



33941 Master Services Agreement

This Master Services Agreement ("Agreement") is entered into on this 10th day of August, 2015 between SIERRA-CEDAR, INC., a Delaware corporation with its principal offices at 1255 Alderman Drive, Alpharetta, Georgia 30005 ("Consultant") and CITY OF LONG BEACH, a municipal corporation with principal offices at 333 West Ocean Blvd, Long Beach, California 90802 ("Client" or "City"). Collectively Consultant and City shall be known as the "Parties".

The Parties agree as follows:

MASTER TERMS AND CONDITIONS

1. Services Provided by Consultant

Consultant shall provide City with computer and consulting services ("Services") as specified in a Statement of Work ("SOW"), more particularly described in Exhibit "A", attached to this Agreement and incorporated by this reference. Together, these Master Terms and Conditions and the SOW comprise this Agreement. The SOW specifies the type of Services to be performed, any specific tasks to be performed by each Party, location and approximate start and end dates of each assigned Consultant, any applicable deliverables and associated due dates, reporting requirements, documentation requirements, and any relevant acceptance and testing procedures and criteria.

Consultant shall not begin work until this Agreement has been signed by both Parties and until Consultant's evidence of insurance has been delivered to and approved by City.

2. Fees, Expenses, & Payment

For all Services performed pursuant to a SOW or other request for Services that references this Agreement, City shall pay Consultant for these Services in the manner described below, in an amount not to exceed Twenty-Four Thousand Dollars (\$24,000), and pay Consultant within thirty (30) days plus a fifteen (15) day grace period after City's electronic receipt of Consultant's invoices. All payments related to this Agreement are non-refundable. City is responsible for all taxes, duties, and customs fees concerning the Services performed hereunder, excluding taxes based on Consultant's income. Any payment not drawn on a U.S. or Canadian bank must be made by wire transfer.

Consultant's invoices should show the services or task performed and the name of the project. Each invoice shall be accompanied by a progress report indicating the progress to date of services performed and covered by the invoice, including a brief statement of any project problems and potential causes of delay in performance, and listing those services that are projected for performance by Consultant during the next invoice cycle.

The City's obligation to pay the sum stated above for any one fiscal year shall be contingent upon the City Council of the City appropriating the necessary funds for such payment by the City in each fiscal year during the term of this Agreement. For the



purposes of this Section, a fiscal year commences on October 1 of the year and continues through September 30 of the following year. In the event that the City Council of the City fails to appropriate the necessary funds for any fiscal year, then, and in that event, the Agreement will terminate at no additional cost or obligation to the City.

3. Staffing

3.1 Coordination of Resources. Consultant will work with City to assess and meet staffing and resource needs for provision of the Services. If City notifies Consultant that it is dissatisfied with the services of any person supplied by Consultant, Consultant shall try in good faith to promptly resolve any concerns. If City continues to be dissatisfied with such person, Consultant will remove that person from the situation and will assign different person to City's work as soon as possible. Consultant shall have the right to remove or replace an assigned individual with a similarly skilled individual in the event such removal or replacement is required due to promotion, leave of absence, illness, or the like. Notwithstanding, City may not require the replacement of key Consultant personnel assigned to a fixed-fee or not-to-exceed engagement (and identified in the SOW as key personnel) except for issues related to performance or inappropriate behavior.

3.2 Non-Solicitation.

City and Consultant agree that during the term of this Agreement, and for a period of twelve (12) months after its termination or expiration, neither Party shall hire, directly or through a staffing company or placement agency, or otherwise retain as an employee or independent contractor an employee or contractor who worked for the other Party or an Affiliate of the other Party at any time during the course of this Agreement. For purposes of this Agreement, "Affiliate" of a Party means any entity which is owned or controlled, in whole or in part, by the Party or any entity which owns or controls, in whole or in part, a Party.

4. Obligations of Consultant

Consultant shall perform or cause to be performed its obligations as set forth in the applicable SOW. All subcontractors hired by Consultant to perform Consultant obligations pursuant to a SOW shall be bound to perform such obligations as if such obligations were being performed by Consultant and Consultant shall be liable for the actions of such subcontractors while performing Services pursuant to this Agreement as if such actions were the actions of Consultant. Consultant may subcontract to an Affiliate. In addition, Consultant shall:

- (a) designate and provide for each SOW one Consultant point of contact who shall be responsible for answering and resolving City's questions and issues relating to the project(s) described therein; and
- (b) provide sufficient, qualified, knowledgeable personnel capable of performing Consultant's obligations set forth in the applicable SOW.

5. Obligations of City



City shall fulfill its obligations as set forth in the applicable SOW and the following obligations (collectively referred to as "City Obligations"):

- (a) designate and provide for each SOW one City point of contact who shall be responsible for answering and resolving Consultant's questions and issues relating to the project(s) described therein; and
- (b) provide sufficient, qualified, knowledgeable personnel capable of: (i) performing City's obligations set forth in the applicable SOW; (ii) participating in the project and assisting Consultant's consultant resources in reviewing Work Product; and (iii) facilitating the search for information and requirements;
- (c) provide Consultant with reasonable access to City's facilities during City's normal business hours and otherwise as reasonably requested by Consultant in order to facilitate Consultant's performance of the Services set forth in each SOW;
- (d) provide Consultant with such reasonable working space, equipment, office support (including but not limited to analog phone lines for dial up capabilities, digital or analog phone lines for long distance and local calls related to the provision of Services, internet access of the same speed and quality as is provided to City's employees, photocopying equipment, and the like), and adequate environment for Consultants, so that they can conduct efficient analytical work and hold meetings with City personnel and/or other Consultant personnel, all as Consultant may reasonably request; and reasonably cooperate with Consultant as may be set forth in the applicable SOW to facilitate Consultant's performance of the Services set forth thereunder.

6. SOW Change Order Process

If Consultant is performing services on an hourly basis and City wishes to add services or extend the engagement, City may so request in writing to Consultant, which may be via e-mail. If Consultant is not able to accommodate the request, it will so notify City.

If either party desires to change the Services to be provided pursuant to a SOW as to which payment for which is not on an hourly basis, the following process shall be followed:

- (a) Consultant will prepare an amendment for City's review documenting the change, including relevant information such as additional resources required, revised end-dates, and additional fees, if applicable;
- (b) When Consultant and City have agreed on the contents of the change order, both parties shall so indicate, either by signing the change order or transmitting approval of the change order via fax, email, or other electronic means.
- (c) Once a change order has been agreed to in such manner by the Parties, it shall constitute an amendment to, and shall be deemed part of, the terms and conditions of the applicable SOW.

7. Ownership and Proprietary Rights

7.1 Ownership of Pre-existing Materials. City acknowledges and agrees that Consultant is the sole and exclusive owner of all rights, including but not limited to all



patent rights, copyrights, trade secrets, trademarks, and other proprietary rights in the systems, programs, specifications, user documentation, and other materials used by Consultant in the course of its provision of services hereunder which were in existence prior to the execution of this Agreement (collectively "Consultant's Materials"). City also acknowledges and agrees that in entering into this Agreement, City acquires no rights in Consultant's Materials. City shall not copy, transfer, sell, distribute, assign, display, or otherwise make Consultant's Materials available to third parties. City agrees to secure and protect each module, software product, piece of documentation, and every other portion of Consultant's Materials so as to protect all of Consultant's rights therein.

7.2 Ownership of Tangible Work Product. The tangible property and work products created by Consultant pursuant to this Agreement ("Work Product") shall belong exclusively to City.

7.3 Ownership of Data Processing Know-how. City recognizes that Consultant's business depends substantially upon the accumulation of learning, knowledge, data, techniques, tools, processes, and generic materials that it utilizes and develops in its client engagements. Accordingly, to the extent material that is used in, enhanced, or developed in the course of providing Services hereunder is of a general abstract character, or may be generically re-used, and does not contain Confidential Information of City, then Consultant will own such material including, without limitation: methodologies; delivery strategies, approaches and practices; generic software tools, routines, and components; generic content, research and background materials; training materials; application building blocks; templates; analytical models; project tools; development tools; inventions; solutions and descriptions thereof; ideas; and know-how (collectively "Know-how"). To the extent such Know-how is contained or reflected in the Work Product, Consultant hereby grants City a fully paid up, perpetual license to use such Know-how only for its internal business. City will not sublicense or sell Know-How to any third party, and will not use or exploit the Know-How to compete with the information technology and consulting business of Consultant.

8. **Warranty and Warranty Exclusions**

Consultant warrants that (a) the services it provides hereunder will be performed in a professional and workmanlike manner in accordance with industry standards; (b) it has the authority to enter into this Agreement; (c) it will perform the Services in a manner that complies with all applicable laws and regulations. City agrees that all development work performed under this Agreement using third-party proprietary development and integration tools shall be subject to the limitations, if any, of City's license agreements with such other third-party software vendors. CONSULTANT DISCLAIMS AND EXCLUDES ALL OTHER EXPRESS AND IMPLIED WARRANTIES CONCERNING ITS SERVICES, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING UNDER STATUTORY OR COMMON LAW.



9. Sole Remedy and Limitation of Liability

IN NO EVENT SHALL CONSULTANT BE LIABLE FOR CONSEQUENTIAL, INDIRECT, EXEMPLARY, PUNITIVE, OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST DATA OR LOST PROFITS, HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF A POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL CONSULTANT'S LIABILITY HEREUNDER EXCEED \$100,000, WHETHER ARISING OUT OF CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, ANY OTHER TORT, INCLUDING INTENTIONAL TORTS, OR ANY OTHER CAUSE OF ACTION. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS AGREEMENT.

10. Trademarks/Service Marks

The parties acknowledge and agree that: neither party shall hereby gain rights in any trademarks or service marks ("marks") used in connection with the business of the other; neither shall use such marks of the other without written consent; and neither shall alter the marks or other proprietary legends made in connection with the marks of the other party.

11. Termination

Unless otherwise explicitly agreed to by the Parties in the applicable SOW, either party may terminate this Agreement or any SOW at any time by giving the other party written notice of termination; provided that: (i) all fees due under this Agreement and all SOWs for Consultant services performed through the date of termination shall be paid by City to Consultant upon the effective date of such termination; (ii) City shall not be due any refund or credit; and (iii) in the event that this Agreement is terminated, all SOWs thereto shall be simultaneously terminated with this Agreement. City agrees to provide Consultant with a minimum of ten (10) business days advance notice of an unscheduled SOW termination or staffing reduction. Consultant may terminate or suspend performance upon City's breach of contract, including breach arising from non-payment, City's failure to timely comply with its obligations under any SOW, or City's failure to promptly accept properly performed services by signing Acceptance Certificates pursuant to any SOW. Notwithstanding, neither party may unilaterally terminate this Agreement while work is ongoing on a fixed-fee or not-to-exceed SOW other than for a material breach which remains uncured for more than ten (10) business days following written notice by the other party.

12. Dispute Resolution

Except for actions for injunctive relief, the parties will attempt to resolve any disputes that arise out of or in connection with this Agreement through good faith negotiation. If a dispute arises, the City Project Manager and the Consultant Account Executive shall first try to resolve it. If the dispute is not resolved within ten (10) business days, either party may escalate the dispute by contacting, in the case of Consultant, Brian Fees, Executive Vice President/Corporate Officer (telephone 888-745-3545 or Brian.Fees@Sierra-



Cedar.com) or in the case of City, Amy Bodek, the Director of Development Services, (telephone 562-570-6428). These parties shall attempt to resolve the dispute by mutual agreement.

13. Indemnification

The Parties agree that to the extent permitted by law, Consultant will indemnify, defend, and hold harmless the City of Long Beach, its Board and Commissions, and their officials, employees, and agents from any third party claim for personal injury, property damage, or intellectual property infringement which arises from the negligence or intentional wrongdoing of the Consultant. City acknowledges that Consultant makes no representations regarding and accepts no indemnification obligation with regard to any third party commercially available software.

With regard to intellectual property infringement, Consultant shall have no liability to indemnify for any claim based on: (a) use of Consultant Work Product outside the scope of this Agreement and/or a Statement of Work; (b) the combination, operation, or use of the Work Product furnished or authorized under this Agreement and/or a Statement of Work with software, hardware, or other materials not furnished by Consultant or reasonably anticipated by the applicable Statement of Work if such infringement would have been avoided by the use of the Work Product without such software, hardware or other materials; or (c) any modification by City of the Work Product not made or authorized in writing by Consultant.

14. General

14.1 Notices. Any notices required hereunder shall be deemed received five days after mailing by certified mail, return receipt requested, or upon delivery by overnight courier with proof of delivery to the following addresses:

If to Consultant:

Sierra-Cedar, Inc.

Attn. CFO

1255 Alderman Drive

Alpharetta, GA 30005

If to City:

CITY OF LONG BEACH

Attn: Director of Devt. Services

333 West Ocean Blvd., 3rd Floor

Long Beach, CA 90802

14.2 Venue: Choice of Law. This Agreement shall be construed in accordance with the laws of the State of California, and the venue for any legal actions brought by any party with respect to this Agreement shall be the County of Los Angeles, State of California for state actions and the Central District of California for any federal actions.

14.3 Relationship of Parties. This is an agreement for professional services. The parties hereto are independent of one another and both agree that no agency, employment,



franchise, or other relationship exists between the parties. Neither party shall have the authority to bind the other with respect to third parties or in any other manner.

14.4 Severability. If any provision of this Agreement is held to be unenforceable or invalid, in whole or in part, then all of the remaining provisions shall nevertheless continue in full force and effect.

14.5 No Assignment. Neither party may assign this Agreement or the rights granted hereunder without the prior written consent of the other, except that a party may assign this Agreement to any successor to the business of the party by merger, consolidation, or sale of assets or to any corporation controlling, controlled by, or under common control with the party and Consultant may assign its right to receive payment hereunder.

14.6 City Use of Third Party Vendors. If City requests Consultant to submit information such as time records or invoices to a third party agency such as a vendor manager or payment manager, all costs associated with Consultant's use of the third party agency shall be borne by City. Consultant shall have no obligation to provide such third party agency with confidential or personal information nor shall Consultant's submission of information to the third party agency relieve City of any obligations hereunder.

14.7 No Third Party Beneficiaries. This Agreement is made and entered into for the sole benefit of the parties hereto. Both parties acknowledge and agree that none of the rights or obligations granted or undertaken herein shall inure to the benefit of any third parties.

14.8 Insurance. Consultant agrees that it shall maintain at least the following minimum levels of insurance and upon City's request shall cause a Certificate of Insurance to be issued and mailed to the City. In addition, Consultant shall also provide an additional insured endorsement equivalent in coverage to ISO form CG 20 10 11 85 or CG 20 26 11 85 naming the "City of Long Beach, its officials, employees and agents" as additional insureds under the general liability policy. No person or department should be identified as the additional insured.

Type of Insurance:	Policy Limits:
General Liability	\$1,000,000 each occurrence and \$2,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit
Excess Liability Insurance	\$7,000,000 each occurrence and aggregate
Workers Compensation and Employer's Liability	State minimum for each state where work is performed
Errors and Omissions	Not less than \$5,000,000

Mailing Address for Certificate of Insurance:
CITY OF LONG BEACH
Attn: DV-AFSB
333 West Ocean Blvd., 3 rd Floor



Mailing Address for Certificate of Insurance:	
Long Beach, CA 90802	

14.9 Schedules, Exhibits and Attachments. These terms are used interchangeably and refer to the following referenced documents:

Reference	Description
A.	Statement of Work
B.	Reserved
C.	Reserved
D.	Reserved
E.	Reserved
F.	Reserved
G.	Reserved

14.10 Force Majeure. Either party shall be excused from performance hereunder for any period such party is prevented from performing any services pursuant hereto in whole or in part as a result of any act of God, war, earthquake, fire, flood, storm, civil disobedience, court order, labor dispute, or other cause beyond such party's reasonable control. Such non-performance shall not constitute grounds for termination or default.

14.11 Entire Agreement. This Agreement shall constitute the entire Agreement between the parties hereto and supersedes all prior agreements and/or representations between the parties relating to the subject matter hereof. The parties acknowledge and agree that they have not relied upon any representations not set forth herein in entering into this Agreement. Both parties have had the opportunity to have this Agreement reviewed by competent counsel. Any change or amendment to this Agreement must be in writing and signed by both parties in order to be effective. No omission or delay by Consultant or City to enforce any right or remedy under this Agreement shall be a waiver of such right or remedy. No terms, provisions, or conditions of any purchase order will have any effect on the obligations of the parties under or otherwise modify this Agreement.

14.12 No Conflict. Consultant and City each represent and warrant that execution and performance of this Agreement does not and will not violate, conflict with, or constitute a default under any contract, commitment, arrangement, understanding, agreement, or restriction, or any adjudication, order, injunction, or finding of any kind by any court or agency to which Consultant or City respectively is bound.

14.13 Electronic documents. The Parties agree to treat facsimile or electronic copies of documents as binding on the Parties in the same manner and to the same degree as original versions of the same documents.



14.14 Change in Document. By signing and delivering this Agreement and/or any schedule, exhibit, amendment, or addendum, each party will be deemed to represent to the other that the signing party has not made any changes to such document from the draft(s) most recently provided to the other party by the signing party, or vice versa, unless the signing party has expressly called such changes to the other party's attention in writing (e.g., by "redlining" the document or by a comment memo or email).

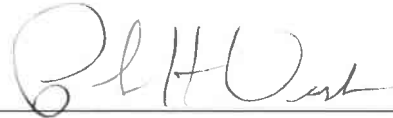
14.15 Excused Performance. Consultant's nonperformance of its obligations as to any specific Deliverable or other obligation under this Agreement shall be excused if and to the extent such nonperformance is due to: (a) City's failure to perform its responsibilities as set forth in this Agreement, provided that Consultant provides City with regular periodic updates and status reports and uses commercially reasonable efforts which do not involve additional costs to Consultant to perform notwithstanding City's failure to perform; (b) the acts or omissions of City or its agents, entities or any third party authorized to act on its behalf which hinder or delay Consultant's ability to perform its obligations under this Agreement; (c) City's failure to perform any activity or performance an action required under this Agreement (other than an action required of Consultant) which hinders or delays Consultant's ability to perform its obligations under this Agreement; or (d) force majeure or unanticipated substantive changes to applicable laws and regulations that interrupt, delay or fundamentally alter the scope of the engagement.

IN WITNESS WHEREOF, the parties acknowledge that they have each read the terms hereof and that in signing below, they agree to all of said terms.

Sierra-Cedar, Inc.

CITY OF LONG BEACH

By: 

By: 

Name: Brian E. Fees

Name: Patrick West

Title: Corporate Officer/EVP

Title: City Manager

Date: August 10, 2015

Date: 8/21/15

APPROVED AS TO FORM

8/13, 2015
 CHARLES PARKIN, City Attorney

By: 

LINDA T. VU
 DEPUTY CITY ATTORNEY



EXHIBIT "A"
STATEMENT OF WORK (SOW)

Statement of Work:

Sierra-Cedar will conduct the following assessments for the City of Long Beach, Development Services Department:

- Identify and document the Hansen system configuration changes required to support integration with e-PlanSoft, Inc.'s electronic plan review system.
- Identify and document the interface touch points between the Hansen system and e-PlanSoft, Inc.'s electronic plan review system.
- Identify the pros and cons of using Hansen's Dynamic Portal specifically considering known future developments of the Hansen system of which Sierra-Cedar is aware.
- Identify and document integration touchpoints between Dynamic Portal and e-PlanSoft, Inc.'s electronic plan review system.
- Identify Dynamic Portal configuration and interface touchpoints including detail pages, payment gateway interface and fee estimation.
- Identify and document a detailed architectural plan and steps explaining estimated costs, deliverables and timelines required for the integration of e-PlanSoft, Inc.'s electronic plan review system with the Hansen system.

Timeline and Deliverables:

- Sierra-Cedar, Inc.'s project manager will attend a kick-off meeting with appropriate City and third-party personnel at the commencement of the project.
- Draft Report explaining the results of the assessments outlined above (4 weeks following the City's issuance of a Purchase Order).
- Final Report updated and/or revised as required following review by City staff (2 weeks following the City's issuance of comments on the draft report).
- Project not to exceed 6 weeks (160 hours of services by Sierra-Cedar). Up to ½ of Sierra-Cedar's time can be performed offsite.



Summary Timeline

The table below represents potential project phasing for the services to be provided under this Statement of Work. The actual phase durations may be adjusted based on the project work plans.

The estimated project commencement date is August 17, 2015 and the estimated date of completion for the project is September 30, 2015.

e-PlanSoft and Hansen Analysis Project				
	2015			
Month/Stage/Phase	Week of 08/17/2015	Week of 08/24/2015	Week of 08/31/2015	Week of 09/07/2015
Hansen configuration application development analysis around e-PlanSoft integration.				
Hansen and e-PlanSoft integration touchpoint analysis.				
Dynamic Portal and e-PlanSoft integration analysis.				
Dynamic Portal implementation and configuration analysis				

Payment:

- 50% upon City's receipt of the Draft Report.
- 50% upon the City's approval of the Final Report.



Project Assumptions

The fixed fee cited in this Statement of Work is based on Sierra-Cedar's analysis for the integration of Hansen and ePlanSoft, Inc.'s electronic plan software, and analysis of the integration and deployment of Dynamic Portal.

- The Draft Report will be produced and delivered to the City, at which point Sierra-Cedar will invoice the City for the initial \$12,000 of the fixed fee cited in this Statement of Work. The City will have a maximum of up to ten (10) business days to review the Draft Report and provide appropriate feedback, provided that any such review must be completed and feedback delivered prior to September 30, 2015. The City Project Manager will consolidate all City feedback and will provide comments to Sierra-Cedar. Following review and feedback, Sierra-Cedar will make the changes and publish a final version of the Draft Report. If the City fails to provide Draft Report review feedback and/or the City does not request additional review time within the maximum 10 business day period or prior to September 30, 2015, whichever is earlier, the deliverable will be deemed approved. Following the City's approval of the Final Report, Sierra-Cedar will invoice the City for the final \$12,000 of the fixed fee cited in this Statement of Work.
- City resources will be available as defined in the project schedule, and as required to respond to Sierra-Cedar's questions and provide relevant information. It is expected that the individuals identified will have experience in the day-to-day operations and will work closely with the business analyst to map and identify business processes. City resources will have the appropriate decision-making authority.
- The City of Long Beach will obtain all consents necessary from its third parties (i.e., those not under contract with Sierra-Cedar) required for Sierra-Cedar to perform City of Long Beach obligations under this Contract. Sierra-Cedar will not have any responsibility for the performance of other contractors or vendors engaged by City of Long Beach (other than Sierra-Cedar's subcontractors) or delays caused by them. There are no third party beneficiaries to this Statement of Work.
- The City of Long Beach will provide executive sponsorship that will actively advocate and support this project.



- The City of Long Beach will provide and build all necessary hardware for the Upgrade, Test, and Production different environments (Upgrade, Test, and Production).
- Sierra-Cedar will have ready access to appropriate personnel in the user departments and to technical documentation associated with the systems. The City will provide the necessary VPN access to the Sierra-Cedar resources, in order to support remote access.
- The City will be responsible for reviewing and refining manual procedures.
- The City is required to procure, configure, and maintain all the requisite hardware, software, and network infrastructure requirements to support this project, including network connectivity for mobile access. Client will have all hardware installed and configured prior to contract start date.
- Any scope item not specifically included in this Statement of Work is considered out of scope.