AGREEMENT FOR AN e-PROCUREMENT SOLUTION
BETWEEN THE CITY OF SAN JOSÉ
AND
PURCHASING TECHNOLOGY CORPORATION

This Agreement is entered into as the City's execution date ("Effective Date") between the City of San José, a municipal corporation ("City"), and Purchasing Technology Corporation, a California Corporation (hereinafter "Contractor"). Each of City and Contractor are sometimes hereinafter referred to as a "Party" and collectively as the "Parties."

R E C I T A L S

WHEREAS, City has issued a Request for Proposal ("RFP") to acquire an e-Procurement Solution ("Solution" or "System"), including the online subscription software ("Software") and design, installation, configuration, implementation, technical support, maintenance, hosting, training, and other related services (collectively the "Services"); and

WHEREAS, Contractor has the necessary expertise and skills to provide such Solution and perform such Services, and Contractor's proposal demonstrates Contractor's ability to meet the City's needs; and

WHEREAS, Contractor has a good understanding of City's requirements through Contractor's examination of the Request for Proposal documents and the exchange of information; and

WHEREAS, based on this in-depth understanding and combining it with Contractor's knowledge and expertise with public organizations, Contractor warrants that the proposed Solution will meet the City's specifications and requirements as described in the Scope of Services; and

WHEREAS, the Recitals are true and correct, are binding on the Parties, and are incorporated herein by reference,

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1 AGREEMENT DOCUMENTS
The documents forming the entire Agreement between City and Contractor shall consist of this Agreement including:

Exhibit A-1	-	Scope of Services
A-2	-	Price List
A-3	-	Preliminary Project Implementation Schedule
A-4	-	Payment Card Industry (PCI) Requirements
A-5	-	Privacy and Disclosure Policy
A-6	-	Final System Acceptance Certificate

Exhibit B	-	Compensation and Payment Schedule	
Exhibit C	-	Insurance Requirements	
Exhibit D	-	Change Order Form	
Exhibit E	-	Notice of Option to Extend Agreement	

In the event any discrepancies or inconsistencies between the provisions of this Agreement and the above-referenced documents arise, the provisions of this Agreement shall prevail. The provisions in the Exhibits shall prevail over conflicting terms in any Attachments to the Exhibits. Contractor and City hereby acknowledge that they have drafted and negotiated the Agreement jointly and that the Agreement will be construed neither against nor in favor of either, but rather in accordance with its fair meaning.

This Agreement and the Exhibits set forth above, contain all of the agreements, representations and understandings of the Parties hereto, and supersede and replace any previous understandings, commitments, or agreements, whether oral or written. Any other terms or conditions included in any shrink-wrap or boot-screen license agreements, quotes, invoices, acknowledgments, bills of lading, or other forms utilized or exchanged by the Parties shall not be incorporated in this Agreement or be binding upon the Parties unless the Parties expressly agree in writing or unless otherwise provided for in this Agreement.

2 TERM OF AGREEMENT

2.1 Term
The term of this Agreement is from the Effective Date to September 30, 2023 ("Initial Term"), inclusive, subject to the provisions of Section 13 TERMINATION and subsection 2.2 "Options to Extend."

2.2 Options to Extend
After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for up to seven (7) additional one-year terms ("Option Periods") through September 30, 2030 for ongoing subscriptions, maintenance, technical support, training, and related professional services. City shall provide Contractor written notice in the form of Exhibit E of its intention to extend the Agreement prior to the end of the then current term.

2.3 No Waiver
City's agreement to extend the term of this Agreement is not a waiver of the "time is of the essence" provision in Section 4.

3 SCOPE OF SERVICES

3.1 Scope of Work
Contractor shall implement the Solution and perform the Services as set forth in the Scope of Services (the "Scope of Services" or "Scope) which is attached as Exhibits A-1 through A-5 and incorporated as though fully set forth herein.

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3.2   Notification

Contractor shall notify City promptly of any factor, occurrence, or event coming to its attention that may affect Contractor's ability to meet the requirements of the Agreement, or that is likely to occasion any material delay in completion of the projects contemplated by this Agreement. Such notice shall be given in the event of any loss or reassignment of key employees, threat of strike, or major equipment failure.

3.3   Grant of License to Access and Use Service

Contractor grants City, including all City's authorized users, a non-exclusive, non-assignable, royalty free, and worldwide license to access and use Contractor's e-Procurement Solution via the Internet, and the e-Procurement Solution shall be maintained to perform in accordance with the provisions of this Agreement.

3.4   Privacy and Disclosure Policy

Contractor shall, in the performance of Services and provision of the Solution, comply with the City's Privacy and Disclosure Policy set forth in Exhibit A-5, entitled "Privacy and Disclosure Policy," which is attached hereto and incorporated herein. Contractor shall ensure that all webpages that it creates are consistent with this Policy. Contractor further agrees that it shall treat all information received through this Agreement in strict accordance with the Policy.

4   PRELIMINARY PROJECT IMPLEMENTATION SCHEDULE

Contractor shall perform the Services according to the terms and provisions of the preliminary schedule set out in the attached Exhibit A-3, entitled "Preliminary Project Implementation Schedule." Time is expressly made of the essence with respect to each and every term and provision of this Agreement.

5   DATA AND FACILITIES

Contractor acknowledges that it has in its possession all applicable specifications and drawings, and all other documents to which reference is made herein and/or which are matched hereto, and all such data are adequate to enable Contractor to fairly determine its ability to perform the work called for herein at the price and in accordance with the schedule set forth herein. Contractor represents that it now has or can readily procure, without assistance of City, all facilities, machinery, and equipment necessary for the performance of this Agreement.

6   STANDARDS OF SERVICE

In connection with the performance of any Services pursuant to this Agreement:

6.1   Number of Employees

Contractor warrants it will provide sufficient employees to complete the Services ordered within the applicable time frames established pursuant to this Agreement. Furthermore, Contractor shall, at its expense, supply all tools, equipment, and other materials necessary to perform the Services contemplated in this Agreement.

6.2   Skill of Employees

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Contractor warrants that employees shall have sufficient skill, knowledge, and training to perform Services and that the Services shall be performed in a professional and workmanlike manner.

6.3   Duty of Confidentiality

All data, documents, discussions, or other information developed or received by or for one Party in performance of this Agreement are confidential and must not be disclosed to any person except as authorized by the other Party, or as required by law. The receiving Party warrants that all employees utilized by it in performing Services are under a written obligation to the receiving Party requiring the employee to maintain the confidentiality of information of the other Party to the extent permitted by law.

6.4   Security and Safety

Contractor shall require employees providing Services at a City location to comply with applicable City security and safety regulations and policies. City may require each employee providing Services to undergo a background investigation, including, but not limited to a criminal records and fingerprint check. Contractor shall promptly replace any employee found to be unacceptable to City, in its sole discretion, on the basis of a significant infraction found in the background investigation.

6.5   Contractor's Obligations to Employees

Contractor shall provide for and pay the compensation of its employees and shall pay all taxes, contributions, and benefits (such as, but not limited to, workers' compensation benefits) which an employer is required to pay relating to the employment of employees. City shall not be liable to Contractor or to any employee for Contractor's failure to perform its compensation, benefit, or tax obligations. Contractor shall indemnify, defend and hold City harmless from and against all such taxes, contributions and benefits and will comply with all associated governmental regulations, including the filing of all necessary reports and returns.

6.6   Replacement of Employees

During the course of performance of Services, City may request replacement of an employee or a proposed employee, provided there is reasonable cause. In such event, Contractor shall, within five (5) working days of receipt of such request from City, provide a substitute employee of sufficient skill, knowledge, and training to perform the applicable Services. If, within the first thirty (30) days after an employee's commencement of Services, City notifies Contractor (1) such employee's level of performance is unacceptable, (2) such employee has failed to perform as required, or (3) such employee, in City's sole opinion, lacks the skill, knowledge or training to perform at the required level, then Contractor will be required to review the work performed by said employee, confirm the quality of work, and correct any items the Contractor deems incorrect. If City requests replacement of an employee for the above-referenced reasons after such thirty (30) day time period, or at any time for a reason other than the reasons indicated above, City shall not be required to pay for, and shall be entitled to a refund of, any sums paid to Contractor for such employee's Services after the date of City's requested replacement of such employee.

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7 CHANGE ORDER PROCEDURE AND AUTHORIZATION

7.1 Changes
Any changes to this Agreement after the Effective Date that relate to (i) the deletion of products or Services, (ii) adding additional products or Services, (iii) changing or modifying products or Services, or (iv) making other changes that materially alter the scope of this Agreement or the deliverables required under this Agreement, including approval of all performance and/or payment schedules shall be made by the Director of Finance in accordance with the procedures set forth below.

7.2 Contract Change Requests
Either Party hereto may, from time to time, and at any time during the term hereof request a change, as defined in the above Section. The Party requesting the change is hereinafter referred to as the "Requesting Party." Requests for changes shall be in writing and shall be addressed and delivered to the other Party as provided herein. Such writing shall be identified as a "Contract Change Request," shall carry a sequential number for ease of tracking, shall set forth in detail the nature of the change requested and the costs associated therewith, and shall identify the products, Services, deliverables or schedules to be changed.

7.3 Procedures
As soon as practical after receipt by the notified Party of copies of the request, the Parties shall meet as necessary to discuss the change and to ascertain its cost and schedule impacts, if any.

7.4 Change Orders
If the Parties decide to implement a change request, a standard form Change Order ("CO") shall be prepared in a form substantially similar to the form attached hereto as Exhibit D, which CO shall describe the change, delineate the cost, schedule, and other impacts of the change, and include the payment terms for any price increase. Only City's Director of Finance and Contractor's Authorized Representative shall have authority to execute COs to this Agreement. Execution of a CO by City's Director of Finance and Contractor's Authorized Representative shall constitute a modification hereof and shall be binding on both Parties hereto.

8 COMPENSATION

8.1 Contract Maximum
The total contract price in U.S. dollars shall not exceed **One Hundred Ninety-Five Thousand Four Hundred Sixty-Five Dollars ($195,465)** during the Initial Term ("Maximum Compensation"). The terms, rates, and schedule of payment are set forth in the attached Exhibit B, entitled "Compensation and Payment Schedule." Contractor shall submit to City invoices at the completion of each milestone, but no more frequently than monthly, with a breakdown of Services as provided in the attached Exhibit B, entitled "Compensation and Payment Schedule." City will make payments to Contractor within thirty (30) days after

the date of approval of each invoice. City will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a U.S. financial institution.

8.2   Non-Funding

Each payment obligation of City is conditioned upon the availability of state or local government funds which are apportioned or allocated for the payment of such an obligation. If the funds are not allocated and available for the continuance of the function performed by Contractor, the product or Service directly or indirectly involved in the performance of that function may be terminated by City at the end of the period for which funds are available. City shall notify Contractor at the earliest possible time of any products or Services which will or may be affected by a shortage of funds.

No penalty shall accrue for City in the event this provision is exercised, and City shall not be liable for any future payments due or for any damages as a result of termination under this Section. This provision shall not be construed so as to permit City to terminate this Agreement or any products or Services in order to acquire similar products or Services from another party. Contractor shall render any assistance which City may seek in affecting a transfer of any right of City in this Agreement, or any part hereof, that is required of City pursuant to the securing of financing hereunder. Despite the foregoing, the City shall pay Contractor for any Services performed in accordance with this Agreement up to the date of termination.

9   TAXES AND CHARGES

Contractor shall be responsible for payment of all taxes, fees, contributions, or charges applicable to the conduct of Contractor's business.

10 FINAL SYSTEM ACCEPTANCE

Upon final delivery of the System, City and Contractor shall conduct Acceptance Tests. The criteria for the Acceptance Tests shall be mutually agreed upon by the Parties and in accordance with the Scope of Services (Exhibits A-1 through A-5). Final System Acceptance will occur upon successful completion of the Acceptance Tests. When Final System Acceptance occurs, the Parties will memorialize this event by promptly executing a Final System Acceptance Certificate (Exhibit A-6).

If, in the discretion of City, the System does not meet the requirements of the Acceptance Test specifications, City may (1) permit Contractor to repair or replace the System so that the same meets the Acceptance Test specifications in all material respects, all at no additional expense to City, or (2) return the System to Contractor at Contractor's expense and without liability to City, and any amounts paid by City for the System shall be promptly refunded by Contractor to City. All warranties shall become effective and begin to run upon the successful completion of the Acceptance Tests and the date of Final System Acceptance.

Payment for any part or parts of the System or Services provided hereunder, or inspection or testing thereof by City, shall not constitute acceptance or relieve Contractor of its obligations under this Agreement. City may inspect the components of the System when delivered and

reject upon notification to Contractor any and all of the System which does not conform to the Specifications or other requirements of this Agreement. Components of the System which are rejected shall be promptly corrected, repaired, or replaced by Contractor in accordance with Contractor's warranty obligations under this Agreement, such that the System conforms to the warranties, specifications, and other requirements of this Agreement. If City receives components of the System with defects or nonconformities not reasonably apparent on inspection, then City reserves the right to require prompt correction, repair, or replacement by Contractor in accordance with Contractor's warranty obligations under this Agreement following the discovery of such defect or nonconformity.

11 CONTRACTOR REPRESENTATION AND WARRANTIES

11.1   Contractor Responsibility
Contractor understands and accepts full responsibility for all requirements and deliverables defined in this Agreement. Contractor warrants it:

11.1.1 Has read and agrees with the specifications contained in the Scope of Services (Exhibits A-1 through A-5);

11.1.2 Fully understands the facilities, difficulties, and restrictions attending performance of the Services; and

11.1.3 Shall inform City of any unforeseen conditions which will materially affect performance of the work within 45 days of the execution of this Agreement and shall not proceed until written instructions are received from City.

11.2   Authority to Make Agreement
Contractor represents and warrants that Contractor has full right and authority to perform its obligations under this Agreement. City shall be entitled to use the System without disturbance.

11.3   Contractor Agreements with City Employees
Contractor shall not enter into a relationship that may result in a financial conflict of interest with any employee or agent of the City who participated in the making of governmental decisions related to this Agreement.

11.4   Warranty for Services and Software Customizations
Contractor warrants to City that Contractor shall render all Services and software customizations provided under this Agreement with reasonable care and skill and warrants that they will function per the approved business requirements and design under ordinary use and operation in conformance with the specifications and documentation. Additionally, Contractor shall warrant its Services and software customizations for a period of one (1) year after Final System Acceptance ("Warranty Period"). During the Warranty Period, City will notify Contractor if any Services or software customizations do not conform to City's specifications as contained in the Scope of Services (Exhibits A-1 through A-5). Upon

receipt of such notice, Contractor will investigate the warranty claim. If this investigation confirms a valid warranty claim, Contractor shall (at no additional cost to the City) repair the defective Services or software customizations. The one (1) Warranty Period is reset for any repaired or replaced item(s), beginning upon City acceptance of the repaired or replaced item(s). If despite its reasonable efforts, Contractor is unable to provide the City with Services or software customizations in compliance with the foregoing warranty, City may pursue its remedy at law to recover direct damages resulting from the breach of this warranty.

11.5   Warranty for Software
Contractor warrants the Contractor Software for one (1) year from the date of Final System Acceptance in accordance with the terms of this Agreement and the provisions of this Section.

11.6   Operability
Contractor warrants that the Software and any customizations will be delivered to the City malware free and does not contain any timers, counters, or preprogrammed devices that will cause the Software to become erased, inoperable, or incapable of processing in the manner as documented in the contract documents specified.

11.7   Upgrades
Contractor shall maintain the Software to operate on all compatible upgrades of the hardware product line and operating systems used by City.

11.8   New Media
Media upon which any Software or software customizations are delivered to City by Contractor:

11.8.1 Shall be new and free from defects in manufacture and materials;

11.8.2 Shall be manufactured in a good and workmanlike manner using a skilled staff fully qualified to perform their respective duties;

11.8.3 Shall, during the Warranty Period, function properly under ordinary use and operate in conformance with the specifications; and

11.8.4 In the event that media provided by Contractor is found to be defective and cannot be utilized for its intended purpose, Contractor shall replace the defective media as soon as possible. Any delays occasioned by the failure of new media shall not be considered excusable delay.

12 WARRANTY AGAINST INFRINGEMENT
Contractor shall defend and indemnify City of all direct losses, costs, and damages resulting from a determination that the Services, Software, or software customizations supplied to City infringe any third party patent rights, copyrights, or trademarks provided that: (i) City promptly notifies Contractor in writing upon City becoming aware of the existence of any such suit,

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action, proceeding threat; (ii) allows Contractor sole control of the defense and/or settlement thereof; and (iii) provides such reasonable cooperation as Contractor may require. In no event shall City consent to any judgment or decree or do any other act in compromise of any such claim without Contractor's express prior written consent. In no event will Contractor be liable for the payment of any amount agreed to in settlement without Contractor's express consent. In the event that City is enjoined from use of the Services, Software, or software customizations due to a proceeding based upon infringement of patent, copyright or trademark, Contractor shall, at its option, either:

- Modify the infringing item(s) at Contractor's expense, so it becomes non-infringing; or

- Replace the infringing item(s) with equal non-infringing item(s), at Contractor's expense; or

- Procure, at Contractor's expense, the necessary licenses for the City to continue using the item(s); or

- Remove the item(s) and refund the purchase price less a reasonable amount for depreciation.

13 TERMINATION

13.1   Termination for Convenience
City shall have the right to terminate this Agreement, without cause, by giving not less than thirty (30) days' written notice of termination.

13.2   Termination for Default
If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.

13.3   Termination Authority
The Director of Finance ("Director") is empowered to terminate this Agreement on behalf of City.

13.4   Consequences of Termination
In the event of termination, Contractor shall:
13.4.1 deliver to City copies of all reports, documents, and other work performed by Contractor under this Agreement;
13.4.2 shall provide to City copies of City's Data in a format and by a delivery method acceptable to City; and
13.4.3 upon confirmation of receipt by City, remove all copies of City Data from Contractor (and Contractor's subcontractor's) systems and provide written verification to the City upon completion.
Upon confirmation that all of the above have occurred, the City shall pay Contractor for all outstanding fees for Services performed and reimbursable expenses incurred through the date of termination.

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14 INDEMNIFICATION

Contractor shall defend, indemnify, and hold harmless City, its officers, employees, and agents against any claim, loss, or liability arising out of or resulting in any way from work performed under this Agreement due to the willful or negligent acts (active or passive) or omissions by Contractor's officers, employees, or agents. The acceptance of said Services and duties by City shall not operate as a waiver of such right of indemnification. This provision shall survive the termination of this Agreement.

15 INSURANCE REQUIREMENTS

Contractor shall have and maintain the policies set forth in Exhibit C, entitled "Insurance Requirements," which is attached hereto and incorporated herein. All policies, endorsements, certificates, and/or binders shall be subject to approval by the Risk Manager of the City of San José as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. Contractor shall provide City with a copy of said policies, certificates, and/or endorsements before work commences under this Agreement.

16 WAIVER

Contractor agrees that City's waiver of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver of any other provision or a waiver of any subsequent breach or violation of the same or any other provision. City's acceptance of the performance of any of Contractor's services will not be a waiver of any provision of this Agreement.

17 INDEPENDENT CONTRACTOR

Contractor, in the performance of this Agreement, is an independent contractor. Contractor shall maintain complete control over all of Contractor's employees, any subcontracting subcontractors, and Contractor's operations. Neither Contractor nor any person retained by Contractor may represent, act, or purport to act as the agent, representative or employee of City. Neither Contractor nor City is granted any right or authority to assume or create any obligation on behalf of the other.

18 COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws, ordinances, codes, and regulations (collectively, "laws") of the federal, state, and local governments, including without limitation, any and all laws specified elsewhere in this Agreement.

19 CONFLICT OF INTEREST

Contractor shall avoid all conflicts of interest or the appearance of conflicts of interest in performance of this Agreement.

20 NONDISCRIMINATION

Contractor shall not discriminate against or segregate any person on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national

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origin, marital status, or family status, in connection with or related to the performance of this Agreement.

21 GIFTS

21.1   Prohibition on Gifts
Contractor acknowledges that Chapter 12.08 of the San José Municipal Code prohibits City's officers and designated employees from accepting gifts as defined in Chapter 12.08.

21.2   No Offer
Contractor shall not to offer any City officer or designated employee any gift prohibited by Chapter 12.08.

21.3   Breach of Agreement
Contractor's offer or giving of any gift prohibited by Chapter 12.08 will constitute a material breach of this Agreement. In addition to any other remedies City may have in law or equity, City may terminate this Agreement for such breach as provided in Section 13 TERMINATION of this Agreement.

22 DISQUALIFICATION OF FORMER EMPLOYEES

Contractor is familiar with Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance") relating to the disqualification of City's former officers and employees in matters which are connected with their former duties or official responsibilities. Contractor shall not utilize either directly or indirectly any officer, employee, or agent of Contractor to perform Services under this Agreement, if in the performance of such Services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

23 CONFIDENTIAL INFORMATION

23.1   Confidentiality
All data and information generated, collected, developed, discovered or otherwise saved in the System exclusively for the City (collectively the "Data") by the Contractor in the performance of this Agreement are confidential and must not be disclosed to any person except as authorized by City, or as required by law.

23.2   Ownership of Materials
City and Contractor agree that Contractor shall own the entire right, title, and interest, including patents, copyrights, and other intellectual property rights, in and to all tangible materials, inventions, works of authorship, software, information and data solely conceived and developed by Contractor in the performance of the project, and developed using Contractor's facilities or personnel. City and Contractor agree that City shall own the entire right, title, and interest, including all patents, copyrights, and other intellectual property rights, in and to all tangible materials, inventions, works of authorship, software, information and data solely conceived and developed by City's facilities or personnel. Technology that is jointly developed using both City and Contractor personnel and facilities shall be jointly

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owned.

23.3 Ownership of Data

The City shall maintain ownership and control of the Data throughout the Agreement period and in perpetuity. Contractor shall have the right to use the Data solely to perform Services under the Agreement with the City. Contractor may not use the Data, a subset of the Data, and/or a summary of the Data, or, cause or permit the Data, a subset and/or a summary thereof, to be used by any third party, outside the Scope of this Agreement without the express written consent of the City. If applicable, Contractor shall provide City with a copy of the Data in a mutually agreed upon format at regular intervals and at such additional times as the City deems appropriate. Contractor warrants that throughout all operational and maintenance activities the accuracy of the Data will be preserved.

23.4 Security

Contractor shall maintain effective controls and security to protect the Data, including conducting daily and incremental backups to a redundant data storage location, providing redundant power, internet, site redundancy, and emergency recovery procedures.

23.5 Copies of Data/Exit Strategy

Upon request of the City or in the event this Agreement is terminated, Contractor shall work with the City to ensure a smooth transition of all City Data to the City's new environment. Additionally, upon request by the City, Contractor shall provide City with a database export of City's Data in a format and by a delivery method acceptable to the City. At the termination of this Agreement, all Data at the Contractor's (or Contractor's subcontractor's) facilities shall be purged when the City confirms that it has received a satisfactory copy of the Data. Contractor shall provide written verification to the City once all City Data has been purged.

23.6 Enforcement

The City and Contractor agree that damages are not adequate and no adequate remedy at law exists for any threatened or actual disclosure or use of information by Contractor in violation of the provisions of this Agreement. Accordingly, Contractor consents to the entry of an injunction against threatened or actual disclosure or use of the information in violation of any provision of this Agreement.

24 CONTRACTOR'S BOOKS AND RECORDS

24.1 Maintenance during Term

Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other documents evidencing or relating to charges for services or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor pursuant to this Agreement.

24.2   Maintenance after Term

Contractor shall maintain all documents which demonstrate performance under this Agreement for a minimum period of four (4) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

24.3   Inspection

Any documents required to be maintained pursuant to this Agreement must be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Contractor shall provide copies of such documents to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this Agreement.

24.4   Custody of Records

Where City has reason to believe that any of Contractor's documents relating to this Agreement may be lost or discarded due to dissolution, disbandment, or termination of Contractor's business, City may, by written request by any of the above-named officers, require that custody of the Contractor's documents be given to City and that these documents be maintained in City Hall. City shall grant access to Contractor's documents to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

25 ASSIGNABILITY

The Parties agree that the expertise and experience of Contractor are material considerations for this Agreement. Unless specifically authorized by City, Contractor may not assign the performance of any obligation or interest under this Agreement without the prior written consent of City. Any attempt by Contractor to assign this Agreement in violation of this Section will be voidable at City's sole option.

26 SUBCONTRACTORS

26.1   Authorized Subcontractors

Notwithstanding the ASSIGNABILITY section above, Contractor may use designated subcontractors approved in advance by City in performing Contractor's Services. Contractor must obtain City's prior written consent in order to change or add subcontractors. Contractor shall be responsible for directing the work of the approved subcontractors and for any compensation due to subcontractors. City assumes no responsibility whatsoever concerning such compensation.

26.2   Compliance with Agreement

Contractor shall ensure that Contractor's subcontractors comply with this Agreement. At City's request, Contractor shall require any or all of Contractor's subcontractors to sign an agreement with Contractor requiring compliance with this Agreement.

27 GOVERNING LAW
This Agreement must be construed -- and its performance enforced -- under California law.

28 JURISDICTION AND VENUE
In the event that suit is brought by either Party to this Agreement, the Parties agree that venue must be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

Contractor further agrees that in the event a lawsuit involving this Agreement is filed by City, Contractor will unconditionally accept the jurisdiction of a federal or state court located in Santa Clara County, California.

29 NOTICES
All notices and other communications required or permitted to be given under this Agreement must be in writing and must be personally served, or mailed, postage prepaid via U. S. mail, or sent via courier service, addressed to the respective Parties as follows:

To City:	City of San José
	Attention: Director of Finance
	200 East Santa Clara St., 13th Floor
	San José, CA 95113
To Contractor:	Purchasing Technology Corporation
	Attention: Ethan Kim, General Manager
	260 South Los Robles Avenue, Suite 206
	Pasadena, CA 91101

Notice will be effective on the date personally delivered or if sent by courier service, on the date of receipt. If mailed, notice will be effective three (3) days after deposit in the mail. The Parties may change their respective addresses in accordance with the provisions of this Section.

30 MISCELLANEOUS

30.1   Survival of Provisions
If any part of this Agreement is for any reason found to be unenforceable, all other parts nevertheless remain enforceable.

30.2   Assignment
Subject to the provisions of ASSIGNABILITY, this Agreement binds and inures to the benefit of the Parties and their respective successors and assigns.

30.3   Headings
The headings of the sections and exhibits of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and are not to be used in its construction.

30.4   Authority of City Manager
Where this Agreement requires or permits City to act and no officer of the City is specified, City's Manager or the designated representative of City's Manager has the authority to act on City's behalf.

City of San José
a municipal corporation

Purchasing Technology Corporation
a California corporation

By_____

By_____

Vickie J. Davis

Jungho Yoon

Information Technology Procurement Manager

President and CEO

Date: _____

Date: _____

By_____

Susan Yoon

APPROVED AS TO FORM:

VP of Administration

Date: _____

_____
Senior Deputy City Attorney

Agreement for an e-Procurement Solution   Page 15 of 39
T-35746-18/1546364
Agenda: 08-21-18
Item: 2.10a
DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT A-1
SCOPE OF SERVICES

The following Scope of Services defines the principal activities and responsibilities of Contractor and the City for the implementation of an e-Procurement System.

1 **PROJECT BACKGROUND AND INTRODUCTION**

    1.1   The City is procuring a turnkey e-Procurement Solution to support the City's e-procurement requirements.

    1.2   To the extent not inconsistent with this Agreement between the City and Contractor, including this Scope of Services, the City's RFP 17-18-11 (including subsequent updates), Contractor's proposal response dated November 30, 2017, Contractor's system demonstration materials dated March 1, 2018, and Contractor's Best and Final Offer (BAFO) response dated March 26, 2018 are hereby incorporated by reference herein and provide context, supplemental information, and are subject to the terms and conditions of this Agreement.

2 **GENERAL SYSTEM REQUIREMENTS**

Contractor shall provide to City an e-Procurement Solution that meets the following requirements:

    2.1   Software as a Service (SaaS) with no requirement for City-owned hardware or locally-installed software other than a client system running a standard web browser.

    2.2   Unlimited subscriptions for City users.

    2.3   Unlimited subscriptions for evaluators (including internal City staff as well as external evaluators).

    2.4   Unlimited solicitations, files/attachments, file sizes, and data storage.

    2.5   Storage of City Data must be on servers physically located in the United States or Canada, and Contractor shall preserve the integrity, security, and availability of the City Data.

    2.6   Browser agnostic – System shall operate on currently supported versions of Microsoft Internet Explorer, Microsoft Edge, Google Chrome, Apple Safari, and Mozilla Firefox, at a minimum.

    2.7   Allows for four independently-administered "instances" of the System for (1) Purchasing, (2) Consulting Services, (3) Construction, and (4) Grants Offered by City/Grantor. The City prefers these "instances" be "departments" within the same portal so that the City presents a cohesive portal for vendors to access in one place, as long as each "department" is still independently administrable.

    2.8   Allows the City to perform all standard solicitation processes, including, but not limited to, Requests for Quotes, Requests for Qualifications, Requests for Bids, Requests for Proposal, and Requests for Information.

    2.9   Allows "branding" to reflect the City's standard look and feel and a customizable public entry page where other informational items about the City's purchasing organization, doing business with the City, a message from the Chief Purchasing Officer, etc. can be posted.

2.10   Solution shall be intuitive and easy to use by vendors with no prior training required.

2.11   All bidding activity must take place in real time and be tracked through a date-time stamped audit log.

2.12   All vendor and solicitation-related activity, including notifications, amendments, submittals, changes, etc. must be tracked with date-time stamps in an audit log.

2.13   Provides ability to "push" notifications of bid opportunities automatically based on vendor's profile and/or City's bid configuration.

2.14   At no time during the term of this Agreement shall the Contractor charge vendors or members of the public to search, view, register for, or participate in City solicitations.

2.15   Ability to make planholders lists (i.e., vendors who have downloaded the bid documents) visible to the public.

2.16   Allows City the choice to (1) publish "private" bids to invited vendors and choose whether or not the bid is visible to the public and (2) publish "public" bids that include a list of suggested vendors that match selected bid classifications (commodity codes).

2.17   Allows City to create and manage a standard document and template library from which to select templates for solicitation creation, evaluation, contracts, etc. and standard attachments such as terms and conditions, insurance requirements, etc.

2.18   Maintains solicitation history for a minimum of 7 years and allows for searching and retrieval of current and past solicitations and solicitation and award documents. Solicitations should be easily searchable based on keyword, author or buyer, commodity code, date range, etc. by City, vendors, and the public.

2.19   Provides City the ability/option to archive historical solicitations at its discretion.

2.20   Allows bidders to respond electronically to City solicitations with the ability to upload/attach documents in a variety of formats such as Adobe pdf, Microsoft Word and Excel files, etc.

2.21   Provides role-based access, security, and dashboards for multiple levels, users, and responsibilities (e.g. administrators, buyers, viewers, evaluators, etc.)

2.22   Allows City to control/modify what information is viewable to vendors and when they are viewable, e.g. show bids after bid is awarded or after the bid ends and before it awarded.

2.23   Provides vendor portal where vendors initiate and maintain their own accounts and profiles.

2.24   Vendor accounts shall have unique usernames and passwords and prevent duplicates, but allow multiple locations and contacts per vendor.

2.25   System shall periodically and automatically notify registered vendors to review and update their profile information.

2.26   Provides City the ability to invite unregistered vendors on an ad-hoc basis to solicitations.

2.27   Allows vendors to attach and update documents such as licenses, certificates, etc. in their vendor profile, including expiration dates and automatic reminders that a given document is about to expire and needs to be updated.

2.28 Includes online question and answer capability so that vendors can submit questions and the City buyer responsible for the solicitation can respond in a real-time format. The responsible buyer shall also be notified by e-mail when a new question has been submitted.

2.29 Automatically updates bid status, e.g. "Open," "Awarded," "Cancelled," etc., and award status, e.g. "In Evaluation," "Recommendation of Award," "BAFO," etc., and provides the ability to add and utilize custom statuses.

2.30 Automatically sends addenda notifications for solicitations.

2.31 Ability to issue the Notice of Intended Award (pre-award notification) and the final award and automatically notify bidders.

2.32 A full complement of vendor, pre-award, and post-award reports, including ad hoc capability for the City to prepare their own reports.

2.33 Ability to export report data and bid information to Microsoft Excel, Microsoft Word, Adobe pdf, or other suitable third party application.

3 **SYSTEM DEPLOYMENT**

3.1 Contractor shall provide all labor, supervision, materials, and equipment necessary to implement, maintain, and support the System.

3.2 Contractor shall designate a dedicated project manager/account manager as the City's primary point of contact.

3.3 Contractor shall work with the City to mass notify and register vendors and shall provide support to vendors throughout the registration process as required.

3.4 Contractor shall conduct an onsite **Project Kickoff Meeting** with the City at the City's designated facility to:

    3.4.1 Introduce members of the project team, including qualifications, project roles, and responsibilities.

    3.4.2 Discuss the Solution at a high level.

    3.4.3 Deliver and discuss Preliminary Project Implementation Schedule (Exhibit A-3), which will be in a critical path format so that the timeline and milestones can be clearly identified and measured.

    3.4.4 Discuss and define implementation and any applicable notice to proceed procedures.

    3.4.5 Define processes for tracking project status.

    3.4.6 Define change control procedures.

    3.4.7 Define the deliverable review process.

    3.4.8 Determine the format and protocol for periodic, ongoing meetings, reports, and communications.

    3.4.9 Define lines of communication, reporting relationships, and escalation procedures.

    3.4.10 Identify and discuss high-risk or problem areas and resolution processes.

3.5 **Business Requirements, Processes, and Workflows Map:**

    3.5.1 Contractor shall meet onsite at City facilities with designated City staff to identify, discuss, and develop a map of the City's business requirements, processes, and workflows.

    3.5.2 Contractor shall deliver the final map to the City for approval.

3.5.3 Upon City approval, Contractor shall configure the System to comply with the map.

3.6 **Training:**

3.6.1 Contractor shall provide up to 3 days of comprehensive, onsite training based on user roles, e.g. administrators, users, trainers, viewers, evaluators, etc., including training materials, tools, and documentation.

3.6.2 Contractor shall have available on its website training and teaching aids for vendors and the public to facilitate their use of the System.

3.6.3 Contractor shall provide ongoing web-based training as required to educate the City and vendors on any significant software changes, including new versions, upgrades, user interface, and configuration changes.

3.6.4 Contractor shall provide up to 2 days of annual refresher training and process review as required and specified by the City.

4 **GO-LIVE, TESTING, AND FINAL SYSTEM ACCEPTANCE**

4.1 Contractor shall provide an online demonstration of the System to City staff when it is believed the System is ready for go-live. The City will provide System feedback, and when the City agrees that the System is ready for go-live will indicate such in writing to the Contractor.

4.2 Contractor shall provide on-site support for System Go-Live to assist City staff and troubleshoot as required. It is anticipated that end user training will take place the same week.

4.3 The Contractor shall demonstrate that the System meets all requirements as stated in this Scope of Services and as further defined in the resulting business process and workflow map.

4.4 Contractor shall prepare and provide to City a test plan to demonstrate that the City's requirements are met in the implemented System.

4.5 Contractor shall provide guidance to the City during completion of the test plan to ensure that it is done in accordance with Contractor-provided training and documentation.

4.6 Following testing, the City and Contractor shall prepare a punch list of items required to properly complete System configuration and implementation.

4.7 Punch list items shall be completed by the respective Party according to a mutually agreed upon schedule.

4.8 Following completion of all punch list items and City's validation that the System meets its requirements, both Parties will execute a Final System Acceptance Certificate (Exhibit A-6) to memorialize System acceptance.

4.8.1 Upon execution of the Final System Acceptance Certificate, the City shall pay to the Contractor any remaining and approved outstanding invoices and any previously withheld retainage.

5 **TECHNICAL/PERFORMANCE REQUIREMENTS, SUPPORT, AND MAINTENANCE**

5.1 The System shall run in a mission critical environment and operate 24x7x365.

5.2 Contractor shall provide help desk support for the City, vendors, and the public by phone, email, and an online portal during the City's regular business hours which are Monday through Friday from 8:30am to 5:30pm Pacific Time, excluding City

holidays.

5.3   Contractor shall provide technical support in accordance with the following service levels during the City's regular business hours:

Severity	Description	Maximum Response Time*	Target Resolution Time
1	System down or critical functionality severely impaired or not operational	15 minutes	2 hours
2	Major functionality severely impaired but a temporary workaround is available	30 minutes	24 hours
3	Loss of non-critical functionality or partial loss of functionality, but System is still usable	1 hour	5 business days

*This is the maximum time it takes to receive an acknowledgement that the issue has been logged and assigned a case number.

5.4   In the event that a Severity 1 issue results in a loss of data, Contractor's Recovery Point Objective (RPO) shall be a maximum of 30 minutes and the Recovery Time Objective (RTO) shall be a maximum of 4 hours.

5.5   Contractor shall guarantee a minimum of 99.9% uptime, excluding scheduled downtime for maintenance.

5.6   Contractor shall track its uptime and provide City with service level credits as follows in the event that the uptime guarantee is not met:

Availability	Service Level Credit
99.9% or greater	No Service Level Credit
99.5% - 99.8%	5% credit for that month's subscription fee
99.0% - 99.4%	15% credit for that month's subscription fee
98.0% - 98.9%	25% credit for that month's subscription fee
Below 98.0%	35% credit for that month's subscription fee

5.7   Service level credits shall be credited to City on the next invoice issued to City following the month for which the credited is applied.

5.8   Contractor shall use Transport Layer Security (TLS) for communications security, e.g. for registration, login, etc. to ensure privacy and data integrity.

5.9   The Solution shall be Security Assertion Markup Language (SAML) 2.0 compliant to allow Single Sign On (SSO). It is expected that SSO will be part of the implementation plan.

5.10   The Solution shall provide a REST Application Programming Interface (API) to allow City to pull data from the e-Procurement system in various formats (including JSON) for the City's Open Data initiatives.

5.11   Contractor shall comply with the City's Payment Card Industry (PCI) Requirements, Exhibit A-5, if at any time during this Agreement, any System used by the Contractor or the Contractor's Software is used for the purpose of performing services related to storing, processing, or transmitting payment cardholder data.

5.12 The System must authenticate the identity of the responding bidder and ensure that the transmitted information is secure and confidential until the time and date established for opening of the bid.

EXHIBIT A-2
PRICE LIST

	Year 1	Year 2	Year 3	Year 4	Year 5	Total Not to Exceed
1. One-Time Implementation Costs						
All implementation costs, excluding onsite training and travel, provided at no additional cost.	Included					Included
On-Site Training (3 days @ $2,000/day)	$6,000					$6,000
Travel Reimbursement Not to Exceed[1]	10,000					10,000
Subtotal One-Time Implementation Costs	**$16,000**					**$16,000**
2. Annual Recurring Costs						
Subscriptions	$29,000	$29,870	$30,766	$31,689	$32,640	$153,965
On-site "As Needed" Refresher Training (up to 2 days per year as requested and specified by City at $2,000/day)		4,000	4,000	4,000	4,000	16,000
Estimated Travel Reimbursement[1]		2,000	2,250	2,500	2,750	9,500
Subtotal Annual Maintenance & Support	**$29,000**	**$35,870**	**$37,016**	**$38,189**	**$39,390**	**$179,465**
3. MAXIMUM COMPENSATION (Initial 5-Year Term)	$45,000	$35,870	$37,016	$38,189	$39,390	$195,465

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[1] City-approved travel shall be reimbursed based on actual up to the not to exceed amount but is limited to the current Internal Revenue Service (IRS) maximum rates for mileage and per diems according to the federal government, general services schedule for the continental United States.

EXHIBIT A-3
PRELIMINARY PROJECT IMPLEMENTATION SCHEDULE

Implementation of this project will proceed in accordance with the Preliminary Project Implementation Schedule set forth below in Table A1, except as may be modified into a Final Project Implementation Schedule that is approved by the City during project initiation, and shall reflect tasks in the appropriate order with estimated dates and based on elapsed time as approved by the City. The Final Project Implementation Schedule will become the governing project schedule incorporated into the Agreement. The Project Implementation Schedule is based upon work being accomplished Monday through Friday during normal business hours (defined as 8:00am to 5:00pm Pacific Time), with the exception of City holidays.
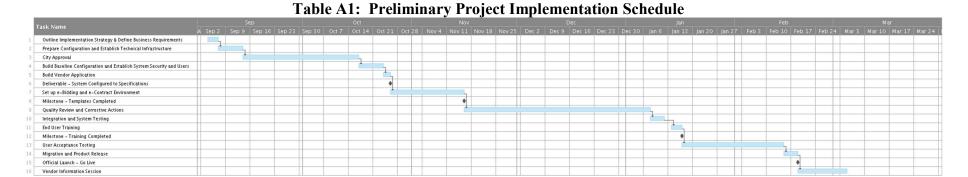
Table A1: Preliminary Project Implementation Schedule

Table A2: Work Breakdown Structure for Solution Implementation

Work Breakdown Structure for Solution Implementation

PHASE		TASK & ACTIVITY			DURATION DAYS	DATES	PARTICIPANTS
1. Analysis	1.1	Outline Implementation Strategy	1.1.1	Outline Implementation Plan	1	9/4/2018	City, PM, BA, SA
	1.2	Business Requirement Definition	1.2.1	Review Requirement	1	9/5/2018	
			1.2.2	Define Requirement	1	9/6/2018	
2. Configuration	2.1	Prepare Detail Configuration	2.1.1	Configure Buyer Landing Page	1	9/7/2018	City, PM, DI
			2.1.2	Configure Document Distribution			
			2.1.3	Configure Commodity Codes	1	9/10/2018	
			2.1.4	Review Vendor List			
			2.1.5	Configure Vendor Application Form			
			2.1.6	Configure Bid Posting Option			
			2.1.7	Configure Standard Items / Spec Codes	1	9/11/2018	
	2.2	Establish Technical Infrastructure	2.2.1	Configure Information Infrastructure	1	9/12/2018	DI, CA
			2.2.2	Configure Business Infrastructure			
	2.3	Finalize Implementation Scope	2.3.1	Finalize Implementation Scope	1	9/13/2018	City, PM, BA
	2.4	City Approval	2.4.1	City Approval to Proceed	22	9/14/18 - 10/16/18	City, PM, BA
3. Implement Environment	3.1	Build Baseline Configuration	3.1.1	Set up Hosting Environment	2	10/17/18 - 10/18/18	DI
			3.1.2	Set up Commodity Codes	1	10/19/2018	City, PM, DI
			3.1.3	Set up Standard Items / Spec Codes	1	10/22/2018	
	3.2	Establish System Security & User	3.2.1	Set up Organization	1	10/23/2018	
			3.2.2	Set up Department			
			3.2.3	Set up Users			
			3.2.4	Set up Roles			
	3.3	Build Vendor Application Form	3.3.1	Develop Vendor Application Form	2	10/24/18 - 10/25/18	
	3.4	Set up e-Bidding and e-Contract Environment	3.4.1	Set up Bid Document and Contract Templates	10	10/26/18 - 11/15/18	City, PM, BA, DI
			3.4.2	Set up Document Category	1	11/16/2018	
			3.4.3	Set up Response Form Template			
			3.4.4	Set up Standard Keyword	2	11/19/18 - 11/20/18	
			3.4.5	Set up Evaluation Criteria (QBE)			
			3.4.6	Set up User Defined Fields / Personal View	1	11/21/2018	
	3.5	Quality Review & Corrective Actions	3.5.1	Review Quality	2	11/26/18 - 11/27/18	City, PM, BA
			3.5.2	Change Issues			
			3.5.3	Power User Training	2	11/28/18 - 11/29/18	
			3.5.4	Power User Process Validation Test	24	11/30/18 - 1/7/19	
4. Training & Testing	4.1	Integration	4.1.1	Integration into web site	1	1/8/2019	DI
			4.1.2	Buyer Landing Page	1	1/9/2019	
	4.2	System Testing	4.2.1	Functionality Testing	1	1/10/2019	PM, BA
			4.2.2	Load Testing	1	1/11/2019	DI, CA
			4.2.3	Fail-Over Testing			
	4.3	End User Training	4.3.1	Bid Publishing Training	1	1/14/2019	City, PM, BA
			4.3.2	R2CoW e-Bidding & Contract Management Training	2	1/15/19 - 1/16/19	
	4.4	User Acceptance Testing	4.4.1	User Acceptance Testing & Approvals	21	1/17/19 - 2/14/19	City, PM, BA
5. Operations	5.1	Production Migration & Vendor Mass Registration / Onboarding	5.1.1	Vendor Data Migration	1	2/15/2019	DI
			5.1.2	Release Production	1	2/18/2019	
			5.1.3	Vendor Information Sessions	10	2/19/19 - 3/4/19	City, PM, BA
	5.2	System Audit	5.2.1	Review Application Log	Ongoing	Ongoing	PM, DI
			5.2.2	Review System Log			
6. Support	6.1	Product Support	6.1.1	Check Lifecycle	Ongoing	Ongoing	PM, DI
	6.2	System Monitoring	6.2.1	System Performance Monitoring			DI
			6.2.2	Availability Monitoring			
	6.3	Q&A	6.3.1	Ensure Scope & Quality of Delivery			City, PM, BA

Contractor represents and warrants that any System used by the Contractor and the Software applications it provides for the purpose of performing services related to storing, processing or transmitting payment cardholder data, at any point during the term of this Agreement shall be secured and certified to meet Payment Card Industry Data Security Standard ("PCI-DSS") and Payment Application Data Security Standard ("PA-DSS") established by the Payment Card Industry Security Standards Council as set forth online at https://www.pcisecuritystandards.org, as may be amended by the PCI Security Standards Council from time to time.

I.   **Performance Standards:** PCI-DSS is a multifaceted security standard comprised of twelve (12) general requirements including requirements for security management, policies, procedures, network architecture, software design and other critical protective measures. The following requirements are designed to build and maintain a secure network; protect cardholder data; ensure the maintenance of vulnerability management programs; implement strong access control measures; regularly monitor and test networks; and ensure the maintenance of information security policies:

    A. **Build and Maintain a Secure Network**
        1. Install and maintain a firewall configuration to protect cardholder data
        2. Do not use vendor-supplied defaults for system passwords and other security parameters

    B. **Protect Cardholder Data**
        1. Protect stored cardholder data using methods such as encryption, truncation, masking, hashing, and any other effective methods of protecting stored data to mitigate potential risks.
        2. Encrypt transmission of cardholder data over open, public networks

    C. **Maintain a Vulnerability Management Program**
        1. Use and regularly update anti-virus software or programs
        2. Develop and maintain secure systems and applications

    D. **Implement Strong Access Control Measures**
        1. Restrict access to cardholder data to ensure critical data can only be accessed by authorized personnel, systems and processes based on the least amount of data and privileges needed to perform a job
        2. Assign a unique identification ("ID") to each person with computer access to maintain accountability and traced actions taken on critical data and systems to known and authorized users
        3. Restrict physical access to cardholder data

    E. **Regularly Monitor and Test Networks**
        1. Track and monitor all access to network resources and cardholder data
        2. Regularly test security systems and processes

F. **Maintain an Information Security Policy**
   1. Maintain a policy that addresses information security for all personnel

II. **Certification:** Contractor shall promptly provide, from time to time at the request of the City, current evidence, in form and substance reasonably satisfactory to City, of compliance with PCI-DSS and PA-DSS, which has been properly certified by an authority recognized by the payment card industry for that purpose. If during the term of this Agreement, Contractor undergoes, or has reason to believe that it will undergo, and adverse change in its certification or compliance status with the PCI-DSS or PA-DSS or other material payment card industry standards, it will promptly notify the City of such circumstances.

III. **Audit:** Contractor agrees to, at contractors own expense, perform an independent audit of any System used to store, process, or transmit payment cardholder data by an independent third party on a quarterly basis to ensure the System is and continues to satisfy PCI-DSS. At a minimum, the audit shall scan for all known methods used by hackers to access private information, vulnerabilities that would allow malicious software (i.e. viruses and worms) to gain access to or disrupt the network devices.

IV. **Material Breach:** Failure by Contractor to comply with any provision of this Exhibit shall constitute a material breach of this Agreement.

V. **Notifications**: **Should the Contractor have a failure of security protocols such that customer data is compromised, the Contractor shall immediately notify the City.**

EXHIBIT A-5
PRIVACY AND DISCLOSURE POLICY

The purpose of this statement is to define the City of San José's policy with regard to the collection and use of personally identifiable information (PII). PII is any information relating to an identified or identifiable individual who is the subject of the information. Users of the City Web Site should be informed of the following:

The City of San José collects two kinds of customer information: (1) anonymous; (2) personally identifiable information (PII).

1   Anonymous information
This type of information does not identify specific individuals and is automatically transmitted by City browser. This information consists of:

- The URL (Uniform Resource Locator or address) of the web page user previously visited;
- The domain names and/or IP addresses which are numbers that are automatically assigned to City computer whenever user are connected to the Internet or World Wide Web.
- The browser version user are using to access the site.

This information is used to help improve the City's Web Site. None of the information can be linked to an individual.

2   Personally Identifiable Information (PII)
This type of information could include name, address, email address, telephone number, credit/debit card information. The City will make every reasonable effort to protect City privacy. It restricts access to City personal identifiable information to those employees who will respond to City request. The City does not intentionally disclose any personal information about Contractor customers to any third parties or outside the City except as required by law or by the consent of the person providing the information.

The City only collects personally identifiable information that is required to provide service. User can decline to provide us with any personal information. However, if user should choose to withhold requested information, the City may not be able to provide user with the online services dependent upon the collection of that information.

3   Access to Personally Identifiable Information
Access to personally identifiable information in public records at local levels of government in San José is controlled primarily by the California Public Records Act (Government Code Section 6250, et. seq.). Information that is generally available under the Public Records Act may be posted for electronic access through the City's Web Site. While the Public Records Act sets the general policies for access to City records, other sections of the California code as well as federal laws also deal with confidentiality issues.

4   Email addresses

Email addresses obtained through the City's Web Site will not be sold or given to other private companies for marketing purposes. The information collected is subject to the access and confidentiality provisions of the Public Records Act, other applicable sections of the California code as well as Federal laws. Email or other information requests sent to the City Web Site may be maintained in order to respond to the request, forward that request to the appropriate City within the City, communicate updates to the City page that may be of interest to citizens, or to provide the City web designer with valuable customer feedback to assist in improving the site. Individuals can cancel any communications regarding new service updates at any time.

5   Use of "Cookies"

Some City applications use "cookies". A cookie is a small data file that certain web sites write to City hard drive when user visit them. A cookie file can contain information such as a user id that the site uses to track the pages user have visited. But the only personal information a cookie can contain is information supplied by user. A cookie is only a test file and cannot read data off user's hard disk or read cookie files created by other sites. Cookies can track user traffic patterns, recognize users computer's browser when user return, and could provide personalized content without requiring sign-in.

User can refuse cookies by turning them off in user browser. However, they may be required to use some of the web applications on the City's Web Site.

6   Security

The City of San José is committed to data security and the data quality of personally identifiable information that is either available from or collected by the City's Web Site and has taken reasonable precautions to protect such information from loss, misuse, or alteration.

7   Contractual Services for the City's Web Site and On-Line Services

To insure that contractors who have access to or provide contractual services for the City's On-Line (e-government) Services are not allowed to re-sell or in any way share or convey to another party or use it for another purpose any information that they may have access to in the course of doing business for the City; all city contracts regarding such services should contain a requirement that the contractor must comply with the City's Web Site and e-Government policies.

8   Electronic Signatures and Payments

The City of San José is committed to data security and the data quality of personally identifiable information that is either available from or collected by Contractor web site and has taken reasonable precautions to protect such information from loss, misuse, or alteration. When a City application accepts credit cards or any other particularly sensitive information for any of its services, it encrypts all ordering information, such as the customer's name and credit card number, in order to protect its confidentiality.

9   Disclaimer

The City Web Site should contain a disclaimer substantially containing the following information:

9.1   The City of San José is neither responsible nor liable for any delays, inaccuracies, errors or omissions arising out of user's use of the City's Web Site or with respect to the material contained on the Site, including without limitation, any material posted on the Site nor for any viruses or other contamination of user's system. The City Web Site and all materials contained on it are distributed and transmitted "as is" without warranties of any kind, either express or implied, including without limitations, warranties of title or implied warranties of merchantability or fitness for a particular purpose. The City of San José is not responsible for any special, indirect, incidental or consequential damages that may arise from the use of, or the inability to use, the Web Site and/or the materials contained on the Web Site whether the materials contained on the Web Site are provided by the City of San José or a third party. The City of San José is neither responsible nor liable for any viruses or other contamination of user's system.

9.2   *Access to Information*
Unless otherwise prohibited by state or federal law, rule or regulation, user will be granted the ability to access and correct any personally identifiable information. The City will take reasonable steps to verify user's identity before granting such access. Each City service that collects personally identifiable information will allow or review and update of that information.

9.3   *Non-City Web Sites*
Non-city web sites may be linked through the City's Web Site. Many non-city sites may or may not be subject to the Public Records Act and may or may not be subject to other sections of the California code or federal law. Visitors to such sites are advised to check the privacy statements of such sites and to be cautious about providing personally identifiable information without a clear understanding of how the information will be used.

9.4   The City is not responsible for, and accepts no liability for, the availability of these outside resources. Linked Web sites are not under the control of, nor maintained by, the City and the City is not responsible for the content of these Web sites, which can and do change frequently; nor for any internal links the displayed Web sites may contain. In addition, inclusion of the linked Web sites does not constitute an endorsement or promotion by the City of any persons or organizations sponsoring the displayed Web sites.

EXHIBIT A-6
FINAL SYSTEM ACCEPTANCE CERTIFICATE

After the City is satisfied with all test results and resolutions, the City will initiate execution of the Final System Acceptance Certificate for that Phase.

FINAL SYSTEM ACCEPTANCE CERTIFICATE

Customer Name: City of San José ("City")

Project Name: e-Procurement Solution

This Final System Acceptance Certificate memorializes the occurrence of Final System Acceptance.

Contractor and the City acknowledge that:

1   Contractor has delivered the Solution, Services, and documentation promised under this Agreement.

2   The System is accepted, and all punch list items generated during testing have been complete.

3   By acknowledging the Final Acceptance of the System, the City agrees to pay any remaining and approved outstanding invoices to Contractor, including previously withheld retainage.

City of San José
("City")

Purchasing Technology Corporation
("Contractor")

By: _____   By: _____

Name: _____   Name: _____

Title: _____   Title: _____

Date: _____   Date: _____

EXHIBIT B
COMPENSATION AND PAYMENT SCHEDULE

1   **Compensation and Payment Terms**

1.1   The maximum amount payable for all products and services provided under this Agreement shall not exceed **One Hundred Ninety-Five Thousand Four Hundred Sixty-Five Dollars ($195,465)** during the Initial Term. Any additional services requested by the City that would exceed the preceding maximum amount will be addressed in accordance with the Change Order Procedures. No additional services will be performed unless both Parties execute a Change Order outlining the services requested and the compensation agreed for such services.

1.2   Progress payments shall be made to Contractor by City based on net thirty (30) days payment terms, following delivery and acceptance of designated milestones as shown below in Table B1: Payment Schedule. All payments are based upon City's acceptance of Contractor's performance as evidenced by successful completion of all of the deliverables as set forth for each milestone. City shall have no obligation to pay unless Contractor has successfully completed and City has approved the milestone for which payment is due.

1.3   Payment for any deliverable under this Agreement, or inspection or testing thereof by City, shall not constitute acceptance or relieve Contractor of its obligations under this Agreement. City may inspect each deliverable and reject upon notification to Contractor any that do not conform to the specifications or other requirements of this Agreement. Rejected deliverables shall be promptly corrected, repaired, or replaced by Contractor. If City receives deliverables with defects or nonconformities not reasonably apparent on inspection, the City reserves the right to require prompt correction, repair, or replacement by Contractor in accordance with Contractor's warranty obligations.

2   **Project Performance and Payment Schedule**

2.1   Work shall commence within two weeks of Agreement execution. All timeline dates are understood to be close of business, 5:00 pm Pacific Time. If timeline dates fall on a weekend or City holiday, the date is understood to be the next business day.

2.2   Compensation and payments shall be made to Contractor by City based on Net Thirty (30) days payment terms.

2.3   Implementation Invoicing Procedure: Contractor will invoice the City upon completion of each milestone but not more frequently than monthly.

2.4   Ongoing Annual Services Invoicing Procedure: After Year 1, the City shall prepay a year in advance for Subscription, Technical Support, and Maintenance services provided under the Agreement. In the event of early termination of the Agreement,

Contractor shall refund the City on a pro-rated basis any fees paid in advance that have not been expended as of the date of termination, excluding third party software.

2.5 In the event that the City requests and the Contractor provides annual refresher training, Contractor shall invoice City at the training rates and actual travel as specified in the Price List, Exhibit A-2.

2.6 The City agrees to compensate Contractor for the Services performed and the Software and software customizations provided in accordance with the terms and conditions of this Agreement. Contractor shall invoice City in accordance with the Payment Schedule in Table B1 below:

Table B1: Payment Schedule

MILESTONE/ ITEM	DELIVERABLE(S)	ESTIMATED COMPLETION	PAYMENT	% COMPLETE
ONE-TIME IMPLEMENTATION COSTS[2]				
1. Analysis	Implementation Strategy	9/6/2018	$7,000	20%
	Business Requirements Definitions			
2. Configuration	Detail Configuration	10/16/2018	3,500	10%
	Technical Infrastructure			
	Implementation Scope			
3. Implement Environment	Baseline Configuration	1/7/2019	7,000	20%
	System and User Security			
	Vendor Application Form			
	e-Bidding and e-Contract Environment			
	Quality Review and Corrective Actions			
4. Training and Testing	Integration	2/14/2019	7,000	20%
	System Testing			
	End User Training			
	User Acceptance Testing			
5. Operations	Production Migration & Vendor Mass Registration/Onboarding	3/4/2019	3,500	10%
	Vendor Information Sessions			
6. Go Live and Final Acceptance[3]		3/4/2019	7,000	20%
Travel Reimbursement Not to Exceed[4]			10,000	
TOTAL IMPLEMENTATION			**$45,000**	**100%**

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[2] Implementation costs are inclusive of Year 1 Subscription, Maintenance, & Support fees.

[3] The signed Final System Acceptance Certificate will trigger payment of the remaining 20%.

[4] City-approved travel shall be reimbursed based on actual up to the not to exceed amount but is limited to the current Internal Revenue Service (IRS) maximum rates for mileage and per diems according to the federal government, general services schedule for the continental United States.

ANNUAL RECURRING COSTS		
Year 2 Subscription, Maintenance, Support, and "As Needed" Refresher Training and Estimated Travel Reimbursement[5]	$35,870	
Year 3 Subscription, Maintenance, Support, and "As Needed" Refresher Training and Estimated Travel Reimbursement[5]	37,016	
Year 4 Subscription, Maintenance, Support, and "As Needed" Refresher Training and Estimated Travel Reimbursement[5]	38,189	
Year 5 Subscription, Maintenance, Support, and "As Needed" Refresher Training and Estimated Travel Reimbursement[5]	39,390	
TOTAL ANNUAL SERVICES	$150,465	
MAXIMUM COMPENSATION NOT TO EXCEED (INITIAL 5-YEAR TERM)	$195,465	

All amounts stated above are in United States Currency.

1   Renewal Period Compensation

1.1   After the Initial Term, the City reserves the right to extend the term of this Agreement pursuant to Section 2.2 ("Options to Extend") at the same rates as the Initial Term unless otherwise requoted and agreed to in writing by the Parties.

1.2   Price Renegotiation. Contractor may request adjustments to the compensation rates sixty (60) days prior to an option term. Contractor shall provide information justifying reasons for any increase, and City shall not unreasonably withhold approval of any increase provided the renewal quote for ongoing services does not increase more than the Producer Price Index (PPI) over the previous year's fees, unless otherwise negotiated.

1.3   City shall provide Contractor prior written notice in the form of Exhibit E of its intention to exercise its option for the next term prior to the end of the then current term. The City's Director of Finance or designee is authorized to exercise options on behalf of the City.

2   Additional Services

2.1   In the event the City requires additional services, Contractor shall provide a written quotation, at no cost to the City, of the type of Additional Service requested and the time required to complete requested work.

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[5] City-approved travel for any requested "as needed" refresher training shall be reimbursed based on actual but is limited to the current Internal Revenue Service (IRS) maximum rates for mileage and per diems according to the federal government, general services schedule for the continental United States.

2.2 Supplemental professional service rates shall not exceed the following:

Supplemental Services	Year 1 Hourly Rate	Year 2 Hourly Rate	Year 3 Hourly Rate	Year 4 Hourly Rate	Year 5 Hourly Rate
Integration Services (API Development)	$250	$250	$250	$250	$250
Software/Web Development	$250	$250	$250	$250	$250
Database Development	$250	$250	$250	$250	$250
Training	$250	$250	$250	$250	$250
Custom Report Writing	$250	$250	$250	$250	$250

2.3 The City reserves the right to request a fixed priced quote in lieu of time and materials. Hourly rates applied for any fixed price quotes shall not exceed the agreed-upon supplemental service rates in Section 4.2 above and must be good for at least ninety (90) days.

2.4 Quotes must be approved by the City through an executed Change Order prior to any work being performed.

<h1 style="text-align:center">EXHIBIT C
INSURANCE REQUIREMENTS</h1>

Contractor, at Contractor's sole cost and expense, shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by Contractor, its agents, representatives, employees or subcontractors or suppliers.

I.   Minimum Scope and Limit of Insurance

There shall be no endorsements reducing the scope of coverage required below unless approved by the City's Risk Manager.

Type of Insurance	Minimum Limit
1 Commercial General Liability The coverage provided by Insurance Services Office "occurrence" form CG 0001, including coverages for contractual liability, personal injury, broad form property damage, independent contractors, products and completed operations.	$1,000,000 per occurrence for bodily injury, personal injury, and property damage or $2,000,000 annual aggregate.
2 Automobile Liability The coverage provided by Insurance Services Office form number CA 0001. Coverage shall be included for all owned, non-owned and hired automobiles.	$1,000,000 combined single limit per accident for bodily injury and property damage.
3 Workers' Compensation and Employer Liability As required by the Labor Code of the State of California.	Not less than $1,000,000 each claim and annual aggregate.
4 Professional Liability / Errors and Omissions Including coverages for negligent acts, errors or omissions arising from professional services provided under this contract, with any deductible not to exceed $25,000 each claim.	Not less than $1,000,000 each claim and annual aggregate.
5 Cyber & Technology Errors & Omission Technology/professional liability insurance and data protection liability insurance covering liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering services provided under this agreement as well as all Vendor costs, including damages it is obligated to pay Client or any third party, which are associated with any Security Breach (as hereafter defined) or loss of Personal Data, regardless of cause (including, without limitation, Vendor negligence or gross negligence and unlawful third party acts). Costs to be covered by this insurance policy shall include without limitation: (a) costs to notify individuals whose Personal Data was lost or compromised; (b) costs to provide credit monitoring and credit restoration services to	Not less than $100,000 each claim and annual aggregate.

individuals whose Personal Data was lost or compromised; (c) costs associated with third party claims arising from the Security Breach or loss of Personal Data, including litigation costs and settlement costs; and (d) any investigation, enforcement or similar miscellaneous costs. For the purposes of this Section, " Security Breach" means (1) the failure by the Vendor to properly handle, manage, store, destroy or otherwise control, or the unauthorized disclosure by the Vendor of: (a) Personal Data in any format or (b) third party corporate information in any format specifically identified as confidential and protected under a confidentiality agreement or similar contract; (2) an unintentional violation of the Vendor's privacy policy or misappropriation that results in the violation of any applicable data privacy laws or regulations; or (3) any other act, error, or omission by Vendor in its capacity as such which is reasonably likely to result in the unauthorized disclosure of Personal Data.	

II.   Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City's Risk Manager.

III.   Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1.   General Liability and Automobile Liability Coverages

a.   The City, its officials, employees, and agents are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, Contractor; products and completed operations of Contractor; premises owned, leased or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and agents.

b.   Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees, and agents. Any insurance or self-insurance maintained by the City, its officials, employees, and agents shall be excess of Contractor's insurance and shall not contribute with it.

c.   Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or agents.

d. Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, and agents.

2. Workers' Compensation and Employers Liability

Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, and agents.

3. All coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

IV.   Acceptability of Insurance

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

V.   Verification of Coverage

Contractor shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by Contractor's insurance company as evidence of the stipulated coverages.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San José – Finance Department
Risk & Insurance
200 East Santa Clara St., 14th Floor
San Jose, CA 95113-1905

VI.   Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

EXHIBIT D
CHANGE ORDER FORM

CHANGE ORDER # _____

Pursuant to Section 7 of the Agreement for a e-Procurement Solution between _____ **("Contractor") and the City of San José ("City"), the Agreement is hereby amended as follows:**   *(The following language is provided as an example of how to complete this form.)*

1. Contractor shall provide the following additional services at the costs indicated below:	
TOTAL	

2. The following services, products or deliverables are hereby deleted and the associated costs in amounts set forth below are also deleted.	
TOTAL	

3. Exhibit ___ is hereby amended to read as set forth in the Revised Exhibit __ which is attached hereto.

4. All of the terms and conditions of the Agreement not modified by Change Order shall remain in full force and effect.

	Total Cost of Change	
	Total Credit of Change	
	Previous Amendments and/or Change Orders	
	Original Contract	

ACCEPTANCE	**APPROVED AS TO FORM**
Contractor hereby agrees to accept the amount set forth herein as payment in full of the work described and further agrees that Contractor is not entitled to additional time or compensation for such work except as set forth herein.	_____ Senior Deputy City Attorney
Contractor	**City of San José**
_____ _____ Date	_____ _____ Name Date Title

EXHIBIT E
NOTICE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE:	e-Procurement Solution
CONTRACTOR **Name and Address:**	
DATE:	

(date the notice is sent must be consistent with the time for exercise set forth in Agreement)

Pursuant to Section 2.2 of the Agreement referenced above, the City of San José hereby exercises its option to extend the term under the following provisions:

OPTION NO.	

NEW OPTION TERM

Begin date:	
End date:	

☐ **CHANGES IN RATE OF COMPENSATION**

Percentage change in CPI upon which adjustment is based:	

Pursuant to Section ____ of the Agreement the Rates of Compensation are hereby adjusted as follows:
(use attachment if necessary)

MAXIMUM COMPENSATION for New Option Term:	

For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of San José hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

CITY OF SAN JOSÉ a municipal corporation   By_____ Name: Title: Date: