



CONTRACT NO #: CityofRiversideP00001

TEAMDYNAMIX

TeamDynamix Solutions LLC
1600 Dublin Road
Suite 200
Columbus, Ohio 43215

CLIENT

City of Riverside
3900 Main Street
Riverside, CA 92522

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“**Agreement**”) is made and entered on _____, 2020 (the “**Effective Date**”), by and between TeamDynamix Solutions LLC, a Delaware limited liability company (“**TeamDynamix**”), and City of Riverside, a Charter City and Municipal Corporation (“**Client**”). TeamDynamix and Client may be referred to in this Agreement, individually, as “**Party**” and, collectively, as “**Parties**”.

1. Scope and Performance of Professional Services. TeamDynamix agrees to render Professional Services to Client as requested by Client and agreed to by TeamDynamix from time to time. TeamDynamix agrees to furnish the Professional Services on the terms and subject to the conditions set forth in this Agreement. During the Term of this Agreement, Client and TeamDynamix may develop and agree upon written statements of work defining Professional Services to be provided by TeamDynamix, TeamDynamix’s compensation, deadlines and additional terms and conditions applicable to specific engagements, if any, and such other details as the Parties may deem appropriate and in such form as the parties may agree (each, a “**Statement of Work**” or “**SOW**”). Statements of Work shall reference this Agreement, shall be executed by the Parties, and shall form a part of and be incorporated into this Agreement. “**Professional Services**” means all forms of consulting, training, education, implementation, custom modification and configuration, and other services provided by TeamDynamix, excluding hosting services, and as further described below and in the Statement of Work. The provisions herein shall prevail in the event of a conflict with provisions in any SOW, and the provisions in an SOW dated later in time shall prevail in the event of a conflict with provisions in an SOW dated earlier in time.

2. TeamDynamix Obligations. Subject to and conditioned upon the compliance of Client with the terms and conditions of this Agreement, TeamDynamix shall use commercially reasonable efforts to provide Client with Professional Services. The professional staff of TeamDynamix will have the proper skill, training, and background necessary to accomplish their assigned tasks and shall perform the services contemplated by this Agreement and each Statement of Work in accordance with the highest industry standards and best practices. TeamDynamix personnel physically located at Client’s facilities, hereinto referred to as “**On-Site**”, shall comply with all reasonable workplace standards and policies applicable to Client’s employees, of which TeamDynamix is apprised of in writing in advance by Client, provided they are not inconsistent with TeamDynamix’s own business practices.

3. Client Obligations. While On-Site, Client will provide TeamDynamix with reasonable access to use Client’s facilities, equipment, data and information that are necessary for TeamDynamix to perform Professional Services. Client will reasonably cooperate with TeamDynamix in the performance of Professional Services and provide reasonable working space to TeamDynamix personnel and reasonably cooperate with such personnel. Client shall respond promptly to any request of TeamDynamix to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for TeamDynamix to perform Professional Services in accordance with the requirements of this Agreement or any applicable SOW. To the extent applicable to Professional Services, a SOW shall set forth any Client obligations in connection with such Professional Services.

TeamDynamix

4. Payment. The Professional Services fee shall be set forth in the SOW, and invoices shall be rendered in accordance with the payment terms set forth therein, and in accordance with the terms of this Agreement. All fees, charges, and other amounts payable to TeamDynamix hereunder do not include any lawfully imposed sales or use taxes, payment of which shall be the sole responsibility of Client (excluding any applicable taxes based on TeamDynamix's net income or taxes arising from the employment or independent contractor relationship between TeamDynamix and its personnel); provided, however, TeamDynamix shall separately itemize any such sales or use tax on Client's invoices.

5. Term. This Agreement shall commence as of the Effective Date and shall continue until all Professional Services are completed in full under any and all outstanding SOWs under this Agreement, unless terminated sooner pursuant to Section 16 or unless extended by the Parties in writing (as may be extended herein, the "Term").

6. Travel. For any on-site Professional Services, Client will reimburse TeamDynamix for all, reasonable travel and out-of-pocket expenses (which shall comprise transport, accommodation and living expenses) incurred. U.S. General Services Administration (GSA.gov) per diem rates are followed for meals/incidentals. Scheduling on-site engagements shall be approved in advance by Client, before travel costs are incurred.

7. Ownership.

7.1. Client Content. Any and all software programs, databases, artwork, logos, graphics, video, text, data and other materials supplied by Client to TeamDynamix in connection with TeamDynamix's performance of any Professional Services ("**Client Content**") are and will at all times remain the sole and exclusive property of Client and its licensors. No right, title, or interest will be transferred from Client to TeamDynamix with respect to any of Client Content or Client's intellectual property rights therein, provided that Client hereby grants TeamDynamix a non-exclusive right and license to use and incorporate such rights into any Work Product solely for the purposes of providing the Professional Services hereunder.

7.2. TeamDynamix Content. TeamDynamix shall retain and possess all right, title, interest, and ownership in and to any and all ideas, concepts, know-how, data processing techniques, software or documentation developed by TeamDynamix personnel (alone or jointly with Client) in connection with Professional Services provided to Client, and it will be the exclusive property of TeamDynamix provided to Client as a part of the Professional Services described herein, and the Client shall have no right, title, interest, or ownership in or to such ideas, concepts, know-how, data processing techniques, software or documentation, except as expressly provided in Section 7.3

7.3. Work Product. As part of or in connection with the Professional Services, TeamDynamix and its employees will or may produce Work Product. "**Work Product**" includes all inventions, discoveries, processes, reports, plans, projections, budgets, software, data, technology, designs, documentation, innovations and improvements created, discovered, developed, compiled or prepared by TeamDynamix or its employees as part of or in connection with the Professional Services. Work Product includes any intermediate work product created in developing the final deliverables. TeamDynamix and Client agree that, except for any Client intellectual property and any data submitted by Client into the TeamDynamix Applications, any and all Work Product shall be the sole and exclusive property of TeamDynamix, provided that TeamDynamix hereby grants Client a non-exclusive right and license to use the Work Product subject to the same terms and conditions as the license(s) provided under the Agreement for the product or service to which the Work Product relates. For the avoidance of doubt, TeamDynamix shall retain ownership of all intellectual property rights in products and services licensed or sold to Client under the Agreement and any derivative works of said products or services, subject to the licenses granted to Client under the Agreement.

8. Confidentiality. Each Party acknowledges that it and its employees or agents, in the course of the projects and services contemplated by this Agreement, may be exposed to or acquire information that is proprietary or confidential to the other Party ("**Confidential Information**"). Each Party agrees to hold Confidential Information of the other Party in strict confidence and not to use such Confidential Information or discuss or disclose and such Confidential Information to any third party. The Parties agree that Confidential Information does not include: (a) information which at the time of disclosure is, or without fault of the recipient becomes, generally available; (b) information which either Party can show was in its possession at the time of disclosure or was independently developed by it; (c) information received from a third party which had the right

TeamDynamix

to transmit the same without violation of any confidentiality agreement with the other party; and (d) information which is required to be disclosed pursuant to court order or by law, or as a result of California law, cannot be deemed confidential. Any Confidential Information will be identified as such. The provisions set forth in this Section 8 shall survive the termination or expiration of this Agreement.

9. Non-Solicitation of Employees. During the Term of this Agreement and for a period of twelve (12) months thereafter, neither Party shall, directly or indirectly, in any manner solicit or induce for employment any person who is then in the employment or engagement of the other Party. A general advertisement or notice of a job listing or opening or similar general publication of a job search or availability to fill employment positions shall not be construed as a solicitation or inducement for the purposes of this Section 9, and the hiring of any such employee or independent contractor who freely responds thereto shall not be a breach of this Section 9.

10. Independent Contractors. The relationship between the Parties created by this Agreement is that of independent contractors and not partners, joint venturers, agents, or employees. Each Party may engage in and possess other business ventures that are competitive with the Professional Services rendered under this Agreement.

11. Identification of Client Relationship. Client grants to TeamDynamix the right to identify Client in TeamDynamix's published list of clients. TeamDynamix will follow guidelines prescribed by Client in using Client's name, trademarks, or logos, as applicable.

12. Mutual Warranties. Each Party represents and warrants that (i) it has full power and authority to enter into this Agreement and to perform its obligations contained herein; (ii) it has not entered into, and shall not enter into any agreement either written or oral in conflict with its obligations under this Agreement; and (iii) its performance under this Agreement and/or any exhibit executed hereunder does not and shall not violate any applicable law, rule, or regulation.

13. Other Representations. TeamDynamix warrants that it owns all right, title and interest in all material and applications used to provide the services under this Agreement or has the authority to license all material or applications to Client and further warrants that such material and applications will not infringe upon the intellectual property rights of any third party.

14. Warranty Disclaimer. TEAMDYNAMIX WARRANTS THAT THE PROFESSIONAL SERVICES WILL BE PERFORMED IN A WORKMANLIKE MANNER AND WITH PROFESSIONAL DILIGENCE AND SKILL, IN ACCORDANCE WITH THIS AGREEMENT, AND ANY SUPPORTING ATTACHED DOCUMENTATION, (ANY SOW, AND SERVICE DESCRIPTION SET FORTH IN ANY LICENSE AGREEMENT). IF THERE IS A MATERIAL BREACH OF THE ABOVE WARRANTY, TEAMDYNAMIX'S ENTIRE LIABILITY AND CLIENT'S ENTIRE REMEDY SHALL BE, AT TEAMDYNAMIX'S OPTION TO (I) MODIFY THE PROFESSIONAL SERVICES TO CONFORM TO THE DOCUMENTATION; (II) PROVIDE A REASONABLE WORKAROUND SOLUTION WHICH WILL REASONABLY MEET CLIENT'S REQUIREMENTS OR (III) IF NEITHER OF THE FOREGOING IS COMMERCIALY REASONABLE, TERMINATE THIS AGREEMENT AND REFUND TO CLIENT ALL SUMS PAID BY CLIENT FOR THE NONCONFORMING SERVICES, WITH NO FURTHER LIABILITY TO TEAMDYNAMIX. THESE REMEDIES ARE CLIENT'S SOLE AND EXCLUSIVE REMEDIES FOR A CLAIM OF BREACH OF WARRANTY UNDER THIS AGREEMENT.

EXCEPT FOR THE EXPRESS WARRANTIES IN SECTIONS 12, 13 AND THIS SECTION 14, EACH PARTY HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT, AND TEAMDYNAMIX SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE.

15. Limitations of Liability. NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

16. Termination.

TeamDynamix

16.1. Breach. Except as otherwise provided in this Agreement, either Party may terminate this Agreement if the other Party has materially breached this Agreement and has not cured such breach within thirty (30) days of receipt of notice from the non-breaching Party specifying the breach (unless such breach is incapable of being cured). A material breach shall have occurred with respect to either Party if such party (i) ceases to do business as a going concern, (ii) makes a general assignment for the benefit of creditors, (iii) files for insolvency, bankruptcy, or seeks to enter receivership, (iv) authorizes, applies for, consents to, or has proceedings commenced against it to appoint a trustee or liquidator for all or a substantial part of its assets which is not resolved within days of such commencement, or (v) violates the confidentiality provisions of this Agreement set forth in Section 8 hereof. Client may terminate this Agreement if TeamDynamix fails to fully perform or comply with any material term or condition of this Agreement, and TeamDynamix has not cured such breach within thirty (30) days of receipt of notice from Client specifying the breach.

16.2. Failure to Pay. TeamDynamix may suspend or terminate the Professional Services by giving Client advance written notice of fourteen (14) days if any payment is delinquent by more than thirty (30) days.

16.3. Effect of Termination. TeamDynamix shall not be liable to Client or any third party for suspension or termination of the Professional Services in accordance with this Agreement. If Client or TeamDynamix terminate this Agreement, Client shall be liable for all fees and expenses relating to Professional Services performed through the date of termination, but and shall not be obligated to pay any Professional Services that remain to be performed under this Agreement following the termination date. Upon the effective date of expiration or termination of this Agreement for any reason, whether by Client or TeamDynamix, Client's right to use the Professional Services shall immediately cease. Any provision of this Agreement which may reasonably be interpreted or construed as surviving the termination, shall survive such termination of the Agreement for any reason.

17. Mutual Indemnification. Each Party agrees to indemnify, defend and hold harmless the other Party and its employees, officers, directors, subsidiaries, agents, and permitted successors and assigns from and against all claims, damages, liabilities, deficiencies, actions, losses, judgments, settlements, penalties, fines, costs and expenses of every nature (including reasonable attorney's fees and the costs of enforcing this Agreement and pursuing any insurance providers) resulting from the indemnifying Party's (or its employees, officers, directors, subsidiaries, and agents) gross negligence or willful misconduct. Neither party's liability to the other party under this Section 17 shall exceed the amount of fees paid by Client to TeamDynamix in the twelve months preceding the origin of such claim, except with respect to claims of gross negligence, willful misconduct, bodily injury, and/or fraud, which shall be uncapped.

18. Assignment. Neither Party shall assign this Agreement or any of its obligations hereunder without the other Party's prior written consent.

19. Force Majeure. No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected Party's reasonable control, including without limitation: strikes, lock-outs, or other industrial disputes (whether involving its own workforce or a third party's), trespassing, sabotage, theft or other criminal acts, failure of energy sources or transport network, acts of god, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, explosions, collapse of building structures, fires, floods, storms, earthquakes, epidemics or similar events, natural disasters or extreme adverse weather conditions (each, a "**Force Majeure Event**"). The party suffering a Force Majeure Event shall use reasonable efforts to mitigate against the effects of such Force Majeure Event.

20. Modification/Waiver; Severability; Interpretation. No modification of this Agreement or any SOW, and no waiver of any breach of this Agreement or any SOW will be effective unless in writing and signed by an authorized representative of the Party against whom enforcement is sought. No waiver of a breach of this Agreement or any SOW or the failure of either Party to exercise in any respect any right provided for under this Agreement shall be construed as a waiver of any subsequent breach of this Agreement or any SOW. No course of dealing between the Parties shall be construed as a waiver of any breach of this Agreement or any SOW. The provisions of this Agreement and any SOWs are severable. If any provision of this Agreement or any SOW is held to be invalid, illegal, or unenforceable, the validity, legality or enforceability of the remaining

TeamDynamix

provisos will in no way be affected or impaired thereby. Each Party acknowledges that this Agreement has been the subject of active and complete negotiations, and that this Agreement should not be interpreted or construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement. Section headings are provided for convenience only and are not to be used to construe or interpret this Agreement. Whenever the words "include" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation."

21. No Third Party Beneficiaries. There are no intended third-party beneficiaries under this Agreement.

22. Governing Law. This Agreement will be construed as having been made in, and will be governed in accordance with, the laws of the State of California, excluding any applicable conflict or choice of law provisions.

23. Entire Agreement. This Agreement, including all Exhibits hereto, constitutes the entire agreement of the Parties hereto and supersedes all prior agreements, negotiations, representations, proposals, discussions, and communications, whether oral or in writing, relating to its subject matter.

24. Counterparts. Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g., pdf or similar format) are true and valid signatures for all purposes hereunder and shall bind the Parties to the same extent as that of an original signature. Any such facsimile or electronic mail transmission shall constitute the final agreement of the Parties and conclusive proof of such agreement. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

25. Notices. All notices hereunder shall be in writing and shall be deemed to have been duly given upon personal delivery, five (5) days after being mailed by registered or certified mail, return receipt requested, or one (1) business day after being sent by nationally recognized overnight courier. Notice shall be addressed to the Parties as set forth on the first page of this Agreement.

TeamDynamix

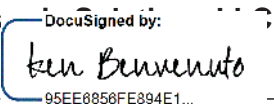
Introduction

City of Riverside, CA (herein known as 'CLIENT') is located in Riverside, CA. CLIENT wishes to implement


- Standard SaaS Deployment
- TeamDynamix Foundations
- Incident Management and Service Request Fulfillment
- IT Service Change Management
- Service Catalog
- Knowledge Management
- Problem Management
- Asset Management
- Project Management
- Project Request Management
- Resource Management
- Time Tracking
- Reporting

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives, on the date and year first above written.

TeamDyn: DocuSigned by: 
Signature Ken Benvenuto
95EE8858FE894E1...
Print Ken Benvenuto
Title CEO
Date 4/28/2020

City of Riverside, California
Signature _____
Print _____
Title _____
Date _____

Approved as to form

Senior Deputy City Attorney

LICENSE AGREEMENT**Client:** City of Riverside, California**Contract Number:** CityofRiversideP00001**Term:** 60 Months**Contract Term Start Date:** _____, 2020**Contract Term End Date:** _____, 2025

THIS LICENSE AGREEMENT (this "Agreement") is made and entered into this ____ day of _____, 2020, by and between TeamDynamix Solutions LLC, a Delaware limited liability company, with its principal place of business at 1600 Dublin Road, Suite, 200, Columbus, Ohio, 43215 ("TeamDynamix"), and the City of Riverside, CA, a Charter City and Municipal Corporation, with its principal location at 3900 Main Street, Riverside, CA (hereinafter "Client"). TeamDynamix and Client may be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

1. **Agreement.** The terms and conditions of this Agreement shall be in addition to those terms and conditions set forth in the exhibits to this Agreement (the "Exhibits"). All Exhibits attached and executed for products and services, or executed in the future for products and services, shall be incorporated into this Agreement by reference, unless specifically stated otherwise in writing. In the event of a conflict between the applicable Exhibit and this Agreement, the Agreement shall control.
2. **License.** Subject to the terms and conditions set forth in this Agreement, TeamDynamix hereby grants to Client a non-exclusive, non-transferrable, revocable, non-sublicensable license to access and use the licensed TeamDynamix software modules ("Applications") during the Term, in object code form only, solely for Client's internal business operations. Client acknowledges and agrees that access to the Applications is licensed and not sold.
3. **Site Connectivity; Access.** Client is solely responsible for providing all telecommunications, computer, and other equipment necessary for accessing the Applications, as well as any third-party access charges. TeamDynamix retains the right, at its sole discretion and without prior notice or liability, to restrict or terminate access to the Applications by Client and/or particular authorized users of Client (each, a "User") if Client and/or its Users materially breach the terms of this Agreement or, through use of the Applications, violates any applicable federal, state, local or international laws or regulations, or the rights of any third party.
4. **Term; Auto-renewal.** The term of this Agreement shall commence on the Contract Term Start Date set forth above (the "Start Date") and shall continue for a period of 60 months after the Start Date (the "Term"), unless earlier terminated pursuant to this Agreement or extended per the renewal provisions of this **Section 4**. Unless Client or TeamDynamix has given notice to the other Party of its desire not to renew under the terms of this Agreement at least sixty (60) days prior the end of the then-current Term, this Agreement will automatically renew for one year at the then current year's one year published price rate and the Term will be deemed to be extended for an additional 12 months (a "Renewal Term"). Any such Renewal Term will be invoiced at the end of the then current term.
5. **Payment and Fees.** City will pay \$173,208.00 for all licenses and services under this agreement. Any additional changes or add-on licenses will be by written agreement by parties. Detailed pricing is deemed a business trade secret and will be contained in Confidential Pricing Sheet and will be separately maintained by the parties.
6. **Support Services; Managed Services.**
 - a. Subject to and conditioned upon the compliance of Client and Users with the terms and conditions of this Agreement, during the Term, TeamDynamix shall use commercially reasonable efforts to provide Client and its Users the support services set forth in **Exhibit A** attached hereto.
7. **Uptime.** So long as Client remains current in its payment obligation to TeamDynamix as set forth in this Agreement, Client shall have the right to the benefit of the system uptime provisions set forth in this **Section 7** of this Agreement.
 - a. "Uptime" means the ability of Client to log into the Applications. "Downtime" is a period of time when the site hosted by TeamDynamix is not operating as designed and Client cannot log into the Applications as a result thereof; provided, however, that Downtime does not include scheduled maintenance,

scheduled upgrades, emergency patches, DNS or network problems out of TeamDynamix's control which may impact Uptime, and the items set forth in **Section 7(c)** of this Agreement.

- b. TeamDynamix guarantees Uptime of 99.5% during each 365 day period beginning on the date that Client begins using the Applications (each, a "Measurement Period"). The Uptime guarantee does not include scheduled maintenance, scheduled upgrades, emergency patches, and DNS or network problems out of TeamDynamix's control which may impact Uptime. In the event that TeamDynamix breaches this Uptime guarantee during a Measurement Period, TeamDynamix shall provide Client with credit for the amount of time that the breach continues ("Downtime Credit"), in an amount equal to 3% of the Daily Fee per 15-minute increment that TeamDynamix is in breach, pursuant to this **Section 7**. For purposes of this **Section 7**, "Daily Fee" shall be calculated by dividing the annualized license costs set forth in Confidential Pricing Sheet by 365. Downtime Credit may be paid by TeamDynamix via a credit to Client's subsequent annual license invoice in the amount owed pursuant to this **Section 7**. The Downtime Credit described in this **Section 7** shall be Client's sole and exclusive remedy and TeamDynamix's sole and exclusive liability for any breach of the obligations set forth in **Section 7** of this Agreement.
- c. **Exceptions to Uptime:** In addition to aforementioned exceptions the following, shall not be considered times when the system is in Downtime:
 - i. a failure or malfunction resulting from scripts, data, applications, equipment, or services provided and/or performed by Client;
 - ii. outages initiated by TeamDynamix or its third party providers at the request or direction of Client for maintenance, back up, or other purposes;
 - iii. outages occurring as a result of any actions or omissions taken by TeamDynamix or its third party providers at the request or direction of Client;
 - iv. outages resulting from Client's equipment and/or third party equipment not within the sole control of TeamDynamix;
 - v. events resulting from an interruption or shut down of the services due to circumstances reasonably believed by TeamDynamix to be a significant threat to the normal operation of the Service, the facility from which the Service is provided, or access to or integrity of Client data (e.g., a hacker or a virus attack);
 - vi. outages due to system administration, commands, file transfers performed by Client representatives;
 - vii. other activities Client directs, denial of service attacks, natural disasters, changes resulting from government, political, or other regulatory actions or court orders, strikes or labor disputes, acts of civil disobedience, acts of war, and other force majeure items;
 - viii. Client's negligence or breach of its material obligations under this Agreement; and
 - ix. a lack of availability or untimely response time of Client to respond to incidents that require its participation for source identification and/or resolution.

8. Confidentiality; Data Security.

- a. Each Party acknowledges that it and its employees or agents, in the course of the projects and services contemplated by this Agreement, may be exposed to or acquire information that is proprietary or confidential to the other Party ("Confidential Information"). Each Party agrees to hold Confidential Information of the other Party in strict confidence and not to use such Confidential Information or discuss or disclose such Confidential Information to any third party. The Parties agree that Confidential Information does not include: (a) information which at the time of disclosure is, or without fault of the recipient becomes, generally available; (b) information which either Party can show was in its possession at the time of disclosure or was independently developed by it; (c) information received from a third party which had the right to transmit same without violation of any confidentiality agreement with the other party; and (d) information which is required to be disclosed pursuant to court order or by law, or as a result of California law, cannot be deemed confidential. . The provisions set forth in this **Section 8(a)** shall survive the termination or expiration of this Agreement.
- b. TeamDynamix will implement reasonable and appropriate measures for the TeamDynamix network (as determined by TeamDynamix) (the "Security Standards") designed to help Client secure Client content against accidental or unlawful loss, access or disclosure (the "Security Objectives") in accordance with the TeamDynamix Security Standards. TeamDynamix may modify the TeamDynamix Security Standards from time to time, but will continue to provide at least the same level of security as is in place on the Effective Date.
- c. TeamDynamix will not access or use Client content except as necessary to maintain or provide the services under this Agreement, or as necessary to comply with the law or a binding order of a governmental body. TeamDynamix will not (i) disclose Client content to any government or third party, or (ii) move Client content from the TeamDynamix servers; except in each case as necessary to comply with the law or a binding order of a governmental body (such as a subpoena or court order). Unless it would be in violation of a court order or other legal requirement, TeamDynamix will give Client reasonable notice of any legal requirement or order referred to in this Section 8(c), to allow Client to seek a protective order or other appropriate remedy. TeamDynamix will only use personal information and billing information in accordance with its privacy policy, and Client consents to such usage. The privacy policy does not apply to Client content.

9. **Mutual Warranties.** Each Party represents and warrants that (a) it has full power and authority to enter into this Agreement and to perform its obligations and to grant any license(s) contained herein; (b) it has not entered into, and shall not enter into any agreement either written or oral in conflict with its obligations under this Agreement; and (c) its performance under this Agreement and/or any Exhibit executed hereunder does not and shall not violate any applicable law, rule, or regulation.

10. **Representations.** TeamDynamix warrants that it owns all right, title and interest in all material and applications used to provide the services under this Agreement or has the authority to license all material or applications to Client and further warrants that such material and applications will not infringe upon the intellectual property rights of any third party.

11. **Disclaimer of Warranties.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN **SECTIONS 9 AND 10**, ALL SERVICES AND TEAMDYNAMIX MATERIALS ARE PROVIDED "AS IS" AND TEAMDYNAMIX HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND TEAMDYNAMIX SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, TEAMDYNAMIX MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR TEAMDYNAMIX MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CLIENT'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR-FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN CLIENT AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

12. **Client Conduct and Obligations.**

- a. Client is responsible for, without limitation, the following: (a) Client's implementation of TeamDynamix Applications or, if applicable, On-Premise software ("Subscription Service"); (b) protecting the names and passwords of the Users to the Subscription Service and preventing and notifying TeamDynamix of unauthorized use of the Subscription Service; and (c) the lawfulness of, and results obtained from, all Client data submitted by Users to the Subscription Service and each such User's acts and omissions.
 - b. Except as otherwise specifically permitted under this Agreement, Client shall not, nor will Client permit any third party to: (i) copy, modify, create derivative works of, distribute, sell, assign, pledge, sublicense, lease, loan, rent, timeshare, deliver or otherwise transfer the Application to any third party in whole or in part provided that Client may utilize TeamDynamix's published documentation as needed for use by its Users; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to reverse engineer or discover the source code or underlying ideas or algorithms of the Applications; (iii) reverse engineer, decompile, disassemble, or translate the Applications or any part thereof; (iv) transfer any of the Applications components to any other person, entity, computer, computer network, or other device; (v) upload, post, mail, publish, transmit or distribute in any way the Applications, any component of the Applications or derivative works based thereon; (vi) input, upload, transmit or otherwise provide to or through the Subscription Service, any information or materials that are unlawful or injurious or that contain, transmit or activate any harmful code, viruses, corrupted files or similar items that may damage the Subscription Service or another's computer hardware; or (vii) remove, delete, alter, or obscure any trademarks, copyright or other proprietary notices.
 - c. Client will work with TeamDynamix and provide timely, confidential feedback about product value and performance.
 - d. Client acknowledges that the Applications and the Subscription Service are proprietary to TeamDynamix, and TeamDynamix retains exclusive ownership of the same throughout the world, including all related intellectual property. In order to use the Subscription Service, Client may be required to acquire third party software directly from third party licensors, and the terms and conditions of such licenses are separate and distinct from this Agreement. Additionally, modifications, updates, or customizations made by TeamDynamix to the Subscription Service shall be owned exclusively by TeamDynamix, and Client shall receive or possess no right, title, or interest in any modifications, updates, or customizations except for its license to use the Subscription Service as expressed herein.
 - e. TeamDynamix may issue to Client or may authorize a Client administrator to issue, a password for each User to use Client's account for which Client has paid the applicable fees to TeamDynamix. Client is responsible for maintaining the confidentiality of all user names and passwords and for ensuring that each user name and password is used only by an authorized User. Client is solely responsible for any and all usage of the Applications through the use of names and passwords. Client agrees to promptly notify TeamDynamix of any unauthorized use of Client's account or any other breach of security suspected or known by Client. TeamDynamix shall have no liability for any loss or damage arising from Client's failure to comply with these requirements.
 - f. Client hereby irrevocably grants all such rights and permissions in or related to Client data to TeamDynamix as are necessary or useful to perform the services contemplated by the Subscription Service and as necessary for TeamDynamix to enforce its rights under this Agreement.
 - g. Client will not knowingly transfer any protected health information (as defined under the Health Insurance Portability and Accountability Act ("HIPAA")) or confidential information under the Family Education Rights Privacy Act ("FERPA") to TeamDynamix without the prior written consent of TeamDynamix. If the activities under this Agreement render TeamDynamix a Business Associate under HIPAA, Client shall execute TeamDynamix's standard Business Associate Agreement. TeamDynamix disclaims all liability for breaches under HIPAA, FERPA, or the promulgated regulations thereunder if such breaches were caused in any way by Client, or Client's employees, agents, officers, or directors.
13. **Data Retention; Data Recovery Services.** TeamDynamix maintains at least seven (7) consecutive calendar days of deleted data. Data recovery services may be purchased by Client and, if purchased, will be billed to Client at standard hourly rates. TeamDynamix expressly disclaims any obligation to maintain deleted data beyond the scope set forth in this **Section 13**, including any obligation to maintain deleted data beyond seven (7) consecutive calendar days.

14. Defaults.

- a. In the event either Party defaults in the performance of any of the material terms of this Agreement, the non-defaulting Party may notify the defaulting Party in writing and allow that Party a reasonable opportunity to cure said default, such opportunity not to be less than thirty (30) calendar days. If said default is not remedied within such cure period, the non-defaulting Party shall then have the right to terminate this Agreement immediately in accordance with this **Section 15(a)** and this **Section 14**.
- b. For purposes of this Agreement, a default shall have occurred with respect to TeamDynamix if TeamDynamix fails to fully and timely perform or comply with any material term or condition of this Agreement. A default shall have occurred with respect to either Party if such party (i) ceases to do business as a going concern, (ii) makes a general assignment for the benefit of creditors, (iii) files for insolvency, bankruptcy, or seeks to enter receivership, (iv) authorizes, applies for, consents to, or has proceedings commenced against it to appoint a trustee or liquidator for all or a substantial part of its assets which is not resolved within (30) days of such commencement, or (v) violates the confidentiality provisions of this Agreement set forth in **Section 8(a)** hereof.

15. Mutual Termination Rights; Termination by Client; Effect of Termination.

- a. Any Party may terminate this Agreement upon an uncured default of the other Party to this Agreement as set forth and in accordance with **Section 14** of this Agreement.
- b. Intentionally Omitted.
- c. A termination of this Agreement shall not, with respect to the terminated services, release either Party from those provisions hereunder regarding confidentiality (**Section 8(a)**), warranties (**Sections 9 and 10**), indemnification (**Sections 16-18**), and limitation on liability (**Section 19**), which shall remain binding upon a Party until expressly released in writing by the other Party. In the event of termination, TeamDynamix agrees to provide access for two (2) client resources via existing TeamDynamix user accounts to manually download through existing export and download capabilities Client intellectual property stored on TeamDynamix host systems for 30 days beginning on the date of termination. In the event that Client requires a complete back-up of the data stored on TeamDynamix's host systems, TeamDynamix will provide a MS SQL server back up and remit a back up to Client, or if a more limited request is made, TeamDynamix will provide data pursuant to a SQL query in a delimited format. TeamDynamix will purge all Client data stored on TeamDynamix's host systems during the first available maintenance window after 30 days from the effective date of termination or expiration.
- d. If Client terminates this Agreement pursuant to **Section 15(a)**, Client will be relieved of any obligation to pay any fees pursuant to **Section 5** attributable to the period after the effective date of such termination (and TeamDynamix shall refund to Client any fees paid in advance for services that TeamDynamix has not performed as of the effective date of termination (on a pro-rata basis)).
- e. In the event that funds sufficient to pay the license fees hereunder are not appropriated for Client's use by Client's legislative body, Client may terminate this Agreement without penalty.

16. Mutual Indemnification. Each Party agrees to indemnify, defend and hold harmless the other Party and its employees, officers, directors, subsidiaries, agents, and permitted successors and assigns from and all claims, damages, liabilities, deficiencies, actions, losses, judgments, settlements, penalties, fines, costs and expenses resulting from the indemnifying Party's (or its employees, officers, directors, subsidiaries, and agents) gross negligence or willful misconduct, claims for bodily injury, or fraud.

17. TeamDynamix IP Indemnity. Subject to the other provisions of this Agreement, TeamDynamix agrees that it will indemnify, defend and hold harmless Client and its employees, officers, directors, subsidiaries, agents, and permitted successors and assigns (each, a "Client Indemnitee") from any and all claims, damages, liabilities, deficiencies, actions, losses, judgments, settlements, penalties, fines, costs and expenses of every nature (including reasonable attorney's fees and the costs of enforcing this Agreement and pursuing any insurance providers) by such Client Indemnitee arising

out of, resulting from, or attributable to any claim by a third party related to any claim that the Subscription Service or Applications infringe any third party's United States patent, copyright, trademark or trade secret rights; provided, however that TeamDynamix shall have no liability under this Agreement for claims of infringement based on (i) modifications, adaptations or changes to the Applications not made by TeamDynamix, (ii) the use or incorporation of Client data in conjunction with the Applications that is the primary cause of the liability.

18. **Client IP Indemnity.** Subject to the other provisions of this Agreement, Client agrees to indemnify, defend and hold harmless TeamDynamix and its employees, officers, directors, subsidiaries, agents, and permitted successors and assigns (each, a "TeamDynamix Indemnitee") from any and all claims, damages, liabilities, deficiencies, actions, losses, judgments, settlements, penalties, fines, costs and expenses of every nature (including reasonable attorney's fees and the costs of enforcing this Agreement and pursuing any insurance providers) incurred by such TeamDynamix Indemnitee arising out of, resulting from, or attributable to any claim by a third party related to any Client data or any unauthorized modification of the Applications, including any claims for intellectual property infringement therefrom.

19. **Limitation of Liability.**

a. To the extent permitted by law, the total, cumulative liability of each Party arising out of or related to this agreement or the services provided hereunder, whether based upon contract, in tort or any other legal or equitable theory, including those related to privacy law, shall be limited to the twelve month subscription amount paid by Client for the service giving rise to the claim during the twelve (12) month period preceding the first event giving rise to the liability. The existence of more than one claim shall not enlarge this limit. The foregoing limitation of liability shall not apply to: (i) bodily injury or death; and (ii) Client's obligation to pay amounts owed for services provided hereunder.

b. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF INCLUDING BUT NOT LIMITED TO LOSS OF DATA OR INFORMATION OF ANY KIND, LOST PROFITS, LOST BUSINESS REVENUE OR FAILURE TO REALIZE EXPECTED SAVINGS AND REGARDLESS OF WHETHER ANY CLAIM FOR SUCH RECOVERY IS BASED UPON THEORIES OF CONTRACT, NEGLIGENCE OR TORT (INCLUDING STRICT LIABILITY). EACH PARTY HEREBY WAIVES, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, ANY AND ALL CLAIMS FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

20. **Independent Contractors.** The relationship between the Parties created by this Agreement is that of independent contractors and not partners, joint venturers, agents, or employees. Each Party may engage in and possess other business ventures and sale/lease relationships that are competitive with the Applications that are licensed under this Agreement.

21. **Governing Law.** This Agreement will be construed as having been made in, and will be governed in accordance with, the laws of the State of California, excluding any applicable conflict or choice of law provisions. Each party hereby consents to the jurisdiction of the Superior Court of the County of Riverside, California.


22. **Force Majeure.** No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected Party's reasonable control, including without limitation: strikes, lock-outs, or other industrial disputes (whether involving its own workforce or a third party's), trespassing, sabotage, theft or other criminal acts, failure of energy sources or transport network, acts of god, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, explosions, collapse of building structures, fires, floods, storms, earthquakes, epidemics or similar events, natural disasters or extreme adverse weather conditions (each a "Force Majeure Event"). The Party suffering a Force Majeure Event shall (a) notify the other Party of the Force Majeure Event as soon as possible and (b) use reasonable efforts to mitigate the effects of such Force Majeure Event.

23. **Entire Agreement.** This Agreement, including all Exhibits hereto, constitutes the entire agreement of the Parties hereto and supersedes all prior agreements, negotiations, representations, proposals, discussions, and communications, whether oral or in writing, relating to its subject matter.

24. **Modification/Waiver; Severability; Interpretation.** No modification of this Agreement or an Exhibit, and no waiver of any breach of this Agreement or Exhibit will be effective unless in writing and signed by an authorized representative of the Party against whom enforcement is sought. No waiver of a breach of this Agreement or any Exhibit or the failure of either Party to exercise in any respect any right provided for under this Agreement shall be construed a waiver of any subsequent breach of this Agreement or any Exhibit. No course of dealing between the Parties shall be construed as a waiver of any breach of this Agreement or any Exhibit. The provisions of this Agreement and the Exhibits are severable. If any provision of this Agreement and the Exhibits is held to be invalid, illegal, or unenforceable, the validity, legality or enforceability of the remaining provisos will in no way be affected or impaired thereby. Each Party acknowledges that this Agreement has been the subject of active and complete negotiations, and that this Agreement should not be interpreted or construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement. Section headings are provided for convenience only and are not to be used to construe or interpret this Agreement. Whenever the words "include" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation."
25. **No Third-Party Beneficiaries.** There are no intended third-party beneficiaries under this Agreement.
26. **Intentionally Omitted.**
27. **Identification of Client Relationship.** Client grants to TeamDynamix the right to identify Client in TeamDynamix's published list of customers. TeamDynamix will follow guidelines prescribed by Client in using Client's name, trademarks, or logos, as applicable.
28. **Counterparts.** Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g., pdf or similar format) are true and valid signatures for all purposes hereunder and shall bind the Parties to the same extent as that of an original signature. Any such facsimile or electronic mail transmission shall constitute the final agreement of the Parties and conclusive proof of such agreement. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.
29. **Authorized Contract Participation.** In accordance with the Client's Rules Governing Procurement of Goods, Services, Insurance and Cooperative Procurement, it is the intent of this solicitation to allow any public body, public or private health or educational institutions, or Client's affiliated agencies and/or corporations, access and use of any subsequent contract(s), as authorized by TeamDynamix, provided such entities are located within the same state or territory as Client's principal place of business.

Participation in this cooperative procurement is strictly voluntary. If authorized by TeamDynamix, any resultant contract(s) may be extended to the entities as indicated above to purchase at then-current contract prices in accordance with contract terms and conditions. TeamDynamix shall notify Client in writing of any entities accessing the contract. No modification of this contract or execution of a separate contract is required to participate, unless an amendment to the material terms of this contract is made. Participating entities shall place their own orders directly with TeamDynamix, and shall fully and independently administer their use of the contract(s), including contractual disputes, invoicing and payments, without direct administration from Client. Client shall not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by TeamDynamix to extend participation and use of the contract. It is understood and agreed that Client is not responsible for the acts or omissions of any other entity participating in this cooperative procurement, and will not be considered in default of such new contract no matter the circumstances.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives, on the date and year first above written.

TeamDyn DocuSigned by: 

Signature *Ken Benvenuto*
95EE8856FE894E1...

Print Ken Benvenuto

Title CEO

Date 4/28/2020

City of Riverside, California


Signature _____

Print _____

Title _____

Date _____

Approved as to form



Senior Deputy City Attorney