

AGREEMENT

**34211**

THIS AGREEMENT is made and entered, in duplicate, as of February 23, 2016, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on February 10, 2015, by and between E-PLAN, INC. DBA E-PLANSOFT, a California corporation ("Consultant"), with a place of business at 20 Morgan, Irvine, California 92618-2022, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City requires specialized services requiring unique skills to be performed in connection with an Electronic Plan Check System ("Project"); and

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

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

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

1. SCOPE OF WORK OR SERVICES.

A. Consultant shall furnish specialized services more particularly described in Exhibit "A", attached to this Agreement and incorporated by this reference, in accordance with the standards of the profession, and City shall pay for these services in the manner described below, not to exceed Four Hundred Six Thousand Three Hundred Twenty Dollars (\$406,320), at the rates or charges shown in Exhibit "B".

B. 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

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

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

11 D. CAUTION: Consultant shall not begin work until this  
12 Agreement has been signed by both parties and until Consultant's evidence of  
13 insurance has been delivered to and approved by City.

14 2. TERM. The term of this Agreement shall commence at midnight on  
15 March 1, 2016, and shall terminate at 11:59 p.m. on February 28, 2017, unless sooner  
16 terminated as provided in this Agreement, or unless the services or the Project is  
17 completed sooner.

18 3. COORDINATION AND ORGANIZATION.

19 A. Consultant shall coordinate its performance with City's  
20 representative, if any, named in Exhibit "C", attached to this Agreement and  
21 incorporated by this reference. Consultant shall advise and inform City's  
22 representative of the work in progress on the Project in sufficient detail so as to  
23 assist City's representative in making presentations and in holding meetings on the  
24 Project. City shall furnish to Consultant information or materials, if any, described  
25 in Exhibit "D", attached to this Agreement and incorporated by this reference, and  
26 shall perform any other tasks described in the Exhibit.

27 B. The parties acknowledge that a substantial inducement to City  
28 for entering this Agreement was and is the reputation and skill of Consultant's key

1 employee, Sean Hooper. City shall have the right to approve any person proposed  
2 by Consultant to replace that key employee.

3 4. INDEPENDENT CONTRACTOR. In performing its services,  
4 Consultant is and shall act as an independent contractor and not an employee,  
5 representative or agent of City. Consultant shall have control of Consultant's work and the  
6 manner in which it is performed. Consultant shall be free to contract for similar services to  
7 be performed for others during this Agreement; provided, however, that Consultant acts in  
8 accordance with Section 9 and Section 11 of this Agreement. Consultant acknowledges  
9 and agrees that (a) City will not withhold taxes of any kind from Consultant's compensation;  
10 (b) City will not secure workers' compensation or pay unemployment insurance to, for or  
11 on Consultant's behalf; and (c) City will not provide and Consultant is not entitled to any of  
12 the usual and customary rights, benefits or privileges of City employees. Consultant  
13 expressly warrants that neither Consultant nor any of Consultant's employees or agents  
14 shall represent themselves to be employees or agents of City.

15 5. INSURANCE.

16 A. As a condition precedent to the effectiveness of this  
17 Agreement, Consultant shall procure and maintain, at Consultant's expense for the  
18 duration of this Agreement, from insurance companies that are admitted to write  
19 insurance in California and have ratings of or equivalent to A:V by A.M. Best  
20 Company or from authorized non-admitted insurance companies subject to Section  
21 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII  
22 by A.M. Best Company, the following insurance:

23 (a) Commercial general liability insurance (equivalent in scope to  
24 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than  
25 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This  
26 coverage shall include but not be limited to broad form contractual liability,  
27 cross liability, independent contractors liability, and products and completed  
28 operations liability. City, its boards and commissions, and their officials,

1 employees and agents shall be named as additional insureds by  
2 endorsement (on City's endorsement form or on an endorsement equivalent  
3 in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or both CG 20 10  
4 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and CG 20 37 07 04),  
5 and this insurance shall contain no special limitations on the scope of  
6 protection given to City, its boards and commissions, and their officials,  
7 employees and agents. This policy shall be endorsed to state that the  
8 insurer waives its right of subrogation against City, its boards and  
9 commissions, and their officials, employees and agents.

10 (b) Workers' Compensation insurance as required by the California  
11 Labor Code and employer's liability insurance in an amount not less than  
12 \$1,000,000. This policy shall be endorsed to state that the insurer waives  
13 its right of subrogation against City, its boards and commissions, and their  
14 officials, employees and agents.

15 (c) Professional liability or errors and omissions insurance in an  
16 amount not less than \$1,000,000 per claim.

17 (d) Commercial automobile liability insurance (equivalent in scope  
18 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an  
19 amount not less than \$500,000 combined single limit per accident.

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

25 C. Each insurance policy shall be endorsed to state that coverage  
26 shall not be reduced, non-renewed or canceled except after thirty (30) days prior  
27 written notice to City, shall be primary and not contributing to any other insurance  
28 or self-insurance maintained by City, and shall be endorsed to state that coverage

1 maintained by City shall be excess to and shall not contribute to insurance or self-  
2 insurance maintained by Consultant. Consultant shall notify City in writing within  
3 five (5) days after any insurance has been voided by the insurer or cancelled by the  
4 insured.

5 D. If this coverage is written on a "claims made" basis, it must  
6 provide for an extended reporting period of not less than one hundred eighty (180)  
7 days, commencing on the date this Agreement expires or is terminated, unless  
8 Consultant guarantees that Consultant will provide to City evidence of uninterrupted,  
9 continuing coverage for a period of not less than three (3) years, commencing on  
10 the date this Agreement expires or is terminated.

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

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

24 G. Any modification or waiver of these insurance requirements  
25 shall only be made with the approval of City's Risk Manager or designee. Not more  
26 frequently than once a year, City's Risk Manager or designee may require that  
27 Consultant, Consultant's subconsultants and contractors change the amount, scope  
28 or types of coverages required in this Section if, in his or her sole opinion, the

1 amount, scope or types of coverages are not adequate.

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

5 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement  
6 contemplates the personal services of Consultant and Consultant's employees, and the  
7 parties acknowledge that a substantial inducement to City for entering this Agreement was  
8 and is the professional reputation and competence of Consultant and Consultant's  
9 employees. Consultant shall not assign its rights or delegate its duties under this  
10 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval  
11 of City, except that Consultant may with the prior approval of the City Manager of City,  
12 assign any moneys due or to become due Consultant under this Agreement. Any  
13 attempted assignment or delegation shall be void, and any assignee or delegate shall  
14 acquire no right or interest by reason of an attempted assignment or delegation.  
15 Furthermore, Consultant shall not subcontract any portion of its performance without the  
16 prior approval of the City Manager or designee, or substitute an approved subconsultant  
17 or contractor without approval prior to the substitution. Nothing stated in this Section shall  
18 prevent Consultant from employing as many employees as Consultant deems necessary  
19 for performance of this Agreement.

20 7. CONFLICT OF INTEREST. Consultant, by executing this Agreement,  
21 certifies that, at the time Consultant executes this Agreement and for its duration,  
22 Consultant does not and will not perform services for any other client which would create  
23 a conflict, whether monetary or otherwise, as between the interests of City and the interests  
24 of that other client. And, Consultant shall obtain similar certifications from Consultant's  
25 employees, subconsultants and contractors.

26 8. MATERIALS. Consultant shall furnish all labor and supervision,  
27 supplies, materials, tools, machinery, equipment, appliances, transportation and services  
28 necessary to or used in the performance of Consultant's obligations under this Agreement,

1 except as stated in Exhibit "D".

2 9. OWNERSHIP OF DATA. All materials, information and data  
3 prepared, developed or assembled by Consultant or furnished to Consultant in connection  
4 with this Agreement, including but not limited to documents, estimates, calculations,  
5 studies, maps, graphs, charts, computer disks, computer source documentation, samples,  
6 models, reports, summaries, drawings, designs, notes, plans, information, material and  
7 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,  
8 and City shall have the unrestricted right to use and disclose the Data in any manner and  
9 for any purpose without payment of further compensation to Consultant. Copies of Data  
10 may be retained by Consultant but Consultant warrants that Data shall not be made  
11 available to any person or entity for use without the prior approval of City. This warranty  
12 shall survive termination of this Agreement for five (5) years.

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

21 11. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for  
22 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates  
23 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available  
24 without breach of this Agreement by Consultant; or (c) a third party who has a right to  
25 disclose does so to Consultant without restrictions on further disclosure; or (d) must be  
26 disclosed pursuant to subpoena or court order.

27 12. ADDITIONAL COSTS. Any costs incurred by City due to Consultant's  
28 failure to meet the standards required by the scope of work or Consultant's failure to

1 perform fully the tasks described in the scope of work which, in either case, causes City to  
2 request that Consultant perform again all or part of the Scope of Work shall be at the sole  
3 cost of Consultant and City shall not pay any additional compensation to Consultant for its  
4 re-performance.

5 13. AMENDMENT. This Agreement, including all Exhibits, shall not be  
6 amended, nor any provision or breach waived, except in writing signed by the parties which  
7 expressly refers to this Agreement.

8 14. LAW. This Agreement shall be construed in accordance with the laws  
9 of the State of California, and the venue for any legal actions brought by any party with  
10 respect to this Agreement shall be the County of Los Angeles, State of California for state  
11 actions and the Central District of California for any federal actions. Consultant shall cause  
12 all work performed in connection with construction of the Project to be performed in  
13 compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state,  
14 county or municipal governments or agencies (including, without limitation, all applicable  
15 federal and state labor standards, including the prevailing wage provisions of sections 1770  
16 *et seq.* of the California Labor Code); and (2) all directions, rules and regulations of any  
17 fire marshal, health officer, building inspector, or other officer of every governmental  
18 agency now having or hereafter acquiring jurisdiction.

19 15. ENTIRE AGREEMENT. This Agreement, including all Exhibits,  
20 constitutes the entire understanding between the parties and supersedes all other  
21 agreements, oral or written, with respect to the subject matter in this Agreement.

22 16. INDEMNITY.

23 A. Consultant shall indemnify, protect and hold harmless City, its  
24 Boards, Commissions, and their officials, employees and agents ("Indemnified  
25 Parties"), from and against any and all liability, claims, demands, damage, loss,  
26 obligations, causes of action, proceedings, awards, fines, judgments, penalties,  
27 costs and expenses, including attorneys' fees, court costs, expert and witness fees,  
28 and other costs and fees of litigation, arising or alleged to have arisen, in whole or

1 in part, out of or in connection with (1) Consultant's breach or failure to comply with  
2 any of its obligations contained in this Agreement, including any obligations arising  
3 from the Project's compliance with or failure to comply with applicable laws,  
4 including all applicable federal and state labor requirements including, without  
5 limitation, the requirements of California Labor Code section 1770 *et seq.* or (2)  
6 negligent or willful acts, errors, omissions or misrepresentations committed by  
7 Consultant, its officers, employees, agents, subcontractors, or anyone under  
8 Consultant's control, in the performance of work or services under this Agreement  
9 (collectively "Claims" or individually "Claim").

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

19 C. If a court of competent jurisdiction determines that a Claim was  
20 caused by the sole negligence or willful misconduct of Indemnified Parties,  
21 Consultant's costs of defense and indemnity shall be (1) reimbursed in full if the  
22 court determines sole negligence by the Indemnified Parties, or (2) reduced by the  
23 percentage of willful misconduct attributed by the court to the Indemnified Parties.

24 D. The provisions of this Section shall survive the expiration or  
25 termination of this Agreement.

26 17. AMBIGUITY. In the event of any conflict or ambiguity between this  
27 Agreement and any Exhibit, the provisions of this Agreement shall govern.

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1                   18.    NONDISCRIMINATION.

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

12                  B.     It is the policy of City to encourage the participation of  
13 Disadvantaged, Minority and Women-Owned Business Enterprises in City's  
14 procurement process, and Consultant agrees to use its best efforts to carry out this  
15 policy in its use of subconsultants and contractors to the fullest extent consistent  
16 with the efficient performance of this Agreement. Consultant may rely on written  
17 representations by subconsultants and contractors regarding their status.  
18 Consultant shall report to City in May and in December or, in the case of short-term  
19 agreements, prior to invoicing for final payment, the names of all subconsultants  
20 and contractors hired by Consultant for this Project and information on whether or  
21 not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as  
22 defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

23                  19.    EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in  
24 accordance with the provisions of the Ordinance, this Agreement is subject to the  
25 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the  
26 Long Beach Municipal Code, as amended from time to time.

27                  A.     During the performance of this Agreement, the Consultant  
28 certifies and represents that the Consultant will comply with the EBO. The

1 Consultant agrees to post the following statement in conspicuous places at its place  
2 of business available to employees and applicants for employment:

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

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

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

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

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

22 20. NOTICES. Any notice or approval required by this Agreement shall  
23 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,  
24 postage prepaid, addressed to Consultant at the address first stated above, and to City at  
25 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy  
26 to the City Engineer at the same address. Notice of change of address shall be given in  
27 the same manner as stated for other notices. Notice shall be deemed given on the date  
28 deposited in the mail or on the date personal delivery is made, whichever occurs first.

1                   21.    COPYRIGHTS AND PATENT RIGHTS.

2                   A.     Consultant shall place the following copyright protection on all  
3 Data: © City of Long Beach, California \_\_\_\_, inserting the appropriate year.

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

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

15                  22.    COVENANT AGAINST CONTINGENT FEES. Consultant warrants  
16 that Consultant has not employed or retained any entity or person to solicit or obtain this  
17 Agreement and that Consultant has not paid or agreed to pay any entity or person any fee,  
18 commission or other monies based on or from the award of this Agreement. If Consultant  
19 breaches this warranty, City shall have the right to terminate this Agreement immediately  
20 notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments  
21 due under this Agreement or otherwise recover the full amount of the fee, commission or  
22 other monies.

23                  23.    WAIVER. The acceptance of any services or the payment of any  
24 money by City shall not operate as a waiver of any provision of this Agreement or of any  
25 right to damages or indemnity stated in this Agreement. The waiver of any breach of this  
26 Agreement shall not constitute a waiver of any other or subsequent breach of this  
27 Agreement.

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

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

12           26. AUDIT. City shall have the right at all reasonable times during the  
13 term of this Agreement and for a period of five (5) years after termination or expiration of  
14 this Agreement to examine, audit, inspect, review, extract information from and copy all  
15 books, records, accounts and other documents of Consultant relating to this Agreement.

16           27. THIRD PARTY BENEFICIARY. This Agreement is not intended or  
17 designed to or entered for the purpose of creating any benefit or right for any person or  
18 entity of any kind that is not a party to this Agreement.

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OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

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

3/3, 2016  
3/3, 2016

E-PLAN, INC. DBA E-PLANSOFT, a  
California corporation  
By [Signature]  
Name Michael Chiggins  
Title President  
By [Signature]  
Name Larry Zaret  
Title Vice President

"Consultant"

March 21, 2016

CITY OF LONG BEACH, a municipal  
corporation  
By [Signature]  
City Manager  
Assistant City Manager  
EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

"City"

This Agreement is approved as to form on 3-7, 2016.

CHARLES PARKIN, City Attorney  
By [Signature]  
Deputy

# EXHIBIT “A”

## Scope of Work



811 Wilshire Blvd., Ste 1050, Los Angeles, CA 90017 | 877.654.3752



City of Long Beach

*Statement of Work Proposal for  
Electronic Plan Check and Integration*

*Proposal Number DV14-034*

*March 1, 2016*



## **Proposal for Electronic Plan Check and Integration Services**

### **Terms of Proposal/Agreement**

Section 1- e-PlanSoft Master Agreement

Section 2- Maintenance and Support Agreement for Customers

Section 3- Professional Service Agreement

Attachment A- Statement of Work and Services

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## Section 1

# e-PlanSoft Master Agreement

Note- Certain Sections may have been renamed and/or renumbered in this document for convenience only and such renaming and/or renumbering will not affect the validity, construction or interpretation of the Agreement. References in the Terms of Service to any Section names or numbers under this document will be deemed to be a reference to the identified or corresponding provisions in this document to accomplish the reasonable intent and objectives of such provisions to the greatest extent possible under applicable law.

Wherever applicable, this agreement applies to entire agreement, not just each section of the agreement.

### 1. Definitions

**"Estimate / Order Form"** means estimate, quote, renewal notification, sales order, or order form provided by e-PlanSoft in the name of and executed by Customer or its Affiliate and accepted by e-PlanSoft which specifies the Service, and any Support Services and/or Professional Services to be provided by e-PlanSoft subject to the terms of this Agreement.

**"Perpetuity"** means using the use of Service by Customer on a perpetual basis for unlimited users in compliance with Estimate / Order Form.

**"Service"** means, collectively, e-PlanSoft's product, online and offline services, modules, and any online and offline services, and modules offered by e-PlanSoft's integrated partners as described in the applicable Estimate / Order provided and accepted by the Customer, but excluding any support services and professional services.

**"On-premise Service"** means Customer elected to install and configure required components provided by e-PlanSoft to enable Service within Customer's own operating environment.

**"Execution of e-PlanSoft Master Agreement"** means acceptance of the terms and conditions defined by Agreement when, a) upon the first use of Service by the first authorized user after e-PlanSoft provides a license key and username and password, and b) when the Customer signs the Agreement prior to receiving the license key and username and password for the first authorized user.

**"User" or "Users"** means individuals who are authorized by Customer to use the Service pursuant to this Agreement or as otherwise defined, restricted or limited in an Estimate / Order Form or amendment to this Agreement, for whom the Service has been procured, and who have been supplied user identifications and passwords by Customer (or by e-PlanSoft at Customer's request). Users may include but are not limited to License and Customer Affiliates' employees, consultants, contractors and agents.

**"Electronic Communications"** means any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically received and/or transmitted through the Service.

**"Consultant"** e-PlanSoft or its sub-consultant, Truepoint Solutions

**"Customer"** the City of Long Beach or "City"

**"Affiliates"** means any entity which directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with a party to this Agreement, by way of majority voting stock ownership or the ability to otherwise direct or cause the direction of the management and policies of such party.



**"Confidential Information"** means: (a) Customer Data; (b) the terms of this Agreement and (c) any commercial, financial, marketing, business, technical or other data, security measures and procedures, know-how or other information disclosed by or on behalf of the disclosing party to the receiving party for purposes arising out of or in connection with this Agreement, that: (i) in the case of information in tangible form, is marked "confidential" or "proprietary;" (ii) in the case of information disclosed orally, visually or any other intangible form, is designated confidential or proprietary at the time of disclosure, and if disclosed orally, is summarized in reasonable detail in a writing delivered to the receiving party within ten (10) days following disclosure; (iii) under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary; and (iv) will include any reproduction of such information in any form or medium, or any part of such information. The following will not be deemed Confidential Information: (1) information that was in the public domain at the time of its disclosure, or which becomes public domain property through no fault of the receiving party; (2) information that was rightfully in the receiving party's possession without restriction prior to disclosure; (3) information that was rightfully disclosed to the receiving party by a third party without restriction (4) information that was independently developed by employees and/or contractors of the receiving party who did not have access to and without use of or reference to the disclosing party's Confidential Information and (5) aggregate data collected or generated by e-PlanSoft or on behalf of e-PlanSoft regarding e-PlanSoft's products and services (for purposes of providing or improving e-PlanSoft products and services, benchmarking system performance, preparing statistics and system metrics, marketing and other purposes) that does not contain any personally identifiable or Customer-specific information. All Confidential Information is subject to the Customers' legal responsibilities to disclose information by, but not limited to the California Public Records Act.

**"Customer Data"** means all electronic data or information submitted to and stored in the Service by Users.

**"Help Documentation"** means the online English language help center documentation describing the Service features, including User Guides which may be updated from time to time.

**"Professional Services"** means the general consulting, implementation and/or training services to be provided to Customer pursuant to (i) the e-PlanSoft Professional Services Agreement found in Section 3 of this document, or such other URL as specified by e-PlanSoft, and (ii) a Statement of Work (as defined in such professional services agreement).

**"Support Services"** means e-PlanSoft's supplemental, fee-based technical support services to be provided to Customer pursuant to the terms for Support Services, found in Section 2 of this document outside of the number of hours for Support Services has been explicitly defined as included in the Estimate / Order Form or any other mutually signed document by e-PlanSoft and Customer.

**"Third Party Applications"** means applications, integrations, services, or implementation, customization and other consulting services related thereto, provided by a party other than e-PlanSoft, as further described in Section 2.4 ("Third Party Applications") that interoperate with the Service.

**"User Guides"** mean the online English language user guides for the Service, accessible via <http://support.eplansoft.com>, as updated from time to time. Customer acknowledges that it has had the opportunity to review the User Guides through a free trial account made available by e-PlanSoft. Customer agrees not to duplicate or share User Guides beyond the expected use of these materials by Customer's Users.

## 2. Terms of Service

Customer acknowledges and agrees to the following Terms of Service, which together with the terms of this Agreement entered into between Customer and e-PlanSoft, will govern Customer's access and use of the Service. Capitalized terms not otherwise defined in these Terms of Service will have the meaning given to them in the Agreement.

**2.1. Accuracy of Customer's Contact Information.** Customer will provide accurate, current and complete information on Customer's legal business name, address, email address, and phone number, and maintain and promptly update this information if it should change.

**2.2. Users: Passwords, Access, and Notification.** Customer will authorize access to and assign unique passwords and user names to users. Customer will be responsible for the confidentiality and use of User's passwords and user names. Customer will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Customer Data, and all other data of any kind contained within emails or otherwise entered electronically through the Service or under Customer's account. e-PlanSoft will act as though any Electronic Communications it receives under Customer's passwords, user name, and/or account number will have been sent by Customer. Customer will use commercially reasonable efforts to prevent unauthorized access to or use of the Service and will promptly notify e-PlanSoft of any unauthorized access or use of the Service and any loss or theft or unauthorized use of any User's password or name and/or Service account numbers.

### 2.3. General Restrictions.

**(a) General.** Customer is responsible for all activities conducted under its User logins and for its Users' compliance with this Agreement. Customer will not and will not permit any third party to: (a) copy, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Service or any part thereof or otherwise attempt to discover any source code or modify the Service in any manner or form unless expressly allowed in the Help Documentation; (b) use the Service for the purpose of building a similar or competitive product or service, or (c) use the Service in a manner that is contrary to applicable law or in violation of any third party rights of privacy or intellectual property rights. Customer will comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with its use of the Service, including without limitation those related to privacy, electronic communications and anti-spam legislation. Customer will not send any Electronic Communication from the Service that is unlawful, harassing, libelous, defamatory or threatening. Except as permitted by this Agreement, no part of the Service may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means. Customer will not in any way express or imply that any opinions contained in Customer's Electronic Communications are endorsed by e-PlanSoft. Customer will ensure that all access and use of the Service by Users is in accordance with the terms and conditions of this Agreement. Any action or breach by any of such User will be deemed an action or breach by Customer.

**(b) HIPAA.** Customer agrees that: (i) e-PlanSoft is not acting on Customer's behalf as a Business Associate or subcontractor; (ii) the Service may not be used to store, maintain, process or transmit protected health information ("PHI") and (iii) the Service will not be used in any manner that would require e-PlanSoft or the Service to be compliant with the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented ("HIPAA"). In the preceding sentence, the terms "Business Associate," "subcontractor," "protected" health information" or "PHI" will have the meanings described in HIPAA.

**2.4. Third Party Applications.** e-PlanSoft may offer certain Third Party Applications under Estimate / Order Forms. Any procurement of such Third Party Applications by Customer will be subject to the terms specified in such Estimate / Order Forms.

In addition, e-PlanSoft or third party providers may offer Third Party Applications through the Service or otherwise related to Customers' use of the Service. Except as expressly set forth in the Estimate / Order Form, e-PlanSoft does not warrant any such Third Party Applications, regardless of whether or not such Third Party Applications are provided



by a third party that is a member of a e-PlanSoft partner program or otherwise designated by e-PlanSoft as "Built For e-PlanSoft," "certified," "approved" or "recommended." Any procurement by Customer of such Third Party Applications or services is solely between Customer and the applicable third party provider. Customer may not use Third Party Applications to enter and/or submit transactions to be processed and/or stored in the Service, unless Customer has procured the Service for such use and access.

e-PlanSoft is not responsible for any aspect of such Third Party Applications that Customer may procure or connect to through the Service, or any descriptions, promises or other information related to the foregoing which is outside of the Statement of Work agreed upon by e-PlanSoft and Customer. If Customer installs or enables Third Party Applications for use with the Service, Customer agrees that e-PlanSoft may enable such third party providers to access Customer Data as required for the interoperability of such Third Party Applications with the Service, and any exchange of data or other interaction between Customer and a third party provider is solely between Customer and such third party provider pursuant to a separate privacy policy or other terms governing Customer's access to or use of the Third Party Applications.

**2.5. Transmission of Data.** Customer understands that the technical processing and transmission of Customer's Electronic Communications is fundamentally necessary to use of the Service. Customer is responsible for securing DSL, cable or another high speed Internet connection and up-to-date "browser" software in order to utilize the Service. Customer expressly consents to e-PlanSoft's interception and storage of Electronic Communications and/or Customer Data, and Customer acknowledges and understands that Customer's Electronic Communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by e-PlanSoft. Customer further acknowledges and understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone or other electronic means. e-PlanSoft is not responsible for any Electronic Communications and/or Customer Data which are delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across networks not owned and/or operated by e-PlanSoft, including, but not limited to, the Internet and Customer's local network.

**2.6. e-PlanSoft's Support Services and Professional Services.** As part of the Service, e-PlanSoft will provide Customer with Help Documentation and other online resources to assist Customer in its use of the Service. e-PlanSoft also offers optional "for fee" Support Services and Professional Services as outlined in Estimate / Order Form for any additional training or work the City wishes to procure which is outside of the Statement of Work Agreed upon by e-PlanSoft and Customer.

**2.7. Confidentiality.** Each party agrees to use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (at all times exercising at least a commercially reasonable degree of care in the protection of such confidential information) not to use or disclose Confidential Information except to the extent necessary to perform its obligations or exercise rights under this Agreement or as directed by Customer. Either party may disclose Confidential Information on a need to know basis to its Affiliates, contractors and service providers who have executed binding written agreements requiring confidentiality and non-use obligations at least as restrictive as those in this Section. Additionally, Customer must input personally identifiable information, including but not limited to credit card information, social security numbers, birth dates only in the fields designated for such data in the Service if the Service requests such data to be entered. Nothing in this Agreement will prohibit the disclosure of Confidential Information to the extent that such disclosure is required by law or order of a court or other governmental authority or regulation.

**2.8.** Intentionally left blank.

**2.9. Ownership of Customer Data.** As between e-PlanSoft and Customer, all title and intellectual property rights in and to the Customer Data is owned exclusively by Customer. Customer agrees that e-PlanSoft may use Customer data to perform necessary and reasonable activities during software engineering activities to ensure that the Service functionality continues to work with Customer's data.



**2.10. e-PlanSoft Intellectual Property Rights.** All rights, title and interest in and to the Service (including without limitation all intellectual property rights therein and all modifications, extensions, customizations, scripts or other derivative works of the Service provided or developed by e-PlanSoft or Sub-Contractor) are owned exclusively by e-PlanSoft or its Sub-Contractor. Except as provided in this Agreement, the rights granted to Customer do not convey any rights in the Service, express or implied, or ownership in the Service or any intellectual property rights thereto. Customer grants e-PlanSoft a royalty free, worldwide, perpetual, irrevocable, transferable right to use, modify, distribute and incorporate into the Service (without attribution of any kind) any suggestions, enhancement request, recommendations, proposals, correction or other feedback or information provided by Customer or any Users related to the operation or functionality of the Service. Any rights in the Service or e-PlanSoft's intellectual property not expressly granted herein by e-PlanSoft are reserved by e-PlanSoft. Customer agrees not to display or use the e-PlanSoft trademarks, logos, and service marks in any manner without e-PlanSoft's express prior written permission. The trademarks, logos and service marks of Third Party Application providers ("Marks") are the property of such third parties. Customer is not permitted to use these Marks without the prior written consent of such third party which may own the Mark.

#### **2.11. Dispute Resolution.**

(a) The parties agree to maintain the confidential nature of all disputes and disagreements between them, including, but not limited to, informal negotiations, mediation or arbitration, except as may be necessary to prepare for or conduct these dispute resolution procedures or unless otherwise required by law or judicial decision. Each party agrees that before it seeks mediation, arbitration, or any other form of legal relief, it will provide written notice to the other of the specific issues in dispute (and referencing the specific portions of any contract between the parties and which are allegedly being breached). Within thirty days after such notice knowledgeable executives of the parties will hold at least one meeting (in person or by video- or tele-conference) for the purpose of attempting in good faith to resolve the dispute.

(b) The dispute resolution procedures in this Agreement will not apply prior to a party seeking a provisional remedy related to claims of misappropriation or ownership of intellectual property, trade secrets or Confidential Information.

**2.12. Service Maintenance.** e-PlanSoft, from time to time, will provide updates to the Service which may or may not include new functionality. Customer is entitled to Service updates as long as Customer is in full compliance with this Agreement during its term. If Customer is not in compliance with this Agreement during its term, including failure to make required payments on time, e-PlanSoft at its sole discretion reserves the right to withhold Delivery of Service Updates. The service updates can be delivered upon the mutual agreed upon resolution of the agreement non-compliance.

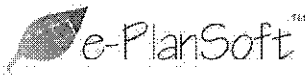
Maintenance and support provisions are described in Section 2 – Maintenance and Support for Customers.

**2.13. Professional Services.** e-PlanSoft, from time to time, may provide to Customer Professional Services, as described in Section 3 – Professional Services. Services related to EPC defined as within the scope of this engagement are covered under the Maintenance & Support Fee. EPC Services outside of the Statement of Work agreed upon by e-PlanSoft and Customer will be charged at \$150 an hour.

### **3. Fees and Payments**

**3.1 Fees.** Customer will pay all fees specified in all Estimate / Order Forms. Except as otherwise specified herein, (i) fees are based on services purchased and not actual usage.

**3.2. Invoicing and Payment.** Customer will provide e-PlanSoft with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to e-PlanSoft. If Customer provides credit card information, Customer authorizes e-PlanSoft to charge such credit card for all Services listed in the Estimate / Order Form for the initial payment, and yearly Maintenance and Support fees. Such charges will be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Estimate / Order Form. If the Estimate / Order Form specifies that payment will be by a method other than a credit card, e-PlanSoft will invoice



Customer in advance and otherwise in accordance with the relevant Estimate / Order Form. Unless otherwise stated, invoiced charges are due Net 30 days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to e-PlanSoft and notifying e-PlanSoft of any changes to such information within five (5) days.

**3.3. Taxes.** Unless otherwise stated, e-PlanSoft fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with the use of Service. If e-PlanSoft has the legal obligation to pay or collect Taxes for which Customer is responsible as a result of using Service, the appropriate amount will be invoiced to and paid by Customer, unless Customer provides e-PlanSoft with a valid tax exemption certificate authorized by the appropriate taxing authority.

#### **4. Warranties**

**4.1. Warranty of Functionality.** e-PlanSoft warrants that: (i) the Service will achieve in all material respects the functionality described in the User Guides applicable to the Service procured by Customer, and as outline in the SOW, and (ii) such functionality of the Service will not be materially decreased. Customer's sole and exclusive remedy for e-PlanSoft's breach of this warranty will be that e-PlanSoft will be required to use commercially reasonable efforts to modify the Service to achieve in all material respects the functionality described in the User Guides and if e-PlanSoft is unable to restore such functionality, Customer will be entitled to terminate the Agreement and receive a refund of the fees paid under the Agreement for its use of the Service. e-PlanSoft will have no obligation with respect to a warranty claim unless notified of such claim within sixty (60) days of the first instance of any material functionality problem, and such notice must be sent to [accounting@eplansoft.com](mailto:accounting@eplansoft.com). The warranties set forth in this Section are made to and for the benefit of Customer only. Such warranties will only apply if the applicable Service has been utilized in accordance with the User Guides, this Agreement and applicable law.

**4.2. Warranty of No Malicious Code.** Each party warrants that it will not purposely introduce viruses, Trojan horses, worms, spyware, or other such malicious code ("Malicious Code") into the Service.

#### **5. Disclaimer of Warranties**

EXCEPT AS STATED IN SECTION 4.1 AND 4.2 ABOVE, E-PLANSOFT DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE OVERALL SYSTEM THAT MAKES THE SERVICE AVAILABLE (INCLUDING BUT NOT LIMITED TO THE INTERNET, OTHER TRANSMISSION NETWORKS, AND CUSTOMER'S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED IN SECTION 4 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY E-PLANSOFT. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

#### **6. Limitations of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO ANYONE FOR LOST PROFITS OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, COVER, SPECIAL, RELIANCE OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND HOWEVER CAUSED, WHETHER FROM BREACH OF WARRANTY, BREACH OR REPUDIATION OF CONTRACT, NEGLIGENCE, OR ANY OTHER LEGAL CAUSE OF ACTION FROM OR IN CONNECTION WITH THIS AGREEMENT (AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF



INCIDENTAL OR CONSEQUENTIAL DAMAGES, IN WHICH CASE SUCH DAMAGES WILL BE SUBJECT TO THE LIMITATIONS SET FORTH IN THE FOLLOWING PARAGRAPH.

THE MAXIMUM LIABILITY OF EITHER PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY LICENSE, USE OR OTHER EMPLOYMENT OF THE SERVICE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STATUTORY DUTY, OR OTHERWISE, WILL BE AN AMOUNT EQUAL TO THE TOTAL CONTRACT AMOUNT. NOTWITHSTANDING THE PREVIOUS SENTENCE, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY TO THE EXTENT SUCH LIABILITY WOULD NOT HAVE OCCURRED BUT FOR THE OTHER PARTY'S FAILURE TO COMPLY WITH THE TERMS OF THIS AGREEMENT.

BOTH PARTIES ACKNOWLEDGE THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT THE PARTIES WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON THEIR LIABILITY. THE LIMITATIONS OF LIABILITY SET FORTH IN THE SECOND PARAGRAPH OF THIS SECTION WILL NOT APPLY TO: (A) FEES DUE UNDER THIS AGREEMENT; (B) A BREACH OF SECTION 2.3 OF THESE TERMS OF SERVICE; OR (C) EITHER PARTY'S INDEMNITY OBLIGATIONS EXCEPT AS SET FORTH IN SECTION 7 BELOW.

## **7. Indemnification**

**7.1. Infringement.** Subject to the terms and conditions set forth in this Section, e-PlanSoft will, at its own expense, defend Customer from and against any and all allegations, threats, claims, suits, and proceedings brought by third parties (collectively "Claims") alleging that the Service, as used in accordance with this Agreement, infringes such third party's copyrights or trademarks, or misappropriates such third party's trade secrets and will indemnify Customer from and against liability, damages, and costs finally awarded or entered into in settlement (including, without limitation, reasonable attorneys' fees) (collectively, "Losses") to the extent based upon such a Claim.

e-PlanSoft will have no liability for Claims to the extent arising from (a) use of the Service in violation of this Agreement or applicable law, (b) use of the Service after e-PlanSoft notifies Customer to discontinue use because of an infringement claim, (c) modifications to the Service not made by e-PlanSoft or made by e-PlanSoft based on Customer specifications or requirements, (d) use of the Service in combination with any non-e-PlanSoft software, application or service, or (e) services offered by Customer or revenue earned by Customer for such services.

If a Claim of infringement as set forth above is brought or threatened, e-PlanSoft will, at its sole option and expense, use commercially reasonable efforts either (a) to procure a license that will protect Customer against such Claim without cost to Customer; (b) to modify or replace all or portions of the Service as needed to avoid infringement, such update or replacement having substantially similar or better capabilities; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement and refund to the Customer a pro-rata refund of the fees paid for under the Agreement for the terminated portion of the Term. The rights and remedies granted Customer under this Section 7.1 state e-PlanSoft's entire liability, and Customer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party.

**7.2. Indemnification Procedures and Survival.** In the event of a potential indemnity obligation under this Section, the indemnified party will: (i) promptly notify the indemnifying party in writing of such Claim; (ii) allow the indemnifying party to have sole control of its defense and settlement; and (iii) upon request of the indemnifying party, cooperate in all reasonable respects, at the indemnifying party's cost and expense, with the indemnifying party in the investigation, trial, and defense of such Claim and any appeal arising therefrom. The indemnification obligations under this Section are expressly conditioned upon the indemnified party's compliance with this Section 7.3 except that failure to notify the indemnifying party of such Claim will not relieve that party of its obligations under this Section but such Claim will be reduced to the extent of any damages attributable to such failure. The indemnification obligations contained in this Section will survive termination of this Agreement for one year.

## 8. Suspension and Termination

**8.1. Suspension for Delinquent Account.** e-PlanSoft reserves the right to suspend Customer's and any Customer Affiliates' access to Support Services if any payment is due but unpaid but only after e-PlanSoft has provided Customer two (2) delinquency notices, and at least thirty (30) days have passed since the transmission of the first notice. Customer agrees that e-PlanSoft will not be liable to Customer or to any Customer Affiliate or other third party for any suspension of Support Services pursuant to this Section.

**8.2. Termination for Cause, Expiration.** Either party may immediately terminate this Agreement and all Estimates/Order Forms issued hereunder in the event the other party commits a material breach of any provision of this Agreement which is not cured within thirty (30) days of written notice from the non-breaching party. Such notice by the complaining party will expressly state all of the reasons for the claimed breach in sufficient detail so as to provide the alleged breaching party a meaningful opportunity to cure such alleged breach and will be sent to the General Counsel of the alleged breaching party at the address listed in the heading of this Agreement (or such other address that may be provided pursuant to this Agreement) ("Notice"). Upon termination or expiration of this Agreement, Customer will have no rights to continue use of the Service. If this Agreement is terminated by Customer for any reason other than a termination expressly permitted by this Agreement, then e-PlanSoft will be entitled to all of the fees due under this Agreement based on licenses and actual services purchased pursuant to section 3. If this Agreement is terminated as a result of e-PlanSoft's breach of this Agreement, then Customer will be entitled to a refund of the fees paid by Customer to e-PlanSoft under this Agreement.

## 9. Modifications

**9.1 To the Service.** e-PlanSoft may make modifications to the Service or particular components of the Service from time to time and will use commercially reasonable efforts to notify Customer of any material modifications.

## Section 2

# MAINTENANCE AND SUPPORT AGREEMENT

Note- If the hyperlink location of this Maintenance and Support Agreement for Customers (the "MSA") is referenced in e-PlanSoft Master Agreement (the "Master Agreement") as defined below and signed by both an authorized representative of the procuring party (the "Customer") and e-PlanSoft Inc. ("Consultant"); or is referenced in the description for an item on a Consultant Estimate / Order Form signed by the Customer, or in an agreement between Consultant and the Customer, then the MSA shall be considered as a fully accepted and executed part of the e-PlanSoft Master Agreement signed by Customer.

### 1. Definitions

e-PlanSoft Master Agreement (section Definitions) defines terms and their meaning. For any term not defined in the Master Agreement, terms mentioned and defined in this MSA will be treated as valid, automatically incorporated in the Master Agreement by reference, subject to all terms and conditions in the Master Agreement and MSA.

**"Level 1 Support"** Basic support and troubleshooting, including general product functionality, password resets, workstation and Internet browser configuration, any third-party software installed on the user workstation and Customer network/connectivity related issues.

**"Level 2 Support"** Covers issues related to functionality included in or inherent to the Service, where the functionality does not operate as described in the product documentation.

**"Incident(s)"** The support event starting with the functional impairment of the Software which with reasonable probability that is based on a defect or error of Service. As soon as Consultant support organization is informed, the support event becomes an Incident.

### 2. Maintenance and Support for Customers

The MSA governs the maintenance and support services by Consultant to Customers who have rights to the Service under the Master Agreement. Consultant will provide technical support for problem determination and resolution for problems arising from normal operation of the Service. Consultant may require the Customer to provide written assistance request describing the problem.

All issues relating to e-PlanCheck should be reported via the Consultant support portal at <http://support.eplansoft.com>.

All issues relating to the IPS System which has been developed as part of this SOW should be reported to the Sub-Consultant. The methods of support contact will be confirmed in the Project Kickoff Meeting. IPS user support will be charged on an As-Needed basis at a rate of \$165 an hour.

**Support Hours.** Consultant will respond to the Customer Support Services during Consultant regular working hours (8.00 a.m. to 5.00 p.m. Pacific Standard Time), excluding the applicable public holidays observed by Consultant ("Regular Working Hours"). For purposes of this paragraph, Consultant means Consultant's office located at 20 Morgan, Irvine CA 92618. All communication between Consultant and the Customer will use the English language.



**On-Site Support.** Customer may request Consultant to provide Support Services on-site. These Services will be considered as professional services, governed by the accompanying Professional Services Agreement.

### **3. Training of Designated Contacts.**

The training of designated Customer Contacts during the Pilot Phase of the Service by Consultant or Consultant certified trainers as defined in the Estimate / Order Form. Any training of Designated Customer Contacts outside of the Pilot Phase of this engagement will be provided as a Professional Services engagement via a separate Estimate / Order Form, governed by the Professional Services Agreement.

Customer shall ensure that one or more Designated Contacts have been trained and/or certified in the use of Service supported by Consultant. Any training received by the Designated Contacts should be provided by either Consultant or Consultant certified trainers. If the Designated Contact changes over the course of the 5 year term of this agreement, e-PlanSoft must be notified. In a case where the Customer does not comply with the aforementioned requirement, the Customer acknowledges that Consultant reserves the right to withhold certain services related to Consultant Support Services.

Only Designated Contacts in the Customer agency/organization are authorized to communicate with Consultant support organization, including (but not limited to): opening Incidents, requesting resolution status, and requesting information about Service functionality. Incidents relating to e-PlanSoft products can be opened via the e-PlanSoft support site <http://support.eplansoft.com>

### **4. Maintenance**

Consultant will provide access of new releases of Service, as well as tools and procedures for upgrades, to the Customer provided that the Customer is in full compliance with the terms and conditions of the Master Agreement and continues to pay the yearly maintenance and support fee as outlined in the Estimate / Order Form. The term of this contract had been set at five (5) years. As the Customer is using the On-Premise Service, the Customer will provide the necessary infrastructure for accepting and testing the new releases of Service, which is accessible by Consultant support and engineering organizations to test any integrated functionality.

### **5. Customer Responsibilities**

In order to receive Support for the Service, the Customer must further satisfy the following requirements:

The Customer must provide and maintain remote access to the Service and any integrated software in an environment that has been configured following the technical standard procedures defined by Consultant and grant Consultant all necessary authorizations, in particular for remote analysis of issue as part of Incident handling. The Customer acknowledges that failure to grant access may lead to delays in Incident handling and the provision of corrections, or may render Consultant unable to provide help in an efficient manner.

The Customer agrees to maintain adequate and current records of all modifications and, if needed, promptly provide such records to Consultant.

Submit all error Incidents via the then current Consultant support infrastructure as made available by Consultant from time to time via updates, upgrades or add-ons.



Inform Consultant without undue delay of any changes to the customer installations and all other information relevant to the Service under which Support is provided.

The Customer is responsible for providing Level 1 Support to its Users using the Service.

**a. Customer Responsibilities prior to contacting Consultant for Service Support**

The following tasks are to be carried out by the Customer before requesting Service Support:

- Accept support Incident from User.
- Work to resolve the issue directly with User. Capture all environmental and technical details pertaining to the issue.
- Continually document the troubleshooting approach and attempted solutions including steps to reproduce the problem.
- Search for error messages in the appropriate server and workstation logs, using the data provided by User.
- Search Consultant User Guides and Knowledgebase articles available at <http://support.eplansoft.com> for known solutions.

## 6. Incident Priority Service Levels

When the Customer reports an issue, Consultant will attempt to assist the Customer by providing information on how to remedy, avoid or bypass errors. The main channel for such support will be the Designated Contacts within the Customer agency/organization.

All issues should be reported via the Consultant support portal at <http://support.eplansoft.com>. Consultant shall use commercially reasonable efforts to comply with the Initial Response Times (IRT) and Maximum Processing Times during Regular Working Hours for the eligible Service regarding support Incidents (messages) when communicating with the Customer contact.

Priority of Support Incidents	Initial Response Time	Maximum Processing Time (provision of a solution, specific diagnostic steps, or a workaround)
1 – Critical	3 hours	6 hours
2 – High	6 hours	1 business days
3 – Medium	1 working day	2 working days

**Priority 1 Support Incidents (“Critical”).** An Incident is assigned Priority 1 if the problem has very serious consequences for normal business transactions and urgent, business critical work cannot be performed.

**Priority 2 Support Incidents (“High”).** An Incident is assigned Priority 2 if normal business transactions in a Production System are affected and selected tasks cannot be performed.

**Priority 3 Support Incidents (“Medium”).** An Incident is assigned Priority 3 if normal business transactions in a Production System can be still performed but in a degraded manner.

**b. Initial Response Time**

Consultant shall confirm receipt of an Incident and provide the Customer with an initial qualified response.



**c. Maximum Processing Time**

Consultant will forward to the Customer a solution, specific diagnostic steps, workaround, a time duration during which Consultant will perform additional investigative efforts.

## **7. Termination.**

The MSA can only be terminated by first terminating the Master Agreement executed between Consultant and the Customer. A valid MSA must be in place in order for the Customer to continue using Services provided by Consultant.

**Other Limitations, Terms, and Conditions**

The scope of Support offered by Consultant may be changed by Consultant upon prior written notice and signed mutual consent from the Customer.

FAILURE TO UTILIZE SUPPORT PROVIDED BY CONSULTANT, IN COMBINATION OF A CURRENTLY ACCESSIBLE REMOTE CONNECTIVITY BETWEEN CONSULTANT AND THE CUSTOMER (WHERE APPLICABLE), MAY PREVENT CONSULTANT FROM BEING ABLE TO IDENTIFY AND ASSIST IN THE CORRECTION OF POTENTIAL PROBLEMS WHICH, IN TURN, COULD RESULT IN UNSATISFACTORY SOFTWARE PERFORMANCE FOR WHICH CONSULTANT CANNOT BE HELD RESPONSIBLE.

Consultant will not provide support for incidents that are in the Customers or User's area of responsibility and as a result, for example, from inappropriate installation, unsatisfactory User training, lack of or incorrect business design, incorrect operation or faulty hardware.

The scope of Support only aims at the resolution of Incidents and problems caused by the Service if the problem or error can be reproduced in the Software on a standalone basis. Support does not include usage, integration, interoperability and operations questions or issues, including any use in conjunction with other Customer Products, which are the responsibility of the Customer.

The Customer shall deploy the On-Premise Service only as described at:

[https://documentation.eplansoft.com/server/Minimum\\_Server\\_Requirements](https://documentation.eplansoft.com/server/Minimum_Server_Requirements).

Consultant shall not be obligated to provide Support if the On-Premise Service has not been deployed as described.

## Section 3

# PROFESSIONAL SERVICES AGREEMENT

Note: If the hyperlink location of this Professional Services Agreement (the "PSA") is referenced in a Statement of Work (the "SOW") as defined below and signed by both an authorized representative of the procuring party (the "Customer") and e-PlanSoft ("Consultant"); or is referenced in the description for an item on a Consultant Estimate / Order Form signed by Customer, or in an agreement between Consultant and Customer, then the Professional Services procured by Customer shall be considered as a fully accepted and executed part of the e-PlanSoft Master Agreement. TruePoint Solutions, as the Sub-Consultant to e-PlanSoft for this engagement, will be subject to by the conditions of this agreement. This is further documented in the attached Sub-Consultant Agreement between e-PlanSoft and TruePoint Solutions.

In addition to any Consultant Professional Services provided to Customer pursuant to this PSA, Consultant may also provide Customer with licensed access to the software (the "Service"), if the Customer has entered into an agreement by executing the Consultant Master Agreement located at <http://eplansoft.com/agreements>.

At any time, the most current version of e-PlanSoft Master Agreement agreed upon by both parties defines the terms and conditions which govern how Customer may use Software.

### 1. Scope of Services

Subject to the terms and conditions of this PSA, Consultant will provide Customer with Professional Services as set forth in the applicable SOW executed by Consultant and Customer and/or Estimate / Order Forms executed by Customer ("Statement of Work" or "SOW"). As a part of this contract, the parties may enter into the SOW that defines the professional services and/or training to be provided to Customer hereunder (the "Professional Services"). The SOW will include, at a minimum: (i) a description of the Professional Services and any deliverables and/or training materials to be provided to Customer (each, a "Deliverable"); (ii) the scope of Professional Services; and (iii) the applicable fees and payment terms for such Professional Services, if not elsewhere specified. All Statements of Work shall be deemed part of and subject to this PSA.

#### 1.1. Terms and Conditions for Training.

**1.1.1. Training Deliverables.** Customer is solely responsible for any printing, shipping and copying charges for any training Deliverables. All electronic and hard copy versions of the training Deliverables are provided for Customer's internal training purposes only.

**1.1.2. For Onsite Delivery.** Customer is responsible for providing appropriate training facilities for the training delivery, including without limitation Internet connectivity, student access to an e-PlanCheck Account, projector, student computers and other reasonable classroom amenities.

**1.1.3. Cancellation and Use Policy.** Customer may reschedule or cancel previously scheduled training registration without penalty up to ten (10) business days prior to the scheduled start date. Registrations that are cancelled or rescheduled within ten (10) business days can be charged the full course price plus any cancellation cost incurred by Consultant (i.e. Airfare and lodging costs).

## 2. Change Management Process

If Customer or Consultant requests a change in any of the specifications, requirements, Deliverables, or scope (including drawings and designs) of the Professional Services described in any SOW, the party seeking the change shall propose the applicable changes by written notice. Within forty-eight (48) hours of receipt of the written notice, each party's project leads shall meet, either in person or via telephone conference, to discuss and agree upon the proposed changes. Consultant will prepare a change order describing the proposed changes to the SOW and the applicable change in fees and expenses, if any (each, a "Change Order"). Change Orders are not binding unless and until they are executed by both parties. Executed Change Orders shall be deemed part of, and subject to, this PSA. If the parties disagree about the proposed changes, the parties shall promptly escalate the change request to their respective senior management officers for resolution.

## 3. Project Materials

**3.1 Deliverables.** Consultant shall own all rights, title and interest in and to the Deliverables (excluding any Customer Confidential Information provided to Consultant for its provisioning of Professional Services), and related intellectual property rights. Consultant shall have the right to use any such Customer Confidential Information solely for the purpose of providing the Professional Services to Customer hereunder. Subject to terms and conditions of this PSA, and during the Term, Consultant hereby provides Customer with a limited, non-exclusive, nontransferable and terminable license to use The Deliverables solely for Customer's internal operations in connection with its authorized use of the applicable Service.

**3.2 Tools.** Notwithstanding any other provision of this PSA: (i) nothing herein shall be construed to assign or transfer any intellectual property rights in the proprietary tools, libraries, know-how, techniques and expertise ("Tools") used by Consultant to develop the Deliverables, and to the extent such Tools are delivered with or as part of the Deliverables, they are licensed, not assigned, to Customer, on the same terms as the Deliverables or as otherwise agreed by Customer; and (ii) the term "Deliverables" shall not include the Tools. Tools are Consultant Confidential Information.

## 4. Professional Services Warranty

**4.1 Professional Services Warranty.** Consultant warrants that (a) it and each of its employees, consultants and subcontractors, if any, that it uses to provide and perform Professional Services has the necessary knowledge, skills, experience, qualifications, and resources to provide and perform the services in accordance with this SOW; and (b) the Professional Services will be performed for and delivered to Customer in a good, diligent, workmanlike manner in accordance with industry standards, laws and governmental regulations applicable to the performance of such services. Consultant's ability to successfully perform hereunder is dependent upon Customer's provision of timely information, access to resources, and participation. If through no fault or delay of Customer the Professional Services do not conform to the foregoing warranty, and Customer notifies Consultant within thirty (30) days of Consultant's delivery of the Professional Services, Customer may require Consultant to re-perform the non-conforming portions of the Professional Services.

**4.2 Disclaimer.** EXCEPT AS STATED IN SECTION 4.1 ABOVE, CONSULTANT DOES NOT REPRESENT THAT THE CUSTOMER'S USE OF THE PROFESSIONAL SERVICES, DELIVERABLES, AND/OR TOOLS WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR THAT THE PROFESSIONAL SERVICES, DELIVERABLES, AND/OR TOOLS WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE PROFESSIONAL SERVICES, DELIVERABLES AND/OR TOOLS WILL BE CORRECTED OR WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED IN SECTION 4.1 ABOVE ARE THE SOLE WARRANTIES AND REMEDIES FOR CUSTOMER AND EXCLUSIVE OBLIGATIONS OF CONSULTANT RELATED TO THE PROFESSIONAL SERVICES, DELIVERABLES AND/OR TOOLS TO BE PERFORMED FOR AND DELIVERED TO CUSTOMER PURSUANT TO THIS PSA AND ANY STATEMENT OF WORK. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF



MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE AND NON-INFRINGEMENT. EXCEPT AS PROVIDED HEREIN, THE PROFESSIONAL SERVICES, DELIVERABLES, AND/OR TOOLS PROVIDED TO CUSTOMER ARE ON AN "AS IS" AND "AS AVAILABLE" BASIS AND ARE FOR COMMERCIAL USE ONLY.

## 5. Payments

**5.1 Fees and Payment.** Fees and expenses for each applicable project shall be set forth in the applicable SOW. Customer shall pay the fees and expenses as specified in the applicable SOW. Travel related expenses incurred by Consultant employees or subcontractors will be billed following the guidelines laid out in the Customer's document AR4-1 Authorization and Reimbursement for General Business Expenses.

**5.2 Taxes.** Consultant fees do not include any local, state, federal or foreign taxes, VAT, levies or duties of any nature ("Taxes"). Customer is responsible for paying all Taxes, including sales, use, personal property, value-added, excise, customs fees, import duties, stamp duties and any other similar taxes and duties, including penalties and interest, imposed by any United States federal, state, provincial or local government entity or any non-US government entity on the transactions contemplated by this PSA, excluding only taxes based on Consultant's income. If Consultant has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Consultant with a valid tax exemption certificate authorized by the appropriate taxing authority.

## 6. Term and Termination

**6.1 Term.** This PSA shall commence on the effective date of the agreement, Estimate / Order Form or SOW referencing this PSA and shall continue in effect until terminated as provided herein. The SOW shall commence on the date it is last signed or on the date specified on the SOW as the start date, and shall expire upon completion of the project set forth in the applicable SOW. Once signed by both parties, a SOW and/or an Estimate / Order Form shall be non-cancellable, except as otherwise explicitly stated in such SOW or Estimate / Order Form. Sections 4.2 and 5 through 17 shall survive termination of this PSA.

**6.2 Termination.** This PSA will terminate automatically when the Consultant Master Agreement and all SOWs and agreements referencing this PSA are terminated or expired. Additionally, either party may terminate this PSA for convenience upon written notice in the event there are no active SOWs hereunder. Upon termination or expiration of this PSA, Customer shall have no rights to continue use of the Deliverables and Tools.

## 7. Confidentiality

The Terms of Section 7 - Confidentiality defined below are subject to and superseded by any Legal requirements of the Customer to disclose information to the public, especially, but not limited to, the California Public Records Act.

For purposes of this PSA, "Confidential Information" means: (a) the terms of this PSA; (b) the pricing and other terms reflected in all SOWs and (c) any commercial, financial, marketing, business, technical or other data, security measures and procedures, know-how or other information disclosed by or on behalf of the disclosing party to the receiving party for purposes arising out of or in connection with this PSA or an SOW, that: (i) in the case of information in tangible form, is marked "confidential" or "proprietary;" (ii) in the case of information disclosed orally, visually or any other intangible form, is designated confidential or proprietary at the time of disclosure, and if disclosed orally, is summarized in reasonable detail in a writing delivered to the receiving party within ten (10) days following disclosure; (iii) under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary; and (iv) will include any reproduction of such information in any form or medium, or any part of such information. The following shall not be deemed Confidential Information: (1) information that was in the public domain at the time of its disclosure, or which becomes public domain property



through no fault of the receiving party; (2) information that was rightfully in the receiving party's possession without restriction prior to disclosure; (3) information that was rightfully disclosed to the receiving party by a third party without restriction (4) information that was independently developed by employees and/or contractors of the receiving party who did not have access to and without use of or reference to the disclosing party's Confidential Information; and (5) aggregate data collected or generated by Consultant or on behalf of Consultant regarding Consultant's products and services (for purposes of providing or improving Consultant products and services, benchmarking system performance, preparing statistics and system metrics, marketing and other purposes) that does not contain any personally identifiable or Customer-specific information.

Each party agrees to use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (at all times exercising at least a commercially reasonable degree of care in the protection of such confidential information) not to use or disclose Confidential Information except to the extent necessary to perform its obligations or exercise rights under this PSA or as directed by Customer. Either party may disclose Confidential Information on a need to know basis to its Affiliates, contractors and service providers who have executed binding written agreements requiring confidentiality and non-use obligations at least as restrictive as those in this Section. Nothing in this PSA will prohibit the disclosure of Confidential Information to the extent that such disclosure is required by law or order of a court or other governmental authority or regulation.

## **8. Limitation of Liability for Professional Services**

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANYONE FOR LOST PROFITS OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, COVER, SPECIAL OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF CUSTOMER DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE), WHETHER SUCH LIABILITY ARISES FROM BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STATUTORY DUTY OR ANY OTHER LEGAL CAUSE OF ACTION ARISING FROM OR IN CONNECTION WITH THE APPLICABLE SOW. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE APPLICABLE SOW OR THIS PSA THE MAXIMUM LIABILITY OF CONSULTANT TO ANY PERSON, FIRM OR CORPORATION WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH ANY PROFESSIONAL SERVICES, DELIVERABLES AND/OR TOOLS WHETHER SUCH LIABILITY ARISES FROM BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STATUTORY DUTY OR ANY OTHER LEGAL CAUSE OF ACTION ARISING FROM OR IN CONNECTION WITH THE APPLICABLE SOW, SHALL BE THE AMOUNT PAID BY CUSTOMER FOR THE PROFESSIONAL SERVICES UNDER THE APPLICABLE SOW. THE ESSENTIAL PURPOSE OF THIS PROVISION IS TO LIMIT THE POTENTIAL LIABILITY OF THE PARTIES ARISING FROM THIS PSA AND ANY SOW. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS SET FORTH IN THIS SECTION ARE INTEGRAL TO THE AMOUNT OF CONSIDERATION LEVIED IN CONNECTION WITH THE PROFESSIONAL SERVICES AND THAT, WERE CONSULTANT TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN, SUCH CONSIDERATION WOULD OF NECESSITY BE SET SUBSTANTIALLY HIGHER. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION SHALL NOT APPLY TO A CUSTOMER'S BREACH OF SECTION 7 OF THIS PSA OR WITH REGARDS TO AMOUNTS DUE BY CUSTOMER UNDER THIS PSA. CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE EXCLUSIONS SET FORTH ABOVE MAY NOT APPLY TO CUSTOMER. NOTHING IN THIS PSA EXCLUDES OR RESTRICTS THE LIABILITY OF EITHER PARTY FOR DEATH OR PERSONAL INJURY RESULTING FROM ITS NEGLIGENCE.

## **9. Force-Majeure**

Neither party shall be liable for any loss or delay resulting from any force majeure event, including, but not limited to, acts of God, fire, natural disaster, terrorism, labor stoppage, internet service provider failures or delays, civil unrest, war or military hostilities, criminal acts of third parties, and any payment date or delivery of Professional Services shall be extended to the extent of any delay resulting from any force majeure event.

## 10. Entire Agreement

This Agreement and its Exhibits, which are attached hereto and incorporated herein, constitute the entire agreement between the parties in connection with the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions of the parties. This Agreement cannot be amended or modified without a written signature on paper by both parties agreeing to the change.

**10.1 Severability.** If any provision of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, such provision will be severed from the remainder of this Agreement, which will otherwise remain in full force and effect.

**10.2 Waiver.** No waiver of any provision of this Agreement will be effective unless in writing and executed by the party waiving the right. Failure to properly demand compliance or performance will not constitute a waiver of a party's rights hereunder. The waiver by either party of a breach or right under this Agreement will not constitute a waiver of any subsequent breach or right.

**10.3 Governing Law.** This Agreement will be governed by, and construed in accordance with, the substantive laws of the State of California without regard to conflict of law principles. The federal and state courts situated in Los Angeles County, California will have exclusive jurisdiction for the resolution of all disputes related to this Agreement.

**10.4 Notices.** Notices will be sent by Certified Mail, Return Receipt Requested, postage prepaid and will be deemed received three (3) days after the date of deposit in the US Mail. At its sole discretion, e-PlanSoft may provide a notice to Customer via electronic means, including telephonic conversation, voice mail, or electronic mail. Notices provided via electronic means will be treated as equivalent to Notices provided by any other mean.

**10.5 Non-Assignability.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Estimates / Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, e-PlanSoft will refund to Customer any prepaid fees. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

# **CITY OF LONG BEACH STATEMENT OF WORK E-PLANCHECK IMPLEMENTATION**



March 1, 2016

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## PROJECT SUMMARY

This Statement of Work sets forth the scope and definition of the consulting/professional services, work and/or project (collectively, the "Services") to be provided by e-PlanSoft ("e-Plan" or "Consultant") to the City of Long Beach ("City").

This SOW was requested by the City following a detailed assessment of the current state of the Infor Public Sector (IPS) installation by *Sierra-Cedar* whose purpose was to document the IPS interface and scripting changes necessary to provide bi-directional integration between the City's IPS application and e-PlanCheck (EPC) for electronic plan review.

This SOW defines a phased approach wherein, a stand-alone deployment of EPC will be provided by e-PlanSoft.

Please reference the *Project Milestone Schedule* (attached) for milestones events.

Project launch is to be scheduled within 30 days of contract execution.

## PROJECT MANAGEMENT PLAN

At the outset of this project, e-Plan's Project Manager will work collaboratively with the City's Project Manager and other stakeholders to complete a Project Management Plan that will be used throughout the project to control the scope, schedule, and quality of the project and to ensure that project objectives are met and that threats to those objectives are identified early and resolved promptly.

At the core of that plan is a *detailed Project Milestone Schedule* that includes the activities for the project, the resources required to perform those activities, and the schedule for completing them including critical dependencies.

We have provided a *preliminary Work Plan* based on current understanding of the activities necessary to produce the required deliverables; we will refine our plan with the City to ensure activities are clearly defined, to review timeframes, and to ensure each activity reflects an appropriate level of detail. Each activity will be owned by a person who is responsible for ensuring it is completed successfully. The project plan will be updated regularly throughout the course of the project and communicated to all participants and stakeholders.

It is important to identify the project's critical path after the detailed project plan has been developed and prior to the start of the project. The project's critical path is the longest sequential set of activities that must occur in a particular order based on identified dependencies. The combined end-to-end duration of activities represents required project duration and the project's critical path. This does not account for activities that may occur in parallel, but do not contribute to the project's critical path.

e-Plan's Project Manager, Sean Hooper, will meet with the City Project Manager on a weekly basis. At that meeting Mr. Hooper will provide an updated schedule and a weekly progress report that includes:

- Activities completed within the current reporting period.
- Activities planned for the next reporting period.
- Updated schedule including milestones and their statuses (originally scheduled date, current target date, and the number of changes to the date).
- Issues or problems requiring resolution.
- The status of any changes that affect scope, cost, or schedule. Any work affecting cost will be done only with written consent from the City.

The City has requested a meeting schedule to outline the dates, times and attendees for this project. We suggest setting up a weekly meeting with the exact details of time and setting to be determined at the Project Kickoff.



## E-PLANSOFT STAFF ASSIGNMENTS

The following e-Plan personnel will be assigned to ensure the successful completion of this project for the City:

Team Members	Role	Responsibilities
Sean Hooper	Project Manager	Responsible for overseeing all aspects of the solution, both from a business and technical perspective. Provides expertise in integration with external systems, solution architecture, and business analysis. Responsible for e-Plan project management activities, and creating project management deliverables. Primary point of contact with the City's Project Manager and responsible for providing status and issue reports to the City.
Jorge Raya-Navarro	User Training and Support Lead	Conducts onsite and remote access user training sessions and oversees the e-Plan customer support team.
Jon Changkachith,	CSA	Responsible for server and software implementation and configuration of e-Plan products for on premise and cloud hosted environments.

## PROJECT PHASES

The Phased solution implementation has become a common practice in the industry as a way to address critical business needs quickly and mitigate the risks associated with what has been termed "big bang" approaches that attempt to do too much too soon.

The milestones included in the schedule of work, and outlined in more detail in Attachment E, are:

1. Discovery
2. Implementation
3. Pilot
4. Full Adoption

During the discovery phase, detailed project plans will be prepared jointly with the City of Long Beach Implementation Team.

## E-PLANCHECK PHASED IMPLEMENTATION

### E-PLANCHECK OVERVIEW

This Project will include the *full deployment* of e-PlanCheck as a stand-alone application. City staff and any outside plan review consultants will be able to perform *simultaneous electronic plan reviews* via their web browser. After completion of this Project, City staff will use EPC to create permit application records, enter contact information, upload plans into EPC for distribution to the plan review staff.

Plan reviewers will be notified via email sent from EPC when plans have been assigned to them by intake staff for review.

Using EPC, City staff can evaluate the completed reviews for a project and package the reviewed plans and any supporting documents (including the Corrections Letters) to be returned to the applicant, via e-mail, FTP, or over the counter.

### 1: DISCOVERY MILESTONE

The discovery milestone is the dedicated time focused on collecting all of the information needed for implementation and rollout of EPC at the City of Long Beach. It has several steps and components.

#### CONTRACT ACCEPTANCE

Please see the *Project Timeline* (attached) for the outlined project schedule following formal acceptance of the Contract.

#### CONFIRM PROJECT MANAGEMENT STRUCTURE

e-Plan and the City of Long Beach personnel shall meet to construct and identify the City's Point of Contact (POC), define a calendar schedule with time slots for remote or in person weekly meetings. This project plan will be reviewed to confirm each milestone event, critical dependencies and to document.

Following this session, the team will document communication expectations and approve the rollout plan for the rest of the project. The *Project Timeline* will be updated once this session has been completed.

#### EPC SETUP REQUIREMENTS

In this milestone, the City shall gather the following items listed below. This information will be used to configure the e-PlanCheck (EPC) Test server in preparation of user pilot testing.

- A list of City departments, permit types, and project types for input into the EPC test server.
- User names, roles, emails and phone numbers for the Core EPC pilot users.
- Identify the Core project team members who are IPS and Plan Review Knowledge Experts.
- A sample representative document for the Correction Report letter.
- A representative sample of electronic stamps (saved in .PNG format) for use by the EPC plan reviewers.
- Standard Comments/Checklists that will be uploaded into the EPC Standard Comment Library (via an [XLS template](#) provided by e-Plan.)
- Prepare the suggested Electronic Plan Review file naming requirements for onboarding constituents.
- Define how the IPS milestones shall be used to coordinate plan review assignments, priority and acceptance.
- A City email account that EPC will use to send automated emails to City staff (email notification alerts).

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**IDENTIFY/CONFIRM TECHNICAL REQUIREMENTS**

A review of the City's hardware and software implementation/configuration will be performed to confirm recommended specifications are met and to review file storage capacity for incoming and outgoing plan review documents.

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**2. IMPLEMENTATION MILESTONE**

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**INSTALL EPC TEST SERVER ENVIRONMENT**

This milestone will include the full deployment and configuration of EPC on the City's test/staging server(s) and the production Server.

e-Plan will perform the installation and configuration of the product via remote access.

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**EPC INSTALLATION AND UPGRADE TRAINING: IT STAFF**

e-Plan will record/video a WebEx session as a leave-behind to document the process of installing the EPC product to a VM Ware image for the testing environment.

City IT staff are invited to attend this session of the initial installation of EPC. Expected time frame: 2 hours.

A separate session will be conducted via WebEx to demonstrate how the EPC upgrade releases are installed. Expected time frame: 45 minutes.

New builds are typically scheduled for release every 60 days.

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**CONFIGURE EPC BACK OFFICE**

Following the software installation of EPC on the City's staging environment, and utilizing the data and information gathered in the EPC Setup Requirement milestone, the following tasks will be performed by City staff with assistance (for knowledge transfer) by e-Plan.

- Creation of User accounts, list configuration, rendering engine settings, etc.
- Set the City email account that EPC will use to send automated emails to City staff (email notification alerts).
- Connect EPC file storage device(s) for incoming and outgoing plan review documents.
- Publish *Electronic Plan Review Submittal Requirements* document for dissemination to the City's constituents on the City's webpage (City responsibility.)
- Implement City's Correction Report.
- Perform batch upload(s) of the standard comments into the EPC sandbox.
- Upload Electronic stamps (.PNG format) into EPC.
- Implement EPC plan distribution workflows for each project type.
- Create sample projects and upload sample plans for training of City staff. Plans shall meet the electronic submittal requirements.

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**INTERNAL TESTING – TEST/SANDBOX**

Internal testing phase to ensure initial configuration is complete on the test/sandbox deployment. Testing includes user login, list management, creating standard comments testing, permit records, uploading and rendering plans, plan distribution workflow, conducting reviews, generating Correction Reports, preparing final deliverables.

## PRODUCTION SERVER DEPLOYMENT

e-Plan will install EPC on the City's production servers. It will be an exact clone of the Test/Sandbox server which was configured and tested in the earlier parts of the implementation process. The production Server will be used for the Pilot and Full Adoption phases.

## 3: EPC 'PILOT' MILESTONE

### PILOT TRAINING SCHEDULE

e-Plan will provide comprehensive training for each EPC user 'role'. Each user role requires two 3 hour session. These sessions will occur on the same day, with one session in the morning and the second session in the afternoon. A maximum class size of 15 users is recommended. Pilot users may need to attend multiple User Role Trainings, depending on their responsibilities.

Designated 'Power users' who can be tasked to provide training to future personnel should be identified – and trained for multiple user roles. All other users only need training for the user roles which cover their work responsibilities.

On-site Training for City staff for EPC is offered as follows:

Course Description	Intended Audience	Sessions	Duration
1. EPC Setup and Configuration. Importing Standard Comment and Checklists, uploading and managing electronic stamps. 2. EPC dashboards and CSV data export 3. Monitoring the EPC Rendering Engine	EPC Administrators, City IT staff.	2	3 hours
1. Intake and acceptance processes. 2. Launching plan review workflows via EPC. 3. Completing QA review for Acceptance or Resubmittal. 4. Packaging Files for resubmittal or permit approval.	Permit Intake Staff and Permit QA Supervisors.	2	3 hours
1. Introduction to the EPC Review Page 2. Conducting and completing your plan reviews. 3. Managing your Team and Tasks.	Plan Review staff, including outside consultants.	2	3 hours

### TRAINING MATERIALS

e-Plan will provide training guides for e-PlanCheck including *EPC Administrator's Back Office Guide*, *EPC Intake and Approval Guide* and *EPC Plan Reviewers Guide* to the City in PDF format, and if desired, in MS Word format.

The City will be provided with the *Electronic Plan Review Submittal Recommendations* document for dissemination to the City constituents and EPC users.

The conclusion of training and handoff of training materials denotes the Pilot Delivery Milestone.

### LIMITED ROLLOUT

Following user training, the City shall utilize the EPC application in Production environment for a period of sixty (60) Days. Any reported issues shall be documented by the POC and communicated to the Project Manager.

### LESSONS LEARNED

A review of reported issues will be conducted by the POC and the Project Manager to determine the best resolution/solution (training related, feature related, configuration related, etc.)

#### 4: FULL ADOPTION (GO-LIVE)

##### FULL TRAINING SCHEDULE

e-PlanSoft will provide comprehensive training for each EPC user 'role'. Each user role requires two 3 hour session. These sessions will occur on the same day, with one session in the morning and the second session in the afternoon. A maximum class size of 15 users is recommended. Pilot users may need to attend multiple User Role Trainings, depending on their responsibilities.

On-site Training for City staff for EPC is offered as follows:

Course Description	Intended Audience	Sessions	Duration
1. EPC Setup and Configuration. Importing Standard Comment and Checklists, uploading and managing electronic stamps. 2. EPC dashboards and CSV data export 3. Monitoring the EPC Rendering Engine	EPC Administrators, City IT staff.	4	3 hours
1. Intake and acceptance processes. 2. Launching plan review workflows via EPC. 3. Completing QA review for Acceptance or Resubmittal. 4. Packaging Files for resubmittal or permit approval.	Permit Intake Staff and Permit QA Supervisors.	4	3 hours
1. Introduction to the EPC Review Page 2. Conducting and completing your plan reviews. 3. Managing your Team and Tasks.	Plan Review staff, including outside consultants.	8	3 hours

Onsite user role-based training will be conducted on the EPC production Server. Each session will be recorded and provided to the City as a left-behind deliverable.

\*In addition to the hands-on, onsite training sessions, EPC user guides will be provided in PDF and, if desired, MS Word format.

##### SOFT LAUNCH

The City has the opportunity to begin utilizing EPC for a few select projects or clients. Once the city is comfortable with EPC, and the accompanying workflow in IPS, the City can move forward with the full scale launch – "Go Live".

##### COMMUNICATION

Schedule communication event City wide re: electronic plan review acceptance. Announce Go-Live date.

##### GO-LIVE

In Go-Live, e-Plan will provide an *on-site support specialist* for one week for user support related issues.

##### POST PRODUCTION SUPPORT

After the Go Live, e-PlanSoft will provide an additional 25 hours of 1<sup>st</sup> level e-PlanCheck user support. After which time the City shall accept 1<sup>st</sup> level user support and e-Plan will provide 2<sup>nd</sup> level support for EPC. See the attached e-Plan Master Agreement.

## KEY ASSUMPTIONS

- The e-Plan Project Manager, Sean Hooper, and City POC will schedule weekly conference calls throughout the life cycle of this project.
- The City shall obtain software licenses for Windows server OS, MS SQL Server and ColdFusion 11 Standard 64 bit. (One ColdFusion license will suffice for both the testing and production environment.)
- e-Plan will provide three Affero APGL iText licenses (for the test, sand box and production web servers).
- EPC will be installed on the City's test server and production environments by e-Plan. The environments shall meet or exceed e-Plan recommended minimum requirements.
  - Recommendations for servers and workstations can be found here:  
[https://documentation.eplansoft.com/server/Minimum\\_Server\\_Requirements](https://documentation.eplansoft.com/server/Minimum_Server_Requirements)
- e-Plan staff shall have secure, remote access to the City's sand box and production environments on an at-will basis.
- The City will provide and manage all necessary SSL certificates and digital certificates.
- The City will appoint a single POC for this project to assist e-Plan with setup and configuration issues.
- No integration between the IPS and the e-Plan applications will be delivered in this stand-alone implementation of EPC.

## SERVER ENVIRONMENT

### DEVELOPMENT SERVERS

Should the City request one, an EPC *development* environment to test the integration between Infor Public Sector system and EPC can be provided and configured by e-Plan. This development site can be installed on the same VM as the EPC sandbox/training server. Optionally, the EPC sandbox server can be used for the development/integration (as expected server load may not warrant a third VM server).

These servers will be located on the City's network and the e-Plan team will have remote access to these servers. Setup and configuration of EPC will be completed remotely by e-Plan staff or their contractors.

### EPC SERVER SOFTWARE REQUIREMENTS

It is the City's stated desire for an on-site implementation of EPC. The City will be responsible for obtaining software licenses for:

- MS SQL Server 2012 R2 Express with Advanced Services, or MS SQL Server 2012 R2. The City's SQL Cluster configuration is supported
- Adobe ColdFusion 11 Standard or Enterprise Edition 64-bit (approx. \$1,500)
- Windows Server 2012

e-Plan will be responsible for installation and configuration of these products on the designated servers. Minimum hardware and software requirements can be found at:

[https://documentation.eplansoft.com/server/Minimum\\_Server\\_Requirements](https://documentation.eplansoft.com/server/Minimum_Server_Requirements)

## EPC SERVER HARDWARE REQUIREMENTS

As to the network topography, e-Plan applications do a level of background processing of images and PDF documents that impose slightly higher demands on a web server environment. Our proposal recommends a VM server to host the EPC application as well as a 2<sup>nd</sup> server to host the MS SQL databases. Plans and supporting documents submitted for plan review can be stored on a SAN/NAS device with at least 1 TB of storage space.

This implementation of the EPC database will comfortably support EPC upwards of 75-125 concurrent users.

e-Plan recommends 64-bit quad-core servers with a minimum 10GB RAM and minimum 1TB HD.

For the duration of this project, remote access by e-Plan and its contractors to these servers should be available at will.

## PLAN REVIEW WORKSTATIONS

EPC is supported on the *Internet Explorer 10, Internet Explorer 11, Firefox and Chrome* browsers. Although 'cookies' are not utilized, pop ups must be enabled. EPC requires popups to be enabled for the specific domain to which EPC is deployed. (Any City policy to disable browser popups must be allowed for this specific website.)

EPC will require no deployments of its application code to the user workstations. Any PDF viewer, such as *Adobe Reader or equivalent*, will be needed for viewing EPC deliverables.

We recommend the City provide at a minimum, two 27" inch monitors running in high definition (1920x1080p) resolution for plan reviewers.

We recommend a PC with a dedicated graphics card capable of supporting two 27 inch monitors.

## PROJECT CHANGE MANAGEMENT

The purpose of Project Change Management is to define the process that will be utilized by the project to manage and account for changes to project scope, cost, and schedule. All project tasks must be approached with an understanding of the project scope and critically examined within the context of project scope, cost, and schedule management.

The purpose of Project Change Management is not to eliminate change, but rather to define a process allowing the proposed changes to be properly identified, evaluated, and escalated as necessary. The Change Order Process is defined anything that changes the Statement of Work, duration of the project or contract values. The Change Order Processes will follow the steps outlined below.

A Change Order Request Form must be completed for all changes requested by either e-PlanSoft or the City that further clarify impact or deviate from the approved SOW or MSA. The e-PlanSoft Project Manager will be responsible for managing all Change Order requests submitted on the project in accordance with the following process:

- All requests must be submitted in writing to the e-PlanSoft Project Manager either by e-mail or hard copy to be recognized as a formal request. Verbal requests or voice mails will not be considered formal change order requests. The Change Order Request Form, shown in an Appendix of this SOW, should be used to document in detail the change and provide justification for why it is needed. The initial submission must also document the estimated work effort and cost specifically for investigating what it would take to implement the change if approved. Based on the impact analysis and the estimated work effort and cost, representatives from both e-PlanSoft and the City will jointly determine whether to proceed with the investigation.

- If the investigation is rejected, then the Change Order request is considered rejected and no further action is required. If it is accepted, then the requester (or its assignees) will then determine the impact of implementing the change on the project. The City is responsible for completing any additional paperwork required as a result of this change (i.e. internal contract change documents).
- In investigating the impact of the Change Order on the project, the requester (or its assignees) will determine the impact and change on the cost, schedule, and manpower originally estimated for the project. The requester will also determine the impact on the SOW and any revisions to the language that may be required, as well as the estimated work effort and cost to implement the Change Order. Once the investigation has been completed, the requester will complete the Change Order Request Form with the information gathered in this step and resubmit it to the project manager for coordinating the review and approval.
- Based on the estimated work effort and cost, representatives from both e-Plansoft and the City will jointly determine whether to proceed with implementing the Change Order. If the implementation is rejected, then the Change Order request is considered rejected, and no further action is required. If the Change Order is accepted, the Change Order request is considered approved. Once all appropriate signatures have been obtained for the Change Order, the approved Change Order will become part of the overall agreement and an amendment to the SOW. The amended SOW will become the new baseline document upon which any new changes will be based.

Hourly rates defined in the Project Costing section of this SOW will apply.

#### ACCEPTANCE

Please indicate below the City contact responsible for Project Management:

Name:	
Title:	
Phone Number(s):	
Email:	

# APPENDIX 1: CHANGE REQUEST FORM SAMPLE

<i>Proposed Change(s) AND Reason/Justification for Change (Indicate Urgency Level)</i>
Urgency Level: <input type="checkbox"/> High <input type="checkbox"/> Medium <input type="checkbox"/> Low

Project Name and Control NUMBER:
Requestor:
Organization:
Date of Request:

<i>Description of Change</i>

<i>Impact of Change(s):</i>
Impact on Resources:
Impact on Schedule:
Impact on Requirements:
Impact on Cost:

<b>Assumptions / Risks</b>

<b>Alternatives to Proposed Change(s) (if any)</b>

<b>SUMMARY of Total Impact of Change</b>
Resources:
Schedule:
Requirements:
Cost:

**Required Approvals:**

Reviewer Name	Department	Decision	Date
		<input type="checkbox"/> Approved <input type="checkbox"/> Rejected	
		<input type="checkbox"/> Approved <input type="checkbox"/> Rejected	
		<input type="checkbox"/> Approved <input type="checkbox"/> Rejected	
		<input type="checkbox"/> Approved <input type="checkbox"/> Rejected	

**Consultant Approval**

\_\_\_\_\_

Date \_\_\_\_\_

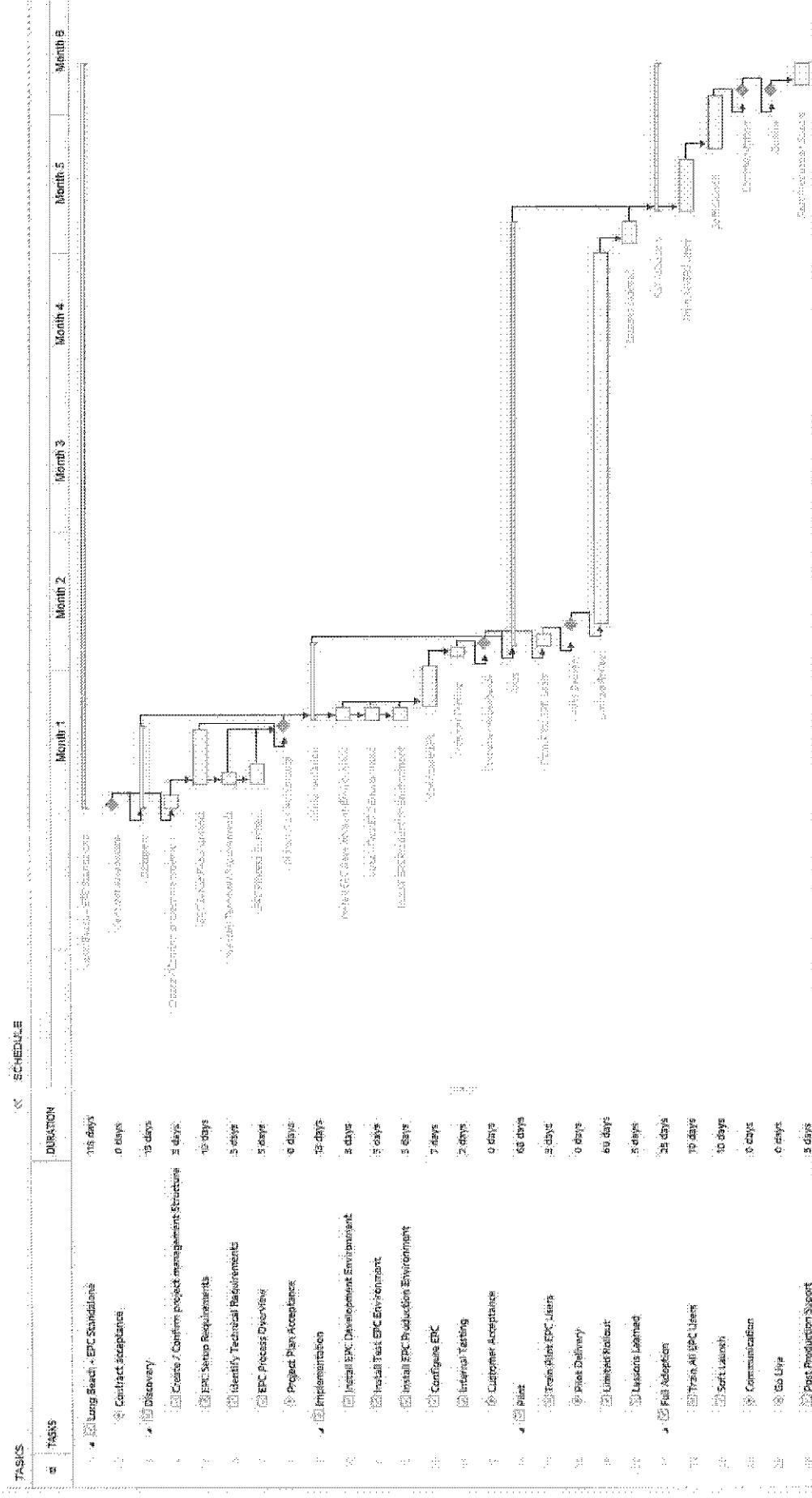
**City Approval**

\_\_\_\_\_

Date \_\_\_\_\_



# Attachment D: Project Milestone Schedule



\*It is expected during the Project initiation to update the project plan based on the City's availability and resource allocation requirements and needs. This may dictate a longer project schedule based upon resource availability and time commitments to the project.

# EXHIBIT “B”

## Rates or Charges

**Project Costing**

<b>Project Costing</b>	<b>Hours</b>	<b>Rate</b>	<b>Total Cost</b>
e-PlanCheck License Fee - Perpetual Site License	-	-	\$ 130,800
e-PlanCheck Maintenance and Support Year 1	-	-	\$ 23,544
e-PlanCheck Training - 11 Days	88	\$ 150	\$ 13,200
e-PlanSoft Project Management	400	\$ 150	\$ 60,000
e-PlanSoft Post Go Live Onsite Support - 5 Days	40	\$ 150	\$ 6,000
EPC installation, configuration (test/production)	100	\$ 150	\$ 15,000
IText License (Dev/test/production web server) – 3.Count	-	-	\$ 1,350
<b>Project Total</b>	<b>628</b>		<b>\$ 249,894</b>

<b>Maintenance and Support Extended Costs</b>			<b>Total Cost</b>
e-PlanCheck Maintenance and Support Years 2-5			\$ 94,176

<b>Total 5 Year Project Cost</b>			<b>\$ 344,070</b>
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\*Payment terms are outlined in the SOW

\*e-PlanSoft Services Rate \$150/Hour



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Fax: 949.860.4810  
lzaret@eplansoft.com

Date: March 1, 2016  
Prepared by: Larry Zaret  
For: City of Long Beach  
RFP DC14-034  
David Khorram

### E-PLANCHECK PROJECT ON PREMISE SALES QUOTE

QUANTITY	UNIT(s)	DESCRIPTION	COST	EXTENDED COST
1	Site	E-PLANCHECK (On Premise) : PB1 <i>Site License - Unlimited Users</i>	\$ 130,800	\$ 130,800
1	Year 1	E-PlanCheck Maintenance and Support	18%	\$ 23,544
Sub-total				\$ 154,344
<b>IMPLEMENTATION, TRAINING</b>				
11	Days	On-site User Training (test/production) 60 users	\$ 1,200	\$ 13,200
400	Hours	Project Management	\$ 150	\$ 60,000
5	Days	Post-Go Live Onsite Support	\$ 1,200	\$ 6,000
100	Hours	EPC installation, configuration (test/production)	\$ 150	\$ 15,000
3	Site	iText License (Dev/test/production web server)	\$ 450	\$ 1,350
Sub-total				\$ 95,550
Year 1 Total				\$ 249,894
Year 2		E-PlanCheck Maintenance and Support		\$ 23,544
Year 3		E-PlanCheck Maintenance and Support		\$ 23,544
Year 4		E-PlanCheck Maintenance and Support		\$ 23,544
Year 5		E-PlanCheck Maintenance and Support		\$ 23,544
Years 2-5 M&S				\$ 94,176

This Quote is governed by the e-PlanSoft Master Services Agreement.

\*Maintenance fees are charged annually at 18% of the total perpetual costs listed in the schedule above and include feature releases, product updates, user documentation, telephone, email, and online interactive support.

\*Travel expenses including airfare, hotel and car rentals, per diem, etc. are charged per the City of Long Beach's Authorization and Reimbursement for General Business Expenses Standards.

\*\*This quote will expire in 90 days from the date shown above.

# Project Payment Schedule

## Payment Schedule

Contract Signed	
EPC Licenses	\$ 130,800.00
EPC M&S Year 1	\$ 23,544.00
<b>Total Due Upon Signing</b>	<b>\$ 154,344.00</b>

Project Services	
Discovery Complete	30% \$ 28,665.00
Implementation Complete	30% \$ 28,665.00
Pilot Delivered	20% \$ 19,110.00
Full Adoption	20% \$ 19,110.00

Maintenance and Support Cost	
EPC M&S Yearly	\$ 23,544.00
<b>Total M&amp;S due Yearly</b>	<b>\$ 23,544.00</b>

\*EPC M&S Invoiced annually on date of Contract Signing.

\*Expenses Invoiced Monthly in accordance with City  
Reimbursable Expenses Administrative Regulations  
Referenced in SOW

# EXHIBIT “C”

Director of Development Services or Designee

# EXHIBIT “D”

Materials/Information Furnished: None