

**AMENDMENT NO. 1
TO THE AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
E-BUILDER, INCORPORATED**

PREAMBLE

This agreement ("Amendment No. 1") is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and e-Builder, Inc., a Florida corporation, ("Contractor" or "e-Builder"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. The Parties previously entered into an agreement entitled "Agreement for Services between the City of Santa Clara, California, and e-Builder, Inc.", dated on or about March 29, 2019 (Agreement);
- B. The Parties entered into the Agreement for the purpose of having Contractor provide Annual Software Subscription as well as Enterprise Implementation, Setup, Deployment, and Training for e-Builder, and the Parties now wish to amend the Agreement to add additional services and increase the not to exceed value of the Agreement; and
- C. The Agreement and this Amendment are collectively referred to herein as the "Agreement as Amended";

NOW, THEREFORE, the Parties agree as follows:

AMENDMENT TERMS AND CONDITIONS

- 1. That the first paragraph of Section 7 of the Agreement, entitled "COMPENSATION AND PAYMENT" is hereby amended to read as follows:

"In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "Compensation and Fee Schedule Amended March 15, 2021". The maximum compensation of this Agreement is \$1,150,000, subject to budget appropriations, which includes all payments that may be authorized for Services and for travel and expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation except through a written amendment to this Agreement."

2. That Exhibit B – Schedule of Fees of the Agreement shall be deleted in its entirety and replaced with Exhibit B – Compensation and Fee Schedule - Amended March 15, 2021.
3. That Exhibit D – Sample Work Order Form of this Amendment No. 1 is hereby added and incorporated into the Agreement by reference.
4. Except as set forth herein, all other terms and conditions of the Agreement shall remain in full force and effect. In case of a conflict in the terms of the Agreement and this Amendment No. 1, the provisions of this Amendment No. 1 shall control.

The Parties acknowledge and accept the terms and conditions of this Amendment No. 1 as evidenced by the following signatures of their duly authorized representatives.

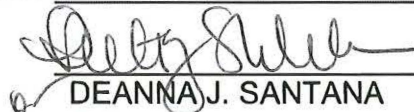
CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:


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Arellano
Date: 2021.03.11 15:34:19
+08'00'

BRIAN DOYLE
City Attorney

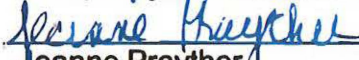
Dated: 3/12/2021


DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

E-BUILDER, INC.
a Florida corporation

Dated: 2/24/21

By (Signature): 

Name: Jeanne Prayther

Title: CFO

Principal Place of Business Address: 1800 NW 69th Avenue, Suite 201
Plantation, FL 33313

Email Address: JPrayther@e-Builder.net

Telephone: (954) 556-6701

Fax: (954) 792-5949

"CONTRACTOR"

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**EXHIBIT B - COMPENSATION AND FEE SCHEDULE
AMENDED MARCH 15, 2021**

1. Compensation: The amount billed to City by Contractor for services under this Agreement as Amended will not exceed one million one hundred fifty thousand dollars (\$1,150,000), subject to budget appropriations.
 - 1.1. Contractor is responsible for notifying City in a timely manner when changes in process or changes in regulations, may result in increased hours or cost. Contractor shall provide reasonable justification for the change. Such changes may be accepted by Work Order as defined in this Exhibit or by Amendment to this Agreement at the sole discretion of the City.
 - 1.2. Contractor shall notify the City ninety (90) days in advance of any changes anticipated to affect future rates. At such time, Contractor and City will enter into negotiations to amend this agreement to reflect proposed updated rates.
2. Fee Schedule
 - 2.1. Annual Software Subscription Unlimited Users: \$154,641.87 per year for five (5) years
 - 2.2. One-Time Implementation Services: e-Builder Enterprise Implementation, Setup, Deployment, and Training: \$205,439.57 for services described in Exhibit A Scope of Services
 - 2.3. Travel Costs: The (NTE) Not to Exceed Travel Expenses are calculated as follows: 16 Man trips@ \$ 2,300.00 per trip = \$36,800.00 and not to exceed \$36,800
 - 2.4. Total Five-Year Investment
 - 2.4.1. Software License Year 1 – Year 5: \$773,209.35
 - 2.4.2. One Time Implementation Services: \$205,439.37
 - 2.4.2.1. Modified One Time Implementation Services modified by Work Order No. 1: \$172,669.37
 - 2.4.2.2. e-Builder AppXchange Implementation Services (Modified by Work Order No. 1: \$32,770.00
 - 2.4.3. Travel Costs: Not to Exceed \$36,800.00
 - 2.4.4. Total \$1,015,448.72

2.5. SQL Data Extract: The Annual Software Subscription contains one (1) SQL Data Extract per year. Customer may purchase additional SQL Data Extracts at cost of \$500.00 each during the first three (3) years. This cost shall increase by 3% year over year the term moves into Year 4 and beyond. The costs of any additional data extracts shall reduce available Contingency.

2.6. Reimbursable Expenses / Pass-Through Costs: In some cases, Contractor may pass-through costs such as, but not limited to subcontracted activities, travel, or materials. Such Pass-Through Costs shall be included in any Work Order for authorization. Reimbursement of expenses is subject to the following conditions.

2.6.1. Pass-Through Costs shall be invoiced without markup.

2.6.2. Expenses shall be reimbursable only to the extent that the Contractor submits sufficient documentation to the City that the expenses were directly incurred in providing the requested services and that such costs are not already included in the fee or hourly rate.

2.6.3. Travel-related expenses (mileage, lodging, meals, etc.).

2.6.3.1. Unless approved in writing (e-mail acceptable) in advance, meals, lodging, and related Per Diem shall not exceed the rates outlined by United States General Services Administration (GSA).

<https://www.gsa.gov/travel-resources>

2.6.3.2. The City shall not reimburse local travel (within Santa Clara County).

2.7. Contingency for Additional Services:

2.7.1. Additional Services may be authorized by the City using the process described in Section 3 of this Exhibit B—Authorization for Work.

2.7.2. The total cost for any Additional Services shall not exceed \$134,551.28 (Contingency) unless authorized through an Amendment to this Agreement.

2.7.3. Any costs not included in Section 2.4 above, including, but not limited to SQL Data Extract, Reimbursable Expenses, any Work Orders, shall be considered a use of this Contingency and the total contract cost shall not be exceeded.

2.7.4. Hourly Rate for Additional Services: \$175.00 per hour.

3. Authorization for Work:

3.1. In the event that Contractor is requested to perform additional work or services not included in the scope of this Agreement, Contractor shall submit a proposal for such work. Such services will be performed on a time-and-material basis and may include services such as custom development, consulting, training, and configuration.

- 3.2. Any work on integrations shall occur only on previously contracted integration points in which City is paying for an Annual Software Subscription. If any work will result in an Annual Software Subscription add-on and if that Add-On will result in an increase in annual licensing costs, e-Builder and City agree that no work will be performed until Amendment to modify the annual licensing costs and to activate the Annual Software Subscription add-on is mutually executed.
- 3.3. All change requests received and approved will be detailed on a contract Amendment or Work Order. Contractor and City agree to outline what Professional Services shall occur upon the execution of this Work Order.
- 3.4. Work performed under a Work Order shall be separate and in addition to the already agreed upon scope found in the Master Services Agreement and any amendments to the Agreement. Each Amendment or Work Order must be signed and accepted prior to initiating additional work by Contractor.
- 3.5. If remaining Contingency funds are available in the Agreement to complete the project quoted, work may be authorized by written authorization of an Assistant Director of the Electric Utility, Electric Utility Chief Operating Officer, or Chief Electric Utility Officer using the Exhibit D - Sample Work Order Form.
 - 3.5.1. Each Work Order shall be substantially in the form specified in Exhibit D. Work Orders shall be issued in accordance with the Terms and Conditions of this Agreement. Each Work Order shall describe the services and deliverables (collectively "Work") the Contractor must provide, the time limit within which the Contractor must complete the Work, and the compensation for the Work. All costs anticipated for the services such as, but not limited to, hourly work, materials, and travel shall be included in the Work Order.
 - 3.5.2. Each Approved Work Order incorporates the Terms and Conditions of this Agreement, and becomes a part of this Agreement. An Approved Work Order must be consistent with – and cannot alter - the terms and conditions of this Agreement. The terms and conditions of this Agreement control over the terms and conditions contained in an Approved Work Order – even if the Approved Work Order expressly states that it is intended to control. Any conflicting terms and conditions in an Approved Work Order are invalid and unenforceable.
 - 3.5.3. Subject to the terms and conditions of this Agreement as Amended, Contractor and City will negotiate the specific requirements of each Approved Work Order.
- 3.6. If insufficient contingency funds are available to complete proposed work, an Amendment to this Agreement shall be executed in advance of starting work. No products or services that will commit or authorize funds in excess of the contingency funds outlined in this Agreement as Amended will be provided unless both Parties execute an Amendment to this Agreement.

4. Payment Provisions

- 4.1. Payment of the first (1st) year's Annual Software Subscription term is due upon the Effective Date of the Agreement. Payments for all subsequent Annual Software Subscriptions shall be prepaid for the then current-year and due on the then current-year annual anniversary of the Effective Date of the MSA. As of the date of this Amendment No. 1, two Annual Software Subscription payments have been made by City (2019 and 2020).
- 4.2. Payment for Total One-Time Implementation Services is due thirty days from each of the following milestones:
 - 4.2.1. Ten (10%) percent One Time Implementation Services on the Effective Date of Agreement (Paid April 2019)
 - 4.2.2. Thirty (30%) percent One Time Implementation Services upon completion of Design & Requirements (Paid August 2019);
 - 4.2.3. Balance of Modified One Time Implementation Services Remaining upon completion of Configuration & Testing (Paid January 2020); and
 - 4.2.4. e-Builder AppXchange Implementation Services
 - 4.2.4.1. 50% paid in May, 2020
 - 4.2.4.2. 50% due upon completion on AppXchange Implementation Services
- 4.3. Monthly Invoices. On a monthly basis, Contractor shall prepare an invoice which includes either the flat rate charge where applicable or an itemization of time and materials spent on services included in this Agreement or in a Work Order.
- 4.4. All monthly invoices shall include a written itemization of the authorized expenses incurred, if any, with a detail listing the cost and source of such expenses and when they were incurred in a format that will permit City to verify rates are the same as those authorized in the Agreement.
- 4.5. Contractor shall maintain documentation of such time and costs for City inspection for a period of three (3) years from the date of termination of this Agreement.
- 4.6. Within thirty (30) days of receipt of an approved itemized written invoice from Contractor, City shall pay Contractor the amount billed for Services performed and authorized costs incurred during that billing period.

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EXHIBIT D – SAMPLE WORK ORDER

This Work Order is issued by the City of Santa Clara acting by and through its **Electric Utility, Silicon Valley Power** to e-Builder, Inc. After execution by City and e-Builder, this Work Order shall constitute a binding legal contract between the City and e-Builder pursuant to the terms of the Agreement effective 3/29/2019 through 3/29/2024. All services shall be using the terms and rates included in the Agreement. In the event of any inconsistency between this Work Order and the Terms and Conditions of the Agreement, the Terms and Conditions of the Agreement shall govern and control.

Work Order No.: _____ (Revision No. _____)

e-Builder Project Manager Name: _____

e-Builder Project Manager e-mail: _____

City / SVP Project Manager Name: _____

City / SVP Project Manager e-mail: _____

Period of Performance for this Work Order

Start Date: _____ End Date: _____

Note: The End Date for this work order cannot be later than the term of the Agreement without amendment to the Agreement.

Maximum Work Order Compensation:

Note: The Maximum Work Order Compensation cannot exceed funds available in the Contingency without amendment to the agreement.

Available Contingency Funds in Agreement:

Previously Committed Contingency Funds in Agreement: _____

Sufficient Budget Appropriations are available in the following Account: _____

PART B: SERVICES TO BE PERFORMED

1. SCOPE OF WORK TO BE PERFORMED

E-Builder shall perform the service(s) described below in accordance with all of the Terms and Conditions of the Agreement. (Insert a detailed scope of work below or attach as a separate file.)

2. REVISED WORK ORDER

☐ No

☐ If yes, provide a brief description of the change(s).

3. COMPENSATION

a. Basis of Compensation: ☐ Time & Materials ☐ Fixed Fee

For Time and Materials, the hourly rate and estimated hours and estimated materials as well as other anticipated costs (such as but not limited to travel) shall be included in this proposed work order. In the event that e-Builder believes the Maximum Work Order Compensation will be exceeded, e-Builder shall notify City in advance including sufficient justification for the change in costs and shall not exceed the Maximum Work Order Compensation unless a Revised Work Order or New Work Order is executed by the Parties.

Signatures:

Authorized e-Builder Representative Name [Print]: _____

Signature: Jeanne Prayther Date: 2/24/21

Authorized City Representative Name [Print]: _____

Signature: _____ Date: _____

* Authorized City Representatives include Electric Utility Assistant Director, Chief Electric Utility Operating Officer, Chief Electric Utility Officer