

MASTER SERVICES AGREEMENT

This Master Services Agreement (the "Agreement") is made and entered into as of the 28th day of June, 2022 (the "Effective Date") by and between SVA Consulting, LLC, a Wisconsin Limited Liability Company ("SVA") with its principal place of business located at 1221 John Q. Hammons Drive, Madison, Wisconsin, 53717 and San Bernardino County with its principal place of business located at Department of Public Works, 825 East Third Street, San Bernardino, California, 92415 ("Client").

For and in consideration of the covenants and conditions hereinafter set forth, SVA and Client agree as follows:

1) Services.

- (a) SVA shall perform the services for Client that are described on the Statement(s) of Work and any associated Change Order(s) as may be associated with this Agreement from time to time by mutual written agreement of the parties and such services shall include Advice, any materials, inventions, ideas, designs, concepts, techniques, discoveries, methodologies, or improvements created by or provided by SVA by use of or exposure to Client and may include the sale of software to Client (the "Work") in accordance with the terms and conditions of this Agreement, and on the price, delivery dates and specifications described in the applicable Statement(s) of Work and Change Order(s). The Statement(s) of Work and Change Order(s) shall be in the form as provided by SVA and shall be signed by both parties and numbered with an individual contract number. SVA is not obligated to perform any Work hereunder and Client has not contracted for any Work unless and until a Statement of Work or Change Order is executed by both parties.
- (b) "Advice" means any technical assistance, strategic assistance (including, but not limited to developing strategy, conducting assessments, program planning, stakeholder alignment, communication management, and process improvement) or know-how communicated to Client by SVA under the terms of this Agreement other than in a Deliverable.
- (c) "Change Order" may refer to a document issued by SVA titled Change Order or Change in Circumstance.
- (d) "Deliverable" means any tangible product (including software) written, developed or prepared in whole or in part by SVA for Client under the terms of this Agreement.

2) Acknowledgements by Client.

- (a) If the Work includes the purchase of software, Client will be required to execute an End User License Agreement ("EULA") for such software. During the course of the Work, SVA may be required to install copies of commercial software. License terms may be in electronic format or contained within the software documentation. Client acknowledges that it is Client's responsibility to review license terms at the time of installation.
- (b) SVA will not perform any management functions or make management decisions on Client's behalf. Client is responsible for all management decisions and functions, and for designating an individual with suitable skill, knowledge, and experience to oversee the services SVA provides. Client is responsible for evaluating the adequacy and results of the services performed and advising SVA



of any need for additional services to achieve the desired results. Client is responsible for establishing and maintaining internal controls, including monitoring ongoing activities.

- (c) Client will be required to provide information to allow SVA to complete the Work. SVA's performance is dependent on the timely and accurate provision of information by Client.

3) Delivery Schedule.

SVA shall complete and deliver the Work to Client according to the delivery schedule and in conformance with the specifications described in the applicable Statement(s) of Work or Change Order(s).

4) Fees, Expenses, and Payment.

- (a) Client agrees to pay SVA for the Work in the amount and in accordance with all applicable Statements of Work, Change Orders, and this Agreement.
- (b) All proposed hours as stated in the Statement(s) of Work and Change Order(s) for projects bid on a time and materials basis are estimates. Client will pay for the actual hours incurred for each service for each project bid on a time and materials basis at the rate set forth in the applicable Statement(s) of Work and any associated Change Order(s).
- (c) Any services that Client asks SVA to provide which are not covered by a Statement of Work or Change Order, including, but not limited to, general consulting and technical phone support, will be charged at the current rate at the time the services are provided. Such rates are subject to change without notice.
- (d) Client is required to pay for all hardware and software purchases in full, in advance. All hardware and software purchases are final and non-refundable.
- (e) A retainer fee equal to 25% of the average estimated cost of the Work or fixed fee cost of the Work outlined in the Statement(s) of Work is due upon scheduling. Payment of the retainer fee is due prior to the commencement of the Work.
- (f) Client will pay 100% of each consultant's hourly rate for travel time from the SVA offices to the site where the Work is to be performed for round trips under one hour. Client will pay 60% of each consultant's hourly rate for round trips over one hour. Travel time is required to be paid in addition to the hourly estimates provided for the Work.
- (g) Client will pay all reasonable expenses associated with the Work including, but not limited to, auto travel/mileage, lodging, airfare, and meals in accordance with SVA's Travel & Miscellaneous Expense Reimbursement Policy, which is attached hereto as Exhibit A.
- (h) If Work scheduled to be performed at the Client site is cancelled or rescheduled at Client's request three (3) business days or less before the scheduled performance date, Client agrees to pay SVA a fee calculated at eight (8) hours times the applicable hourly rate for each member of SVA personnel scheduled to perform.
- (i) Client will be required to pay sales tax and shipping, as applicable for the Work.
- (j) Client will be billed as frequently as the Work requires or the Client reasonably requests, but no less frequently than monthly.
- (k) Payment is due upon receipt, unless otherwise specified in a Statement of Work or Change Order.
- (l) SVA may assess an interest charge of 1% per month if Client does not pay on time, or as otherwise allowed by law.



5) **Confidentiality and Non-Disclosure.**

- (a) **Acknowledgment of Confidentiality.** Each party hereby acknowledges that it may be exposed to confidential and proprietary information, some of which may be trade secrets, belonging to or supplied by the other party or relating to its affairs including, without limitation, custom work product, base technology, embedded software and other technical information (including any functional design, technical design, drawings, analysis, research, processes, computer programs, methods, ideas, "know how," product information, product research, clinical study information of any variety and the like), business information (sales and marketing research, materials, plans, accounting and financial information, business processes, personnel records, product information, business strategies, organizational models/structures, policies and procedures, and the like) and other information designated as confidential expressly or reasonably expected to be confidential by its content or by the circumstances in which it is provided ("Confidential Information"). Confidential Information does not include (i) information which is part of the public domain through no act or failure to act on the part of the recipient of the information, (ii) information received by the recipient party from a third party as a matter of right without any restriction on disclosure, (iii) information which was independently conceived or developed by an employee or agent of the recipient having had no exposure to any Confidential Information of the disclosing party, or (iv) information which was in the recipient's possession prior to the receipt or disclosure from the disclosing party.
- (b) **Covenant Not to Disclose.** With respect to the other party's Confidential Information, and except as expressly authorized herein, the recipient shall not at any time during its access to the Confidential Information of the other party or at any time thereafter, regardless of the circumstances of the termination of such access, use or induce or permit others to use any of the Confidential Information for any purposes, except as may be necessary for the recipient party to carry out its responsibilities under this Agreement and any associated Statement(s) of Work or Change Order(s). The parties agree to limit access by their respective partners, employees and agents to a "need-to-know basis" and to such other recipients as the other party may approve in writing, provided that all such recipients shall have first executed a confidentiality agreement in a form acceptable to the owner of such information. Neither party nor any recipient may (i) alter or remove from any software or associated documentation owned or provided by the other party any proprietary, copyright, trademark, or trade secret legend, or (ii) attempt to decompile, disassemble, or reverse engineer the other party's Confidential Information (and any information derived in violation of such covenant shall automatically be deemed Confidential Information owned exclusively by the owner of the original source materials). Each party shall use at least the same degree of care in safeguarding the other party's Confidential Information as it uses in safeguarding its own Confidential Information, but in no event shall less than due diligence and care be exercised. Each party agrees not to disclose any Confidential Information for a period of five (5) years after the termination of the contract or without the consent of the other party in writing.

6) **Solicitation and Hiring of Employees, Independent Contractors and Agents Prohibited.**

Client understands and agrees that SVA employees, independent contractors and agents are highly skilled and specially trained individuals who are of great value and



importance to SVA. Client understands and agrees that it would be a difficult and expensive undertaking for SVA to replace its employees, independent contractors and agents. Client further understands and agrees that the measure of damages for the loss of an SVA employee, independent contractors and agents would be difficult to ascertain; such damages are, therefore, presumed to exist. Client agrees not to solicit for employment or hire SVA employees, independent contractors or agents for employment or utilize the services of SVA employees, independent contractors or agents in any manner with Client or any of its affiliated companies or entities.

IN THE EVENT THAT ANY SVA EMPLOYEE IS EMPLOYED BY CLIENT OR ANY OF ITS AFFILIATES OR MEMBER COMPANIES WITHIN ONE (1) YEAR FROM THE TERMINATION DATE OF THIS AGREEMENT, CLIENT AGREES TO PAY SVA, IN AND AS LIQUIDATED DAMAGES, A SUM OF MONEY EQUAL TO THE DEPARTING EMPLOYEE'S TOTAL ANNUAL COMPENSATION BEING PAID BY SVA AT THE TIME OF DEPARTURE. FOR THE PURPOSES OF THIS AGREEMENT, "TOTAL COMPENSATION" SHALL INCLUDE REGULAR WAGES, BONUSES, AND THE TOTAL VALUE OF ANY EMPLOYEE BENEFITS PACKAGE.

IN THE EVENT ANY SVA INDEPENDENT CONTRACTOR OR AGENT IS UTILIZED BY CLIENT OR ANY OF ITS AFFILIATES OR MEMBER COMPANIES WITHIN ONE (1) YEAR FROM THE TERMINATION DATE OF THIS AGREEMENT, CLIENT AGREES TO PAY SVA, IN AND AS LIQUIDATED DAMAGES, A SUM OF MONEY EQUAL TO THE FEES PAID BY SVA TO THE INDEPENDENT CONTRACTOR OR AGENT OVER THE COURSE OF THE PRECEDING 24 MONTHS. CLIENT, IN ITS WRITTEN AGREEMENT WITH ITS CLIENT TO WHOM, OR FOR WHOSE BENEFIT, SERVICES ARE PROVIDED SHALL INCLUDE A SIMILAR NON-SOLICITATION/NON-HIRE PROVISION RESTRICTING SUCH CLIENT FROM SOLICITING OR HIRING EMPLOYEES, INDEPENDENT CONTRACTORS OR AGENTS OF SVA. CLIENT AGREES THAT THE LIQUIDATED DAMAGES SET FORTH HEREIN ARE NECESSARY TO PROTECT THE LEGITIMATE BUSINESS INTERESTS OF SVA AND ARE REASONABLE IN AMOUNT.

7) **Intellectual Property.**

- (a) The Work provided by SVA to Client, other than third-party software, is proprietary property of SVA and all rights, title and interest in the Work, including all associated intellectual property rights, remain only with SVA. SVA also retains all rights, title and interest in any pre-existing code that may be used for Client's benefit. SVA shall retain the right to use all source code created as a result of custom software development, without regard to termination of the Agreement. In the case of custom software development, SVA is not responsible for information generated by custom-developed software.
- (b) Client shall have the right to use all the Work, Deliverables, and Advice in connection with its internal operations and in connection with its client, if applicable, specified on each associated Statement of Work and Change Order but not in connection with or for the benefit of the business of any other party ("License to Use"). Such License to Use shall continue into perpetuity. During the term of this Agreement and thereafter, Client agrees not to disclose to any third party not specifically identified on each associated Statement of Work or Change Order (i) any Deliverable or the information contained therein and (ii) any Advice. Nothing in this Agreement shall be construed as barring SVA from using any ideas, concepts,



methods, or techniques used by SVA in providing the Deliverables or Advice for any other purposes.

8) **SVA Warranties.**

SVA warrants that:

- (a) SVA has full and exclusive right and power to enter into and perform according to the terms of this Agreement.
- (b) The Work will meet the specifications listed in the applicable Statement of Work or Change Order, will be complete and accurate, and will comply with all applicable laws and regulations.
- (c) At the time of completion of the Work or receipt of Deliverable by Client and for a period of sixty (60) days thereafter, each Deliverable will substantially conform to the specifications for it in the Agreement. SVA has no duty to maintain, modify, or enhance any Work or Deliverable after acceptance of the Work or Deliverable by Client, unless specifically provided for in a separate Statement of Work or Change Order.
- (d) The Work shall be performed with the skill, care and judgment customarily used by information technology consultants for similar work.

9) **Disclaimer of Warranties.**

- (a) OTHER THAN THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, SVA MAKES NO WARRANTIES OR REPRESENTATIONS AS TO THE WORK THAT SVA MAY PROVIDE. ALL IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED.
- (b) SVA MAKES NO WARRANTIES OR REPRESENTATIONS AS TO ANY THIRD-PARTY SOFTWARE SVA MAY PROVIDE. ALL IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE FOR THIRD-PARTY SOFTWARE ARE DISCLAIMED.
- (c) SVA MAKES NO WARRANTIES OR REPRESENTATIONS AS TO THE INFORMATION GENERATED BY CUSTOM-DEVELOPED SOFTWARE DEVELOPED BY SVA. ALL IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED.
- (d) All Work provided by SVA shall endeavor to meet the functionality, desires, and direction of the Client. SVA does not warrant or represent that the Work will meet all of Client's specific needs or desires.
- (e) The Work is not intended to constitute the practice of accounting or be governed by the American Institute of CPAs' standards, notwithstanding that some individuals performing the Work may also be licensed as certified public accountants. The Work also is not intended to constitute the practice of law or be considered legal advice, notwithstanding that some individuals performing the Work may also be lawyers.

10) **Acceptance; Sole Remedy.**

Deliverables and Work shall be deemed accepted by Client unless written notice of non-conformity is received by SVA within sixty (60) days of Client's receipt of the Deliverable or completion of the Work. In the event of discovery by Client of a non-conforming



Deliverable or unsatisfactory Work, Client shall allow SVA reasonable time to cure the non-conformity; such period to cure shall not exceed 60 days.

11) Limitation of Liability and Disclaimer of Damages.

- (a) **Limitation of Liability.** SVA's aggregate monetary liability for any cause(s) of action whether in contract, tort or otherwise under or relating to this Agreement or the associated Statement(s) of Work or Change Order(s) shall in no event exceed the total of all amounts paid by Client to SVA pursuant to this Agreement and the associated Statement(s) of Work and Change Order(s) during the six (6) month period immediately preceding the initial accrual of the cause(s) of action.
- (b) **Exclusion of Certain Damages.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER SVA, NOR ANY OF ITS AFFILIATES OR SUPPLIERS, WILL BE LIABLE FOR ANY INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, DAMAGES FOR LOST PROFITS OR REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION) ARISING IN CONNECTION WITH THIS AGREEMENT AND ITS ASSOCIATED STATEMENT(S) OF WORK AND CHANGE ORDER(S), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE.
- (c) **File Transfer, Storage, and Collaboration Sites.** Client shall accept all liability for and SVA shall not be liable in any way for the use of file transfer, storage, and collaboration sites that are required by Client and which are not supported by SVA. SVA has no control over the security of these external sites and therefore cannot be responsible for the security of such sites. These sites include, but are not limited to, DropBox, Box, Google Drive, Google Docs, iCloud, Amazon Cloud, Kindle Docs, Workplace, Confluence, Slack and Evernote.
- (d) **Force Majeure.** SVA shall not be responsible for any delays, errors, lost data, failures to perform, interruptions, or disruptions in the Work provided under this Agreement and the associated Statement(s) of Work and Change Order(s) which are caused by or result from any act, omission or condition beyond SVA's reasonable control whether or not foreseeable or identified including, without limitation, acts of God, strikes, lockouts, riots, acts of war, governmental regulations, fire, power failure, earthquakes, severe weather, floods or other natural disaster, or SVA's or any third party's hardware, software or communications equipment or facilities, including unavailability of hardware or software. Dates or times of performance by SVA shall be extended to the extent of delays excused by this subsection.

12) Termination.

This Agreement shall commence as of the Effective Date and shall terminate upon sixty (60) days' prior written notice by either party. In the event that Client terminates this Agreement, SVA will discontinue all Work upon receipt of such notification. Client will pay for all Work performed by SVA up until the date of receipt of cancellation notice.



13) **Notices.**

All notices and requests in connection with this Agreement shall be deemed given as of the day they are received either by messenger, delivery service, or in the United States of America mails, postage prepaid, certified or registered, return receipt requested, and addressed as follows:

NOTICES TO SVA: SVA Consulting, LLC
1221 John Q. Hammons Drive
Madison, WI 53717
Attention: Bryan Bechtoldt

NOTICES TO Client: _____

Attention: _____

or to such other address as the party to receive the notice or request so designates by written notice to the other.

14) **Miscellaneous.**

- (a) **Independent contractor.** SVA is an independent contractor for Client. Nothing in this Agreement shall be construed as creating an employer-employee relationship, or as a limitation upon either party to terminate this Agreement at any time without cause.
- (b) **Assignment.** Client may not assign this Agreement without written approval from SVA.
- (c) **Severability.** If a court holds a provision of this Agreement to be illegal, invalid or unenforceable, the rest of the document will remain in effect and this Agreement will be amended to give effect to the eliminated provision(s) to the maximum extent possible.
- (d) **Waiver.** A waiver of any breach of this Agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party
- (e) **Applicable law.** This Agreement is governed by the laws of the State of Wisconsin without regard to its conflict of laws principles.
- (f) **Dispute resolution.** Any action to enforce this Agreement or its associated Statement(s) of Work or Change Order(s) shall be brought in the state or federal courts of Wisconsin.
- (g) **Entire agreement.** This Agreement, its Exhibits, Statement(s) of Work and/or Change Order(s), if any, constitute the entire agreement between the parties with respect to the Work and Deliverables and all other subject matter hereof and supersedes all prior and contemporaneous communications. It shall not be modified except by a written agreement signed on behalf of SVA and Client by their respective duly authorized representatives.
- (h) **Survival.** Provisions regarding fees and payment, limitations of liability and disclaimer of damages, confidentiality and non-disclosure, intellectual property, solicitation of employees, termination, and all provisions in this "Miscellaneous" section shall survive termination of the Agreement.



- (i) **Counterparts and Originals.** This Agreement may be executed by Client and SVA each on separate counterparts, each of which when so executed and delivered shall be an original and all such counterparts shall together constitute but one and the same document. Facsimile and scanned counterparts may serve as originals.



IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date written above.

SVA CONSULTING, LLC

SAN BERNARDINO COUNTY

Signature

Signature

Name

Curt Hagman
Name (print)

Title

Chairman, Board of Supervisors
Title

Date

Date



EXHIBIT A

Travel & Miscellaneous Expense Reimbursement Policy

- 1) **Airfare:** SVA will obtain a logical economy, coach or equivalent fare available to the business traveler on a scheduled major airline. For international travel of over six (6) hours in a single flight segment, SVA personnel will use business class.
- 2) **Mileage/auto travel:** If SVA personnel use a personal or rental automobile in lieu of air travel, Client will reimburse SVA at a rate per mile equivalent to the United States Internal Revenue Service (“IRS”) mileage allowance rate for the most direct, practical route or for actual rental expenses.
- 3) **Local transportation:** Client will reimburse SVA for local transportation expenses, such as auto rentals, taxis, buses, light rail, tolls, and parking fees. For auto rentals, SVA will rent intermediate models, if available, from a national car rental agency, unless the number of individuals being transported requires a larger auto. Client shall also reimburse SVA for parking fees associated with parking at the departure airport.
- 4) **Lodging:** SVA will obtain lodging at three-star hotels in the immediate area, if reasonably available. Client will reimburse SVA for actual lodging charges.
- 5) **Meals:** Client will reimburse SVA for actual meal expenses.
- 6) **Communication expenses.** Client will reimburse SVA for all reasonable communications expenses associated with travel to perform the Work, including, but not limited to, inflight internet, hotel wireless charges, mobile hotspot charge, and international voice and data charges.
- 7) **Non-reimbursable expenses:** Client will not be required to reimburse SVA for personal expenses, such as hotel shop purchases, in-room movies, sundry items, and the like. Client will not be required to reimburse SVA for any charges associated with personal side trips. If any of these charges appear on receipts, SVA will deduct or exclude them from Client’s invoice. If SVA personnel visit more than one (1) client on the same trip, SVA will apportion the expenses in a reasonable manner between the clients.
- 8) **Receipts:** To support travel expense items on invoices, SVA will retain in its files receipts for lodging, airline travel, rental cars and all other non-per diem expenditures of an amount that would require a receipt under IRS guidelines. SVA will make these receipts available to Client upon request.
- 9) **Cancellations and rescheduling:** If Client cancels or reschedules a trip after SVA has booked airline, car, or hotel reservations, SVA will attempt to cancel the reservations without incurring a penalty. Client will reimburse SVA for charges it is unable to avoid, including cancellation and rescheduling charges.
- 10) **Policy changes:** SVA may change its expense reimbursement policies from time to time and will give Client thirty (30) days’ advance notice of any such changes.

