

## AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into on 12/21/17 by and between the City of St. Helena, located in the County of Napa, State of California (City), and Beehive Industries, LLC, a Nebraska based LLC with a primary place of business at 151 N 8<sup>th</sup> St, Ste 400, Lincoln, NE 68508 (Consultant).

### RECITALS:

City desires to employ Consultant to furnish professional services in connection with the project described as Beehive Asset Management software implementation, hosting and licensing.

The City desires to license software and provide certain hosted software services, maintenance and support services, consulting services, systems integration services, data conversion services, training services, and/or related services as described in the Attached Exhibit A "Scope of Services" (collectively, "Services").

Consultant desires to perform such Services on behalf of the City on the terms and conditions set forth herein.

Consultant has represented that Consultant has the necessary expertise, experience, and qualifications to perform the required duties.

NOW, THEREFORE, in consideration of the mutual premises, covenants, and conditions herein contained, the parties agree as follows:

### SECTION 1 – BASIC SERVICES

Consultant agrees to perform the services set forth in **Exhibit A, "Scope of Services"** and made part of this Agreement.

### SECTION 2 – ADDITIONAL SERVICES

Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement that are in addition to or outside of those set forth in this Agreement or **Exhibit A, "Scope of Services"**, unless such additional services and compensation are authorized in advance and in writing by the City Council or City Manager of the City.

### SECTION 3 - SOFTWARE SERVICES AND SUPPORT

A. Subject to the terms of this Agreement, Consultant will use commercially reasonable efforts to provide City the Services as detailed in the Scope of Services attached as Exhibit A, with future attachments included as extensions of Exhibits A and B (i.e. Exhibit A-1, Exhibit B-1) and attached hereto and incorporated herein by this reference. Services are primarily a software as a service offering and include all required software licenses, support, maintenance, hosting, storage, training and any other additional services specifically detailed in the attached Exhibit A.

B. Software License. Upon payment of all applicable fees by City, Consultant grants City all required Consultant software licenses required for the performance of the Services contemplated in this Agreement. All licenses are granted and enforced under the provisions of the then current End User License Agreement located at [www.beehiveindustries.com/eula.pdf](http://www.beehiveindustries.com/eula.pdf).

C. Restrictions and Responsibilities

- i) City will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services (“Software”); or, modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Consultant or authorized within the Services). With respect to any Software that is distributed or provided to City for use on City’s premises or devices, Consultant hereby grants City a non-exclusive, non-transferable, non-sublicensable license to use such Software during the Term, only in connection with the Services.
- ii) City represents, covenants, and warrants that City will use the Services only in compliance with all applicable laws and regulations and any standard published Consultant policies then in effect, if any. To the extent allowed by law, City hereby agrees to indemnify and hold harmless Consultant against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys’ fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from City’s use of Services. Although Consultant has no obligation to monitor City’s use of the Services, Consultant may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.
- iii) City shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, “Equipment”), unless specifically identified as a responsibility and approved obligation of Consultant in the Scope of Services. City shall also be responsible for maintaining the security of the Equipment, City account, passwords (including but not limited to administrative and user passwords) and files and other related items owned by City.

**SECTION 4 – TIME FOR COMPLETION**

The time for completion of services shall be as identified in **Exhibit A, “Scope of Services”**.

**SECTION 5 – COMPENSATION AND METHOD OF PAYMENT**

A. Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amount specified in **Exhibit B, “Compensation”**, attached hereto and made a part hereof. Total compensation shall not exceed \$23,040 annually, unless additional compensation is approved in accordance with Section 2.

B. Consultant shall furnish to City an original invoice for all work performed and expenses incurred. The invoice shall detail charges by the following categories if applicable: labor (by sub-category), travel, materials, equipment, supplies, subconsultant contracts, and miscellaneous expenses. City will pay Consultant the then applicable fees for the Services detailed in the Exhibit A, "Scope of Services" and in accordance with the amount and schedule in Exhibit B, Compensation and any terms therein (the "Fees"). Consultant reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Term or then current renewal term, upon sixty (60) days prior notice to City (which may be sent by email) and in accordance with Section 2. City shall independently review each invoice submitted to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. If no charges or expenses are disputed, the invoice shall be approved, and City will issue full payment received by Consultant thirty (30) days after the mailing date of the invoice. Unless other mutually agreed upon arrangements have been made in writing amounts, payments not received within thirty (30) days will be considered past due and are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate suspension or termination of Services. Continued non-payment will result in all licenses being suspended or revoked, access to Services and data restricted or denied, and termination of this Agreement at the sole discretion of Consultant. If the City disputes any charges or expenses, the City will return the original invoice to Consultant for correction and resubmission. If the City reasonably determines that the invoiced charges and expenses exceed the value of the services performed to date and that the Agreement will not be completed satisfactorily within the contract price, City may retain all or a portion of the invoiced charges and expenses. Within thirty (30) days of satisfactory completion of the project, City shall pay the retained amount, if any, to Consultant.

C. City will pay Consultant the then applicable fees for the Services and as detailed in the Scope of Services and in accordance with the payment terms detailed in Exhibit B, Compensation (the "Fees"). Consultant reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Term or then current renewal term, upon sixty (60) days prior notice to City (which may be sent by email).

D. Annual license and maintenance Fees may be subjected to an annual increase during the Initial Term or any subsequent renewal term, with notice, where such increase will not exceed the published Consumer Price Index (CPI) from the previous year. Any change in Fees not subjected to a new Scope of Services or any other mutually approved change orders, will not exceed the published CPI from the previous year.

E. Payment to the Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

#### **SECTION 6 – STANDARD OF PERFORMANCE**

Consultant represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and

practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.

**SECTION 7 – INSPECTION AND FINAL ACCEPTANCE**

City may inspect and accept or reject any of Consultant’s work under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant’s work within thirty (30) days after submitted to City, unless the parties mutually agree to extend such deadline. City shall reject work by a timely written explanation, otherwise Consultant’s work shall be deemed to have been accepted. City’s acceptance shall be conclusive as to such work except with respect to latent defects and fraud. Acceptance of any of Consultant’s work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, the sections pertaining to indemnification and insurance.

**SECTION 8 – INSURANCE REQUIRED**

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees, as indicated:

- A. Minimum Scope of Insurance. Coverage shall be at least as broad as:
  - 1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
  - 2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 8 (hired auto) and code 9 (non-owned auto).
  - 3. Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.
  
- B. Minimum Limits of Insurance. Consultant shall maintain limits no less than:
  - 1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations, as applicable. If Commercial General Liability Insurance or other form with a General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
  - 2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
  - 3. Employer’s Liability: \$100,000 per accident for bodily injury or disease.
  
- C. Excess Limits. If Consultant maintains higher limits than the minimums shown above, City requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
  
- D. Primary Coverage. For any claims related to this contract the Consultants insurance

coverage shall be primary insurance as respects to City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of Consultants insurance and shall not contribute with it.

E. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions of \$25,000 or greater must be declared to and approved by the City.

F. Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its agent, officers, officials, employees, and volunteers are to be covered as additional insured as respects: liability arising out of work or operations performed by the Consultant or Consultant's subconsultants; or automobile owned, leased, hired or borrowed by the Consultant.
2. For any claims related to Consultant's conduct while performing the work of this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its agents, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its agents, officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subsection (b) of Section 2782 of the Civil Code.

G. Waiver of Subrogation. Consultant's commercial general liability policies shall be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its agents, officers, officials, employees and volunteers for losses paid under the terms of this policy which arises from the work performed by the named insured for the City.

H. The Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

I. Verification of Coverage. Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on forms that conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time. Any cost specifically related to providing certificates that conform to, or acceptable by, the City, will be passed through to the City for payment to Consultant.

## SECTION 9 - WARRANTY AND DISCLAIMER

- A. Consultant represents and warrants that no portion of the Consultant Services 1) contains any deliberate back door, Trojan horse, worm or virus designed to permit access

or use of either the City computer systems by any unintended party, (2) disable, damage or erase the Service or City data, or (3) perform any other such actions and that such Consultant Services do not knowingly infringe on any intellectual property rights of any third party.

B. Consultant expressly disclaims any warranty of service beyond the purpose for which the Services were created. The City bears the risk of using the Services and the entire risk arising out of use or performance of the Services remains with the City.

C. THE SOFTWARE IS PROVIDED TO THE CUSTOMER "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW. BEEHIVE, ON ITS OWN BEHALF, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, EXCEPT FOR WHAT IS PROVIDED UNDER THIS SECTION 6.

#### **SECTION 10 – INDEMNIFICATION**

A. Consultant shall indemnify and hold harmless City, its agents, officers, officials, employees, and volunteers from any and all claims, demands, suits, loss, damages, injury, and/or liability (including any and all costs and expenses in connection therewith), incurred by reason of any negligent or otherwise wrongful act or omission of Consultant, its officers, agents, employees and subcontractors, or any of them, under or in connection with this Agreement; and Consultant agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against City, its agents, officers, officials, employees and volunteers, or any of them, arising out of such negligent or otherwise wrongful act or omission, and to pay and satisfy any resulting judgments.

B. When Consultant under this Agreement is duly licensed under California Business and Professions Code as an architect, landscape architect, professional engineer, or land surveyor ("design professional"), the provisions of this section regarding Consultant's duty to defend and indemnify apply only to claims that arise out of or relate to the negligence, recklessness, or willful misconduct of the design professional.

C. If any action or proceeding is brought against Indemnitees by reason of any of the matters against which Consultant has agreed to indemnify Indemnitees as provided above, Consultant, upon notice from City, shall defend Indemnitees at Consultant's expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to Indemnification in order to be so indemnified. The insurance required to be maintained by Consultant shall ensure Consultant's obligations under this section, but the limits of such insurance shall not limit the liability of Consultant hereunder. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

D. The provisions of this section do not apply to claims to the extent occurring as a result of the City's sole negligence or willful acts or misconduct.

### **SECTION 11 - LIMITATION OF LIABILITY**

In no event will Consultant, its affiliates, suppliers, or certificate authorities be liable to the City for any loss, damages, claims or costs that exceed the amounts paid by City to Consultant, Consultant's entire liability and City's exclusive remedy shall be at the option of Consultant to either (a) return the most recent license fee paid, or (b) repair or replace the Software. Consultant is not responsible for any additional liabilities including any consequential, indirect or incidental damages, any lost profits or lost savings, any damages resulting from business interruption, personal injury or failure to meet any duty of care or claims by a third party, even if a Consultant representative has been advised of the possibility of such loss, damages, claims or costs.

### **SECTION 12 – INDEPENDENT CONTRACTOR STATUS**

A. Consultant is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Consultant shall have no authority to bind City in any manner or to incur an obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.

B. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees or agents are in any manner officials, officers, employees or agents of City.

C. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

### **SECTION 13 – CONFLICTS OF INTEREST**

A. Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City Manager. Consultant agrees to at all times avoid conflicts with the interests of City in the performance of this Agreement.

B. City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is aware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

**SECTION 14 – OWNERSHIP OF DOCUMENTS**

A. The Consultant agrees that all inspection reports, drawings, documentation, photographs, maps and computations prepared by City and supplied to Consultant under the terms of this Agreement, imported, added, created and/or modified inside of the Consultant's system, shall be, and shall remain the exclusive property of the City and shall be deemed confidential information of the City. The City may extract, download, back-up, or otherwise have access to original copies of the information at all times for any purpose the City deems appropriate. Consultant hereby waives any interest, title, lien or right to any such data. These documents shall remain the property of the City, which shall have the right to use same at the City's sole risk without restriction or limitation and without compensation to the Consultant other than that provided in this Agreement.

B. All copyrights, patents, trade secrets, or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, improvements, developments, works of authorship, or other products developed or created by Consultant during the course of providing services (collectively the "Work Product") shall belong exclusively to City. The Work Product shall be considered a "work made for hire" within the meaning of Title 17 of the United States Code. Without reservation, limitation, or condition, Consultant hereby assigns, at the time of creation of the Work Products, without any requirement of further consideration, exclusively and perpetually, any and all right, title, and interest Consultant may have in the Work Product throughout the world, including without limitation any copyrights, patents, trade secrets, or other intellectual property rights, all rights of reproduction, all rights to create derivative works, and the right to secure registrations, renewals, reissues, and extensions thereof.

**SECTION 15 – CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION; PROPRIETARY RIGHTS**

A. All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.

B. Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided consultant gives City notice of such court order or subpoena.

C. If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant's conduct.

E. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of



deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite such response.

F. The software and any authorized copies that are made are the intellectual property of and are owned by Consultant. The structure, organization and code of and within the software are valuable trade secrets and confidential information of Consultant. The software is protected by law, including but not limited to the copyright laws of the United States and other countries, and by international treaty provisions. Except as expressly stated herein, this agreement does not grant the City intellectual property rights in the software and all rights not expressly granted are reserved by Consultant.

G. The Parties shall use and protect confidential information solely for performing its obligations to the other party. The Parties shall not sell or distribute confidential information. The Parties shall give access to confidential information only to employees or individuals that have need of the information to perform their work functions.

#### **SECTION 16 – COMPLIANCE WITH LAW**

Consultant shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Consultant shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Consultant to comply with this section.

#### **SECTION 17 – COMPLIANCE WITH CIVIL RIGHTS**

During the performance of this contract, Consultant agrees as follows:

A. Equal Employment Opportunity. In connection with the execution of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, ancestry, age, sexual orientation, gender, gender identity and gender expression as protected categories specifically and expressively in that category, physical handicap, medical condition, marital status, sex, or national origin. Such actions shall include, but not be limited to, the following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training including apprenticeship.

B. Nondiscrimination Civil Rights Act of 1964. Consultant will comply with all federal regulations relative to nondiscrimination to federally-assisted programs.

C. Solicitations for Subcontractors including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations, made by Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by Consultant of Consultant's obligations under this Agreement and the regulations relative to nondiscrimination.

### **SECTION 18 – COOPERATION BY CITY**

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the work as outlined in the Exhibit A, "Scope of Services", shall be furnished to Consultant in every reasonable way to facilitate, without undue delay, the work to be performed under this Agreement.

### **SECTION 19 – NOTICES**

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by facsimile or first class mail, addressed as follows:

To City: City Manager  
1480 Main Street  
St. Helena, California 94574

To Consultant: Beehive Industries, LLC  
Attn: CEO  
151 N 8<sup>th</sup> St  
Suite 400  
Lincoln, NE 68508

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or, if mailed, three (3) days after deposit in the custody of the U.S. Postal Service.

### **SECTION 20 – TERM AND TERMINATION**

A. Subject to earlier termination as provided below, this Agreement is for the period of one (1) year from the Effective Date ("Initial Service Term"), and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the "Term"), unless either party provides notice of termination at least thirty (30) days prior to the end of the then-current term.

B. If either Consultant or City fail to perform any material obligation under this Agreement, then, the non-breaching party may terminate this agreement upon notice to the breaching party plus three (3) business days.

C. Curing Breach. If the breaching party notifies an intent to cure within three (3) days of the notice received by the non-breaching party of the breach, the breaching party has the right to

cure breach within thirty (30) days. If the breaching party does cure the breach within the allotted time, then the agreement continues under the stated rules of this document.

D. Upon termination of this Agreement by either Consultant or City and all payments being owed to Consultant being paid in full, all property belonging to City which is in Consultant's possession shall be delivered to City. Specific to digital data and property, Consultant will make all City data available to City for electronic retrieval for a period of ninety (90) days, but thereafter Consultant may, but is not obligated to, delete stored City data. Consultant may apply additional fees for any efforts Consultant is requested to perform in conjunction with retrieval of City data. City will cease all use of the Consultant license and any such materials to which such license applies. Consultant shall furnish to City a final invoice for work performed and expenses incurred by Consultant, prepared as set forth in this Agreement.

#### **SECTION 20 – ATTORNEY FEES**

If litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorneys' fees, costs and expenses, in addition to any other relief to which it may be entitled. In addition, any legal fees, costs and expenses incurred to enforce the provisions of this Agreement shall be reimbursed to the prevailing party.

#### **SECTION 21 – ENTIRE AGREEMENT**

This Agreement, including the attached Exhibits, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Consultant and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

#### **SECTION 22 – SUCCESSORS AND ASSIGNS**

This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties. However, this Agreement shall not be assigned by Consultant without written consent of the City, not unreasonably withheld.

#### **SECTION 23 – CONTINUITY OF PERSONNEL**

Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff assigned to perform the services required under this Agreement, prior to any such performance.

#### **SECTION 24 – DEFAULT**

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default and may terminate this Agreement immediately by written notice to Consultant.

**SECTION 25 – WAIVER**

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement.

**SECTION 26 – LAW TO GOVERN; VENUE**

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Napa. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Northern District of California, in San Francisco.

**SECTION 27 – SEVERABILITY**


If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

**SECTION 28 – SPECIAL PROVISIONS**

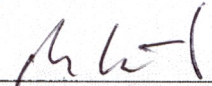
This Agreement is subject to the following special provisions: none.

IN WITNESS WHEREOF, the parties hereto have accepted, made, and executed this Agreement upon the terms, conditions, and provisions above stated, the day and year first above written.

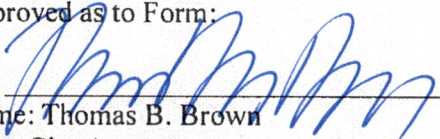
Consultant:

By:   
Name: Retire Smith  
Title: CEO

City:

By:   
Name: Mark Prestwich  
Title: City Manager

Approved as to Form:

By:   
Name: Thomas B. Brown  
Title: City Attorney

## Exhibit A: Scope of Services

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### Project Description

The current modules scoped in this project include **Water, Wastewater, Stormwater, Signs, Streets, Facilities, & Work Engine** which are intended to:

- Consolidate data from various sources and formats, including Esri geodatabases (GIS) and historical digital Asset Management data
- Known ESRI Datasets include Stormwater, Signs, Streets, while Water and Sewer are currently being collected via Trimble Device
- Establish work-histories and maintenance programs for assets & features
- Streamline and document work orders
- Provide access to data in connected and disconnected environments
- Provide reporting for management, Council and regulatory agencies
- Create prioritization with query lists & query maps for work performed and work needed
- Provide access and ability to edit GIS through Beehive interface (GIS is *not* required on user workstations)
- Provide ability to attach documents to features, including as-builts, CCTV, Pictures, Permits, etc.
- Provide easy access to data by other staff with multiple permission levels
- Beehive does not have limits on total/concurrent users or counts of assets.

This project is inclusive of all required hosting, support, storage, training and maintenance, which are detailed further in the General Terms section below.

### Assumptions & Discovery

Beehive is aware that the City's Wastewater data exists and understands its condition. Beehive is also aware that the Water system is currently in the works to be collected. Known datasets in ESRI include Stormwater, Signs, and Streets. Beehive accepts that other digital data exists and will need to be converted. Such data and its condition include some or all the following conditions in the Beehive data section below.

Known integrations are listed below and are included in the estimate. Should other integrations be required, Beehive will work with the City through the discovery process to ascertain if additional costs are necessary.

Beehive will assume all the data conversion initiatives. As part of this process, Beehive will request assistance from the City at certain times, specifically at data delivery and data validation, as those are not tasks that Beehive can independently perform.

No *custom* report creation is scoped. Many of the fields for reports can be easily configured in the Beehive software to reflect current City operations, but to date, no *customizations* have been identified.

## Data for Conversion

- Aerial imagery:
  - Must be in standard formats (.jpg, .tiff, .mrsid, or .ecw).
- Shapefiles (.shp) or geodatabase (.gdb) files containing feature and base data :
  - Esri GIS Data for conversion
  - Objects must contain a known geometry.
  - Data must exist in a known coordinate system.
  - Base data layers should be relevant to software being deployed and may include:
 

▪ Parcels	▪ Flood Zones	▪ Sections
▪ Addresses	▪ City Limits	▪ Points of Interest (parks, trails, etc.)
▪ Centerlines	▪ Subdivisions	
▪ Zoning	▪ Lots	
▪ Districts	▪ Easements	
- Historical/Digital AM data for conversion (Requires an ability to relate data to a feature and/or event)
- Other digital feature data (.xls, .mdb, other databases, etc.) may be able to be converted, dependent on data quality.
- Attachments (video, photos, as-builts, other documents, etc.):
  - Must be able to be tied to an individually identifiable feature, activity or event
- Events (historical):
  - Must be able to be tied to an individual feature.
  - All events will use the standard event form.
    - In the case of any MACP or PACP data, all event data will use the industry standard MACP/PACP formats.
    - If custom event forms are required, please see the Additional Services section below.

*All data must exist in digital form. Beehive may be able to assist in coordinating physical data conversions, but no physical data conversion is included in this project or in any pricing*

## Integrations & API

- Esri
- No other integrations have been scoped for this project. For any future integrations, please see the Additional Services section below.

## Additional Services

Beehive is happy to partner with you to provide additional value-added data to your installation. Additional fees *may* apply for these additional services. These options include, but are not limited to:

- Custom event forms
- Custom reports
- Additional years of aerials
- Additional base layer data
- Additional feature data import, after initial deployment
- Newly acquired data
- Assistance with physical data conversion
- Out of scope Digital data for conversion
- Out of scope Integrations & API services

## Customer Responsibilities

Beehive requires the following be accomplished or accommodated to provide the highest level of quality service in the most efficient manner to the Customer:

- Customer to determine a main point of contact who we can rely on for communication related to the project.
- Customer to provide timely access to the feature data in need of migration and conversion. This is generally coordinated via electronic file transfer, email attachments, or exchange of portable hard drives, depending on the amount of data available. Additional details follow below in the Data Conversion section. All feature data to be converted will be directly obtained and submitted by Customer.
- Customer to notify Beehive when data has been submitted for conversion and deployment.
- Customer to be responsible for all final validation of converted data throughout the project.
- Customer to identify and assist in coordination of training with all intended participants.

## Change Management Process

Changes to the project or its priorities should be communicated in writing between the Project Leads of each team. The teams acknowledge that such changes may need to be evaluated to determine impact on timelines, resources, or any potential need to scope additional work and additional costs associated with such changes. Any additional costs will be presented and approved in advance.

## Training

One of the major benefits of Beehive is that it is intuitive and easy to learn. This provides a training benefit where you don't have to spend days or weeks in training sessions; after deployment, we're able to get you up and running within a few hours. Upon completion of the data conversion, Beehive will provide three (3) remotely hosted training sessions:

- Beehive101: a 90-minute session designed to cover Beehive basics such as navigation, query use, adding assets, and viewing data.
- Beehive201: a 60-minute session designed to cover the advanced features in Beehive such as work flows, Work Order creation and management, and advanced query skills.
- Admin Site Training: a brief 30-minute session for administrators that covers user and feature property management.
- Additional Training, as needed

The above training sessions are provided at no additional cost to the City, and are open to an unlimited number of users. Additional, specific and ongoing training can be scheduled as needed and is included in the annual license. Should the City request onsite training, expenses for travel time and materials could be incurred.

## General Terms

The following services are included as part of the annual Beehive Software License and Maintenance:

- Hosting
- Unlimited seat license within your organization
- Technical support - Technical support is available around the clock via email and web support with phone support available during working hours via a dedicated support toll free phone line.
- Initial and ongoing training – Initial training will be provided in an online format, facilitated by a Beehive team member. The specifics will be scoped and determined in conjunction with Customer and scheduled in advance to meet needs. Ongoing training will be provided as needed. Onsite training is available per request and as mutually agreed upon. Additional fees will apply.
- Ongoing software updates



## Exhibit B: Compensation

### Schedule of Rates/Materials

The total project cost for this phase is outlined below:

#### Annual Software, License and Maintenance

#### Water, Wastewater, & Stormwater, Signs, Streets, Facilities, Work Engine

- Listed Core Modules .....\$23,040
- Unlimited Seat Licenses .....\$0 (included)
- Unlimited Hosting, Monitoring and Storage .....\$0 (included)
- Software Updates .....\$0 (included)
- Ongoing Training .....\$0 (included)

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**Total** **\$23,040**

#### Annual Service

- Web Hosting (Cloud Package) .....\$0 (included)
- Phone, Email, Online Customer Support .....\$0 (included)
- Unlimited Training .....\$0 (included)

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**Total** **\$0**

#### Initial Deployment (Year One Only)

- Import Existing Spatial Digital Data .....\$0
- Software Installation/Configuration .....\$0

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**Total** **\$0**

<b>Total Year One Project Cost</b>	<b>\$23,040</b>
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<b>Annual License, Maintenance &amp; Service (after Initial Annual Term)</b>	<b>\$23,040</b>
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### Delivery and Terms of Service

- Initial Term: 12 Months. Estimated to be January 2018-December 2018
- Successive annual license terms estimated to begin January 2019
- License and maintenance period to begin first day of the month, two months after receipt of the signed acceptance of this proposal and notice to proceed.
- Implementation will commence upon receipt of signed acceptance of this proposal and notice to proceed.

## Payment Terms

- Customer will be invoiced fifty percent (50%) of the year one total upon signature with the remaining invoiced 60 days after initial invoice or completion of deployment, whichever comes first.
- Payment is due upon receipt. Any payment that is not received within 30 days from receipt is subject to a late fee of 1.5% per month or the maximum amount allowed by law.
- Applicable sales taxes are in addition to the quoted price. If customer is tax exempt, please remit a copy of the required Tax Exemption Certificate with this agreement.
- Please address correspondence, purchase orders, and payments to Beehive's main office listed below.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/28/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> UNICO Group, Inc. 1128 Lincoln Mall Suite 200 Lincoln NE 68508	<b>CONTACT NAME:</b> Cortney Moderacki <b>PHONE (A/C No. Ext):</b> (402) 434-7200 <b>FAX (A/C No.):</b> (402) 434-7272 <b>E-MAIL ADDRESS:</b> cmoderacki@unicogroup.com												
<b>INSURER(S) AFFORDING COVERAGE</b>													
<b>INSURED</b> Nebraska Global Investment Company LLC Beehive Industries 151 North 8th St, Suite 300 Lincoln NE 68508	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td><b>INSURER A:</b> Travelers Casualty of America</td> <td></td> </tr> <tr> <td><b>INSURER B:</b> Travelers Indemnity Company</td> <td style="text-align: right;">25658</td> </tr> <tr> <td><b>INSURER C:</b> Charter Oak Fire Ins Co</td> <td style="text-align: right;">25615</td> </tr> <tr> <td><b>INSURER D:</b></td> <td></td> </tr> <tr> <td><b>INSURER E:</b></td> <td></td> </tr> <tr> <td><b>INSURER F:</b></td> <td></td> </tr> </table>	<b>INSURER A:</b> Travelers Casualty of America		<b>INSURER B:</b> Travelers Indemnity Company	25658	<b>INSURER C:</b> Charter Oak Fire Ins Co	25615	<b>INSURER D:</b>		<b>INSURER E:</b>		<b>INSURER F:</b>	
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<b>INSURER F:</b>													

**COVERAGES** **CERTIFICATE NUMBER:** 17/18 Beehive2 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER			680-8507P860-17-42	3/29/2017	3/29/2018	EACH OCCURRENCE \$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
							MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMPIOP AGG \$ 2,000,000
							\$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			BA-6B654218-17-SEL	3/29/2017	3/29/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 5,000			CUP-8545P815-17-42	3/29/2017	3/29/2018	EACH OCCURRENCE \$ 2,000,000
							AGGREGATE \$ 2,000,000
							\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			UB8545P587	3/29/2017	3/29/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
							E L EACH ACCIDENT \$ 100,000
							E L DISEASE - EA EMPLOYEE \$ 100,000
							E L DISEASE - POLICY LIMIT \$ 500,000
A	Technology E & O			ZPL15T72720	01/15/2017	01/15/2018	Each Loss Limit \$3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER**

**CANCELLATION**

City of St. Helena  
 1480 Main Street  
 St. Helena, CA 94574

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Chad Ideus/MUN