

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

1 AGREEMENT

2 **35751**

3 THIS AGREEMENT is made and entered, in duplicate, as of November 30,
4 2020, for reference purposes only, pursuant to Resolution No. RES-20-0144, adopted by
5 the City Council of the City of Long Beach at its meeting on November 17, 2020, by and
6 between SYSTEM INNOVATORS, a division of N. HARRIS COMPUTER
7 CORPORATION, a Canada corporation ("Consultant"), with a place of business at 9000
8 Southside Blvd., Bldg 700, Suite 7200, Jacksonville, Florida 32256, and the CITY OF
9 LONG BEACH, a municipal corporation ("City").

10 WHEREAS, City requires specialized services requiring unique skills to be
11 performed in connection with software maintenance and support services for the City's
12 cashiering system ("Project"); and

13 WHEREAS, City has selected Consultant in accordance with City's
14 administrative procedures and City has determined that Consultant and its employees are
15 qualified, licensed, if so required, and experienced in performing these specialized
16 services; and

17 WHEREAS, City desires to have Consultant perform these specialized
18 services, and Consultant is willing and able to do so on the terms and conditions in this
19 Agreement;

20 NOW, THEREFORE, in consideration of the mutual terms, covenants, and
21 conditions in this Agreement, the parties agree as follows:

22 1. SCOPE OF WORK OR SERVICES.

23 A. Consultant shall furnish specialized services more particularly
24 described in Exhibit "A", attached to this Agreement and incorporated by this
25 reference, in accordance with the standards of the profession, and City shall pay for
26 these services in the manner described below, in an annual amount of One Hundred
27 Five Thousand Dollars (\$105,000), at the rates or charges shown in Exhibit "B".

28 B. The City's obligation to pay the sum stated above for any one

1 fiscal year shall be contingent upon the City Council of the City appropriating the
2 necessary funds for such payment by the City in each fiscal year during the term of
3 this Agreement. For the purposes of this Section, a fiscal year commences on
4 October 1 of the year and continues through September 30 of the following year. In
5 the event that the City Council of the City fails to appropriate the necessary funds
6 for any fiscal year, then, and in that event, the Agreement will terminate at no
7 additional cost or obligation to the City.

8 C. Consultant may select the time and place of performance for
9 these services; provided, however, that access to City documents, records and the
10 like, if needed by Consultant, shall be available only during City's normal business
11 hours and provided that milestones for performance, if any, are met.

12 D. Consultant has requested to receive regular payments. City
13 shall pay Consultant in due course of payments following receipt from Consultant
14 and approval by City of invoices showing the services or task performed, the time
15 expended (if billing is hourly), and the name of the Project. Consultant shall certify
16 on the invoices that Consultant has performed the services in full conformance with
17 this Agreement and is entitled to receive payment. Each invoice shall be
18 accompanied by a progress report indicating the progress to date of services
19 performed and covered by the invoice, including a brief statement of any Project
20 problems and potential causes of delay in performance, and listing those services
21 that are projected for performance by Consultant during the next invoice cycle.
22 Where billing is done and payment is made on an hourly basis, the parties
23 acknowledge that this arrangement is either customary practice for Consultant's
24 profession, industry or business, or is necessary to satisfy audit and legal
25 requirements which may arise due to the fact that City is a municipality.

26 E. Consultant represents that Consultant has obtained all
27 necessary information on conditions and circumstances that may affect its
28 performance and has conducted site visits, if necessary.

1 F. CAUTION: Consultant shall not begin work until this
2 Agreement has been signed by both parties and until Consultant's evidence of
3 insurance has been delivered to and approved by City.

4 2. TERM. The term of this Agreement shall commence at midnight on
5 January 1, 2021, and shall terminate at 11:59 p.m. on December 31, 2022, unless sooner
6 terminated as provided in this Agreement, or unless the services or the Project is
7 completed sooner.

8 3. COORDINATION AND ORGANIZATION.

9 A. Consultant shall coordinate its performance with City's
10 representative, if any, named in Exhibit "C", attached to this Agreement and
11 incorporated by this reference. Consultant shall advise and inform City's
12 representative of the work in progress on the Project in sufficient detail so as to
13 assist City's representative in making presentations and in holding meetings on the
14 Project. City shall furnish to Consultant information or materials, if any, described
15 in Exhibit "D", attached to this Agreement and incorporated by this reference, and
16 shall perform any other tasks described in the Exhibit.

17 B. The parties acknowledge that a substantial inducement to City
18 for entering this Agreement was and is the reputation and skill of Consultant's key
19 employee, named in Exhibit "E" attached to this Agreement and incorporated by this
20 reference. City shall have the right to approve any person proposed by Consultant
21 to replace that key employee.

22 4. INDEPENDENT CONTRACTOR. In performing its services,
23 Consultant is and shall act as an independent contractor and not an employee,
24 representative or agent of City. Consultant shall have control of Consultant's work and the
25 manner in which it is performed. Consultant shall be free to contract for similar services to
26 be performed for others during this Agreement; provided, however, that Consultant acts in
27 accordance with Section 9 and Section 11 of this Agreement. Consultant acknowledges
28 and agrees that (a) City will not withhold taxes of any kind from Consultant's compensation;

1 (b) City will not secure workers' compensation or pay unemployment insurance to, for or
2 on Consultant's behalf; and (c) City will not provide and Consultant is not entitled to any of
3 the usual and customary rights, benefits or privileges of City employees. Consultant
4 expressly warrants that neither Consultant nor any of Consultant's employees or agents
5 shall represent themselves to be employees or agents of City.

6 5. INSURANCE.

7 A. As a condition precedent to the effectiveness of this
8 Agreement, Consultant shall procure and maintain, at Consultant's expense for the
9 duration of this Agreement, from insurance companies that are admitted to write
10 insurance in California and have ratings of or equivalent to A:V by A.M. Best
11 Company or from authorized non-admitted insurance companies subject to Section
12 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII
13 by A.M. Best Company, the following insurance:

14 i. Commercial general liability insurance (equivalent in
15 scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less
16 than One Million Dollars (\$1,000,000.00) per each occurrence and Two
17 Million Dollars (\$2,000,000.00) general aggregate. This coverage shall
18 include but not be limited to broad form contractual liability, cross liability,
19 independent contractors liability, and products and completed operations
20 liability. City, its boards and commissions, and their officials, employees and
21 agents shall be named as additional insureds by endorsement (on City's
22 endorsement form or on an endorsement equivalent in scope to ISO form CG
23 20 10 11 85 or CG 20 26 11 85 or both CG 20 10 07 04 and CG 20 37 07 04
24 or both CG 20 33 07 04 and CG 20 37 07 04), and this insurance shall contain
25 no special limitations on the scope of protection given to City, its boards and
26 commissions, and their officials, employees and agents. This policy shall be
27 endorsed to state that the insurer waives its right of subrogation against City,
28 its boards and commissions, and their officials, employees and agents.

1 ii. Workers' Compensation insurance as required by the
2 California Labor Code and employer's liability insurance in an amount not
3 less than One Million Dollars (\$1,000,000.00). This policy shall be endorsed
4 to state that the insurer waives its right of subrogation against City, its boards
5 and commissions, and their officials, employees and agents.

6 iii. Professional liability or errors and omissions insurance
7 in an amount not less than One Million Dollars (\$1,000,000.00) per claim.

8 iv. Commercial automobile liability insurance (equivalent in
9 scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in
10 an amount not less than Five Hundred Thousand Dollars (\$500,000.00)
11 combined single limit per accident.

12 B. Any self-insurance program, self-insured retention, or
13 deductible must be separately approved in writing by City's Risk Manager or
14 designee and shall protect City, its officials, employees and agents in the same
15 manner and to the same extent as they would have been protected had the policy
16 or policies not contained retention or deductible provisions.

17 C. Each insurance policy shall be endorsed to state that coverage
18 shall not be reduced, non-renewed or canceled except after thirty (30) days prior
19 written notice to City, shall be primary and not contributing to any other insurance
20 or self-insurance maintained by City, and shall be endorsed to state that coverage
21 maintained by City shall be excess to and shall not contribute to insurance or self-
22 insurance maintained by Consultant. Consultant shall notify City in writing within
23 five (5) days after any insurance has been voided by the insurer or cancelled by the
24 insured.

25 D. If this coverage is written on a "claims made" basis, it must
26 provide for an extended reporting period of not less than one hundred eighty (180)
27 days, commencing on the date this Agreement expires or is terminated, unless
28 Consultant guarantees that Consultant will provide to City evidence of uninterrupted,

1 continuing coverage for a period of not less than three (3) years, commencing on
2 the date this Agreement expires or is terminated.

3 E. Consultant shall require that all subconsultants or contractors
4 that Consultant uses in the performance of these services maintain insurance in
5 compliance with this Section unless otherwise agreed in writing by City's Risk
6 Manager or designee.

7 F. Prior to the start of performance, Consultant shall deliver to City
8 certificates of insurance and the endorsements for approval as to sufficiency and
9 form. In addition, Consultant shall, within thirty (30) days prior to expiration of the
10 insurance, furnish to City certificates of insurance and endorsements evidencing
11 renewal of the insurance. City reserves the right to require complete certified copies
12 of all policies of Consultant and Consultant's subconsultants and contractors, at any
13 time. Consultant shall make available to City's Risk Manager or designee all books,
14 records and other information relating to this insurance, during normal business
15 hours.

16 G. Any modification or waiver of these insurance requirements
17 shall only be made with the approval of City's Risk Manager or designee. Not more
18 frequently than once a year, City's Risk Manager or designee may require that
19 Consultant, Consultant's subconsultants and contractors change the amount, scope
20 or types of coverages required in this Section if, in his or her sole opinion, the
21 amount, scope or types of coverages are not adequate.

22 H. The procuring or existence of insurance shall not be construed
23 or deemed as a limitation on liability relating to Consultant's performance or as full
24 performance of or compliance with the indemnification provisions of this Agreement.

25 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
26 contemplates the personal services of Consultant and Consultant's employees, and the
27 parties acknowledge that a substantial inducement to City for entering this Agreement was
28 and is the professional reputation and competence of Consultant and Consultant's

1 employees. Consultant shall not assign its rights or delegate its duties under this
2 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval
3 of City, except that Consultant may with the prior approval of the City Manager of City,
4 assign any moneys due or to become due Consultant under this Agreement. Any
5 attempted assignment or delegation shall be void, and any assignee or delegate shall
6 acquire no right or interest by reason of an attempted assignment or delegation.
7 Furthermore, Consultant shall not subcontract any portion of its performance without the
8 prior approval of the City Manager or designee, or substitute an approved subconsultant
9 or contractor without approval prior to the substitution. Nothing stated in this Section shall
10 prevent Consultant from employing as many employees as Consultant deems necessary
11 for performance of this Agreement.

12 7. CONFLICT OF INTEREST. Consultant, by executing this Agreement,
13 certifies that, at the time Consultant executes this Agreement and for its duration,
14 Consultant does not and will not perform services for any other client which would create
15 a conflict, whether monetary or otherwise, as between the interests of City and the interests
16 of that other client. Consultant further certifies that Consultant does not now have and shall
17 not acquire any interest, direct or indirect, in the area covered by this Agreement or any
18 other source of income, interest in real property or investment which would be affected in
19 any manner or degree by the performance of Consultant's services hereunder. And,
20 Consultant shall obtain similar certifications from Consultant's employees, subconsultants
21 and contractors.

22 8. MATERIALS. Consultant shall furnish all labor and supervision,
23 supplies, materials, tools, machinery, equipment, appliances, transportation and services
24 necessary to or used in the performance of Consultant's obligations under this Agreement,
25 except as stated in Exhibit "D".

26 9. OWNERSHIP OF DATA. All materials, information and data
27 prepared, developed or assembled by Consultant or furnished to Consultant in connection
28 with this Agreement, including but not limited to documents, estimates, calculations,

1 studies, maps, graphs, charts, computer disks, computer source documentation, samples,
2 models, reports, summaries, drawings, designs, notes, plans, information, material and
3 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,
4 in a format identified by City, and City shall have the unrestricted right to use and disclose
5 the Data in any manner and for any purpose without payment of further compensation to
6 Consultant. Copies of Data may be retained by Consultant but Consultant warrants that
7 Data shall not be made available to any person or entity for use without the prior approval
8 of City. This warranty shall survive termination of this Agreement for five (5) years.

9 10. TERMINATION. Either party shall have the right to terminate this
10 Agreement for any reason or no reason at any time by giving ninety (90) calendar days
11 prior written notice to the other party. In the event of termination under this Section, City
12 shall pay Consultant for services satisfactorily performed and costs incurred up to the
13 effective date of termination for which Consultant has not been previously paid. The
14 procedures for payment in Section 1.B. with regard to invoices shall apply. On the effective
15 date of termination, Consultant shall deliver to City all Data developed or accumulated in
16 the performance of this Agreement, whether in draft or final form, or in process. And,
17 Consultant acknowledges and agrees that City's obligation to make final payment is
18 conditioned on Consultant's delivery of the Data to City.

19 11. CONFIDENTIALITY. Consultant shall keep all Data confidential and
20 shall not disclose the Data or use the Data directly or indirectly, other than in the course of
21 performing its services, during the term of this Agreement and for five (5) years following
22 expiration or termination of this Agreement. In addition, Consultant shall keep confidential
23 all information, whether written, oral or visual, obtained by any means whatsoever in the
24 course of performing its services for the same period of time. Consultant shall not disclose
25 any or all of the Data to any third party, or use it for Consultant's own benefit or the benefit
26 of others except for the purpose of this Agreement.

27 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for
28 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates

1 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available
2 without breach of this Agreement by Consultant; or (c) a third party who has a right to
3 disclose does so to Consultant without restrictions on further disclosure; or (d) must be
4 disclosed pursuant to subpoena or court order.

5 13. ADDITIONAL COSTS AND REDESIGN.

6 A. Any costs incurred by City due to Consultant's failure to meet
7 the standards required by the scope of work or Consultant's failure to perform fully
8 the tasks described in the scope of work which, in either case, causes City to request
9 that Consultant perform again all or part of the Scope of Work shall be at the sole
10 cost of Consultant and City shall not pay any additional compensation to Consultant
11 for its re-performance.

12 B. If the Project involves construction and the scope of work
13 requires Consultant to prepare plans and specifications with an estimate of the cost
14 of construction, then Consultant may be required to modify the plans and
15 specifications, any construction documents relating to the plans and specifications,
16 and Consultant's estimate, at no cost to City, when the lowest bid for construction
17 received by City exceeds by more than ten percent (10%) Consultant's estimate.
18 This modification shall be submitted in a timely fashion to allow City to receive new
19 bids within four (4) months after the date on which the original plans and
20 specifications were submitted by Consultant.

21 14. AMENDMENT. This Agreement, including all Exhibits, shall not be
22 amended, nor any provision or breach waived, except in writing signed by the parties which
23 expressly refers to this Agreement.

24 15. LAW. This Agreement shall be construed in accordance with the laws
25 of the State of California, and the venue for any legal actions brought by any party with
26 respect to this Agreement shall be the County of Los Angeles, State of California for state
27 actions and the Central District of California for any federal actions. Consultant shall cause
28 all work performed in connection with construction of the Project to be performed in

1 compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state,
2 county or municipal governments or agencies (including, without limitation, all applicable
3 federal and state labor standards, including the prevailing wage provisions of sections 1770
4 *et seq.* of the California Labor Code); and (2) all directions, rules and regulations of any fire
5 marshal, health officer, building inspector, or other officer of every governmental agency
6 now having or hereafter acquiring jurisdiction.

7 16. PREVAILING WAGES.

8 A. Consultant agrees that all public work (as defined in California
9 Labor Code section 1720) performed pursuant to this Agreement (the "Public
10 Work"), if any, shall comply with the requirements of California Labor Code sections
11 1770 *et seq.* City makes no representation or statement that the Project, or any
12 portion thereof, is or is not a "public work" as defined in California Labor Code
13 section 1720.

14 B. In all bid specifications, contracts and subcontracts for any
15 such Public Work, Consultant shall obtain the general prevailing rate of per diem
16 wages and the general prevailing rate for holiday and overtime work in this locality
17 for each craft, classification or type of worker needed to perform the Public Work,
18 and shall include such rates in the bid specifications, contract or subcontract. Such
19 bid specifications, contract or subcontract must contain the following provision: "It
20 shall be mandatory for the contractor to pay not less than the said prevailing rate of
21 wages to all workers employed by the contractor in the execution of this contract.
22 The contractor expressly agrees to comply with the penalty provisions of California
23 Labor Code section 1775 and the payroll record keeping requirements of California
24 Labor Code section 1771."

25 17. ENTIRE AGREEMENT. This Agreement, including all Exhibits,
26 constitutes the entire understanding between the parties and supersedes all other
27 agreements, oral or written, with respect to the subject matter in this Agreement.

28 18. INDEMNITY.

1 A. Consultant shall indemnify, protect and hold harmless City, its
2 Boards, Commissions, and their officials, employees and agents (“Indemnified
3 Parties”), from and against any and all liability, claims, demands, damage, loss,
4 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
5 costs and expenses, arising or alleged to have arisen, in whole or in part, out of or
6 in connection with (1) Consultant’s breach or failure to comply with any of its
7 obligations contained in this Agreement, including any obligations arising from the
8 Project’s compliance with or failure to comply with applicable laws, including all
9 applicable federal and state labor requirements including, without limitation, the
10 requirements of California Labor Code section 1770 *et seq.* or (2) negligent or willful
11 acts, errors, omissions or misrepresentations committed by Consultant, its officers,
12 employees, agents, subcontractors, or anyone under Consultant’s control, in the
13 performance of work or services under this Agreement (collectively “Claims” or
14 individually “Claim”).

15 B. In addition to Consultant’s duty to indemnify, Consultant shall
16 have a separate and wholly independent duty to defend Indemnified Parties at
17 Consultant’s expense by legal counsel approved by City, from and against all
18 Claims, and shall continue this defense until the Claims are resolved, whether by
19 settlement, judgment or otherwise. No finding or judgment of negligence, fault,
20 breach, or the like on the part of Consultant shall be required for the duty to defend
21 to arise. City shall notify Consultant of any Claim, shall tender the defense of the
22 Claim to Consultant, and shall assist Consultant, as may be reasonably requested,
23 in the defense.

24 C. If a court of competent jurisdiction determines that a Claim was
25 caused by the sole negligence or willful misconduct of Indemnified Parties,
26 Consultant’s costs of defense and indemnity shall be (1) reimbursed in full if the
27 court determines sole negligence by the Indemnified Parties, or (2) reduced by the
28 percentage of willful misconduct attributed by the court to the Indemnified Parties.

1 D. The provisions of this Section shall survive the expiration or
2 termination of this Agreement.

3 19. AMBIGUITY. In the event of any conflict or ambiguity between this
4 Agreement and any Exhibit, the provisions of this Agreement shall govern.

5 20. FORCE MAJEURE. If any party fails to perform its obligations
6 because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain
7 labor or materials or reasonable substitutes for labor materials, governmental restrictions,
8 governmental regulations, governmental controls, judicial orders, enemy or hostile
9 governmental action, pandemic, civil commotion, fire or other casualty, or other causes
10 beyond the reasonable control of the party obligated to perform, then that party's
11 performance will be excused for a period equal to the period of such cause for failure to
12 perform.

13 21. NONDISCRIMINATION.

14 A. In connection with performance of this Agreement and subject
15 to applicable rules and regulations, Consultant shall not discriminate against any
16 employee or applicant for employment because of race, religion, national origin,
17 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or
18 disability. Consultant shall ensure that applicants are employed, and that
19 employees are treated during their employment, without regard to these bases.
20 These actions shall include, but not be limited to, the following: employment,
21 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or
22 termination; rates of pay or other forms of compensation; and selection for training,
23 including apprenticeship.

24 B. It is the policy of City to encourage the participation of
25 Disadvantaged, Minority and Women-Owned Business Enterprises in City's
26 procurement process, and Consultant agrees to use its best efforts to carry out this
27 policy in its use of subconsultants and contractors to the fullest extent consistent
28 with the efficient performance of this Agreement. Consultant may rely on written

1 representations by subconsultants and contractors regarding their status.
2 Consultant shall report to City in May and in December or, in the case of short-term
3 agreements, prior to invoicing for final payment, the names of all subconsultants
4 and contractors hired by Consultant for this Project and information on whether or
5 not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as
6 defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

7 22. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in
8 accordance with the provisions of the Ordinance, this Agreement is subject to the
9 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the
10 Long Beach Municipal Code, as amended from time to time.

11 A. During the performance of this Agreement, the Consultant
12 certifies and represents that the Consultant will comply with the EBO. The
13 Consultant agrees to post the following statement in conspicuous places at its place
14 of business available to employees and applicants for employment:

15 "During the performance of a contract with the City of Long Beach, the
16 Consultant will provide equal benefits to employees with spouses and its
17 employees with domestic partners. Additional information about the City of
18 Long Beach's Equal Benefits Ordinance may be obtained from the City of
19 Long Beach Business Services Division at 562-570-6200."

20 B. The failure of the Consultant to comply with the EBO will be
21 deemed to be a material breach of the Agreement by the City.

22 C. If the Consultant fails to comply with the EBO, the City may
23 cancel, terminate or suspend the Agreement, in whole or in part, and monies due or
24 to become due under the Agreement may be retained by the City. The City may
25 also pursue any and all other remedies at law or in equity for any breach.

26 D. Failure to comply with the EBO may be used as evidence
27 against the Consultant in actions taken pursuant to the provisions of Long Beach
28 Municipal Code 2.93 et seq., Contractor Responsibility.

1 E. If the City determines that the Consultant has set up or used its
2 contracting entity for the purpose of evading the intent of the EBO, the City may
3 terminate the Agreement on behalf of the City. Violation of this provision may be
4 used as evidence against the Consultant in actions taken pursuant to the provisions
5 of Long Beach Municipal Code Section 2.93 et seq., Contractor Responsibility.

6 23. NOTICES. Any notice or approval required by this Agreement shall
7 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
8 postage prepaid, addressed to Consultant at the address first stated above, and to City at
9 411 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy
10 to the City Engineer at the same address. Notice of change of address shall be given in
11 the same manner as stated for other notices. Notice shall be deemed given on the date
12 deposited in the mail or on the date personal delivery is made, whichever occurs first.

13 24. COPYRIGHTS AND PATENT RIGHTS.

14 A. Consultant shall place the following copyright protection on all
15 Data: © City of Long Beach, California _____, inserting the appropriate year.

16 B. City reserves the exclusive right to seek and obtain a patent or
17 copyright registration on any Data or other result arising from Consultant's
18 performance of this Agreement. By executing this Agreement, Consultant assigns
19 any ownership interest Consultant may have in the Data to City.

20 C. Consultant warrants that the Data does not violate or infringe
21 any patent, copyright, trade secret or other proprietary right of any other party.
22 Consultant agrees to and shall protect, defend, indemnify and hold City, its officials
23 and employees harmless from any and all claims, demands, damages, loss, liability,
24 causes of action, costs or expenses (including reasonable attorney's fees) whether
25 or not reduced to judgment, arising from any breach or alleged breach of this
26 warranty.

27 25. COVENANT AGAINST CONTINGENT FEES. Consultant warrants
28 that Consultant has not employed or retained any entity or person to solicit or obtain this

1 Agreement and that Consultant has not paid or agreed to pay any entity or person any fee,
2 commission or other monies based on or from the award of this Agreement. If Consultant
3 breaches this warranty, City shall have the right to terminate this Agreement immediately
4 notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments
5 due under this Agreement or otherwise recover the full amount of the fee, commission or
6 other monies.

7 26. WAIVER. The acceptance of any services or the payment of any
8 money by City shall not operate as a waiver of any provision of this Agreement or of any
9 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
10 Agreement shall not constitute a waiver of any other or subsequent breach of this
11 Agreement.

12 27. CONTINUATION. Termination or expiration of this Agreement shall
13 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
14 17, 19, 22 and 28 prior to termination or expiration of this Agreement.

15 28. TAX REPORTING. As required by federal and state law, City is
16 obligated to and will report the payment of compensation to Consultant on Form 1099-
17 Misc. Consultant shall be solely responsible for payment of all federal and state taxes
18 resulting from payments under this Agreement. Consultant shall submit Consultant's
19 Employer Identification Number (EIN), or Consultant's Social Security Number if
20 Consultant does not have an EIN, in writing to City's Accounts Payable, Department of
21 Financial Management. Consultant acknowledges and agrees that City has no obligation
22 to pay Consultant until Consultant provides one of these numbers.

23 29. ADVERTISING. Consultant shall not use the name of City, its officials
24 or employees in any advertising or solicitation for business or as a reference, without the
25 prior approval of the City Manager or designee.

26 30. AUDIT. City shall have the right at all reasonable times during the
27 term of this Agreement and for a period of five (5) years after termination or expiration of
28 this Agreement to examine, audit, inspect, review, extract information from and copy all

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

1 books, records, accounts and other documents of Consultant relating to this Agreement.

2 31. THIRD PARTY BENEFICIARY. This Agreement is not intended or
3 designed to or entered for the purpose of creating any benefit or right for any person or
4 entity of any kind that is not a party to this Agreement.

5 IN WITNESS WHEREOF, the parties have caused this document to be duly
6 executed with all formalities required by law as of the date first stated above.

7
8
9 December 14, 2020

SYSTEM INNOVATORS, a division of N.
HARRIS COMPUTER CORPORATION, a
Canada corporation

By [Signature]
Name THERRY BECHTEL
Title V.P. OPERATIONS

11
12 DECEMBER 14, 2020

By [Signature]
Name JEFFREY SUMNER
Title EXECUTIVE VICE PRESIDENT

"Consultant"

CITY OF LONG BEACH, a municipal
corporation

16
17 December 21, 2020

By [Signature]
City Manager

"City"

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

20 This Agreement is approved as to form on Dec. 16, 2020.

21 CHARLES PARKIN, City Attorney

22 By [Signature]
23 Deputy

28

EXHIBIT “A”

Scope of Work

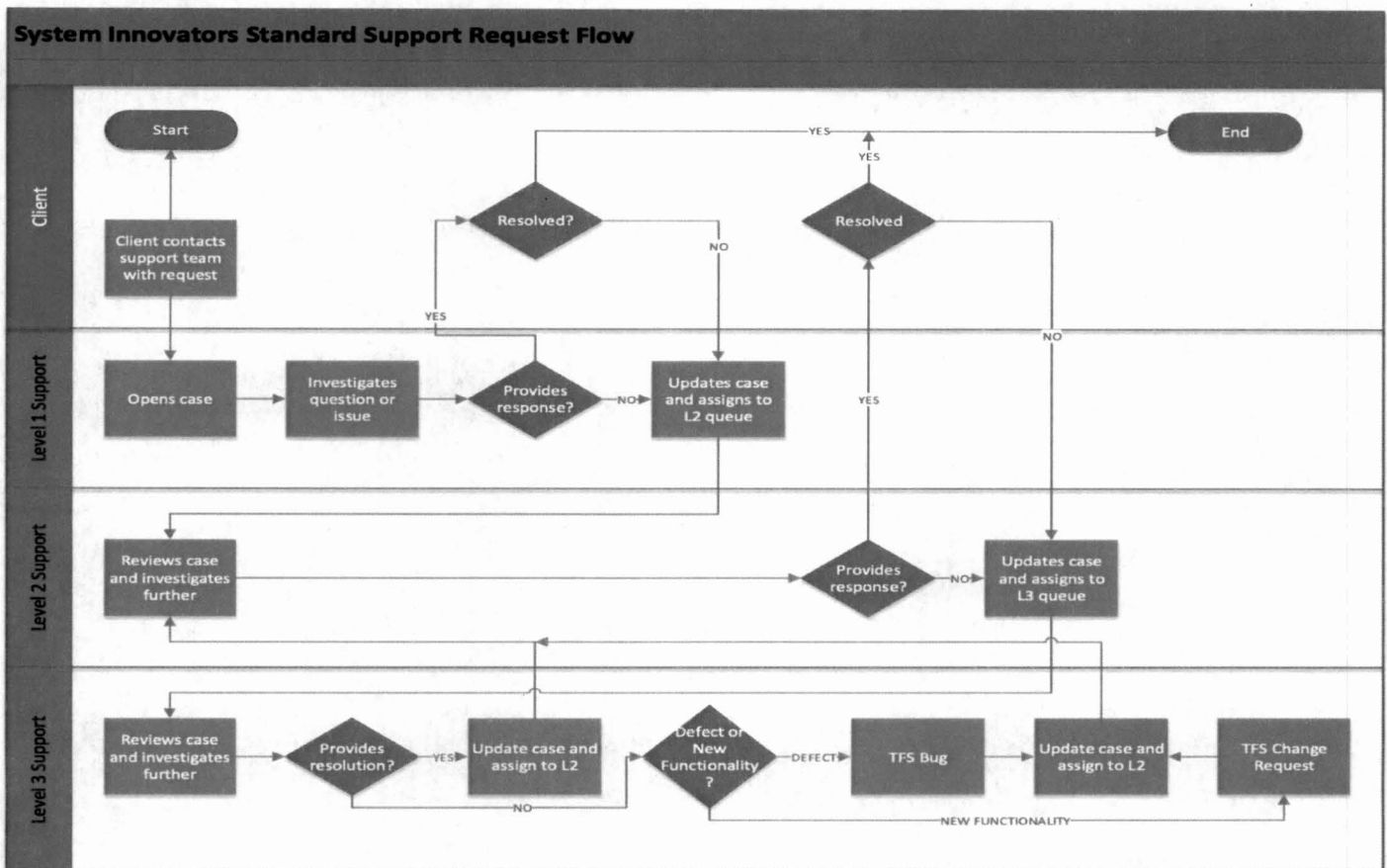
Exhibit 2 Standard Support and Maintenance Services – Standard Guidelines

The purpose of this Exhibit 2 is to describe the Standard Support and Maintenance Services provided by System Innovators as part of Annual Software Support and Maintenance.

System Innovators reserves the right to make modifications to this document as required; provided, System Innovators shall not reduce the scope of support provided hereunder without the prior consent of the Organization.

1 Description of Support Services

1.1 Support Request Flow



1.2 Support Request Process.

- (a) In order to initiate the support process, the client is required to notify System Innovators Client Services of a support request by:
 - (i) phoning support, by sending an email, or by opening a *Ticket* in the Client Services Ticket Portal (<https://support.systeminnovators.com>).
 - (ii) In all case the client will receive a ticket reference number for tracking the progress of the support request.
- (b) All client support requests must include at a minimum: organization name, contact person, software product and version, module and/or menu selection, nature of issue, detailed description of the question or issue and any other information believed to be pertinent.
- (c) Tickets created via the Client Services Ticketing Portal will be issued a ticket number upon creation.
- (d) Phoned or emailed requests will be logged into support tracking system by a support analyst. The client will receive a ticket number for issue tracking and can be monitored, updated, or closed via the Client Services Ticketing Portal
- (e) The ticket will be placed to a ticket queue. It will be actioned by the next available support analyst based on the *Ticket Severity Level* and *Ticket Age*.
 - (i) System Innovators encourages a Customer to contact Client Services by phone for *Urgent / Severity 1* issues.
- (f) While the support analyst investigates the issue, the client may be contacted for additional information, advised of issue status, or to perform a course of action for resolution.
- (g) In the event the support request uncovers a product *Defect*, the support analyst will log the issue in System Innovators Development Tracking System. A secondary tracking number called a "*Defect Number*" will be created and linked to the support request. The ticket will be placed in a deferred state until the defect has resolved as part a future software maintenance release. The resolution is dependent on the nature and complexity of the defect.
- (h) Should the support request uncover new product *Feature* or *Functionality*, the support analyst will log the issue in System Innovators Development Tracking System. A "*Change Request Number*" will be created and linked to the support request. The ticket will be placed in a deferred state until the iNovah Product Team makes decision to move forward with the new feature or functionality. Clients may be charged for new feature or functionality requests; this requires written authorization from the client through a mutually executed agreement or Client issued Purchase Order.

- (i) The current status for all tickets can be viewed in the Client Services Ticket Portal, or by phoning or emailing the support department.

2 Standard Support Services and Activities. The support services listed below are included as part of annual software support and maintenance:

- (a) Access to the Client Services Ticket Portal
(<https://support.systeminnovators.com/>)
 - (i) Unlimited number of Users for ticket creation, monitoring, and updates
- (b) Phone support via 800 toll free number (800-963-5000)
- (c) Email support (clientservices@systeminnovators.com)
- (d) Technical troubleshooting and issue resolution
- (e) Limited training consultation (15 minute guideline)
- (f) State and/or Federal mandated changes (charges may apply)
- (g) Periodic software maintenance updates that incorporate new generally available product features/functionality, and/or resolve reported product defects
- (h) Access to System Innovators Collaboration system “innoverse”
(<https://innoverse.systeminnovators.com/>)
 - (i) One User Account per Client
- (i) Product and software release notes and system requirements documentation
- (j) Generally available product manuals and training guides
- (k) Technical document including the following:
 - (i) How to, Troubleshooting, and Technical Knowledge Base Articles
 - (ii) Product installation documentation and system prerequisites
 - (iii) Support Utilities
- (l) Peripheral device support; drivers, firmware
- (m) New software release notifications

3 Additional Support Services and Activities. The Additional Support Services listed below are not included as part of annual software support and maintenance. These services can be

purchased by the Client as Additional Services; this requires written authorization from the client through a mutually executed agreement or Client issued Purchase Order

- (a) State and/or Federal mandated changes
- (b) Scheduled assistance for software installations, upgrades and other special projects
- (c) Design review for potential software enhancements or custom modifications
- (d) Extended Administrative or End User Training
- (e) Custom software modifications including:
 - (i) File imports and exports
 - (ii) Bills/scanlines/barcodes
 - (iii) Cashiering customizations
 - (iv) Reversal of customizations
 - (v) Form creation or re-design
- (f) Data conversions / global modification to setup table data
- (g) Database maintenance, repairs and optimization
- (h) iNovah Public API consulting
- (i) Custom report development
- (j) On-site installation, upgrade or troubleshooting
- (k) Assistance with creation of backup scripts / backup recovery
- (l) Assistance with database installation, configuration and updating
- (m) Preventative maintenance monitoring or other services
- (n) Recommending or assisting with disaster recovery plans
- (o) Assistance with recovering data resulting from system crashes
- (p) Attendance to the annual Harris Technical Training Conference

4 Out of Scope Services and Activities. The following services listed below are not included as part of annual software support and maintenance.

- (a) Modification to Source or Host system interfaces

- (b) Setup of peripheral devices; printers, scanners, barcode readers, imagers, cash drawers
- (c) Database refreshes, backups, restores
- (d) Operating system installation/upgrades of servers/workstations
- (e) Reconfiguration of hardware, file servers, and virtual environments
- (f) Hardware system upgrades
- (g) Third party software upgrades

5 Third Party Support. The following section defines the standard support services for third party software (if applicable) that are included as part of annual support and maintenance. This section serves as a guideline but is superseded by any existing third party or other agreement.

- (a) 800 telephone support – “*First Level*” support for basic technical troubleshooting. Complex issues that require Level 2 support (or higher) will be escalated to the third party for support.
- (b) Updating system to support new versions of licensed applications
- (c) Limited training questions (15-minute guideline)

6 Severity Level Classification, Target Response and Resolution Times

6.1 Classification. All *Tickets* (i.e. support requests) will be assigned an appropriate *Severity Level* based on the *Definitions* outlined in section 6.2 – Severity Level Definition. In the appropriate severity level. In the event that System Innovators determines from time to time that a severity level with respect to a specific error should be reclassified, System Innovators will discuss such reclassification and the rationale behind it with Client and, if the parties mutually agree that the severity level should be reclassified, the parties may do so. Either party shall be entitled at any time to escalate any good faith dispute that it may have about the severity level classification of a support issue, pursuant to the *Escalation Processes* set forth in Section 6.4 below.

6.2 Response Times. System Innovators will use commercially reasonable efforts to respond by telephone, email, or through the support portal to a reported issue within the timeframes set forth in the Response Time column in Section 8.1 below that corresponds to the assigned severity level

6.3 Resolution Times. System Innovators will use commercially reasonable efforts to provide a resolution (via remote support, workaround, patch or other forms determined by System Innovators) to a reported Ticket within the timeframe set forth in the

Resolution Time column in Section 8.1 below that corresponds to the assigned severity level.

6.4 Support Request Escalation Process. This escalation process was implemented to ensure that client issues are handled in an efficient and timely manner. If at any time you are not completely satisfied with the handling of the support request, escalate with the support department as follows:

- (a) Contact the Support Analyst Assigned to the issue
- (b) Contact the Manager of Customer Support
- (c) Contact the Vice President of Operations
- (d) Contact the Executive Vice President of System Innovators

7 Severity Level Definitions.

Severity Levels	Definition
<p>Severity 1</p>	<p>The total unavailability of the production application, or a repeatable malfunction within the production application causing impact to business operation if not promptly restored.</p> <ul style="list-style-type: none"> ▪ Production System Down ▪ Inability to process payments ▪ Program errors without workarounds ▪ Incorrect calculation errors impacting a majority of records ▪ Aborted postings or error messages preventing data integration and update ▪ Performance issues of severe nature impacting critical processes
<p>Severity 2</p>	<p>Reproducible issues that affect the functioning of components within the application, or data inconsistencies with no work around available.</p> <ul style="list-style-type: none"> ▪ Calculation errors impacting a minority of records ▪ Report calculation issues ▪ Printer related issues (related to iNovah software and not the printer hardware) ▪ User Security/Permission issues ▪ Workstation connectivity issues (Workstation specific)
<p>Severity 3</p>	<p>Reproducible or intermittent Issues that affect the functioning of components within the application, or data inconsistencies. Workaround available.</p> <ul style="list-style-type: none"> ▪ Usability issues ▪ Performance issues not impacting critical processes ▪ Report formatting issues ▪ Training questions, how to, or implementing new processes ▪ Recommendations for enhancements on system changes

Severity Levels	Definition
Severity 4	<p>Requests for information, assistance on application capabilities, and other requests that do not fit the criteria for Severity 1, Severity2, or Severity 3.</p> <ul style="list-style-type: none"> ▪ Questions about documentation ▪ Requests for documentation or information ▪ Questions about products ▪ Aesthetic issues

7.1 Production System Down Definition. The iNovah Enterprise Revenue Management (ERM) is substantially inoperable and are inaccessible by more than one of the Client's end users, or the iNovah ERM applications hang indefinitely.

8 Service Levels. System Innovators agrees to use commercially reasonable effort to respond to, correct, or resolve reported tickets as described below:

8.1 Response Time

Severity Levels	Target Response Time
Severity 1	1 - 4 Business Hours
Severity 2	1 Business Day
Severity 3	2 - 3 Business Days
Severity 4	5 - 10 Business Days

8.2 Business Hour Definition. The time period between 8:00 a.m. to 8:00 p.m. Eastern Time on a Business Day.

8.3 Business Day Definition. Monday through Friday, excluding the following:

- (a) **Published holidays.**
 - (i) New Year's Day
 - (ii) President's Day (Observed)
 - (iii) Memorial Day (Observed)
 - (iv) 4th of July (Observed)
 - (v) Labor Day
 - (vi) Columbus Day (Observed)*

- (vii) Thanksgiving Day
 - (viii) Day after Thanksgiving*
 - (ix) Thanksgiving Day
 - (x) Christmas Eve (Observed)*
 - (xi) Christmas Day (Observed)
- (b) Natural disasters, and/or other exceptional unplanned events

9 Client's Responsibilities.

9.1 Client's Support. Client, at Client's sole expense, shall;

- (a) Provide System Innovators such assistance, information, services and facilities as may be reasonably requested by System Innovators to perform the support and maintenance services
- (b) Provide System Innovators with access to at least one named technical contact who is familiar with the technology, operations, and functionality of Client's systems and the iNovah ERM applications;
- (c) And, where appropriate, help secure the assistance of any person whose relationship with Client may be contributing to error.

9.2 Client Designated Support Contacts. The client will assign two (2) named resources, a primary and a backup, to be client designated support contacts responsible for:

- (a) Assisting with the support relationship between System Innovators and the client
- (b) Initiating and managing the priority case handling process
- (c) Distributing proactive notifications to the client's end users (as applicable)
- (d) Ensuring appropriate follow up and feedback from the client's end user
- (e) Ensuring that a communication link is operational for remote troubleshooting purposes; direct internet, virtual private network (VPN), remote access server (RAS)

EXHIBIT “B”

Rates or Charges



Invoice **MN00133131**
 Date **10/16/2020**
 Page **1 of 1**

Remit To: System Innovators, a division of N Harris Corporation
 PO Box 74007259
 Chicago, IL 60674-7259

Bill to
 Long Beach, City of
 Accounts Payable
 411 West Ocean Blvd. Lobby
 Long Beach, CA 90802
 USA

Ship To
 Long Beach, City of
 Accounts Payable
 411 West Ocean Blvd. Lobby
 Long Beach, CA 90802
 USA

PO Number	Customer No.	Salesperson ID	Shipping Method	Payment Terms
	LON70		DELIVERY	1/1/2021

Ordered	Item Number	Description	Unit Price	Ext Price
1.00	NOTE	Software Support	US\$ 0.00	US\$ 0.00
1.00	SI MAINT	iNovah V2- SWS: 1/1/2021 to 12/31/2021	US\$ 27,652.27	US\$ 27,652.27
1.00	SI MAINT	Additional Non-Cashiering License(Unlimited Receipts Annually): 1/1/2021 to 12/31/2021	US\$ 45,544.15	US\$ 45,544.15
1.00	SI MAINT	Rescue Net Real-time Interface (Zoll): 1/1/2021 to 12/31/2021	US\$ 4,684.39	US\$ 4,684.39
1.00	SI MAINT	Tyler Munis Interface: 1/1/2021 to 12/31/2021	US\$ 4,684.39	US\$ 4,684.39
1.00	SI MAINT	Hansen Interface: 1/1/2021 to 12/31/2021	US\$ 4,684.39	US\$ 4,684.39
1.00	SI MAINT	Rescue Net Export: 1/1/2021 to 12/31/2021	US\$ 2,342.20	US\$ 2,342.20
1.00	SI MAINT	CC&B Real-Time Interface: 1/1/2021 to 12/31/2021	US\$ 5,670.01	US\$ 5,670.01
1.00	SI MAINT	Tow Admin Real-Time Interface: 1/1/2021 to 12/31/2021	US\$ 5,670.01	US\$ 5,670.01
1.00	SI MAINT	DataTicket Parking Citation Interface -SWS: 1/1/2021 to 12/31/2021	US\$ 2,476.21	US\$ 2,476.21

Invoice Questions? Please call Cyrene Kwok at 1-888-847-7747 ext 2699 OR e-mail CKwok@harriscomputer.com	Subtotal	US\$ 103,408.02
	Misc	US\$ 0.00
	Tax	US\$ 0.00
	Freight	US\$ 0.00
	Trade Discount	US\$ 0.00
	Total	US\$ 103,408.02

EXHIBIT “C”

City’s Representative:

Amanda Hall

Commercial Services Bureau Manager

(562) 570-6242

EXHIBIT "D"

Materials/Information Furnished: None

EXHIBIT "E"

Consultant's Key Employee:

Kim Sobkowich

Maintenance Account Manager

(904) 281-9090, x72100