

SOFTWARE AND SUPPORT SUBSCRIPTION AGREEMENT

GOVQA, LLC

(Public Records Request Management Software)

THIS SOFTWARE AND SUPPORT SUBSCRIPTION AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (“Effective Date”), by and between the CITY OF RIVERSIDE (“City”), a California charter city and municipal corporation and GovQA, LLC, a Delaware limited liability company authorized to do business in California (“Consultant”).

1. **Scope of Services.** City agrees to retain and does hereby retain Consultant and Consultant agrees to provide the services more particularly described in Exhibit “A,” “Scope of Services” (“Services”), attached hereto and incorporated herein by reference, in conjunction with Public Records Request Management Software (“Project”).

2. **Term.** This Agreement shall be effective on September 1, 2021, and shall remain in effect until August 31, 2024, unless otherwise terminated pursuant to the provisions herein. This Agreement can be extended up to and including three (3) additional 1-year periods upon expiration of the initial term.

3. **Compensation/Payment.** Consultant shall perform the Services under this Agreement for annual payments as follows:

Year 1	\$21,574
Year 2	\$22,221
Year 3	\$22,888
Extension years:	
Year 4	\$23,574
Year 5	\$24,282
Year 6	\$25,010

Said payment shall be made annually on or before the anniversary of the Effective Date.

4. **Notices.** Any notices required to be given, hereunder shall be in writing and shall be personally served or given by mail. Any notice given by mail shall be deemed given when deposited in the United States Mail, certified and postage prepaid, addressed to the party to be served as follows:

To City

Innovation & Technology Department  
City of Riverside  
Attn: Angela Morales  
3900 Main Street  
Riverside, CA 92522

To Consultant

GOVQA, LLC  
Attn: Marissa Ferenc  
9014 Heritage Pkwy., Suite 308  
Woodridge, IL 60517

5. **Prevailing Wage.** If applicable, Consultant and all subcontractors are required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under Section 1720 et seq. of the California Labor Code and implemented by Resolution No. 13346 of the City Council of the City of Riverside. The Director's determination is available on-line at [www.dir.ca.gov/dlsr/DPreWageDetermination.htm](http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm) and is referred to and made a part hereof; the wage rates therein ascertained, determined, and specified are referred to and made a part hereof as though fully set forth herein.

6. **Contract Administration.** A designee of the City will be appointed in writing by the City Manager or Department Director to administer this Agreement on behalf of City and shall be referred to herein as Contract Administrator.

7. **Standard of Performance.** While performing the Services, Consultant shall exercise the reasonable professional care and skill customarily exercised by reputable members of Consultant's profession practicing in the Metropolitan Southern California Area, and shall use reasonable diligence and best judgment while exercising its professional skill and expertise.

8. **Personnel.** In performing the Services, Consultant will use only qualified personnel with suitable experience levels.

The Parties agree that Consultant personnel will not be considered employees of City and will not be entitled to any of the rights, benefits or privileges arising from an employment relationship with City. Consultant expressly acknowledges that it is an independent contractor of City and no agency, partnership or employment relationship is intended or created by this Agreement between Consultant and City.

9. **Assignment and Subcontracting.** Neither party shall assign any right, interest, or obligation in or under this Agreement to any other entity without prior written consent of the other party. In any event, no assignment shall be made unless the assignee expressly assumes the obligations of assignor under this Agreement, in a writing satisfactory to the parties. Consultant acknowledges that any assignment may, at the City's sole discretion, require City Manager and/or City Council approval. Consultant shall not subcontract any portion of the work required by this Agreement without prior written approval by the responsible City Contract Administrator. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including without limitation, the insurance obligations set forth in Section 12. The Consultant acknowledges and agrees that the City is an intended beneficiary of any work performed by any subcontractor for purposes of establishing a duty of care between any subcontractor and the City.

10. **Independent Contractor.** In the performance of this Agreement, Consultant, and Consultant's employees, subcontractors and agents, shall act in an independent capacity as independent contractors, and not as officers or employees of the City of Riverside. Consultant acknowledges and agrees that the City has no obligation to pay or withhold state or federal taxes or to provide workers' compensation or unemployment insurance to Consultant, or to Consultant's

employees, subcontractors and agents. Consultant, as an independent contractor, shall be responsible for any and all taxes that apply to Consultant as an employer.

11. **Indemnification/Defense Obligation.** Except for City's sole negligence or willful misconduct, Consultant shall indemnify and hold City and City's officers and employees harmless from all damages, costs and expenses, including attorneys' fees, in law or equity, including damage to property or personal injury, including death, that may arise or be incurred due to intentional or negligent acts, errors or omissions of Consultant or any of Consultant's employees, substitute consultants or agents committed while rendering services pursuant to this Agreement. The parties expressly agree that any payment, attorney fee, cost or expense City incurs or makes to or on behalf of an injured City employee under City's self-administered Workers' Compensation program are included as a loss, expense or cost for the purposes of this paragraph. The provisions of this paragraph shall survive the expiration or early termination of this Agreement.

Consultant agrees, at its cost and expense, to promptly defend the City, and the City's employees, officers, managers, agents and council members (collectively the "Parties to be Defended") from and against any and all claims, allegations, lawsuits, arbitration proceedings, administrative proceedings, regulatory proceedings, or other legal proceedings which arise out of, or relate to, or are in any way connected with: 1) the Services, work, activities, operations, or duties of the Consultant, or of anyone employed by or working under the Consultant, or 2) any breach of the Agreement by the Consultant. This duty to defend shall apply whether or not such claims, allegations, lawsuits or proceedings have merit or are meritless, or which involve claims or allegations that any or all of the Parties to be Defended were actively, passively, or concurrently negligent, or which otherwise assert that the Parties to be Defended are responsible, in whole or in part, for any loss, damage or injury. Consultant agrees to provide this defense immediately upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel acceptable to City. This obligation to defend as set forth herein is binding on the successors, assigns and heirs of Consultant and shall survive the termination of Consultant's Services under this Agreement.

Neither the City nor Consultant, its partners, principals, and employees shall be liable for more than the eight (8) times the total value of this Agreement for any actions, damages, claims, liabilities, costs expenses, or losses in any way arise out of or relating to the delivery of the services provided hereunder. In no event shall the City, or Consultant, its partners, principals, or employees be liable for indirect, incidental, consequential, special, punitive, or exemplary damages, costs, expenses or losses. The provisions of this paragraph shall apply regardless of the form of action, whether in contract, statute, tort (including without limitation negligence) or otherwise.

12. **Errors and Omissions Insurance.** Prior to City's execution of this Agreement, Consultant shall obtain, and shall thereafter maintain during the term of this Agreement, errors and omissions professional liability insurance in the minimum amount of \$1,000,000 to protect the City from claims resulting from the Consultant's activities.

13. **Business Tax.** Consultant understands that the Services performed under this Agreement constitutes doing business in the City of Riverside, and Consultant agrees that Consultant will register for and pay a business tax pursuant to Chapter 5.04 of the Riverside Municipal Code and keep such tax certificate current during the term of this Agreement.

14. **Time of Essence.** Time is of the essence for each and every provision of this Agreement.

15. **City's Right to Employ Other Consultants.** City reserves the right to employ other Consultants in connection with the Project. If the City is required to employ another consultant to complete Consultant's work, due to the failure of the Consultant to perform, or due to the breach of any of the provisions of this Agreement, the City reserves the right to seek reimbursement from Consultant.

16. **Accounting Records.** Consultant shall maintain complete and accurate records with respect to costs incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

17. **Confidential and Proprietary Information.**

17.1 Each Party will hold in confidence, and will not disclose to any unauthorized personnel, any confidential or proprietary information of the other Party. Each Party will use such confidential or proprietary information only for the purpose for which it was disclosed.

17.2 As used in this Agreement, the term "confidential or proprietary information" means all trade secrets or proprietary information designated as such in writing by one Party to the other. All software code in source or object format shall be deemed to be proprietary information whether it is marked as such or not. Information which is orally or visually disclosed by one Party to the other, or is disclosed in writing without an appropriate letter, proprietary stamp or legend, will constitute proprietary information of the releasing Party if:

17.2.1 It would be apparent to a reasonable person, familiar with the business of the releasing Party and the industry in which it operates, that such information is of a confidential or proprietary nature; or

17.2.2 The releasing Party, within thirty (30) calendar days after such disclosure, delivers to the receiving Party a written document describing such information and referencing the place and date of such oral, visual, or written disclosure, and the names of receiving Party personnel to whom such disclosure was made.

17.3 Each Party will only disclose confidential or proprietary information received by it under this Agreement to personnel who have a need to know such confidential or proprietary

information for the performance of its duties and who are bound by an agreement to protect the confidentiality of such confidential or proprietary information.

17.4 Each Party will adopt and maintain programs and procedures which are reasonably calculated to protect confidential or proprietary information, and will be responsible to the other Party for any disclosure or misuse of confidential or proprietary information which results from a failure to comply with this provision. Each Party will promptly report to the other Party any actual or suspected violation of the terms of this Agreement and will take all reasonable further steps requested by the offended Party to prevent, control, or remedy any such violation.

17.5 The obligations of each Party specified above will not apply with respect to any confidential or proprietary information, if the receiving Party can demonstrate, by reasonable evidence, that such confidential or proprietary information:

17.5.1 was generally known to the public at the time of disclosure or becomes generally known through no wrongful act on the part of the receiving Party;

17.5.2 was already in the possession of the receiving Party at the time of disclosure;

17.5.3 becomes known to the receiving Party through disclosure by sources having the legal right to disclose such confidential information;

17.5.4 was independently developed by the receiving Party without reference to, or reliance upon, the confidential information; or

17.5.5 was required to be disclosed by the receiving Party to comply with applicable laws or governmental regulations, provided that the receiving Party provides prompt written notice of such disclosure to the offended Party and takes reasonable and lawful actions to avoid and/or minimize the extent of such disclosure.

17.6 If City is subject to freedom of information legislation, Consultant agrees to adhere to the standards outlined in such legislation regarding protection of privacy and disclosure of records with respect to all work done for City pursuant to this Agreement.

17.7 Upon termination of this Agreement, each Party will make all reasonable efforts to return to the other Party all tangible manifestations, and all copies thereof, of confidential or proprietary information received by the other Party under this Agreement, if requested to do so by the disclosing Party.

## **18. Ownership of Intellectual Property**

Consultant has exclusive licensing and distribution rights for GovQA software within the United States of America. To the knowledge of Consultant, having made reasonable commercial attempts, GovQA software does not infringe on any copyrights, trademarks, or patents. City will not remove any ownership or copyright notices from GovQA software or documentation.

Reproduction, disassembly, decompilation, transfer, reverse engineering, or disclosure to others, in whole or in part, of GovQA is strictly prohibited.

Consultant is, and will remain, the exclusive owner, or is the authorized agent of the owner of GovQA Public Records Request Management Software proprietary information, and all patent, copyright, trade secret, trademark, and other intellectual property rights remain solely with Consultant. No license or conveyance of any such rights to City is granted or implied under this Agreement.

City is deemed to own any Site-Specific Configuration for their Public Records Request Management Software installation. City grants Consultant a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to use, reproduce, sublicense, modify, and sell the Site-Specific Configuration developed pursuant to this Agreement without compensation to City.

City may not sell, rent, lease, give, distribute, assign, pledge, sublicense, loan, timeshare, or otherwise transfer GovQA software to any other party. City will not copy, resell or give GovQA configurations or documentation to any other party. City agrees not to distribute GovQA Public Records Request Management Software as part of any other software product, commercial or otherwise, without the prior written approval of Consultant.

City will retain sole and complete ownership of its data at all times, regardless of the location of the data, and Consultant may not make any use of City data other than for testing purposes, without the prior written consent of City. This provision shall survive the expiration or termination of this Agreement.

19. **Copyrights.** Consultant agrees that any work prepared for City which is eligible for copyright protection in the United States or elsewhere shall be a work made for hire. If any such work is deemed for any reason not to be a work made for hire, Consultant assigns all right, title and interest in the copyright in such work, and all extensions and renewals thereof, to City, and agrees to provide all assistance reasonably requested by City in the establishment, preservation and enforcement of its copyright in such work, such assistance to be provided at City's expense but without any additional compensation to Consultant. Consultant agrees to waive all moral rights relating to the work developed or produced, including without limitation any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use or subsequent modifications. This provision shall survive the expiration or termination of this Agreement.

20. **Conflict of Interest.** Consultant, for itself and on behalf it's agents and employees, represents and warrants that by the execution of this Agreement, they have no interest, present or contemplated, in the Project affected by the above-described Services. Consultant further warrants that neither Consultant, nor its agents or employees have any real property, business interests or income interests that will be affected by this project or, alternatively, that Consultant will file with the City an affidavit disclosing any such interest.

21. **Solicitation.** Consultant warrants that Consultant has not employed or retained any person or agency to solicit or secure this Agreement, nor has it entered into any agreement or

understanding for a commission, percentage, brokerage, or contingent fee to be paid to secure this Agreement. For breach of this warranty, City shall have the right to terminate this Agreement without liability and pay Consultant only for the value of work Consultant has actually performed, or, in its sole discretion, to deduct from the Agreement price or otherwise recover from Consultant the full amount of such commission, percentage, brokerage or commission fee. The remedies specified in this section shall be in addition to and not in lieu of those remedies otherwise specified in this Agreement.

22. **General Compliance With Laws.** Consultant shall keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Consultant, or in any way affect the performance of services by Consultant pursuant to this Agreement. Consultant shall at all times observe and comply with all such laws, ordinances and regulations, and shall be solely responsible for any failure to comply with all applicable laws, ordinances and regulations. Consultant represents and warrants that Consultant has obtained all necessary licenses to perform the Scope of Services and that such licenses are in good standing. Consultant further represents and warrants that the services provided herein shall conform to all ordinances, policies and practices of the City of Riverside.

23. **Waiver.** No action or failure to act by the City shall constitute a waiver of any right or duty afforded City under this Agreement, nor shall any such action or failure to act constitute approval of or acquiescence in any breach thereunder, except as may be specifically provided in this Agreement or as may be otherwise agreed in writing.

24. **Amendments.** This Agreement may be modified or amended only by a written agreement and/or change order executed by the Consultant and City.

25. **Termination.** City, by notifying Consultant in writing, shall have the right to terminate any or all of Consultant's services and work covered by this Agreement at any time.

25.1 Other than as stated below, City shall give Consultant thirty (30) days prior written notice prior to termination for convenience or nonrenewal.

25.2 City may terminate this Agreement upon fifteen (15) days written notice to Consultant, in the event:

25.2.1 Consultant substantially fails to perform or materially breaches the Agreement; or

25.2.2 City decides to abandon or postpone the Project.

26. **Offsets.** Consultant acknowledges and agrees that with respect to any business tax or penalties thereon, utility charges, invoiced fee or other debt which Consultant owes or may owe to the City, City reserves the right to withhold and offset said amounts from payments or refunds or reimbursements owed by City to Consultant. Notice of such withholding and offset, shall promptly be given to Consultant by City in writing. In the event of a dispute as to the amount owed or whether such amount is owed to the City, City will hold such disputed amount until either the appropriate appeal process has been completed or until the dispute has been resolved.

27. **Successors and Assigns.** This Agreement shall be binding upon City and its successors and assigns, and upon Consultant and its permitted successors and assigns, and shall not be assigned by Consultant, either in whole or in part, except as otherwise provided in paragraph 9 of this Agreement.

28. **Venue.** Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in the Superior Court of California - County of Riverside, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

29. **Nondiscrimination.** During Consultant's performance of this Agreement, Consultant shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, military or veteran status, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, genetic information, gender, gender identity, gender expression, or sexual orientation, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, Consultant agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

30. **Severability.** Each provision, term, condition, covenant and/or restriction, in whole and in part, of this Agreement shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, of this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant and/or restriction of this Agreement, and the remainder of the Agreement shall continue in full force and effect.

31. **Authority.** The individuals executing this Agreement and the instruments referenced herein on behalf of Consultant each represent and warrant that they have the legal power, right and actual authority to bind Consultant to the terms and conditions hereof and thereof.

32. **Entire Agreement.** This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings or agreements of the parties. Neither party has been induced to enter into this Agreement by and neither party is relying on, any representation or warranty outside those expressly set forth in this Agreement.

33. **Interpretation.** City and Consultant acknowledge and agree that this Agreement is the product of mutual arms-length negotiations and accordingly, the rule of construction, which provides that the ambiguities in a document shall be construed against the drafter of that document, shall have no application to the interpretation and enforcement of this Agreement.



33.1 Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of the Agreement or any of its terms. Reference to section numbers, are to sections in the Agreement unless expressly stated otherwise.

33.2 This Agreement shall be governed by and construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement.

33.3 In the event of a conflict between the body of this Agreement and Exhibit "A" - Scope of Services hereto, the terms contained in Exhibit "A" shall be controlling.

34. **Exhibits.** The following exhibits attached hereto are incorporated herein to this Agreement by this reference:

Exhibit "A" - Scope of Services.

IN WITNESS WHEREOF, City and Consultant have caused this Agreement to be duly executed the day and year first above written, and effective September 1, 2021.

CITY OF RIVERSIDE, a California  
charter city and municipal corporation  
a California corporation

GOVQA, a Delaware limited liability  
company authorized to do business in  
California

By: \_\_\_\_\_  
City Manager

By:  \_\_\_\_\_

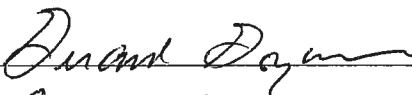
Timothy P. Callahan  
[Printed Name]

Attest: \_\_\_\_\_  
City Clerk

General Manager  
[Title]

Certified as to availability of funds:

By:  \_\_\_\_\_  
Chief Financial Officer/Treasurer

By:  \_\_\_\_\_

GERARD GOZUM  
[Printed Name]  
VP of FINANCE & ADMIN  
[Title]

Approved as to Form:

By:  \_\_\_\_\_  
Deputy City Attorney

**EXHIBIT "A"**

**SCOPE OF SERVICES**

**SOFTWARE AND SUPPORT SUBSCRIPTION**

(Inserted behind this page)



GovQA, LLC.  
 9014 Heritage Pkwy Suite 308  
 Woodridge, IL 60517  
 US

**Vendor ID: Quote #: Q-02676-2 Expiration Date: 10/12/2021**  
**Prepared On: 7/16/2021**

**GovQA Contact:** Marissa Ferenc  
**Phone:** 6306337370  
**Email:** mferenc@govqa.com

**Bill To**  
 Riverside, CA  
 3900 Main Street  
 Riverside, CA 92522

**Ship To**  
 Angela Morales  
 amorales@riversideca.gov  
 Riverside, CA  
 3900 Main Street  
 Riverside, CA 92522

**Start Date:**  
 9/1/2021

**End Date:**  
 8/31/2024

**Billing Term:** Billed Annually for a 12 month subscription term

Annual Software Subscription Services

Product ID	Qty	Item Description	Unit Price	Annual Price
QA1000	1	Exchange Platform with FOIA Module	\$17,912	\$17,912
QA2004	1	ADFS/Single Sign-on Module	\$1,455	\$1,455
QA2007	1	Attachment Search	\$1,967	\$1,967
QA2000	100	Hosted Data Storage (GB) Note: Overage Fees Will Apply	\$0	\$0
QA2000	1	Additional Hosted Data Storage (100GB)	\$240	\$240
<b>Annual Software Subscription Services TOTAL:</b>				<b>\$21,574.00</b>

**Annual Software Subscription Services Year 2 TOTAL:** \$22,221.00

**Annual Software Subscription Services Year 3 TOTAL:** \$22,888.00

**Optional Annual Software Subscription Services Year 4 TOTAL:** \$23,574.00

**Optional Annual Software Subscription Services Year 5 TOTAL:** \$24,282.00

**Optional Annual Software Subscription Services Year 6 TOTAL:** \$25,010.00

- I. **Training and ongoing support included in Renewal Subscription Fees:**
  - A. Ongoing support through system videos and knowledgebase
  - B. Periodic webinars to train and update Customer on new features
  - C. Customer will log ALL ISSUES into the GovQA Support System to receive technical support.