

**CITY OF SAN MATEO
AGREEMENT WITH TECHNOLOGY MANAGEMENT PROFESSIONALS
DBA TMPROS, LLC. FOR
MASTER TECHNOLOGY-RELATED PROFESSIONAL SERVICES**

This Professional Services Agreement (hereinafter “Agreement”), made as of this day of _____, is entered into by and between Technology Management Professionals dba TMPros, LLC, (hereinafter referred to as “VENDOR”), an Atwater, California Company, and the City of San Mateo (hereinafter referred to as “CUSTOMER”), a municipal corporation in the State of California.

RECITALS:

A. CUSTOMER desires certain equipment, software, maintenance and support services hereinafter described.

B. CUSTOMER desires to engage VENDOR to provide these professional services by reason of its qualifications and experience for performing such services and VENDOR has offered to provide the required services on the terms and in the manner set forth herein.

NOW, THEREFORE, IT IS AGREED as follows:

SECTION 1 – DEFINITIONS

1.1 “Acceptance” means that CUSTOMER has accepted in writing that the Professional Services, Deliverables or other goods and services as agreed to as part of this Agreement were performed and delivered in accordance with the Statement of Work or Change Order. CUSTOMER will create a list of non-conforming elements which must be corrected before Acceptance, except for minor or inconsequential errors, and such Acceptance shall not be unreasonably withheld. If Professional Services are for the implementation of a software or a system, then within sixty (60) days of the Go Live Date (as defined below) CUSTOMER will create a list of Defects (as defined below) which must be corrected before Acceptance, except for minor or inconsequential errors.

1.2 “Applicable Specifications” means the functional, operational and other characteristics of the Services or deliverables, timeline, milestones, assumptions, testing and validation criteria, and other specifications as described in the Statement of Work or Change Order.

1.3 “Change Order” is a mutual agreement in writing by both Parties changing the scope of the project. The Change Order will include information such as but not limited to the date executed, due date, scope of work, assumptions, agreed upon cost, hours and rates, job responsibilities, deliverables, verification and acceptance testing, payment terms, requestor, and approving parties).

1.4 “Customization” means but is not limited to all code, software modifications or computer programming to the licensed Software developed or modified under the terms of this Agreement or related Change Order or Statement of Work.

1.5 “Defect” means (i) an omission in software code causing the software or integration links to operate such that it is not in compliance with the Applicable Specifications or (ii) the media on which the product(s) is delivered is damaged or corrupted such that the software does not load properly, (iii) the documentation contains gaps and/or erroneous information with regard to the deliverables, (iv) the services delivered did not meet the Applicable Specifications or were not performed in a professional manner consistent with experts and professionals in the industry, or (v) errors, problems or other irregularities in the deliverables.

1.6 “Effective Date” means the date that this Agreement takes effect, which unless otherwise stated, will be the date set forth on Page One of this Agreement upon being signed by duly authorized representatives of VENDOR and CUSTOMER.

1.7 “Go Live Date” is the date of the first production use of the licensed Software or deliverables from this Agreement by Customer where the Customer is using the Software or deliverable to manage its normal business operations. Prototype development and testing, data conversion and testing, initial system training, and conference room pilot operations and testing take place before the Go Live Date.

1.8 “Professional Services” means all services provided by VENDOR which are primarily intellectual and mental, and performed by qualified personnel. Such services may include without limitation project planning, consulting, project management, data conversion, training, programming, and development of Customizations.

1.9 “Software” means the Vendor’s computer software program(s) licensed by CUSTOMER and identified in the software license agreement.

1.10 “Statement of Work” means a document mutually developed and agreed upon by both parties which describes in detail the services to be provided by Vendor, implementation schedule and phases, responsibilities of Customer and Vendor, description and schedule of training, detailed list of professional services fees and expenses by major work task, acceptance plans, assumptions, risks, training schedule and description, etc.

SECTION 2 - SCOPE OF SERVICES

2.1 The scope of services to be performed by VENDOR under this Agreement is as described in the Statement of Work in Exhibit A of this Agreement, which is attached and incorporated by reference.

2.2 Customizations.

2.2.1 All CUSTOMER initiated Customizations shall be made using the Change Order process described herein and shall be compensated at VENDOR’s then prevailing, or other mutually agreeable rates, on a time and materials basis.

2.2.2 Once installed and Accepted, all Customizations shall be considered part of the Licensed and Covered Software.

2.2.3 CUSTOMER shall, within sixty (60) days of Acceptance of any Customization pay VENDOR a mutually agreeable and pro-rated additional Maintenance and Support Fee for any Customization.

2.3 Customer's Rights to Engage Other Consultants. CUSTOMER reserves the right to engage other consultants in connection with this Agreement. Any third party receiving confidential information or trade secrets under this paragraph must agree to the same prohibition against disclosure as CUSTOMER and VENDOR may require that any such third party execute a non-disclosure agreement which includes widely accepted and reasonable non-disclosure terms.

2.4 Progress. VENDOR shall keep the Project Manager and/or his/her duly authorized designee informed on a regular basis regarding the status and progress of the Services, activities performed and planned hereunder, and any meetings that have been scheduled or are desired relative to the Professional Services or relative to this Agreement.

2.5 Scheduling. VENDOR shall generally have no obligation to work any particular schedule, unless otherwise provided in this Agreement or in the Statement of Work. VENDOR shall coordinate the provision of the Professional Services with CUSTOMER in such a fashion and schedule so as to achieve the results sought under the terms of this Agreement.

2.6 Statement of Work. The Services, such as but not limited to training, software implementation, software development and customization, consulting, and interface development, will be performed pursuant to and in accordance with the Statement of Work attached hereto as Exhibit A of this Agreement.

2.7 Change Orders. Change Orders applicable to the Statement of Work shall be negotiated and implemented as described in the Statement of Work or as otherwise agreed to by the duly authorized representatives of both parties. VENDOR shall use its best efforts to provide all costs, Third Party Software, additional platform and infrastructure requirements, additional training requirements, and any other additional component or services within fifteen (15) business days of receipt of a Change Order.

SECTION 3 - DUTIES OF VENDOR

3.1 Vendor Responsibilities. VENDOR warrants that it has all requisite power and authority to conduct its business and to execute and deliver, and to perform all of its obligations under this Agreement.

VENDOR warrants that the individual who has signed this Agreement representing VENDOR has the legal power, right and authority to enter into this Agreement so as to bind VENDOR to perform the conditions contemplated herein.

VENDOR shall be responsible for the professional quality, technical accuracy and coordination of all

work furnished by VENDOR under this Agreement. VENDOR shall, without additional compensation, correct or revise any errors or deficiencies in its work.

VENDOR represents that it is qualified to furnish the services described under this Agreement.

VENDOR shall be responsible for employing or engaging all persons necessary to perform the services of VENDOR.

VENDOR agrees to comply with the City's minimum wage ordinance as codified in Municipal Code Chapter 5.92, which differs from the state minimum wage and includes a Consumer Price Index escalator.

3.2 Vendor's Responsibilities for Costs and Expenses. VENDOR shall be responsible for all costs and expenses incurred by VENDOR, personnel of VENDOR, and subcontractors of VENDOR, in connection with this Agreement and performance of the Professional Services, including, without limitation, payment of salaries, fringe benefit contributions, payroll taxes, withholding taxes and other taxes or levies and all other amounts due to its personnel and subcontractors, office overhead expenses, travel expenses except as otherwise agreed, telephone and other telecommunications expenses, and document reproduction expenses.

3.3 Travel Expenses. Travel and related expenses shall be necessary, reasonable and consistent with CUSTOMER's travel policies, and shall be mutually agreed upon in advance. CUSTOMER shall not be responsible for any VENDOR travel time

3.4 Vendor Personnel and Professional Services Warranty. The Services shall be performed by VENDOR or under its supervision, and VENDOR shall be responsible for all actions and work product(s) of the personnel working on behalf of VENDOR in the performance of this Agreement.

VENDOR represents that it possesses the professional and technical personnel required to perform the Professional Services for this Agreement and as defined in the Statement of Work. VENDOR warrants that all Services will be performed diligently and in a timely, professional and workmanlike manner by experienced and competent personnel with the care and skill ordinarily exercised by members of the profession practicing under similar conditions using all common and widely accepted practices and professional standards for Services such as but not limited to installing, implementing, deploying, and maintaining the Product.

VENDOR represents and warrants that (i) none of the Services or any part of this Agreement is or will be inconsistent with any obligation VENDOR may have to others; (ii) the Services, deliverables or work products as they are delivered to CUSTOMER will not infringe, misappropriate or violate any intellectual property or other right of any person or entity; and (iii) VENDOR has the full right to provide CUSTOMER with the assignments and rights provided herein (including without limitation, through execution of appropriate written agreements with its employees, agents and subcontractors).

3.5 Remedies for Non-Performance of Services. If any element of the Services does not conform to the warranty on Professional Services, then CUSTOMER shall notify VENDOR in writing of such nonconformance. VENDOR shall timely re-perform such element in a manner that does conform, provided, however, that if such re-performance is impracticable, VENDOR shall timely refund the fees allocable to such nonconforming element. At its sole discretion, CUSTOMER may withhold payment for non-conformance to professional standards, excessive or unauthorized costs, or defects in deliverables until remedied, and no interest, penalties or late fees shall apply to such withholdings.

3.6 Cooperation with Customer's Project Manager. As required herein or in the Statement of Work, CUSTOMER shall designate a Project Manager for the project effort to implement the Product. VENDOR shall work closely and cooperate fully with CUSTOMER's designated Project Manager, and any other agencies which may have jurisdiction over or interest in the Software and related Professional Services. The Project Manager will administer this Agreement on behalf of CUSTOMER. The Project Manager, or his/her designee, shall be the principal officer of CUSTOMER for liaison with VENDOR, and shall review and give approval to the details of the Scope of Work and Services as described in the Statement of Work and any Change Orders or Amendments to this Agreement. The Project Manager shall be specified in the Statement of Work which is mutually agreed to between CUSTOMER and VENDOR. CUSTOMER reserves the right to change its Project Manager.

3.7 Vendor Marketing. No news releases, including photographs, public announcements, or confirmations of the same, relating to any part of the subject matter of this Agreement or any phase of providing the Professional Services shall be made without prior written consent of CUSTOMER. The information which VENDOR acquires related to its performance of the Professional Services shall be kept confidential unless the release of information is authorized in writing by CUSTOMER.

3.8 Electronic Format for Supporting Documentation. All VENDOR and Third Party Supporting Documentation provided electronically shall be provided in a form and format that does not require CUSTOMER to purchase additional Third Party Software to view and print the Supporting Documentation.

3.9 Virus Free. VENDOR warrants that to the best of its knowledge there are no viruses, backdoor entries, time bombs, unauthorized programming, lockout devices or other disruptive technologies being shipped with deliverables, products or software in this Agreement. CUSTOMER will notify VENDOR in writing if it detects such disruptive technologies and will provide any information that it may have regarding the nature of such non-conformance. VENDOR will correct such non-conformance in a timely manner and at no cost to CUSTOMER.

SECTION 4 - DUTIES OF CUSTOMER

CUSTOMER shall provide pertinent information regarding its requirements for the project.

CUSTOMER shall examine documents submitted by VENDOR and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of VENDOR'S work.

SECTION 5 - TERM

The services to be performed under this Agreement shall commence on July 1, 2022 and be completed on or about June 30, 2023.

SECTION 6 - PAYMENT

6.1 There will be a 15% holdback of all fees which will be paid upon final Acceptance by CUSTOMER without penalty or late fees.

6.2 Payment for services will be authorized and processed by CUSTOMER according to the following schedule:

6.2.1 Installation support and training services (including technical configuration, process consulting, project management and training) fees will be invoiced monthly upon completion of the agreed upon designated tasks and deliverables as defined in the Statement of Work. VENDOR must provide an itemized invoice showing the specific tasks completed and the resources involved in each task.

6.2.2 Travel expenses must be approved in advance by CUSTOMER. Approved travel expenses will be paid upon presentation of actual receipts and documented completion of travel.

6.2.3 Data conversion fees (data conversion activities, responsibilities and fees will be defined in the Statement of Work) will be invoiced upon approval by CUSTOMER on a module by module basis according to the following schedule:

- 50% of the Data Conversion fees upon the VENDOR'S verification of successful data conversion, and successful installation of the converted data for each module in preparation for reliability and acceptance testing.
- 50% of Data Conversion fees upon CUSTOMER'S verification that reliability and acceptance tests have been successful and non-conforming issues have been corrected.

6.2.4 Customization and development services will be invoiced monthly upon completion of agreed upon tasks, milestones and deliverables. The vendor must provide an itemized invoice showing the specific tasks completed and the resources involved in each task.

6.3 Payment shall be made by CUSTOMER only for services rendered and upon submission of a payment request upon completion and CUSTOMER approval of the work performed. In consideration for the full performance of the services set forth in the Statement of Work in Exhibit A, CUSTOMER agrees to pay VENDOR a fee pursuant to rates stated in Exhibit B, attached and incorporated by reference. Based on the applicable payment schedule or as otherwise agreed to in the executed contract(s), CUSTOMER will pay all properly authorized, documented and prepared invoices which are not in dispute within thirty (30) days of receipt by CUSTOMER of such invoices.

6.4 Withholding of Payment. In addition to the 15% holdback of all fees, the CUSTOMER will withhold payment without penalty or late fees, for the VENDOR'S non-conformance to professional standards, excessive or unauthorized costs, or defects in deliverables until remedied.

SECTION 7 – TERMINATION

Without limitation to such rights or remedies as CUSTOMER shall otherwise have by law, CUSTOMER shall have the right to terminate this Agreement or suspend work on the Project for any reason, upon thirty (30) days' written notice to VENDOR. VENDOR agrees to cease all work under this Agreement upon receipt of said written notice.

SECTION 8 - OWNERSHIP OF DOCUMENTS

All documents prepared by VENDOR in the performance of this Agreement are and shall be the property of CUSTOMER, whether the project for which they are made is executed or not.

SECTION 9 - CONFIDENTIALITY

All reports and documents prepared by VENDOR in connection with the performance of this Agreement are confidential until released by CUSTOMER to the public. VENDOR shall not make any such documents or information available to any individual or organization not employed by VENDOR or CUSTOMER without the written consent of CUSTOMER before any such release.

The following shall not be considered Confidential or Proprietary Information: (i) any information in the public domain at the time of its communication thereof to either party by the other party; (ii) any information which enters the public domain, through no fault of the receiving party subsequent to the time of its communication to the receiving party; (iii) any information which is obtained in good faith by either party from a third party, provided such third party is not bound by a confidentiality agreement with Vendor or Customer, as applicable; (iv) information that was already known to that party prior to the date of disclosure to that party; (v) information which the receiving party establishes was developed independently of confidential or proprietary information furnished to it; and (vi) information that is required to be disclosed to any court, government authority or regulatory authority or pursuant to requirement of any state or federal law.

SECTION 10 - INTEREST OF VENDOR

VENDOR covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services under this Agreement.

SECTION 11 - VENDOR'S STATUS

It is expressly agreed that in the performance of the services required under this Agreement, VENDOR shall at all times be considered an independent Vendor as defined in Labor Code Section 3353, under control of the CUSTOMER as to the result of the work but not the means by which the result is accomplished. Nothing herein shall be construed to make VENDOR an agent or employee of CUSTOMER while providing services under this Agreement.

SECTION 12 – PERSONNEL REVIEW AND APPROVAL

VENDOR shall have the right to assign personnel to this Agreement, but CUSTOMER shall have the right of review of VENDOR's personnel assigned to the project, including all subcontractors. This includes but is not limited to CUSTOMER's ability to require a timely replacement.

VENDOR warrants that each person assigned to this Agreement will be for the duration of the project with full-time efforts except as specified or agreed to by CUSTOMER, or due to the following exceptions: illness, death, termination or resignation from VENDOR. No subcontractors shall be used on the project without the express written approval of CUSTOMER.

SECTION 13 - INDEMNITY

VENDOR agrees to hold harmless, indemnify and defend CUSTOMER, the Estero Municipal Improvement District, its elected and appointed officials, employees, and agents from and against any and all claims, loss, liability, damage, and expense arising out of VENDOR's sole negligence or willful misconduct in the performance of this Agreement, or based upon any claim that the VENDOR's Software, Services, tools and related documentation infringes upon a copyright, patent, or third party right, except for those claims arising out of CUSTOMER's sole negligence or willful misconduct. VENDOR agrees to defend CUSTOMER, its elected and appointed officials, employees, and agents against any such claims, and will assume at the time incurred, and pay all costs, losses, liabilities, damages and attorney fees arising from such claim.

SECTION 14 - INSURANCE

VENDOR shall procure and maintain for the duration of the contract the insurance specified in Exhibit C of this agreement.

SECTION 15 - NONASSIGNABILITY

Both parties hereto recognize that this Agreement is for the personal services of VENDOR and cannot be transferred, assigned, or subcontracted by VENDOR without the prior written consent of CUSTOMER.

SECTION 16 - RELIANCE UPON SKILL OF VENDOR

It is mutually understood and agreed by and between the parties hereto that VENDOR is skilled in the performance of the work agreed to be done under this Agreement and that CUSTOMER relies upon the skill of VENDOR to do and perform the work in the most skillful manner, and VENDOR agrees to thus perform the work. The acceptance of VENDOR's work by CUSTOMER does not operate as a release of VENDOR from said obligation.

SECTION 17 - WAIVERS

The waiver by either Party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions of any ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, condition, ordinance, or law. The subsequent acceptance by either Party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other Party of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

SECTION 18 - COSTS AND ATTORNEY FEES

Attorney fees in an amount not exceeding \$85 per hour per attorney, and in total amount not exceeding \$5,000, shall be recoverable as costs (by the filing of a cost bill) by the prevailing Party in any action or actions to enforce the provisions of this Agreement. The above \$5,000 limit is the total of attorney fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions. It is the intent of this Agreement that neither Party shall have to pay the other more than \$5,000 for attorney fees arising out of an action, or actions to enforce the provisions of this Agreement.

SECTION 19 - NON-DISCRIMINATION

VENDOR warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal employment opportunity. Neither VENDOR nor any of its sub-Vendors shall discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act.

SECTION 20 – MEDIATION

20.1 Dispute Resolution. In the event of any dispute between the parties hereunder, the parties shall first attempt to resolve the dispute at the Project Manager level representing CUSTOMER and his/her equivalent representing VENDOR. If the dispute is not resolved at this level within ten (10) business days of the date the other party is first informed of the dispute in writing, the parties shall attempt to resolve the dispute at the City Manager level and his/her equivalent representing VENDOR. The use of the foregoing procedure is a condition precedent to the commencement of any mediation or other legal proceedings hereunder.

20.2 Mediation. Should any dispute arise out of this Agreement, any Party may request that it be submitted to mediation. The Parties shall meet in mediation within thirty (30) days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the Parties shall each submit one name from mediators listed by the American Arbitration Association, the California State Board of Mediation and Conciliation, or other agreed-upon service. The mediator shall be selected by a “blindfold” process.

The cost of mediation shall be borne equally by the Parties. Neither Party shall be deemed the prevailing party. No Party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than sixty (60) days, unless the parties extend the maximum time.

Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by the American Arbitration Association, the California State Board of Mediation and Conciliation, or other agreed-upon service. The mediator shall be selected by a "blindfolded" process.

The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

SECTION 21 - LITIGATION

VENDOR shall testify at CUSTOMER'S request if litigation is brought against CUSTOMER in connection with VENDOR'S services under this Agreement. Unless the action is brought by VENDOR, or is based upon VENDOR'S wrongdoing, CUSTOMER shall compensate VENDOR for preparation for testimony, testimony, and travel at VENDOR'S standard hourly rates at the time of actual testimony.

SECTION 22 - NOTICES

All notices, requests, consents and approvals hereunder shall be in writing and shall be delivered with proof of receipt where official proof of receipt can be validated, postage prepaid, and addressed as follows:

To CUSTOMER:	Rob Learmonth City of San Mateo 330 W 20th Avenue San Mateo, CA 94403
To VENDOR:	Technology Management Professionals Attn: Baron Wolt 4790 Caughlin Pkwy #438 Reno, Nevada 89519

Either party may change its address or addressee for the purposes of this paragraph by notice. Notice given in accordance with this paragraph shall be deemed given when received.

SECTION 23 – TOBACCO FREE STANDARDS

CUSTOMER has adopted a policy which prohibits the use of tobacco products within CUSTOMER buildings, vehicles or on CUSTOMER property. VENDOR employees, subcontractors, or employees of subcontractors shall abide by the policy during the performance of this Agreement.

SECTION 24 – TAXES

CUSTOMER shall be liable for all federal, state, municipal or other governmental taxes, duties charges or costs, however designated, now or hereinafter imposed, upon the Services and deliverables of this Agreement exclusive, however, of taxes based upon net income, gross income or net worth of VENDOR; taxes based upon the franchise of VENDOR; taxes based upon any equipment or software, other than that which is licensed in this Agreement, which are owned by the VENDOR; or taxes paid by or for any employee of the VENDOR. CUSTOMER reserves the right to review the tax charges and, in no event, will be responsible to pay more than is appropriate or actually paid under applicable law. VENDOR will pass on to CUSTOMER any tax refunds received with respect to the CUSTOMER's previous payment or reimbursement of applicable taxes hereunder.

SECTION 25 – COOPERATION/FURTHER ACTS

The parties shall fully cooperate with one another in attaining the purposes of this Agreement and, in connection therewith, shall take any such additional further acts and steps and sign any such additional documents as may be necessary, appropriate and convenient as related thereto.

SECTION 26 – TRANSITION COOPERATION

Upon termination of this Agreement for any reason, VENDOR agrees to, upon CUSTOMER's written request:

1. Provide sufficient efforts and cooperation to ensure an orderly and efficient transition of services to CUSTOMER or its contractor without degradation of the quality and level of VENDOR's performance of its services to CUSTOMER.
2. Return to CUSTOMER all data records, logs and documentation in a mutually agreeable format, including full disclosure of the custom software code and system design, third party suppliers and other pertinent information about the services required to perform the Services for CUSTOMER.
3. Furnish phase-in training, and phase-in/phase-out services for up to ninety (90) calendar days after termination of this Agreement.
4. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in/phase-out services required. The plan shall specify a date for transferring responsibilities and shall be subject to CUSTOMER's approval.

SECTION 27 – FORCE MAJEURE

Neither Party will incur any liability to the other on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond its reasonable control and without negligence of the Parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, acts of terrorism, floods, and earthquakes.

SECTION 28 - AGREEMENT CONTAINS ALL UNDERSTANDINGS; AMENDMENT

This document represents the entire and integrated agreement between CUSTOMER and VENDOR and supersedes all prior negotiations, representations, and agreements, either written or oral. Unless set forth herein, neither Party shall be liable for any representations made whether orally or in writing.

This document may be amended only by written instrument, signed by duly authorized representatives of both CUSTOMER and VENDOR.

The documents constituting the Agreement between both Parties are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. The Exhibits shown below constitute a material part hereof, and are hereby incorporated by reference herein as part of this Agreement.

1. Exhibit A – Master Service Agreement
2. Exhibit B – Managed IT Services Proposal and Fee Schedule
3. Exhibit C – Insurance Requirements

In the event of a disagreement between the various documents relating to this Agreement, the order of precedence shall be as follows (in order from most controlling to least controlling):

1. This Agreement, including the related Maintenance and Support Agreement and the Software License Agreement
2. Managed IT Services Proposal and Fee Schedule
3. Master Service Agreement

SECTION 29 - GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of California and, in the event of litigation, venue will be in the County of San Mateo.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, CITY OF SAN MATEO and Technology Management Professionals have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives, and hereto have accepted the terms, conditions, and provisions set forth above.

CITY OF SAN MATEO

VENDOR

Azalea Mitch
Public Works Director

Baron Wolt
President
Its Authorized Agent

APPROVED AS TO FORM

Linh Nguyen
Assistant City Attorney

Attachments:

Exhibit A – Master Service Agreement
Exhibit B – Managed IT Services Proposal and Fee Schedule
Exhibit C – Insurance Requirements

Master Service Agreement

Parties to the agreement

This agreement between Client, and Technology Management Professionals Nevada LLC, a Nevada Limited Liability Company, hereinafter referred to as Service Provider.

Initial Term

This agreement is effective on the date of execution and shall remain in effect for the selected Term Options, the Initial Term. The default Term Option is 36-months. Any and all modifications, amendments, changes, alterations, updates, and addendums must be in writing and signed by both parties.

Termination

This agreement may be terminated by Client for good cause and upon written notice, only if the Service Provider:

- Breaches any material term or condition of this Agreement, and does not commence work to cure such breach within thirty (30) days, and achieve such cure within ninety (90) days of receipt of such written notice.
- Terminates or suspends its business operations, unless it is succeeded by a permitted assignee under the Agreement.

Renewal

The Master Service Agreement automatically renews for a subsequent 12-month term beginning on the day immediately following the end of the Initial Term and each year thereafter, unless either party gives the other party written notice of its intent not to renew this Agreement at least sixty (60) days prior to the end of the agreement period.

Service Fees and Payment Schedule

Fees for monthly service charges provided by Service Provider will become due and payable on the first day of each month. It is understood that all Services requested by Client that fall outside of the terms of this Agreement will be billed as separate, individual services. The contract will commence on the date of signing unless otherwise agreed upon by both parties in writing.

Late Fees and Penalties

Service fees will be invoiced to Client by Service Provider, and shall be payable by Client to Service Provider within thirty days. Invoices not paid within such thirty (30) days will bear interest at the lesser of eighteen percent (18%) or the maximum contract rate of interest allowable by law.

Taxes

It is understood that any Federal, State or Local Taxes applicable shall be added to each invoice for services or materials rendered under this Agreement. Client shall pay any such taxes unless a valid exemption certificate is furnished to Service Provider for the state of use.

Growth Provisions

In the event the Client adds additional devices, users, or locations or a change of scope occurs requiring additional devices or systems be supported, pricing based on associated Service Plans will be added to the monthly fees of this agreement. From time to time we may audit your networks to determine if the appropriate number of devices is being billed for. Only additional services that have been added to a service plan may be removed prior to the end of the term of the service plan.

Service Descriptions

Monitoring Services

Service Provider will provide ongoing monitoring and security services of all covered critical devices as indicated by a service plan. Service Provider will provide monthly reports as well as document critical alerts, scans, and event resolutions to Client. Should a problem be discovered during monitoring, Service Provider shall open a service ticket and make every attempt to rectify the condition while following prioritization and escalation procedures.

Patch Management

Service Provider will provide ongoing patch management services to all covered compatible devices. Patch management services are limited to compatible Microsoft and 3rd party applications. A full listing of compatible applications can be found on Service Provider website.

Support

Support services provided to the Client by Service Provider are limited to the services required to get your system to normal operating order. Support services must be explicitly included in a given Service Plan.

Help Desk and Remote Support

Remote Support provided to the Client by Service Provider through remote means between the hours of 8:00am and 5:00pm in Client's primary time zone Monday through Friday, excluding nationally recognized holidays.

Onsite Support

Onsite Support provided to the Client by Service Provider through an onsite technician in select service areas between the hours of 8:00 am and 5:00 pm in the location's time zone Monday through Friday, excluding nationally recognized holidays. Onsite Support in areas outside of the TMPros Onsite Support footprint will always be billed for time, travel, and per diem costs.

Additional Services

Additional services will be provided on an as needed basis and will be billed according to pricing guidelines of the service plan. If not pricing is established Service Provider's current rates will apply. Both written and verbal requests are subject to additional services fees to include the following services.

Projects Services

Any IT related equipment install, IT scope change, purchase or solution research request, on-site work to include equipment move, change, install, or other IT related work will be considered project work. Installation of any equipment not purchased through the service provider that increases the number of client devices are considered project hours. Any device installation that replaces existing devices are not considered project hours. Any devices that are purchased through the service provider are covered and installed at service provider expense. Any requested work above the monthly-allocated hours outlined in Appendix B will be considered project work outside the scope of the agreement and will be billed at the appropriate rate.

CIO Services

Any requested on-site or remote meetings, consultations, phone calls relating to decision-making, services rendered or any IT related discussions will count as CIO hours. Any work beyond the allotted hours will be billed as additional CIO services.

Other Included Services

Each Service Plan may include services specifically outlined in the Service Plan, and will supersede the definitions in this Agreement

Excluded Services

Any service not explicitly included in a service plan are billable as a separate service at current rates. Services defined in this document are only included if a Service Plan is active covering those services. Service rendered under this Agreement does not include:

- Parts, equipment, or software not covered by vendor/manufacture warranty or support.
- The costs of any parts, equipment, or shipping charges of any kind.
- The costs of any Software, Licensing, or Software Renewal or Upgrade Fees of any kind.
- The costs of any 3rd Party Vendor or Manufacturer Support or Incident Fees of any kind.
- The cost to bring Client's environment up to minimum standards required for Services.
- Failure due to acts of God, building modifications, power failures or other adverse environmental conditions or factors.
- Service and repair made necessary by the alteration or modification of equipment other than that authorized by Service Provider, including alterations, software installations or modifications of equipment made by Client's employees or anyone other than Service Provider.
- Installation of hardware not purchased through or under the advisement of Service Provider.
- Maintenance of Applications software packages, whether acquired from Service Provider or any other source unless specified.
- Programming (modification of software code) and program (software) maintenance unless specified.
- Tasks deemed to be regular business functions or operations regardless of the technical level.
- Training Services of any kind unless specified.

After Hours and Holidays

Service Provider will respond to Client's Trouble Tickets, and with best effort after hours or on holidays. Trouble tickets should be submitted by authorized Client employees, or through a designated contact person by email, help desk (<http://support.tmpros.com>), or by phone (888) 955-7767. Each call will be assigned a Help Desk Ticket number for tracking.

Service outside Normal Working Hours

Emergency services performed outside of the hours of 8:00am through 5:00pm in Client's primary time zone Monday through Friday, excluding posted national holidays (available on Service Provider Website), shall be subject to a 1.5x multiple on hourly services expenses.

Priority Matrix

	Everyone Affected <i>Entire company or client base is affected</i>	Medium Group or Department Affected <i>Organization largely affected</i>	Small group or individual <i>A small portion of the organization is affected</i>
High Impact <i>Major business process affected</i>	Priority 1 – Critical	Priority 2 – Urgent	Priority 4 – Normal
Medium Impact <i>Business is degraded but there is a reasonable workaround</i>	Priority 2 – Urgent	Priority 3 – High	Priority 4 – Normal
Low Impact <i>More of an irritation than a stoppage</i>	Priority 4 – Normal	Priority 4 – Normal	Priority 5 – Low

Priority Guideline Matrix

Response Times

Priority	Response Time	Escalation Time
Priority 1	Within 1 Hour	2 Hours
Priority 2	Within 4 Hours	8 Hours
Priority 3	Within 24 Hours	48 Hours
Priority 4	Within 48 Hours	96 Hours
Priority 5	Within 96 Hours	128 Hours

Target Response Times

Support Tiers

The following table details and describes our Support Tier levels:

Support Tier	Description
Tier 1 Support	All support incidents begin in Tier 1, where the initial trouble ticket is created unless it is priority 1. The issue is identified and clearly documented, and basic hardware/software troubleshooting is initiated.
Tier 2 Support	All support incidents that cannot be resolved with Tier 1 Support are escalated to Tier 2, where more complex support on hardware/software issues can be provided by more experienced Engineers.

Tier 3 Support	Support incidents that cannot be resolved by Tier 2 Support are escalated to Tier 3, where support is provided by the most qualified and experienced engineers who have the ability to collaborate with 3rd Party (Vendor) Support Engineers to resolve the most complex issues.
Tier 4 CIO Services	Issues that cannot be resolved by Tier 3 in conjunction with vendor support are escalated to CIO Services for review and direction.

Service Request Escalation Procedure

- Support Request is Received through Phone, E-mail, Chat or Monitoring.
- Trouble Ticket is Created
- Issue is identified and documented in the help desk system.
 1. Issue is qualified to determine if it can be resolved through Tier 1 Support.
 2. Level 1 Resolution – issue is worked to a successful resolution
 3. Quality Control – Issue is verified to be resolved to Client's satisfaction
 4. Trouble Ticket is closed after complete problem resolution details have been updated in the help desk system.
- If issue cannot be resolved through Tier 1 Support
 1. Issue is escalated to Tier 2 Support
 2. Issue is qualified to determine if it can be resolved by Tier 2 Support
 3. Level 2 Resolution – issue is worked to a successful resolution
 4. Quality Control – Issue is verified to be resolved to Client's satisfaction
 5. Trouble Ticket is closed after complete problem resolution details have been updated in the help desk system.
- If issue requires Onsite Support Tier 2 may dispatch Onsite Support
 1. Issue is escalated to Onsite Support
 2. Issue is qualified to determine if it can be resolved by Onsite Support
 3. Onsite Resolution – Issue is worked to a successful resolution.
 4. Quality Control – Issue is verified to be resolved to Client's satisfaction
 5. Trouble Ticket is closed after complete problem resolution details have been updated in the help desk system.
- If cannot be resolved through Tier 2 or Onsite Support
 1. Issue is escalated to Tier 3 Support
 2. Issue is qualified to determine if it can be resolved by Tier 3 Support
 3. Level 3 Resolution – issue is worked to a successful resolution
 4. Quality Control – Issue is verified to be resolved to Client's satisfaction
 5. Trouble Ticket is closed after complete problem resolution details have been updated in the help desk system.
- Issue is escalated to Operations Director or Tier 4 CIO Services for action. Request is updated with complete details of all activity performed.

Miscellaneous

Limitation of Liability

In no event shall Service Provider be held liable for indirect, special, incidental or consequential damages arising out of service provided hereunder, including but not limited to loss of profits or revenue, loss of use of equipment, lost data, costs of substitute equipment, or other costs.

Confidentiality

Service Provider and its agents will not use or disclose client information, except as necessary or consistent with providing the contracted services, and will protect against unauthorized use.

Execution of Agreement

This Agreement may be executed using digital signatures. Each party will be delivered an original electronic copy, which shall be binding upon execution. This Agreement may also be executed in counterparts. When each party has signed and delivered at least one such counterpart to each party's counsel, each counterpart shall be deemed an original, and, when

taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all parties.

Notices

Any notice given under this Agreement must be in writing and shall be deemed to have been duly given if mailed by U.S. first-class certified mail, return receipt requested, postage prepaid and addressed to the attention of the undersigned at the address shown in the heading of this Agreement.

Entire Agreement

This Agreement contains the entire agreement between the parties, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. The provisions of this Agreement may be waived, altered, amended or repealed, in whole or in part, only upon the written consent of all parties.

Headings

The headings and numbering of the difference paragraphs of this Agreement are inserted for convenient reference only and are not to be taken as part of this Agreement or to control or affect the meaning, construction or effect of the same.

Consequential Damages

Service Provider shall not be liable to the Client for special, indirect or consequential damages under any provision of this Agreement or for any special, indirect or consequential damages arising out of any act or failure to act hereunder.

Attorney's Fees and Costs

In the event a lawsuit, arbitration or mediation is initiated by either party, the party against whom a judgment or award is entered shall be liable for all costs of suit and all reasonable attorneys' fees as set by the court or arbitrator.

Controversies

Any claim or controversy that arises out of or relates to this Agreement or the alleged breach of it, and which cannot be settled by the parties will be settled by submission to a local chapter of the American Arbitration Association or a similar body for binding unappealable arbitration in accordance with the current rules and procedures of such organization. The aggrieved party has the right to bring the grievance to arbitration in the State of California in which such party has its respective principal place of business. In the event a lawsuit or arbitration proceeding is initiated by either party, the party against whom a judgment or award is entered will also be liable for costs of suit and reasonable attorneys' fees as set by the court or arbitrator.

Law and Forum for Disputes

This Agreement shall be governed in all respects by the laws of the State of California as they apply to agreements entered into and to be performed within California, without regard to conflict of law provisions. Any claim or dispute that arise out of or relating to this agreement shall be resolved by a court located in Merced County, California, except as otherwise described in the Arbitration Option paragraph below. All parties submit to the personal jurisdiction of the courts located within Merced County, California for the purpose of litigating all such claims or disputes.

Arbitration Option

For any claim in which the total amount of controversy is less than \$10,000, the party requesting relief may elect to resolve the dispute in a cost effective manner of binding arbitration. The arbitration option requires submission to a local chapter of the American Arbitration Association or a similar body for binding unappealable arbitration in accordance with the current rules and procedures of such organization. The aggrieved party has the right to bring the grievance to arbitration in the state in which such party has its respective principal place of business. In the event a lawsuit or arbitration proceeding is initiated by either party, the party against whom a judgment or award is entered will also be liable for costs of suit and reasonable attorneys' fees as set by the court or arbitrator.

Waiver of Breach

The waiver of any party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach hereof.

Severability

This Agreement constitutes the product of negotiations of the parties hereto and any enforcement hereof will be interpreted in a neutral manner and not more strongly for against any party based upon the source of the draftsmanship of this Agreement. If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions hereof shall continue to be fully effective.

Mutual Drafting Clause

This agreement is drafted mutually, with participation of both parties. Ambiguities will not be interpreted in favor of either party.

Advice of Counsel

Each party hereto, by its due execution of this Agreement, represents that it has reviewed each term of this Agreement with Counsel, and that hereafter no party shall deny the validity of this Agreement on the ground that the party did not have advice of Counsel. Each party has had the opportunity to receive independent legal advice with respect to the advisability of making the compromise and settlement provided for herein and with respect to the advisability of executing this Agreement.

Force Majeure

Service Provider is not responsible for failure to render services due to circumstances beyond its control including, but not limited to, acts of God.

Exhibit B

Managed IT Services Proposal

Mar 11, 2022

Quote no.: Quote 6416
Exp. Date: 5/30/2022

Prepared for San Mateo WWTP
2050 Detroit Ave
San MateoCA

Non-Recurring Setup Charges (NRC)

Initial setup requires the installation of the TMPros monitoring software and the reconfiguration of any systems to support the service. It does not include the cost of any required hardware or software purchases required to bring systems into compliance with best practices. Any identified deficiencies and recommendations will be presented during the setup and onboarding process.

Managed IT Services - Monthly Recurring Charges (MRC)

	Price	QTY	Subtotal
Monitoring			
Server Monitoring 24x7 Remote Monitoring, Patch Management, Ticketing, and Remote Management Tools	\$100.00	28	\$2,800.00
Workstation Monitoring 24x7 Remote Monitoring, Patch Management, Ticketing, and Remote Management Tools	\$35.00	4	\$140.00
Network Device Monitoring 24x7 Remote Monitoring of Switches, Routers, Wireless Access Points, and Critical Printers	\$35.00	25	\$875.00
Security			
<input type="checkbox"/> Managed Endpoint Detection and Automated Response Professional EDR for Win/MacOS/Linux endpoints.	\$7.00	0	\$0.00

<input type="checkbox"/> External Vulnerability Scanning External vulnerability scanning per IP or host name per month. Typically at least one per site.	\$40.00	0	\$0.00
<input type="checkbox"/> Risk Intelligence Scanning Scan for protected information per device scanned per month	\$5.00	0	\$0.00
<input type="checkbox"/> Workstation Cloud Backup	\$14.00	0	\$0.00
<input type="checkbox"/> Workstation Document Backup	\$5.00	0	\$0.00
Server Support & Services			
Veeam Management	\$20.00	19	\$380.00
Desktop Support	\$25.00	4	\$100.00
Virtual Server Support	\$50.00	19	\$950.00
Physical Server Support Includes SAN/NAS	\$125.00	6	\$750.00
<input type="checkbox"/> Server Backup Pro Cloud backup (Up to 500 GB)	\$95.00	0	\$0.00
Network Support			
Network Device Support	\$25.00	25	\$625.00
Onsite Monthly			
MSA: Support Project Monthly Maintenance, Onsite Visit, Transition hours for migration	\$75.00	60	\$4,500.00
Monthly Reporting			
MSA: CIO Services Monthly Progress Report and Invoices	\$200.00	4	\$800.00

Managed IT MRC \$11,920.00

Initial Term Selection

Please select only one of the options below. A discount will automatically be applied to your Managed Services MRC for the selected term. Discounts do not apply to software or cloud licenses. Hourly services will be billed based on the term selection in the chart below.

	12 Months	24 Months	36 Months	48 Months	60 Months
Managed IT MRC Services Discount	0%	2%	4%	6%	8%
VoIP Discount MRC Discount	0%	2%	4%	6%	8%
Onsite Services (Incident Response)	\$175 per hour	\$150 per hour	\$125 per hour	\$110 per hour	\$100 per hour
Project Services	\$175 per hour	\$150 per hour	\$125 per hour	\$110 per hour	\$100 per hour
CIO Services	\$250 per hour	\$225 per hour	\$175 per hour	\$150 per hour	\$125 per hour
Selected Term	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

By signing below you agree to following Master Service Agreements:

- TMPros Managed IT Services - [TMPros Master Services Agreement](https://www.tmpros.com/master-service-agreement) located on our website at <https://www.tmpros.com/master-service-agreement>.

☐ I authorize automatic ACH deductions using provided payment information for NRC and MRC as specified in this services proposal.

San Mateo WWTP

EXHIBIT C

Insurance Requirements for Vendors

Vendor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with products and materials supplied to the Entity. The cost of such insurance shall be borne by the Vendor.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01) and include products coverage.

Minimum Limits of Insurance Coverage shall be at least as broad as Insurance Services Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

If the Vendor maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or higher limits maintained by the Vendor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

Self-Insured Retentions

Self-insured retentions be declared to and approved by the Entity. At the option of the Entity, either: the Vendor shall obtain coverage to reduce or eliminate such self-insured retentions as respects the Entity, its officers, officials, employees, and volunteers; or the Vendor shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Vendor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Vendor’s insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used).

Primary Coverage

For any claims related to this contract, the Vendor’s insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be

excess of the Vendor's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

Verification of Coverage

Vendor shall furnish the Entity with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to Entity before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Vendor's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Waiver of Subrogation

Vendor hereby grants to Entity a waiver of any right to subrogation which any insurer of said Vendor may acquire against the Entity by virtue of the payment of any loss under such insurance. Vendor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer

Special Risks or Circumstances

Entity reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Note:

Vendor Exceptions

There are a number of organizations/companies that provide services to your agencies that will not have formal contracts in place. These include but are not limited to, United Parcel Service, Federal Express, United States Postal Service, and for hire interstate truck lines as examples. Although each of these companies may provide vendor services to you, you typically will not require formal contracts and will not require evidence of insurance. All of the companies listed above are required to be licensed under the Department of Transportation rules and regulations which also require specific limits of insurance.