many of the City’s services and online resources to operate more efficiently, effectively, and securely. All new and proposed applications must utilize the authentication and authorization functions and components of IdM. Strong authentication is required for privileged accounts or accounts with access to sensitive information. This technical requirement applies to all solutions regardless of where the application is hosted.

1.3. Supported Releases: The Contractor shall maintain the currency of all third-party software used in the development and execution or use of the Work with third-party vendor approved and supported releases, including, but not limited to, all code libraries, frameworks, components, and other products (e.g., Java JRE, code signing certificates, .NET, jQuery plugins, etc.), whether commercial, free, open-source, or closed-source. This includes any of the Contractor’s controlled systems running on the City’s network, including, but not limited to, any application, firewall, or other type of physical or virtual appliances.

1.4. Updates & Upgrades: During the Term of this Agreement, the Contractor shall provide the City with copies of all new versions, updates, and upgrades of the On-Premise Software (collectively, “Upgrades”), without additional charge, promptly after commercial release. Upon delivery to the City, Upgrades will become part of the On-Premise Software and will be subject to the license and other terms of this Agreement applicable to such On-Premise Software. In addition, the Contractor shall ensure that SaaS receives all updates and upgrades the Contractor provides to its customers generally.

- 1.5. Compatibility with Third-Party Software:** The Contractor acknowledges and agrees that the Work must integrate and operate compatibly with various third-party software products. The Contractor shall actively monitor and stay current on new version releases, updates, and changes made to any such third-party software that interfaces or integrates with the Contractor's Work. The Contractor shall ensure that its own products remain fully compatible with the most recent generally available versions of these third-party software components. Within ninety (90) days of the commercial release of a new generally available version of any interfacing third-party software, the Contractor shall complete all necessary testing, coding, and product updates to certify compatibility with the new version. The Contractor shall provide the updated and version-compatible products to the City at no additional cost. If the Contractor's Work is not compatible with the most current generally available third-party software versions required for operation, the City reserves the right to temporarily cease using the incompatible Work until the compatibility issue is resolved, without penalty or payment for a period of noncompliance. Under no circumstances shall the Contractor require the City to run old, non-current versions of third-party software to remain compatible with the Contractor's Work. The responsibility and costs for ensuring third-party software version compatibility shall reside solely with the Contractor.
- 1.6. Adjustment of Licenses:** The City may, at each anniversary date of this Agreement, increase or decrease the number of licenses it has purchased under this Agreement by giving written notice to the Contractor at least thirty (30) days prior to the anniversary date. The Contractor shall adjust the invoice for the next billing period based on the unit price per license specified in this Agreement. The City shall not reduce the number of licenses below the minimum quantity required under this Agreement.
- 1.7. Timing of Fees and Subscriptions:** Notwithstanding any provision to the contrary: (i) no fees for maintenance of On-Premise Software or SaaS, including without limitation for Upgrades, will accrue before Go-Live (as defined below); and (ii) no period before Go-Live will be counted against the time covered by any maintenance period. In addition, no fees for use of SaaS will accrue before Go-Live, and no period before Go-Live will be counted against the time covered by any SaaS subscription fees. "Go-Live" refers to the earlier of Acceptance of the On-Premise Software or SaaS or the City's first use of the On-Premise Software or SaaS in production, other than a beta use or trial.
- 1.8. Transition Assistance:** The Contractor acknowledges that the Work to be performed under this Agreement is vital to the City and must be continued without interruption and that, upon this Agreement's expiration without renewal, a successor, either the City or another contractor, may continue them. The Contractor agrees to: (i) furnish phase-in training; and (ii) exercise its best efforts and cooperation to complete an orderly and efficient transition to a successor. The Contractor shall, upon the City's written notice: (i) furnish phase-in, phase-out services for up to sixty (60) days after this Agreement expires; and (ii) negotiate in good faith to determine the nature and extent of phase-in, phase-out services required. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the Work called for by this Agreement are maintained at the required level of proficiency. The Contractor shall be

reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after expiration that result from phase-in, phase-out operations) at the rates contained herein. The City shall have the authority extend this Agreement monthly if additional time is required beyond the termination of this Agreement, if necessary, to effectuate the transition, and the City shall pay a proration of the subscription fee during any necessary extension.

2. SECURITY AUDITS

2.1. Performance of Security Audits: Prior to the Effective Date of this Agreement, the Contractor, will at its expense conduct or have conducted the following, and thereafter, the Contractor will at its expense conduct or have conducted the following at least once per year, and immediately after any actual or reasonably suspected Security Breach: (i) a SSAE 18/SOC 2 Type 2 or other mutually agreed upon audit of the Contractor's security policies, procedures and controls; (ii) a quarterly external and internal vulnerability scan of the Contractor's systems and facilities, to include public facing websites, that are used in any way to deliver Services under this Agreement. The report must include the vulnerability, age, and remediation plan for all issues identified as critical or high; and (iii) a formal penetration test performed by qualified personnel of the Contractor's systems and facilities that are used in any way to deliver Work under this Agreement. The Contractor will provide the City the results of the above audits. The Contractor shall also protect data against deterioration or degradation of quality and authenticity by, at minimum, having a third party perform annual data integrity audits. In addition, the Contractor shall comply with the City's annual risk assessment and the results thereof.

2.2. Security Audit Results: The Contractor will provide the City the reports or other documentation resulting from the above audits, certifications, scans, and tests within seven (7) business days of the Contractor's receipt of such results. The report must include the vulnerability, age, and remediation plan for all issues identified as critical or high. Based on the results and recommendations of the above audits, the Contractor will, within thirty (30) calendar days of receipt of such results, promptly modify its security measures to meet its obligations under this Agreement and provide the City with written evidence of remediation. The City may require, at the Contractor's expense, that the Contractor perform additional audits and tests, the results of which will be provided to the City within seven (7) business days of Contractor's receipt of such results. To the extent the Contractor controls or maintains information systems used in connection with this Agreement, the Contractor shall provide the City with the results of all security assessment activities when conducted on such information systems, including any code-level vulnerability scans, application-level risk assessments, and other security assessment activities as required by this Agreement or reasonably requested by the City. The Contractor will remediate any vulnerabilities to comply with its obligations hereunder. If additional funds are required to perform the tests required by the City that are not accounted for in this Agreement, the Parties agree to amend this Agreement as necessary.

3. DATA SECURITY AND PROTECTION REQUIREMENTS

3.1. Data Ownership and Access: Unless otherwise required by law, the City has exclusive ownership of all City Data under this Agreement, including all City Data created, processed, or

derived in connection with this Agreement. The Contractor shall have no right, title, or interest in City Data. The Parties recognize and agree that the Contractor is a bailee for hire with respect to City Data, and the Contractor's use and possession of City Data is solely on the City's behalf. The City retains the right to access and retrieve City Data stored on the Contractor's infrastructure at any time during the term of this Agreement. This Agreement does not grant either Party any rights, implied or otherwise, to the other Party's data, content, or intellectual property, except as expressly stated in this Agreement.

- 3.2. Permitted use and Prohibited Activities:** The Contractor shall use City Data solely for the purpose of performing its obligations under this Agreement. The following activities are strictly prohibited without the City's express written authorization: (i) data mining, analysis, or processing of City Data for purposes other than those expressly specified in this Agreement, except as legally required by applicable law; and (ii) any use of City Data that would result in City Data becoming attached to the Contractor's products, services, or deliverables.
- 3.3. Data Location and Storage Requirements:** All City Data must be stored, processed, and transmitted solely within the United States, unless the City has provided express written approval for alternative data handling locations. Any such approval shall specify the permitted locations, duration, security requirements, and conditions for such exception. The Contractor shall not interrupt or obstruct the City's ability to access and retrieve City Data.
- 3.4. Encryption and Data Transfer:** All file transfers, transmissions, and communications containing City Data must be encrypted both in transit (including web interfaces and all transmission methods) and at rest using National Institute of Standards and Technology (NIST) approved strong encryption methods and current industry-standard encryption protocols.
- 3.5. Software and Network Security:** The Contractor shall implement and maintain the following security measures:
- 3.5.1.** Use only properly licensed software and technology in all systems that access, process, store, or transmit City Data, maintaining compliance with all applicable copyright laws and intellectual property requirements, including proper adherence to open-source license terms;
 - 3.5.2.** Ensure that any underlying or integrated software employed under this Agreement is updated on a regular basis. Upon request, the Contractor shall provide a software bill of materials ("SBOM") annually or upon major changes to the solution(s) provided to the City under this Agreement. The Contractor shall provide a complete SBOM for the supported life of the solution(s);
 - 3.5.3.** Monitor for security vulnerabilities in applicable software components using a risk-based approach to identify, assess, and promptly mitigate any vulnerabilities. The Contractor shall regularly consult the Known Exploited Vulnerabilities (KEV) Catalog published by the Cybersecurity and Infrastructure Security Agency (CISA) and shall promptly remediate any applicable vulnerabilities identified therein; and

3.5.4. Implement commercially reasonable network security measures, including firewalls, intrusion detection and prevention systems, regular security assessments, and periodic penetration testing.

3.6. Artificial Intelligence Systems: The Contractor shall not use City Data to train, improve, or develop any artificial intelligence, machine learning models, algorithms, or automated decision-making systems without express written authorization from the City. The Contractor shall comply with all applicable provisions of Colo. Rev. Stat. § 6-1-1701 et seq., including but not limited to the prohibition against algorithmic discrimination and the requirements for the development, deployment, and use of high-risk artificial intelligence systems. If the work under this Agreement involves the use of any artificial intelligence system that constitutes a "high-risk artificial intelligence system" as defined by Colo. Rev. Stat. § 6-1-1701(9), the Contractor shall exercise reasonable care to protect consumers from known or reasonably foreseeable risks of algorithmic discrimination. The Contractor shall also ensure that any consequential decisions made or influenced by such systems comply with all applicable legal standards and are subject to appropriate human oversight, documentation, and transparency obligations as required by law.

3.7. Personnel Security, Access Controls, and Subcontractor Requirements

3.7.1. Personnel Access and Qualifications: The Contractor may provide City Data to its agents, employees, assigns, and subcontractors only as necessary to fulfill their assigned responsibilities under this Agreement and in accordance with the principle of least privilege. Before granting access to City Data, the Contractor shall ensure all such personnel have: (i) passed criminal background screenings appropriate to the nature and sensitivity of accessible City Data; (ii) completed annual training enabling effective compliance with all data protection provisions of this Agreement; and (iii) appropriate qualifications for handling such City Data.

3.7.2. Access Control Requirements: The Contractor shall implement and maintain the following access controls for all personnel with access to City Data:

3.7.2.1. Principle of Least Privilege: Limit access rights to the minimum necessary to perform assigned duties, restricting access based on role, function, and business need;

3.7.2.2. Multi-Factor Authentication: Require multi-factor authentication for all systems that access, process, store, or transmit City Data;

3.7.2.3. Access Logging and Monitoring: Maintain comprehensive logs of all access to City Data, including user identity, date, time, and nature of access. Logs shall be retained for a minimum of one year and made available to the City upon request; and

3.7.2.4. Periodic Access Reviews: Conduct quarterly reviews and certifications of all personnel with access to City Data to ensure access rights remain appropriate and necessary. Remove access immediately upon termination of employment or change in role that no longer requires such access.

3.7.3. Confidentiality and Data Protection Obligations: The Contractor shall impose data protection obligations on all personnel with City Data access that are at least as restrictive as those in this Agreement and shall require all such personnel to execute nondisclosure

agreements that are at least as protective as the terms of this Agreement. The Contractor shall monitor compliance with data protection requirements and remain fully responsible for all actions and omissions regarding City Data taken by such personnel.

- 3.7.4. Subcontractor Requirements and Approval:** The Contractor shall not permit any subcontractor, agent, or third-party service provider to access, process, store, or transmit City Data without the City's prior written approval. The Contractor shall: (i) provide the City with written notice identifying any proposed subcontractor and describing the specific City Data to which the subcontractor will have access and the purpose of such access at least thirty (30) days prior to granting access; (ii) ensure that all approved subcontractors execute written agreements containing data protection, security, and confidentiality obligations that are at least as protective as those contained in this Agreement; and (iii) flow down all applicable data protection requirements to subcontractors at all tiers.
- 3.7.5. Contractor Liability for Personnel and Subcontractors:** The Contractor shall remain fully liable to the City for any breach of this Agreement or any unauthorized access, use, disclosure, or loss of City Data by the Contractor's personnel, subcontractors, agents, or any other third parties engaged by the Contractor, regardless of tier. The Contractor's use of subcontractors does not relieve the Contractor of any obligations under this Agreement.
- 3.8. Data Backup and Retention:** The Contractor shall regularly back up all City Data in its possession using appropriate and reliable storage media, industry-standard backup procedures, and security measures. The Contractor shall retain such backup copies as necessary to meet its obligations under this Agreement and shall preserve data for litigation holds as requested by the City.
- 3.9. Data Return and Destruction:** Upon the expiration or termination of this Agreement, the Contractor shall, as directed by the City, promptly transfer or securely delete all City Data. The Contractor shall permanently destroy all City Data when no longer needed or required for the purposes of this Agreement by shredding, erasing, or otherwise modifying the City Data to make it unreadable or indecipherable, and shall provide written certification of such destruction to the City upon request. This requirement shall not apply to the extent the Contractor is required by law to retain copies of certain City Data. The Contractor's obligations set forth in this Section apply to the Contractor's successors, including without limitation any trustee in bankruptcy.
- 3.10. Monitoring and Audit Rights:** The City reserves the right to inspect and monitor the Contractor's access to and use of City Data and to evaluate the effectiveness of security controls, subject to the Contractor's reasonable security requirements and advance notice.
- 3.11. Response to Legal Process:** If the Contractor is required by a court of competent jurisdiction or administrative body to disclose City Data, the Contractor shall first notify the City and, prior to any disclosure, cooperate with the City's reasonable requests in connection with the City's right to intervene, quash, or modify the legal order, demand, or request, and upon request, provide the City with a copy of its response. Upon notice, the City will promptly coordinate with the Contractor regarding the preservation and disposition of any City Data and records relevant to any current or anticipated litigation. If the City receives a subpoena, legal order, or other legal

demand seeking data maintained by the Contractor, the City will promptly provide a copy to the Contractor. Upon notice and if required by law, the Contractor shall promptly provide the City with copies of data required for the City to meet its necessary disclosure obligations.

3.12. Mandatory Disclosures: The Contractor shall provide the City with a copy of any disclosure the Contractor is required to file with any regulatory body as a result of a security breach or other incident, including but not limited to required disclosures mandated by the Securities and Exchange Commission. If the contents of any such disclosure are protected by law, the Contractor shall instead provide the City with prompt notice that it was required to make such a disclosure along with the name of the regulatory body requiring the disclosure.

3.13. Survival of Obligations: These data protection obligations shall survive the termination or expiration of this Agreement and shall remain in effect until all City Data is properly returned to the City, securely destroyed, or as otherwise required by applicable law.

4. DISASTER RECOVERY AND CONTINUITY

4.1. The Contractor shall maintain a continuous and uninterrupted business continuity and disaster recovery program with respect to the Work provided under this Agreement. The program shall be designed, in the event of a significant business disruption affecting the Contractor, to provide the necessary and sufficient capabilities, processes, and procedures to enable the Contractor to resume and continue to perform its duties and obligations under this Agreement without undue delay or disruption. In the event of equipment failures, the Contractor shall, at no additional expense to the City, take reasonable steps to minimize service interruptions, including using any back-up facilities where appropriate. Upon request, the Contractor shall provide the City with a copy of its disaster recovery plan and procedures.

4.2. Prior to the Effective Date of this Agreement, the Contractor shall, at its own expense, conduct or have conducted the following, and thereafter, the Contractor will, at its own expense, conduct or have conducted the following at least once per year:

4.2.1. A test of the operability, sufficiency, and completeness of business continuity and disaster recovery program's capabilities, processes, and procedures that are necessary to resume and continue to perform its duties and obligations under this Agreement.

4.2.2. Based upon the results and subsequent recommendations of the testing above, the Contractor will, within thirty (30) calendar days of receipt of such results and recommendations, promptly modify its capabilities, processes, and procedures to meet its obligations under this Agreement and provide City with written evidence of remediation.

4.2.3. Upon request, the Contractor shall provide the City with report summaries or other documentation resulting from above testing of any business continuity and disaster recovery procedures regarding the Services provided under this Agreement.

4.3. The Contractor represents that it is capable, willing, and able to provide the necessary and sufficient business continuity and disaster recovery capabilities and functions that are appropriate for it to provide services under this Agreement.

5. DELIVERY AND ACCEPTANCE

5.1. Acceptance & Rejection: Deliverables will be considered accepted (“Acceptance”) only when the City provides the Contractor affirmative written notice of acceptance that such Deliverable has been accepted by the City. Such communication shall be provided within a reasonable time from the delivery of the Deliverable and shall not be unreasonably delayed or withheld. Acceptance by the City shall be final, except in cases of Contractor’s failure to conduct proper quality assurance, latent defects that could not reasonably have been detected upon delivery, or the Contractor’s gross negligence or willful misconduct. The City may reject a Deliverable if it materially deviates from its specifications and requirements listed in this Agreement or its Exhibits by written notice setting forth the nature of such deviation. In the event of such rejection, the Contractor shall correct the deviation, at its sole expense, and redeliver the Deliverable within fifteen (15) days. After redelivery, the Parties shall again follow the acceptance procedures set forth herein. If any Deliverable does not perform to the City’s satisfaction, the City reserves the right to repudiate acceptance. If the City ultimately rejects a Deliverable, or repudiates acceptance of it, the Contractor will refund to the City all fees paid, if any, by the City with respect to any rejected Deliverable. Acceptance shall not relieve the Contractor from its responsibility under any representation or warranty contained in this Agreement, and payment of an invoice prior to Acceptance does not grant a waiver of any representation or warranty made by the Contractor.

5.2. Quality Assurance: The Contractor shall provide and maintain a quality assurance system acceptable to the City for Deliverables under this Agreement and shall provide to the City only such Deliverables that have been inspected and found to conform to the specifications identified in this Agreement and any applicable solicitation, bid, offer, or proposal from which this Agreement results. The Contractor’s delivery of any Deliverables to the City shall constitute certification that any Deliverables have been determined to conform to the applicable specifications, and the Contractor shall make records of such quality assurance available to the City upon request.

6. WARRANTIES AND REPRESENTATIONS

6.1. Notwithstanding the acceptance of any Work, or the payment of any invoice for such Work, the Contractor warrants that any Work provided by the Contractor under this Agreement shall be free from material defects and shall function as intended and in material accordance with the applicable Specifications. The Contractor warrants that any Work, and any media used to distribute it, shall be, at the time of delivery, free from any harmful or malicious code, including without limitation viruses, malware, spyware, ransomware, or other similar function or technological means designed to disrupt, interfere with, or damage the normal operation of the Work and the use of City resources and systems. The Contractor’s warranties under this Section shall apply to any defects or material nonconformities discovered within 180 days following delivery of any Work.

6.2. Upon notice of any defect or material nonconformity, the Contractor shall submit to the City in writing within 10 business days of the notice one or more recommendations for corrective action with sufficient documentation for the City to ascertain the feasibility, risks, and impacts of each recommendation. The City’s remedy for such defect or material non-conformity shall be:

- 6.2.1.** The Contractor shall re-perform, repair, or replace such Work in accordance with any recommendation chosen by the City. The Contractor shall deliver, at no additional cost to the City, all documentation required under this Agreement as applicable to the corrected Work or Deliverable; or
- 6.2.2.** The Contractor shall refund to the City all amounts paid for such Work, as well as pay to the City any additional amounts reasonably necessary for the City to procure alternative goods or services of substantially equivalent capability, function, and performance.
- 6.3.** Any Work delivered to the City as a remedy under this Section shall be subject to the same quality assurance, acceptance, and warranty requirements as the original Work. The duration of the warranty for any replacement or corrected Work shall run from the date of the corrected or replacement Work.
- 6.4. Customization Services:** The Contractor warrants that it will perform all customization services, if any, in a professional and workmanlike manner. In case of breach of the warranty of the preceding sentence, the Contractor, at its own expense, shall promptly re-perform the customization services in question or provide a full refund for all nonconforming customization services.
- 6.5. Third-Party Warranties and Indemnities:** The Contractor will assign to the City all third-party warranties and indemnities that the Contractor receives in connection with any Work or Deliverables provided to the City. To the extent that the Contractor is not permitted to assign any warranties or indemnities through to the City, the Contractor agrees to specifically identify and enforce those warranties and indemnities on behalf of the City to the extent the Contractor is permitted to do so under the terms of the applicable third-party agreements.
- 6.6. Intellectual Property Rights in the Software:** The Contractor warrants that it is the owner of all Deliverables, and of each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the intellectual property rights to the Deliverables in this Agreement without the further consent of any third party and without conditions or requirements not set forth in this Agreement. In the event of a breach of the warranty in this Section, the Contractor, at its own expense, shall promptly take the following actions: (i) secure for the City the right to continue using the Deliverable as intended; (ii) replace or modify the Deliverable to make it non-infringing, provided such modification or replacement will not materially degrade any functionality as stated in this Agreement; or (iii) refund 100% of the fee paid for the Deliverable for every month remaining in the Term, in which case the Contractor may terminate any or all of the City's licenses to the infringing Deliverable granted in this Agreement and require return or destruction of copies thereof. The Contractor also warrants that there are no pending or threatened lawsuits, claims, disputes, or actions: (i) alleging that any of the Work or Deliverables infringes, violates, or misappropriates any third-party rights; or (ii) adversely affecting any Deliverables or Services, or the Contractor's ability to perform its obligations hereunder.
- 6.7. Disabling Code:** The Work will contain no malicious or disabling code that is intended to damage, destroy, or destructively alter software, hardware, systems, or data. The Contractor

represents, warrants and agrees that the City will not receive from the Contractor any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design, or other malicious, illicit or similar unrequested code, including surveillance software or routines which may, or is designed to, permit access by any person, or on its own, to erase, or otherwise harm or modify any City system, resources, or data (a "Disabling Code"). In the event a Disabling Code is identified, the Contractor shall take all steps necessary, at no additional cost to the City, to: (i) restore and/or reconstruct all data lost by the City as a result of a Disabling Code; (ii) furnish to City a corrected version of the Work or Deliverables without the presence of a Disabling Code; and, (iii) as needed, re-implement the Work or Deliverable at no additional cost to the City. This warranty shall remain in full force and effect during the Term.

7. PAYMENT CARD INDUSTRY DATA SECURITY STANDARD COMPLIANCE

7.1. If the Contractor is directly involved in the processing, storage, or transmission of cardholder data on behalf of the City as part of this Agreement, this Section shall apply. Any contractor who provides or has access to software, systems, hardware, or devices which process and/or interact with payment card information or payment cardholder data must be compliant with the current version of the Payment Card Industry Data Security Standard (PCI DSS).

7.2. The Contractor covenants and agrees to comply with Visa's Cardholder Information Security Program (CISP), MasterCard's Site Data Protection Rules (SDP), and with all other credit card association or National Automated Clearing House Association (NACHA) rules or rules of member organizations ("Association"), and further covenants and agrees to maintain compliance with the PCI DSS, SDP, and (where applicable) the Payment Application Data Security Standard (PA-DSS) (collectively, the "Security Guidelines"). The Contractor represents and warrants that all of the hardware and software components utilized for the City or used under this Agreement is now and will be PCI DSS compliant during the term of this Agreement. All service providers that the Contractor uses under this Agreement must be recognized by Visa as PCI DSS compliant. The Contractor further agrees to exercise reasonable due diligence to ensure that all of its service providers (as defined by the PCI Security Council), agents, business partners, contractors, Subcontractors, and any third party who may have access to credit card information under this Agreement maintain compliance with the Security Guidelines and comply in full with the terms and conditions set out in this Section. The Contractor further certifies that the equipment, as described herein, will be deployed in a manner that meets or exceeds the PA DSS and/or PCI certification and will be deployed on a network that meets or exceeds PCI standards. The Contractor shall demonstrate its compliance with PCI DSS by annually providing the City an executed Attestation of Compliance (AOC). The Contractor must provide verification to the City, prior to start up and ongoing annually during the term of this Agreement, that all modules of the Contractor's system(s) that interface with or utilize credit card information in any manner or form of collection are PCI DSS compliant. If the Contractor is a service provider involved in the processing, storage or transmission of cardholder data or sensitive authentication data (collectively "Data Handling") on behalf of the City that would result in Data Handling being included in the City's PCI scope through connected software or components, then the Contractor

must provide a PCI Responsibility Matrix (“Matrix”) to be attached to this Agreement as an exhibit. The Matrix must identify where responsibility resides for each PCI control requirement, whether it be with the Contractor, the City or shared by both. Any PCI control requirements that do not apply should be indicated along with any pertinent notes.

- 7.3.** The Contractor shall not retain or store CAV2/CVC2/CVV2/CID or such data prohibited by PCI DSS subsequent to authorization of a credit card transaction, shall prohibit disclosure of any and all cardholder information, and in the event of a compromise of credit card information of any kind, the Contractor shall notify the City in writing consistent with the Security Breach response notification requirements of this Agreement, and shall provide, at the Contractor’s sole expense, all necessary and appropriate notification to parties and persons affected by such disclosure and compromise.
- 7.4.** If any Association requires an audit of the Contractor or any of the Contractor’s Service Providers, agents, business partners, contractors, or Subcontractors due to a data security compromise event related to this Agreement, the Contractor agrees to cooperate with such audit. If as a result of an audit of the City it is determined that any loss of information is attributable to the Contractor, the Contractor shall pay the City’s reasonable costs relating to such audit, including attorney’s fees. No review, approval, or audit by the City shall relieve the Contractor from liability under this Section or under other provisions of this Agreement.
- 7.5.** The Contractor is solely responsible for its PCI DSS compliance. The Contractor shall ensure that all PCI DSS vendors comply with PCI DSS standards: (i) in providing Services or Deliverables to the City under this Agreement; (ii) in storing, processing, or transmitting PCI data; and (iii) in engaging in any other activities for any purpose relating to this Agreement. As between the Contractor and the City, the Contractor shall be responsible for a PCI DSS vendor's non-compliance with PCI DSS.
- 7.6.** In addition to all other defense and indemnity obligations undertaken by the Contractor under this Agreement, the Contractor, to the extent that its performance of this Agreement includes the allowance or utilization by members of the public of credit cards to pay monetary obligations to the City or the Contractor, or includes the utilization, processing, transmittal and/or storage of credit card data by the Contractor, shall defend, release, indemnify and save and hold harmless the City against any and all fines, penalties, assessments, costs, damages or other financial obligations, however denominated, assessed against the City and/or the Contractor by credit card company(s), financial institution(s) or by the National Automated Clearing House Association (NACHA) or successor or related entity, including but not limited to, any credit card company fines, regardless of whether considered to be consequential, special, incidental or punitive damages, costs of notifying parties and persons affected by credit card information disclosure, the cost of replacing active credit cards, and any losses associated with fraudulent transaction(s) occurring after a security breach or loss of information with respect to credit card information, and shall defend, release, indemnify, and save and hold harmless the City from any and all claims, demands, suits, actions, liabilities, causes of action or legal or equitable proceedings of any kind or nature, of or by anyone whomsoever, in any way affected by such credit card data or utilizing

a credit card in the performance by the Contractor of this Agreement. In furtherance of this, the Contractor covenants to defend and indemnify the City and the Contractor shall maintain compliance with PCI DSS and with all other requirements and obligations related to credit card data or utilization set out in this Agreement.

8. LICENSE OR USE AUDIT RIGHTS

- 8.1.** To the extent that the Contractor, through this Agreement or otherwise as related to the subject matter of this Agreement, has granted to the City any license or otherwise limited permission to use any of the Contractor's intellectual property, the terms of this Section shall apply.
- 8.2.** The Contractor shall have the right, at any time during and throughout the Term, but not more than once per year, to request via written notice in accordance with the notice provisions of this Agreement that the City audit its use of and certify as to its compliance with any applicable license or use restrictions and limitations contained in this Agreement (an "Audit Request"). The Audit Request shall specify the period to be covered by the audit, which shall not include any time covered by a previous audit. The City shall complete the audit and provide certification of its compliance to the Contractor ("Audit Certification") within a reasonable amount of time following the City's receipt of the Audit Request.
- 8.3.** If upon receipt of the City's Audit Certification, the Parties reasonably determine that: (i) the City's use of licenses, use of software, use of programs, or any other use during the audit period exceeded the use restrictions and limitations contained in this Agreement ("Overuse"), and (ii) the City would have been or is then required to purchase additional maintenance and/or services ("Maintenance"), the Contractor shall provide written notice to the City in accordance with the notice provisions of this Agreement identifying any Overuse or required Maintenance and request that the City bring its use into compliance with such use restrictions and limitations.

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