

AMENDED AND RESTATED

AGREEMENT

between

THE CITY OF COCONUT CREEK

and

GOVERNMENTJOBS.COM, INC., a California corporation

d/b/a NEOGOV

for

ON-LINE EMPLOYMENT APPLICATION SERVICES

This Amended and Restated Agreement is made and entered into this 1st day of October, 2019 by and between the City of Coconut Creek, a municipal corporation, with principal offices located at 4800 West Copans Road, Coconut Creek, FL 33063 (the "CITY") and GovernmentJobs.com, Inc., a California corporation d/b/a "NEGOV", with offices located at 300 Continental Boulevard, Suite 565, El Segundo, CA 90245 (the "VENDOR") for the purpose of providing On-line Employment Application Services.

WHEREAS, the CITY first contracted to use VENDOR'S services to provide NEOGOV Software License and Maintenance Services on October 1, 2006 ("Original Agreement"); and

WHEREAS, the parties desire to update the Original Agreement into this Restated Agreement for convenience, clarification, and ease of reference.

NOW THEREFORE, the CITY and the VENDOR in consideration of the mutual covenants hereinafter set forth, agree as follows:

- 1) The undersigned VENDOR hereby represents that it will perform the requirements of this Agreement pursuant to all covenants and conditions.
- 2) **Scope of Work**
The Scope of Work shall be as per Exhibit "A".
- 3) **Term/Contract Price**
The Term shall be for five (5) years ("initial term") with the option to extend the Agreement for one (1) five (5) year renewal period as long as agreed to by both parties in writing. The Contract price shall be Eight Thousand Six Hundred Eighty-Two Dollars and 19/100 (\$8,682.19) per year for the initial term.
 - (a) Set up and Training Pricing as referenced in the Original Agreement is included in Exhibit "B" (VENDOR Set up and Training Order Form), Maintenance and License Pricing is included in Exhibit "C" (VENDOR Maintenance and License Order Form) and current pricing of the initial term is reflected in Exhibit "C" for ease of reference, as referenced in the Original Agreement.
 - (b) Renewal Term(s). For each Renewal Term, VENDOR shall continue to provide CITY with the services, and shall provide maintenance and support services as described herein,

provided CITY issues a purchase order or modification to this Agreement and pays VENDOR in advance the annual recurring charges then in effect.

(c) Cost Adjustments

- i. Costs for all services purchased under this Contract shall remain firm for the initial term as provided in Section 3, "Term/Contract Price" above. Costs for any extension term years shall not exceed five percent (5%) per year. Justification for any requested price increase, such as Updates, Upgrades, Consumer Price Index, Information Security Advancements, and/or cost of Data Storage, shall be detailed and submitted to the CITY at least ninety (90) days prior to the contract anniversary date. Any approved cost adjustments shall become effective upon the anniversary date of the contract.
- ii. The CITY may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or any decreases are considered to be insufficient. In the event the CITY does not wish to accept the adjusted prices and the matter cannot be resolved to the satisfaction of the CITY, the contract can be cancelled by the CITY upon giving thirty (30) days written notice to the VENDOR.

4) Insurance Requirements:

Throughout the term of this contract, the VENDOR and/or any and all subcontractors or anyone directly or indirectly employed by either of them shall maintain in force at their own expense, insurance as follows:

4.1 General Liability

Commercial General Liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage including coverage for premises/operations, contractual liability, personal injury, explosion, collapse, underground hazard, products/completed operations, broad form property damage, cross liability and severability of interest clause. This policy of insurance shall be written in an "occurrence" based format.

4.2 Professional Liability / Errors and Omissions Coverage

VENDOR must provide the CITY with evidence of Professional Liability insurance with, at a minimum of \$1,000,000.00 per occurrence and in the aggregate. "Claims-Made" forms are acceptable for Professional Liability insurance. Coverage shall include all claims arising out of the VENDOR's operations or premises, any person directly or indirectly employed by the VENDOR, and the VENDOR's obligations under indemnification under this contract.

4.3 Information Security/Cyber Liability Insurance

VENDOR must provide the CITY with evidence of Information Security/Cyber Liability Insurance with, at a minimum of \$3,000,000.00 per occurrence written on a "Claims-Made" basis covering Supplier, its employees, subcontractors and agents for expenses, claims and losses resulting from wrongful acts committed in the performance of, or failure to perform, all services under this Agreement, including, without limitation, claims, demand and any other payments related to electronic or physical security, breaches of confidentiality and invasion of or breaches of privacy.

Information Security/Cyber Liability Insurance shall include Internet Media Liability including cloud computing and mobile devices for protection of private or confidential information whether electronic or non-electronic, network security and privacy; privacy against liability for system attacks, digital asset loss, denial or loss of service, introduction, implantation or spread of malicious software code, security breach, unauthorized access and use; including regulatory action expenses and notification and credit monitoring expenses.

4.4 General

Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit and provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence limits specified above.

Should any required insurance lapse during the Contract term, requests for payments originating after such lapse shall not be processed until the CITY receives satisfactory evidence of reinstated coverage as required by this Contract, effective as of the lapse date. If insurance is not reinstated, CITY may, at its sole option terminate this Agreement effective on the date of such lapse of insurance.

(a) , General Liability policies shall be endorsed to provide the following: Name as additional insured the City of Coconut Creek and its Officers, Agents, Employees and Commission Members.

(b) That such insurance is primary to any other insurance available to the additional insured with respect to claims covered under the policy and that insurance applies separately to each insured against whom claims are made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

All policies shall be endorsed to provide sixty (60) days prior written notice of cancellation, non-renewal or reduction in coverage or limits to:

City of Coconut Creek
Attn: Risk Manager
4800 West Copans Road
Coconut Creek, FL 33063

The issuing agency shall include full name, address and telephone number in each insurance certificate issued.

4.5 Insurance Company and Agent

All insurance policies herein required of the VENDOR shall be written by a company with a A.M. Best rating of A-VII or better that is duly authorized and licensed to do business in the State of Florida and shall be executed by agents, thereof that are duly licensed as agents in said state.

5) Indemnification

The parties agree that one percent (1%) of the total compensation for the services provided pursuant to this Agreement shall constitute specific consideration given to VENDOR for the indemnification provided hereunder.

5.1 The VENDOR shall indemnify and hold harmless the City Commission, the City of Coconut Creek, and its agents and employees, collectively referred to as "Releasee" for purposes of this Section, from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of the services provided that any such claim, damage, loss or expense (1) is attributable to injury to or destruction of tangible property including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the VENDOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

5.2 In any and all claims against the Releasee by any employee of the VENDOR, any

subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the VENDOR or any subcontractor under Workers' Compensation Acts, Disability Benefits Acts or other Employee Benefit Acts.

- 5.3** The VENDOR further agrees to defend, indemnify and hold harmless the Releasee from all such claims, fees, royalties, or costs for its use of any patent, trademark, or copyrighted materials, and any suits or actions of any name that may be brought against the Releasee for the infringement of any patents, trademarks or copyrights claimed by any person, firm, or corporation.
- 5.4** The indemnification provided above shall obligate the VENDOR to defend at its own expense or to provide for such defense, at the Releasee's option, any and all claims, liabilities, losses, judgments, lawsuits, and/or causes of action as a result of VENDOR's own negligence of any name and description that may be brought against the Releasee which may result from any operations and activities under this Agreement whether the negligent actions be performed by the VENDOR, its agents or by anyone directly or indirectly employed by either. This indemnification includes all costs and fees including reasonable attorney's and paralegal's fees and costs at trial and appellate levels.
- 5.5** Under no circumstances shall VENDOR'S total liability to CITY or any other person, regardless of the nature of the claim or form of action (whether arising in contract, tort, strict liability or otherwise), exceed the aggregate amount of fees and revenue received by VENDOR hereunder for the prior twelve (12) month period; provided, however that the foregoing limitations set forth in this section shall not apply to actions brought under Section 5.3 or for any injury to persons or damages to tangible property arising out of VENDOR'S gross negligence or willful, gross misconduct.
- 5.6** Nothing herein is intended to serve as a waiver of sovereign immunity by the CITY under Section 768.28, *Fla. Stat.*, nor shall anything included herein be construed as consent to be sued by any third parties in any matter arising out of this Agreement. The foregoing indemnification and release shall survive the termination or expiration of this Agreement.

6) Public Records

VENDOR shall keep such records and accounts and require any and all VENDOR'S and subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to the project and any expenses for which VENDOR expects to be reimbursed. Such books and records shall be available at all reasonable times for examination and audit by CITY and shall be kept for a period of three (3) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records shall be grounds for CITY'S disallowance of any fees or expenses based upon such entries.

CITY is a public agency subject to Chapter 119, Florida Statutes. To the extent VENDOR is a VENDOR acting on behalf of the CITY pursuant to Section 119.0701, Florida Statutes, VENDOR shall comply with all public records laws in accordance with Chapter 119, Florida Statute. In accordance with state law, VENDOR agrees to:

- (a) Keep and maintain all records that ordinarily and necessarily would be required by the CITY in order to perform the services.

- (b) Upon request from the CITY'S custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copies within a reasonable time at a cost that does not exceed the costs provided in Chapter 119, Florida Statute, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the contract if the VENDOR does not transfer the records to the CITY.
- (d) Upon completion of the services within this Agreement, at no cost, either transfer to the CITY all public records in possession of the VENDOR or keep and maintain public records required by the CITY to perform the services. If the VENDOR transfers all public records to the CITY upon completion of the services, the VENDOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the VENDOR keeps and maintains public records upon completion of the services, the VENDOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.
- (e) **IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLA. STAT., TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS AT 954-973-6774, PublicRecords@coconutcreek.net, 4800 West Copans Road, Coconut Creek, FL 33063.**

If VENDOR does not comply with this Section, the CITY shall enforce the Agreement provisions in accordance herewith and may unilaterally cancel this Agreement in accordance with state law.

7) Independent Contractor

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the Vendor/Contractor is an independent Vendor/Contractor under this Agreement and not the City's employee for any purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Worker's Compensation Act, and the State Unemployment Insurance law. The Vendor/Contractor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Vendor's/Contractor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of Vendor/Contractor, which policies of Vendor/Contractor shall not conflict with City, State, or United States policies, rules or regulations relating to the use of Vendor's/Contractor's funds provided for herein. The Vendor/Contractor agrees that it is a separate and independent enterprise from the City, that it had full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Vendor/Contractor and the City and the City will not be liable for any obligation incurred by Vendor/Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

8) Assignment and Subcontracting

No assignment of this Agreement or any right occurring under this Agreement shall be made, in whole or in part, by the VENDOR without the express written consent of the City Commission,

which consent shall not be unreasonably withheld. In the event of any assignment, the assignee shall assume the rights, duties and responsibilities of the VENDOR.

9) Termination

Termination for Cause: Immediate

In the event the VENDOR defaults in or violates any of the terms, obligations, restrictions or conditions of this contract, the CITY may, upon written notice to the VENDOR, terminate this contract effective immediately upon receipt of notice as provided in Section 10, "Notice," below. The notice for immediate termination shall state the date of termination and VENDOR shall discontinue all work under this contract on that date.

Termination for Cause: Time to Correct

In the event the VENDOR defaults in or violates any of the terms, obligations, restrictions or conditions of this contract, the CITY may, upon written notice to the VENDOR consistent with Section 10), "Notice," below, set forth the reason(s) for said termination and state a reasonable time-frame, not to exceed fifteen (15) calendar days, for the VENDOR to correct the conditions to the satisfaction of the CITY. In the event the VENDOR has failed to correct the condition(s) of the default or the default is not remedied to the satisfaction and approval of the CITY within the time-frame prescribed, the CITY may terminate the contract effective immediately as provided above. If VENDOR requests a hearing before the City Manager within the time-frame prescribed for correction, the City Manager may extend such time for correction to accommodate such hearing. Notwithstanding the above, the CITY shall have all legal and equitable remedies available to it, including, but not limited to termination of the Contract.

Effect of Termination

Excluding subscription services, upon thirty (30) calendar days written notice to the VENDOR as provided in Section 10), "Notice," below, the CITY may without cause and without prejudice to any other right or remedy, terminate the contract for the CITY's convenience whenever the CITY determines that such termination is in the best interest of the CITY. Where the contract is terminated for the convenience of the CITY the notice of termination to the VENDOR must state that the contract is being terminated for the convenience of the CITY under the termination clause and the extent of termination. The VENDOR shall discontinue all work on the appointed last day of service.

- (a) Within sixty (60) days of notification of termination of this Agreement, VENDOR shall provide CITY with a dedicated data files suitable for importation into commercially available database software (e.g., MS-Access or MS-SQL). The dedicated data files shall be comprised of CITY'S data contained in VENDOR'S system. The structure of the relational database shall be specific to the CITY'S data and shall not be representative of the proprietary VENDOR database.
- (b) In the case of termination by either party, any advance payment by CITY that applies to the remaining unearned months of the Agreement shall be returned to the CITY on a pro rata basis except for any remaining credit for payment of the subscription services, which shall only be returned if payment was made beyond one (1) year in advance and CITY notifies VENDOR of CITY's intent to cancel prior to commencement of the year for which the advance payment applies.

10) Anti-Discrimination

That VENDOR shall for itself, its personal representatives, successors in interests, assigns, subcontractors, and sub-lessees, as a part of the consideration hereof, hereby covenant and agree that:

- (a) No person on the ground of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, gender identity or expression or veteran or service member status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of or performance of services described herein; and
- (b) VENDOR, its personal representatives, successors in interests, assigns, subcontractors, and sub-lessees shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to hiring, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, gender identity or expression or veteran or service member status .

That in the event of a proven breach of the above non-discrimination covenant, the CITY shall have the right to terminate the Agreement as if this Agreement had never been made.

11) Notice

Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the following addresses.

CITY

City Manager
City of Coconut Creek
4800 West Copans Road
Coconut Creek, FL 33063
With a copy to the City Attorney at the same address.

VENDOR

GovernmentJobs.com, Inc. d/b/a NEOGOV
300 Continental Boulevard
Suite 565
El Segundo, CA 90245

12) Agreement Subject to Funding

This Agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Coconut Creek in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

13) Venue

This Agreement shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this Agreement is situated exclusively in the 17th Judicial Circuit Court in and for Broward County, Florida or the United States District Court for the Southern District of Florida.

14) Signatory Authority

The VENDOR shall provide the CITY with copies of requisite documentation evidencing that the signatory for VENDOR has the authority to enter into this Agreement.

15) Severability; Waiver of Provisions

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without

invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

16) Merger; Amendment

This Agreement constitutes the entire Agreement between the VENDOR and the CITY, and negotiations and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the VENDOR and the CITY.

17) Force Majeure

Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure").

18) Piggyback Clause

It is understood and agreed by CITY and VENDOR that any local governmental entity may purchase the services specified herein in accordance with the prices, terms, and conditions of this Agreement. It is also understood and agreed that each local entity shall establish its own contract with VENDOR, be invoiced therefrom and make its own payments to VENDOR in accordance with the terms of the contract established between the local governmental entity and VENDOR. It is also hereby mutually understood and agreed that CITY is not a legally bound party to any contractual Agreement made between VENDOR and any local entity other than CITY.

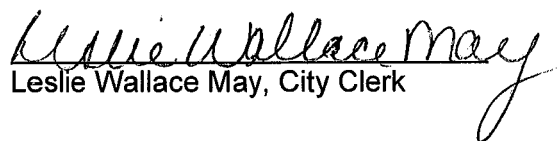
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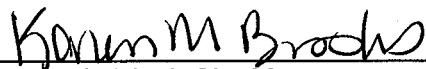
IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature. CITY OF COCONUT CREEK, through its City Manager or designee and GovernmentJobs.com, Inc. d/b/a VENDOR, signing by and through _____ (President, Owner, CEO, etc.) duly authorized to execute same.

CITY

Attest:

CITY OF COCONUT CREEK, FLORIDA


Leslie Wallace May, City Clerk

By: 
~~Mary C. Blasi, City Manager~~
Karen M Brooks

Date: 10/16/19

Approved as to Form:

By: 
Terrill C. Pyburn, City Attorney

VENDOR

ATTEST:

GovernmentJobs.com, Inc. d/b/a NEOGOV

[Signature]
(Corporate Secretary)

[Signature] 10/14/2019
Signature of President/Owner Date

John Clark
Type/Print Name of Corporate Secy.

Chance Evangelist
Type/Print Name of President/Owner

(CORPORATE SEAL)

CORPORATE ACKNOWLEDGEMENT

STATE OF _____ :
:SS
COUNTY OF _____ :

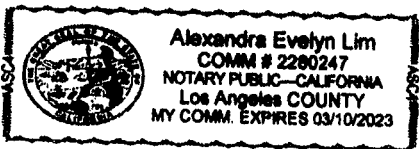
I HEREBY CERTIFY that on this day, before me, an Officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared _____, of _____ a _____ Corporation, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that he/she executed the same.

WITNESS my hand and official seal this _____ day of _____, 2019.

see CA acknowledgement attached.

[Signature]
Signature of Notary Public
State of California

Alexandra Lim
Print, Type or Stamp Name of Notary Public



- Personally known to me
- Produced Identification

CA Driver License
Type of I.D. Produced

- DID take an oath, or
- DID NOT take an oath

CALIFORNIA CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

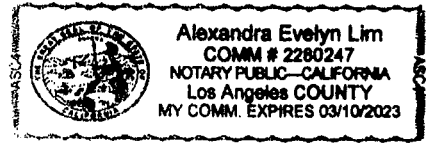
State of California)
County of Los Angeles)

On October 14, 2019 before me, Alexandra Lim, Notary Public,
(here insert name and title of the officer)

personally appeared Shane Evangelist

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

Signature Alexandra Lim

(Seal)

Optional Information

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of Agreement between The City of Coconut Creek & GovernmentJobs.com containing 11 pages, and dated 10/14/2019.

The signer(s) capacity or authority is/are as:

- Individual(s)
- Attorney-in-Fact
- Corporate Officer(s) CEO Title(s)

- Guardian/Conservator
- Partner - Limited/General
- Trustee(s)
- Other: _____

representing: GovernmentJobs.com Inc.
Name(s) of Person(s) or Entity(ies) Signer is Representing
DBA NEW GOV

Additional Information	
Method of Signer Identification	
Proved to me on the basis of satisfactory evidence: <input checked="" type="radio"/> Form(s) of identification <input type="radio"/> credible witness(es)	
Notarial event is detailed in notary journal on: Page # <u>23</u> Entry # <u>81</u>	
Notary contact: <u>3103472217</u>	
Other	
<input type="checkbox"/> Additional Signer(s)	<input type="checkbox"/> Signer(s) Thumbprint(s)
<input type="checkbox"/>	

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EXHIBIT "A"
SCOPE OF WORK

1. Provision of On-line Services

- (a) CITY hereby engages VENDOR, and VENDOR hereby agrees (subject to the terms and conditions set forth herein), to provide the services outlined within this Agreement (the "Services"). CITY hereby acknowledges and agrees that VENDOR'S provision and performance of the Services is dependent and conditioned upon CITY'S full performance of its duties, obligations and responsibilities hereunder.
- (b) Subscription. "Services" means each proprietary VENDOR web-based software-as-a-service application that may be set forth on an Order and subsequently made available by VENDOR to CITY, and associated components as described in the service specifications. Subject to and conditioned on CITY's and its authorized users' compliance with the terms and conditions of this Agreement, VENDOR hereby grants to CITY a limited, non-exclusive, non-transferable, and non-sublicensable right to (a) access and use, and to permit Authorized Users to access and use, the Services specified in the Order solely for CITY's internal purposes; (b) generate, print, and download CITY Data as may result from any access to or use of the Services; and (c) train Authorized Users in uses of the Services permitted hereunder (these rights shall collectively be referred to as the "SaaS Subscription"). "Authorized Users" means (i) CITY employees, and (ii) CITY agents, contractors, consultants, and their respective employees, all of which are pre-approved by VENDOR.
- (c) Delivery and Subscription Term. VENDOR delivers each Service by providing CITY with online access. When you access VENDOR Services, you are accepting it for use in accordance with this Agreement. Unless otherwise specified in an applicable Ordering Document, Service subscriptions shall commence on the Effective Date and remain in effect for the term (the "Initial Term"). Thereafter, SaaS Subscription(s) shall renew for successive terms (each a "Renewal Term" and together with the Initial Term, collectively, the "Term") unless a party delivers to the other party, at least thirty (30) days prior to the expiration of the Initial Term or the applicable Renewal Term, written notice of such party's intention to not renew this Agreement, or unless terminated earlier in accordance with this Agreement. VENDOR shall provide CITY access to the Services within a reasonable time following the Effective Date unless otherwise agreed.

2. Additional Vendor Responsibilities

In connection with the performance of this Agreement, VENDOR shall be responsible for the following:

- (a) VENDOR shall provide all required hosting and operations support for the applications described in the System Overview in a centralized facility.
- (b) VENDOR shall follow those support, maintenance and other procedures and shall provide those support, maintenance and other services to CITY as more

fully described in this Agreement and the System Overview.

- (c) VENDOR shall provide CITY with unlimited job advertisements on www.governmentjobs.com.

3. City Responsibilities

In connection with the performance of this Agreement and the provision of the Services, CITY shall be responsible for the following:

- (a) VENDOR'S logos, including the "powered by" logo, may appear on the "employment opportunities", "job description" and other pages of CITY'S web site.
- (b) CITY shall be responsible for ensuring that CITY'S use of the Services and the performance of CITY'S other obligations hereunder comply with all laws applicable to CITY.
- (c) CITY shall be responsible, as between VENDOR and CITY, for the accuracy and completeness of all records and databases provided by CITY in connection with this Agreement for use on VENDOR'S system.

4. Ownership, Protection and Security

- (a) The parties agree that the VENDOR marks and the CITY marks shall both be displayed on and through VENDOR'S system(s).
- (b) Ownership of any graphics, text, data or other information or content materials and all records and databases supplied or furnished by CITY hereunder for incorporation into or delivery through the application(s) described in the System Overview shall remain with CITY, and VENDOR shall cease use of all such material upon termination of this Agreement.
- (c) CITY acknowledges and agrees that nothing in this Agreement or any other Agreement grants CITY any licenses or other rights with respect to VENDOR'S software system (source code or object code) other than the right to receive Services as expressly provided herein. VENDOR shall retain all ownership in the intellectual property and all other proprietary rights and interests associated with VENDOR'S software system and Services and all components thereof and associated documentation, except as expressly provided herein.
- (d) VENDOR grants to CITY a limited license during the term of this Agreement to use and reproduce VENDOR'S trademarks and logos for purposes of including such trademarks and logos in advertising and publicity materials and links solely as permitted hereunder. All uses of such trademarks and logos shall conform to CITY'S standard guidelines and requirements for use of such trademarks and logos.

5. Vendor Representations and Warranties

- (a) *Service Performance Warranty.* VENDOR warrants that it will perform the Services in a manner consistent with industry standards reasonably applicable to the performance thereof.
- (b) *No Other Warranty.* EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 5, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CITY'S USE OF THE SERVICES ARE AT ITS OWN RISK. VENDOR DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. VENDOR DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.
- (c) *Disclaimer of Actions Caused by and/or Under the Control of Third Parties.* VENDOR DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE VENDOR SYSTEM AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THJRD PARTIES CAN IMPAIR OR DISRUPT CITY'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH VENDOR WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, VENDOR CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, VENDOR DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.
- (d) *Configurable Services.* The Services can be used in ways that do not comply with applicable laws and it is CITY's sole responsibility to monitor the use of the Services to ensure that such use complies with and is in accordance with applicable law. In no event shall VENDOR be responsible or liable for CITY failure to comply with applicable law in connection with your use of the Services. VENDOR is not responsible for any harm caused by users who were not authorized to have access to the Services but who were able to gain access because usernames, passwords or accounts were not terminated on a timely basis by CITY.
- (e) *Services Do Not Constitute Advice or Credit Reporting.* VENDOR does not provide its CITYs with legal advice regarding compliance, data privacy or other relevant applicable laws in the jurisdictions in which you use the Services. YOU ACKNOWLEDGE AND AGREE THAT THE SERVICES PROVIDED HEREUNDER ARE NOT INTENDED TO BE AND WILL NOT BE RELIED UPON BY YOU AS EITHER LEGAL, FINANCIAL, INSURANCE OR TAX ADVICE. TO THE EXTENT YOU REQUIRE ANY SUCH ADVICE, YOU REPRESENT THAT YOU WILL SEEK SUCH ADVICE FROM QUALIFIED LEGAL, FINANCIAL, INSURANCE, ACCOUNTING OR OTHER PROFESSIONALS. YOU SHOULD REVIEW APPLICABLE LAW IN ALL JURISDICTIONS WHERE YOU OPERATE AND HAVE EMPLOYEES AND CONSULT EXPERIENCED COUNSEL FOR

LEGAL ADVICE. YOU ACKNOWLEDGE THAT VENDOR IS NOT A "CONSUMER REPORTING AGENCY" AS THAT TERM IS DEFINED IN THE FAIR CREDIT REPORTING ACT AS AMENDED.

- (f) **No Control of HR Practices.** You acknowledge that VENDOR exercises no control over your specific human resource practices implemented using the Service or your decisions as to employment, promotion, termination, or compensation of any Personnel or Authorized User of the Service. You further agree and acknowledge that VENDOR does not have a direct relationship with your employees and that you are responsible for all contact, questions, CITY Data updates and collection, with your employees. In addition, you are responsible for the privacy (including your own privacy policies governing your processing of CITY Data), collection, use, retention and processing of your CITY Data, and providing any and all notices and information to your employees regarding the foregoing, in compliance with all applicable laws. VENDOR hereby disclaims all liability arising from your decisions and from harmful data or code uploaded to the Service by you and/or your employees, contractors or agents.
6. **Payment Terms.** Unless otherwise stated in an Ordering Document, CITY shall pay all Subscription fees (the "Fees") within thirty (30) days of CITY's receipt of VENDOR's invoice. Fees shall be invoiced annually in advance and in a single invoice for each Term.

6. Publicity

Except as expressly contemplated herein, neither party shall issue any press releases which mentions the other party or the transactions contemplated by this Agreement without the prior consent of the other party, which consent shall not be unreasonably withheld.

7. Nondisclosure

Through exercise of each party's rights under this Agreement, each party may be exposed to the other party's technical, financial, business, marketing, planning, and other information and data, in written, oral, electronic, magnetic, photographic and/or other forms, including but not limited to (i) oral and written communications of one party with the officers and staff of the other party which are marked or identified as confidential or secret or similarly marked or identified and (ii) other communications which a reasonable person would recognize from the surrounding facts and circumstances to be confidential or secret ("Confidential Information") and trade secrets. In recognition of the other party's need to protect its legitimate business interests, each party hereby covenants and agrees that it shall regard and treat each item of information or data constituting a trade secret or Confidential information of the other party as strictly confidential and wholly owned by such other party and that it will not, without the express prior written consent of the other party or except as required by law including the Public Records Act of the State of Florida, redistribute, market, publish, disclose or divulge to any other person, firm or entity, or use or modify for use, directly or indirectly in any way for any person or entity: (i) any of the other party's Confidential Information during the term of this Agreement and for a period of three (3) years after the termination of this Agreement or, if later, from the last date Services (including any warranty work) are performed by the disclosing party hereunder; and (ii) any of the other party's trade secrets at any time during which such information shall constitute a trade secret under applicable law.

8. Liability Limitations

- (a) If promptly notified in writing of any action brought against CITY based on a claim that VENDOR'S Services infringe a United States patent, copyright or trademark right of a third party (except to the extent such claim or infringement relates to any third party software incorporated into VENDOR'S applications), VENDOR will defend such action at its expense and will pay any and all fees, costs or damages that may be finally awarded in such action or any settlement resulting from such action (provided that CITY shall permit VENDOR to control the defense of such action and shall not make any compromise, admission of liability or settlement or take any other action impairing the defense of such claim without VENDOR'S prior written approval).
- (b) CITY acknowledges and agrees: (i) that VENDOR has no proprietary, financial, or other interest in the goods or services that may be described in or offered through CITY'S web site; and (ii) that except with respect to any material supplied by VENDOR, CITY is solely responsible (as between VENDOR and CITY) for the content, quality, performance, and all other aspects of the goods or services and the information or other content contained in or provided through CITY'S web site.
- (c) OTHER THAN THOSE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, VENDOR DOES NOT MAKE ANY WARRANTIES TO CITY OR

ANY OTHER PERSON OR ENTITY, EITHER EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER. VENDOR SHALL NOT BE LIABLE TO CITY OR TO ANY OTHER PERSON OR ENTITY, UNDER ANY CIRCUMSTANCE OR DUE TO ANY EVENT WHATSOEVER, FOR CONSEQUENTIAL OR INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFIT, LOSS OF USE OR BUSINESS STOPPAGE.

- (d) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY OR TO ANY OTHER PERSON OR ENTITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CITY'S USE OR, OR INABILITY TO USE, THE SERVICES, UNDER ANY CIRCUMSTANCE, CAUSE OF ACTION OR THEORY OF LIABILITY, OR DUE TO ANY EVENT WHATSOEVER, FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS OPPORTUNITY OR PROFIT, LOSS OF USE, LOSS OF GOODWILL OR BUSINESS STOPPAGE, EVEN IF A PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
- (e) UNDER NO CIRCUMSTANCES SHALL VENDOR'S TOTAL LIABILITY TO CITY OR ANY OTHER PERSON, REGARDLESS OF THE NATURE OF THE CLAIM OR FORM OF ACTION (WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EXCEED THE AGGREGATE AMOUNT OF FEES AND REVENUE RECEIVED BY VENDOR HEREUNDER FOR THE PRIOR TWELVE (12) MONTH PERIOD; PROVIDED, HOWEVER THAT THE FOREGOING LIMITATIONS SET FORTH IN THIS SECTION 8(E) SHALL NOT APPLY TO ACTIONS BROUGHT UNDER 8(A) ABOVE OR TO ANY INJURY TO PERSONS OR DAMAGES TO PROPERTY ARISING OUT OF VENDOR'S GROSS NEGLIGENCE OR WILLFUL, GROSS MISCONDUCT.