

SERVICES AGREEMENT (LIMITED)

Public Safety Software Systems Support and Technology Project Management

City Agreement No. C2021-162

City Budget Code: 41611-53201

This Services Agreement (Limited) for Public Safety Systems Support and Technology Project Management ("**Agreement**"), by and between the City of Napa, a California charter city ("**City**"), and Cloud 5 Solutions LLC, a Limited Liability Company ("**Consultant**"), is effective on the Effective Date identified on the signature page.

NOW, THEREFORE, the City and the Consultant, for the mutual consideration described herein, agree as follows:

1. SCOPE OF SERVICES.

1.1. Services. Consultant will perform the services described in the Scope of Services and Schedule of Performance, attached hereto as **Exhibit "A"** and incorporated herein by reference ("**Services**"), in accordance with the terms and conditions of this Agreement and to the satisfaction of the City's authorized representative, Scott Nielsen, Information Technology Manager ("**City's Authorized Representative**"). Time is of the essence for the performance of all Services under this Agreement.

1.2. Independent Contractor. Consultant will control the manner and means for performing the Services, acting as an independent contractor and not as an employee of the City.

2. COMPENSATION.

2.1. Payment. The City will pay Consultant for Consultant's time and authorized expenses necessary to perform the Services, at the rates and charges set forth in the Compensation Rates and Charges attached hereto as **Exhibit "B"** and incorporated herein by reference, as compensation in full for Services satisfactorily performed in compliance with this Agreement. Consultant's total compensation for performing the Services may not exceed \$ 500,000; \$165,000 for FY21/22, \$165,000 for FY22/23, \$165,000 FY23/24 without prior written authorization from the City. If the City authorizes Consultant to perform services in addition to the Scope of Services set forth in Exhibit "A," Consultant will be compensated in accordance with the rates and charges in Exhibit "B." Consultant will not be entitled to any compensation for additional services performed without the City's prior written consent, or which exceed the scope of the City's written consent.

2.2. Invoices. Consultant will submit a monthly itemized invoice to the City's Authorized Representative for the Services provided during the preceding month. At a minimum, the invoice must identify the Services performed, the hours spent performing the Services, the applicable hourly rate(s), and any authorized expenses based on the rates and charges authorized in Exhibit "B." The City will pay the Consultant within thirty (30) days after approval of each invoice, with the exception of any disputed amounts.

3. AUTHORIZED REPRESENTATIVE. Consultant hereby assigns Travis Enders, President and CEO to serve as the Consultant's authorized representative ("**Consultant's Authorized Representative**"), to personally participate in and manage the Services provided under this Agreement, and to serve as the primary point of contact for all matters pertaining to this Agreement. As a material inducement to entering into this Agreement, the City has relied upon Consultant's representations regarding Consultant's qualifications (including the qualifications of Consultant's Authorized Representative, its personnel, and its subconsultants, if any, as identified on Exhibits "A" or "B"). Consultant will not replace Consultant's Authorized Representative (or any of its personnel or its subconsultants, if any, as identified on Exhibits "A" and "B") without the City's prior written consent.

4. NOTICES. All notices or requests required or contemplated by this Agreement will be in writing and delivered to the other party's Authorized Representative by personal delivery, U.S. Mail, nationwide overnight delivery service, email, or as otherwise specified herein. Delivery is deemed effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, (b) actual receipt at the address identified below, or (c) three business days following deposit in the U.S. Mail of registered or certified mail sent to the address identified below. A party's contact information, below, may be changed by providing written notice of any change to the other party.

TO CITY: Scott Nielsen
Information Technology Manager
CITY OF NAPA
P.O. Box 660
NAPA, CA 94559-0660
snielsen@cityofnapa.org

TO CONSULTANT: Travis Enders
President and CEO
PO Box 245
Medora, ND 58645-0245
travis.enders@cloud5solutions.com

5. TERM. The term of this Agreement begins on the date it is signed by the City Clerk, below, attesting to full execution of the Agreement by both parties ("**Effective Date**"), and ends upon Consultant's completion of the Services required by this Agreement, unless terminated earlier as provided herein. The following provisions will survive expiration or termination of this Agreement: Section 7 (Dispute Resolution), Section 8.1 (Confidentiality), Section 8.3 (Records of Performance), Section 10 (Indemnification), and Section 13 (General Provisions).

6. CITY'S RIGHT TO TERMINATE. The City may terminate this Agreement for convenience (with or without cause) by providing written notice of termination to Consultant, effective upon the date stated in the notice. If the City terminates the Agreement it will pay Consultant for all Services satisfactorily performed up to and including the effective date of the termination, subject to the provisions of Sections 2 and 8.2.

7. DISPUTE RESOLUTION. If any dispute arises between the parties in relation to this Agreement, the Authorized Representatives for each party will meet, in person, as soon as practicable, to engage in a good faith effort to resolve the dispute informally. Either party may give written notice to the other party of a request to submit a dispute to mediation, and a mediation session must take place within 60 days of the date that such notice is given, or sooner if reasonably practicable. The parties will jointly appoint a mutually acceptable mediator. The parties will share equally the costs of the mediator; however, each party will pay its own costs of preparing for and participating in the mediation, including any legal costs. Good faith participation in mediation pursuant to this Section is a condition precedent to either party commencing litigation in relation to the dispute. In addition, any claims by Consultant arising from or related to this Agreement are subject to the claim presentment requirements in the Government Claims Act (Government Code section 900 et seq.).

8. INFORMATION AND RECORDS.

8.1. Confidentiality. Consultant will not disclose any information or records related to the performance of this Agreement, including information and records received from the City, as well as information and records created by the Consultant, to any person other than a City employee, unless and only to the extent that the City provides the Consultant with prior written consent to make a disclosure. Consultant will notify the City's Authorized Representative of any request for disclosure of information, or any actual or potential disclosure of information, under this Agreement.

8.2. Title to Records. All original documents or records ("**work product**"), whether paper or

electronic, required by this Agreement to be prepared by Consultant (including its employees and subconsultants), whether complete or in progress, are the property of the City. Consultant will promptly deliver all such work product to the City at the completion of the Services, upon termination, or upon demand by the City. However, Consultant may make and keep copies of the work product.

8.3. Records of Performance. Consultant will maintain adequate records of performance under this Agreement (including Services provided, invoices, and payments received) and make these records available to the City for inspection, audit, and copying during the term of this Agreement and until four years after the Agreement has expired or been terminated.

9. ACCIDENT REPORT. If any death, personal injury, or property damage occurs in connection with the performance of the Services, Consultant will promptly submit to the City Clerk's Office a written notice of the incident of damage with the following information:

- 9.1. A description of the damage including date, time, and location, and whether any City property was involved;
- 9.2. Name and contact information of any witness;
- 9.3. Name and address of the injured or deceased person(s); and
- 9.4. Name and address of Consultant's insurance company.

10. INDEMNIFICATION. To the full extent permitted by law, Consultant will indemnify, hold harmless, release, and defend the City (including its officers, elected or appointed officials, employees, volunteers, and agents) from and against any and all liability or claims (including actions, demands, damages, injuries, settlements, losses, or costs [including legal costs and attorney's fees]) (collectively, "**Liability**") of any nature, arising out of, pertaining to, or relating to Consultant's acts or omissions under this Agreement. Consistent with Civil Code Section 2782, Consultant will not be obligated to indemnify City for the proportionate share of the Liability caused by the City's active negligence, sole negligence, or willful misconduct. Consultant's indemnification obligations under this Agreement are not limited by any limitations of any insurance held by Consultant, including, but not limited to, workers' compensation insurance.

11. CONFLICTS OF INTEREST. Consultant warrants that as of the Effective Date of this Agreement it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Services. Consultant further warrants that in the performance of the Services, Consultant will not employ or enter into a subcontract with any person or entity having any such conflict of interest.

12. COMPLIANCE WITH LAW. Consultant will comply with all applicable federal, state and local laws, rules, and regulations related to the Services under this Agreement. Consultant represents and warrants to City that Consultant has and will keep in effect during the term of this Agreement all licenses (including, but not limited to, the City of Napa business license), permits, qualifications, and approvals of whatsoever nature which are legally required for Consultant to practice Consultant's profession or perform the Services. At all times during the term of this Agreement, Consultant will comply with all applicable laws, rules, and regulations prohibiting discrimination in employment based on race, ethnicity, color, national origin, religion, marital status, age, sex, sexual orientation, disability (including any physical or mental impairment that substantially limits a major life activity), medical condition, or any protected class. Every provision of law required to be inserted or referenced in this Agreement will be deemed to be inserted or referenced.

13. GENERAL PROVISIONS.

13.1. Headings. The heading titles for each section of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

13.2. Severability. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement will be construed as not containing that term, and the remainder of this Agreement will remain in full force and

effect; provided, however, this Section will not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

13.3. Governing Law, Jurisdiction, and Venue. The interpretation, validity, and enforcement of this Agreement will be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement will be filed and heard in a court of competent jurisdiction in the County of Napa.

13.4. Attorney's Fees. If any litigation is commenced to enforce or interpret this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses.

13.5. Assignment and Delegation. This Agreement will not be assigned or transferred in whole or in part, nor will any of the Consultant's duties be delegated without the City's prior written consent. Any attempt to assign, transfer, or delegate this Agreement, in whole or any part without the City's prior written consent will be void and of no force or effect. Any consent by the City to one assignment, transfer, or delegation will not be deemed to be consent to any subsequent assignment, transfer, or delegation.

13.6. Modifications. This Agreement may not be amended or modified orally. No amendment or modification of this Agreement is binding unless it is in a writing signed by both parties.

13.7. Waivers. No waiver of a breach, default, or duty under this Agreement will be effective unless it is in writing and signed by the party waiving the breach, default, or duty. Waiver of a breach, default, or duty under this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach, default, or duty under this Agreement.

13.8. Entire Agreement. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the Services. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all. If any provision in any document attached or incorporated into this Agreement conflicts or is inconsistent with a provision in the body of this Agreement, the provisions in the body of this Agreement will control over any such conflicting or inconsistent provisions.

13.9. Interpretation. Each party to this Agreement has had an opportunity to review the Agreement, and to consult with its respective legal counsel regarding the meaning of the Agreement. Accordingly, Civil Code section 1654 will not apply to interpret any uncertainty in the meaning of the Agreement.

[Signature page follows.]

14. SIGNATURE PAGE.

14.1. Counterparts. This Agreement may be executed in counterparts, each one of which is deemed an original, but all of which together constitute a single instrument.

14.2. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the Effective Date set forth below.

CITY:
CITY OF NAPA, a California charter city

By: Elizabeth Cabell
Elizabeth Cabell, Acting Finance Director

CONSULTANT:
Cloud 5 Solutions, LLC a limited liability company

By: Travis M Enders
Travis Enders, President and CEO

ATTEST: Tiffany Carranza
Tiffany Carranza, City Clerk

Date: 6/23/2021
("Effective Date")

COUNTERSIGNED:

Joy Riesenber
Joy Riesenber, City Auditor

APPROVED AS TO FORM:

for [Signature]
Michael W. Barrett, City Attorney

Sabrina S. Wolfson, Deputy City Attorney

EXHIBIT "A"**SCOPE OF SERVICES AND SCHEDULE OF PERFORMANCE**

1.0. SCOPE OF SERVICES. Consultant will perform the Services described in this Exhibit "A," in accordance with the terms of the Agreement.

Configuration and Troubleshooting to include:

- 911 Computer Aided Dispatch System (CAD) and all ancillary components.
- Mobile applications
- Configure and provide Tier 1 and 2 level support for Public Safety software systems.
- Configure and support Virtualization Infrastructure as a Tier 1 and 2 level.
- Interface with vendors for support issues beyond Tier 1 and 2.
- Configure and support SQL databases for various software platforms.
- Assist with ArcGIS/ESRI projects as needed and where applicable.
- Supplement City of Napa IT resources wherever possible and as needed.
- Provide Project Management services and/or assist with Project Management services on Technology related projects.

2.0. SCHEDULE OF PERFORMANCE.

2.1. REQUESTS FOR SERVICES. Upon request by City, Consultant will provide the Services described above, beginning on July 1, 2021, and ending on June 30, 2024. The Services will be provided for a variety of individual matters, as required by the City. Upon request by the City's Authorized Representative for Consultant to perform Services for a particular matter, Consultant will provide a written estimate of the time within which Services for the matter will be completed, and the estimated cost for providing the requested Services. Following written authorization from the City's Authorized Representative, Consultant will perform and complete the Services as specified in the written authorization. Consultant is not entitled to payment for any Services performed without a written authorization, or for Services that exceed the scope of a written authorization. For purposes of this Section, the written estimate and written authorization may be provided on paper or in an electronic form.

EXHIBIT "B"

COMPENSATION RATES AND CHARGES

1. AUTHORIZED HOURLY RATES:

Consultant will be compensated for time reasonably necessary to provide the Services based on the following hourly rate schedule, subject to the not-to-exceed limit in Section 2 of the Agreement:

<u>Position:</u>	<u>Hourly Rate:</u>
President & CEO, Travis Enders	\$150.00

2. Reimbursement:

Consultant will be reimbursed for onsite work inclusive of travel expenses in the following lump sums: \$5,775 for 3 days; \$7,050 for 4 days; or \$8,650 for 5 days