

## ANNUAL SUPPORT AND LICENSE AGREEMENT

This Agreement (Agreement) is made by and between Compass Computer Solutions, Inc. (Compass), a New York Corporation with offices at 5 June Court, River Edge, NJ 07661 and the City of San Diego (City), also referred to individually as "Party" and collectively as the "Parties". This Agreement memorializes acceptance of the terms and conditions of the Contract to provide City with document management software and support (Services).

### Recitals

WHEREAS, City is entering into a nonexclusive license agreement with Compass to use certain software programs (Programs) described in Section 4.

WHEREAS, City and Compass desire to enter into an agreement whereby Compass will perform software support services (Program Support) for City with respect to the Programs;

WHEREAS This Agreement is exempt from competitive bidding requirements pursuant to San Diego Municipal Code (SDMC) section 22.3208(a) because it provides for an expenditure of \$25,000 or less;

WHEREAS This Agreement is exempt from competitive bidding requirements pursuant to San Diego Municipal Code (SDMC) section 22.3208(d) because the Purchasing Agent has certified that the award of a sole source contract is necessary under SDMC section 22.3016(a).

NOW, THEREFORE, in consideration of the recitals stated above, which are incorporated herein by this reference, the Parties agree as follows: - \_\_\_\_\_

### Agreement

1. Contract Documents. The Contract between the Parties consists of this Agreement and all the documents listed below (collectively referred to as the "Contract Documents"), which are incorporated in full herein and together contain all the terms and conditions of the Contract:
  - 1.1 City's General Contract Terms and Provisions (Exhibit A);
  - 1.2 Compass' Terms and Conditions (Exhibit B)
2. Entire Agreement. The Contract constitutes the entire understanding between City and Compass with respect to the subject matter of the Contract and transactions contemplated by the Parties. All prior negotiations, agreements and understandings concerning the subject matter of the Contract are merged into the Agreement.
3. Term. The term of this Contract shall be for a period of two years from date of approval by the City Attorney in accordance with Charter section 40 (Effective Date), after the Agreement has been executed by the parties. The total duration of the Contract, including

all renewals, may not exceed 5 years unless approved by ordinance of the City Council in accordance with Charter section 99.

If City chooses to terminate the Program Support provisions listed in Section 5 of this Agreement, the Programs' License provisions listed in Section 4 of this Agreement shall remain in full force and City will be able to continue to use the Programs without Compass assistance or Compass program updates of any kind. Either Party may terminate this Agreement at any time and for any reason upon thirty (30) days written notice to the other Party.

4. Programs' License.

4.1 PROGRAMS. The licensed Programs include all of the listed programs purchased by City:

Compass eLive — Core Software  
Compass eLive — Front Office/Back Office - Document Management Software  
Compass eLive — iBuild — Report Management Software

4.2 LICENSE. Compass will provide and license to the City the following:

- a. The Program software;
- b. Updates to the Programs as developed and made available by Compass as described in section 4.3, below;
- c. Release documentation for updates;
- d. Installation guides for each release; and
- e. Notification of the availability of updates and documentation.

Completed software releases will be distributed by Compass electronically from Compass' website ([www.isharecompass.com](http://www.isharecompass.com)) to City's computer.

Compass will supply software releases on other media (i.e., CD, DVD, 1/4" cartridge tape, floppy disks, etc.) at City's request and expense.

4.3. PROGRAM ENHANCEMENTS. Compass will provide enhancements to the Programs as available. The specific enhancements made to the Programs and the timing of when they will be available will be at Compass' sole discretion and at no charge to City.

4.4 CITY SPECIFIC ENHANCEMENTS. City may request specific enhancements from Compass that Compass has not included in the Programs. Compass will provide a

quotation for the cost of such enhancements. If City agrees to purchase such enhancements, Compass will bill City separately for specific enhancements at Compass' then published consulting rates.

5. Program Support.

5.1. **ADVICE AND SUPPORT.** Compass shall provide Program Support by email, web helpdesk, and by telephone via the response line, from 9:00 a.m. until 6:00 p.m. Eastern Standard or Eastern Daylight Savings Time, Monday through Friday, excluding National and State holidays. The Annual Fee covers the following Support from Compass:

- a. Support for the Programs includes:
  - i. Information/Assistance regarding product features (no charge if an explanation can be given in five minutes or less; Compass will give City quote if training is needed);
  - ii. Problem Diagnosis (no time limitations); and
  - iii. Problem Resolutions (no time limitations)
- b. Where a problem is defined as a feature not operating in conformance with the Compass supplied documentation for that feature or function. If the problem is non-conforming, Compass will fix it so that it is conforming. There are no time limitations.
- c. Compass will provide information on what features exist in the Programs, but will not provide training on use of those features as part of this Agreement.
- d. Compass can assist with problems related to other third-Party software, operating systems, networks, web servers, etc. to the best of its ability, but is not obligated to do so under this Agreement. Compass does not charge for minor assistance, but will, at City's request, provide City with a Statement of Work outlining the cost and timeframe for work associated with the resolution of any third-Party software/hardware issues.

5.2 **SERVICES OUTSIDE THE SCOPE.** The following services are outside the scope of this Agreement are not covered by the Annual Fee:

- a. Software re-installation due to City's equipment failure;
- b. Software re-installation due to City's equipment upgrade;
- c. Software re-installation or re-configuration due to operating system or any other Third-Party software change;
- d. Software re-installation or re-configuration due to network topology or other network changes;

- e. Setup of report, program or database definitions or background forms;
  - f. Training on the use of Compass software functionality; and
  - g. Customizations or other services not listed in the covered services above listed in Section 5.
6. Compensation. City will pay Compass annually in advance of the provided services listed in Section 5. The compensation shall consist of an annual fee of \$7,200 for the provision of this software to provide the Services. The total amount paid to Compass shall not exceed \$15,000 for the duration of the Contract including any and all option years exercised. The annual amount of compensation paid to Compass for each year in which the Contract is in effect shall not exceed the amount appropriated for this Contract as certified by the Comptroller or his designee. Compass is not obligated to provide goods or services in excess of this amount, and does so at its own risk, unless the Contract is amended in a writing duly executed by the Parties increasing this not-to-exceed amount.

6.1 **ADDITIONAL COSTS.** Any support services not covered under section 5.1 will be billed at the hourly rate for the term of this Contract as stated below.

— Additional Costs  
Professional Services - \$200/hour  
Training Services - \$150/hour

7. System Access. City shall maintain at its cost, on its premises, and have available for use by Compass, a means for Compass to connect to City's host computer system and network. This may include, but not be limited to, a modem approved by Compass and a communications software package, a VPN or Internet Access to a PC on the City network that has access to the host computer system. This connection and software shall be available for use by Compass for the express purpose of rendering support under this Agreement.
8. Contract Administrator. The City Treasurer's Office (Department) is the Contract Administrator for this Contract. Compass shall provide the Services under the direction of a designated representative of the Department as follows:

Mary Davis, Treasury Systems Manager  
1200 Third Avenue, Suite 100  
Office of the City Treasurer, (619) 533-6316  
mjdavis@sandiego.gov

9. Notice. All notices, demands or other communications required by this Contract shall be made in writing and shall be delivered personally, or sent by certified mail, return receipt requested, postage pre-paid. Every notice shall be addressed to the Party to whom they

are directed at the following addresses, or at such other addresses as may be designated by notice from such Party:

To City:

Mary Davis, Treasury Systems Manager  
Office of the City Treasurer  
1200 Third Avenue, Suite 100  
San Diego, CA 92101

To Compass:

John Walsh, CEO  
Compass Computer Solutions  
5 June Court  
River Edge, NJ 07661

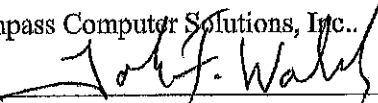
10. Annual Appropriation of Funds. Compass acknowledges that the Contract Term may extend over multiple City fiscal years, and Compass understands and agrees that work and compensation under this Contract is contingent on the City Council appropriating funding for such work and compensation for those fiscal years. City may terminate the Contract if sufficient funds are not duly appropriated and authorized for any given fiscal year, or if funds appropriated and authorized for this Contract are exhausted before the fiscal year concludes. City is not obligated to pay Compass for any amounts not duly appropriated and authorized by the City Council.
11. Submittals Required. Compass is required to submit all forms and information delineated in Exhibit A before the Agreement is executed, which include:
  - Insurance Certificates with required endorsements
  - Contractor Standards Pledge of Compliance
  - City of San Diego Business Tax Certificate
12. Contract Interpretation. These Contract Documents completely describe the goods and services to be provided. Contractor will provide any work, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for or identified in the Contract Documents. Words or phrases which have a well-known technical or construction industry or trade meaning and are used to describe work, materials, equipment, goods, or services will be interpreted in accordance with that meaning unless a definition has been provided in the Contract Documents. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the Parties will use the order of precedence as set forth below. The document highest in the order of precedence controls. Inconsistent provisions in the Contract Documents that address the same subject, are consistent, and have different degrees of specificity, are not in conflict and the more specific language will control. The order of precedence, from

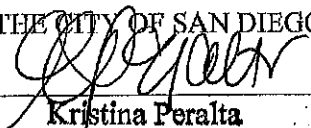
highest to lowest, is as follows:

1. This Agreement.
2. City's General Contract Terms and Provisions (Exhibit A).
3. Compass' Standard Terms (Exhibit B)

13. Amendments. The Contract Documents, including this Agreement, may be amended in writing and agreed to by both Parties. Any alleged oral amendments have no force or effect.

IN WITNESS WHEREOF, this Agreement is executed by City and Contractor acting by and through their authorized officers.

Compass Computer Solutions, Inc.  
By:   
Name: John F. Walsh  
Title: CEO  
Date: 1/2/2018

THE CITY OF SAN DIEGO  
By:   
Name: Kristina Peralta  
Title: Director  
Purchasing & Contracting  
Date: 1/9/2018

Approved as to form this 11 day of January, 2018.

MARA W. ELLIOTT, City Attorney

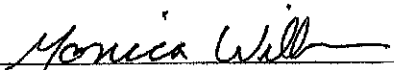
By:   
Monica Willian  
Deputy City Attorney

Exhibit A



**THE CITY OF SAN DIEGO**

**GENERAL CONTRACT TERMS AND PROVISIONS**

**APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS**

## ARTICLE I

### SCOPE AND TERM OF CONTRACT

**1.1 Scope of Contract.** The scope of contract between the City and a provider of goods and/or services (Contractor) is described in the Contract Documents. The Contract Documents are set forth in Section 1 of the Agreement.

**1.2 Effective Date.** A contract between the City and Contractor (Contract) is effective on the last date that the contract is signed by the parties and approved by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, this Contract is effective until it is completed or as otherwise agreed upon in writing by the parties, whichever is the earliest. A Contract term cannot exceed five (5) years unless approved by the City Council by ordinance.

**1.3 Contract Extension.** The City may, in its sole discretion, unilaterally exercise an option to extend the Contract as described in the Contract Documents. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration if authorized under Charter section 99 and the Contract Documents. Contractor shall not increase its pricing in excess of the percentage increase described in the Contract.

## ARTICLE II

### CONTRACT ADMINISTRATOR

**2.1 Contract Administrator.** The Purchasing Agent or designee is the Contract Administrator for purposes of this Contract, and has the responsibilities described in this Contract, in the San Diego Charter, and in Chapter 2, Article 2, Divisions 5, 30, and 32.

**2.1.1 Contractor Performance Evaluations.** The Contract Administrator will evaluate Contractor's performance as often as the Contract Administrator deems necessary throughout the term of the contract. This evaluation will be based on criteria including the quality of goods or services, the timeliness of performance, and adherence to applicable laws, including prevailing wage and living wage. City will provide Contractors who receive an unsatisfactory rating with a copy of the evaluation and an opportunity to respond. City may consider final evaluations, including Contractor's response, in evaluating future proposals and bids for contract award.



2.2 [Reserved]

**ARTICLE III  
COMPENSATION**

3.1 [RESERVED]

3.2 Invoices.

**3.2.1 Invoice Detail.** Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due.

**3.2.2 Service Contracts.** Contractor must submit invoices for services to City by the 10<sup>th</sup> of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

**3.2.3 Goods Contracts.** Contractor must submit invoices for goods to City within seven days of the shipment. Invoices must describe the goods provided.

3.2.4 [RESERVED]

**3.2.5 Extraordinary Work.** City will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator's written authorization.

3.2.6 [RESERVED]

3.3 [RESERVED]

3.4 [RESERVED]

## ARTICLE IV

### SUSPENSION AND TERMINATION

**4.1 City's Right to Suspend for Convenience.** City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and conditions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties.

**4.2 City's Right to Terminate for Convenience.** City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

**4.3 City's Right to Terminate for Default.** Contractor's failure to satisfactorily perform any obligation required by this Contract constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to deliver goods and/or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

**4.3.1** If Contractor fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from City specifying the nature of the default, City may immediately

cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

**4.3.2** If City terminates this Contract, in whole or in part, City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and Contractor shall be liable to City for any excess costs. Contractor shall also continue performance to the extent not terminated.

**4.4 Termination for Bankruptcy or Assignment for the Benefit of Creditors.** If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

**4.5 Contractor's Right to Payment Following Contract Termination.**

**4.5.1 Termination for Convenience.** If the termination is for the convenience of City an equitable adjustment in the Contract price shall be made. No amount shall be allowed for anticipated profit on unperformed services, and no amount shall be paid for an as needed contract beyond the Contract termination date.

**4.5.2 Termination for Default.** If, after City gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment in the Contract price shall be made as provided in Section 4.3.2. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

**4.6 Remedies Cumulative.** City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

**ARTICLE V**

**ADDITIONAL CONTRACTOR OBLIGATIONS**

**5.1 [RESERVED]**

5.2 [RESERVED]

5.3 [RESERVED]

5.4 [RESERVED]

**5.5 Delay.** Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.

**5.5.1** If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

**5.6 Restrictions and Regulations Requiring Contract Modification.** Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the City.

**5.7 Warranties.** All goods and/or services provided under the Contract must be warranted by Contractor or manufacturer for at least twelve (12) months after acceptance by City, except automotive equipment. Automotive equipment must be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless otherwise stated in the Contract. Contractor is responsible to City for all warranty service, parts, and labor. Contractor is required to ensure that warranty work is performed at a facility acceptable to City and that services, parts, and labor are available and provided to meet City's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to City instead of performing the warranty

service itself. If Contractor is not an authorized service center and causes any damage to equipment being serviced, which results in the existing warranty being voided, Contractor will be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets City's operational needs.

**5.8 Industry Standards.** Contractor shall provide goods and/or services acceptable to City in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by City, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

**5.9 Records Retention and Examination.** Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. Contractor shall make available all requested data and records at reasonable locations within City or County of San Diego at any time during normal business hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.

**5.9.1** Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

**5.10 [RESERVED]**

**5.11 Duty to Cooperate with Auditor.** The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

**5.12 [RESERVED]**

**5.13 [RESERVED]**

**5.13.1 Criminal Background Certification.** Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any sexual and drug related convictions. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

**5.13.2 Photo Identification Badge.** Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

**5.14 Standards of Conduct.** Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

**5.14.1 Supervision.** Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.

**5.14.2 City Premises.** Contractor's employees and agents shall comply with all City rules and regulations while on City premises.

**5.14.3 Removal of Employees.** City may request Contractor immediately remove from assignment to the City any employee found unfit to perform duties at the City. Contractor shall comply with all such requests.

**5.15 Licenses and Permits.** Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

**5.16 Contractor and Subcontractor Registration Requirements.** Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

## **ARTICLE VI INTELLECTUAL PROPERTY RIGHTS**

**6.1 Rights in Data.** All data provided by the City to Contractor shall belong to the City. Upon the expiration or termination of this Contract, Contractor shall return all such data to the City at no expense to the City, and Contractor shall not retain any such data belonging to the City. Furthermore if, in connection with the services performed under this Contract, Contractor or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials), all rights of Contractor or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of City. Contractor, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Contractor's work on behalf of the City without prior written consent of City. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City, without the prior written consent of the City.

**6.2 Intellectual Property Rights Assignment.** For no additional compensation, Contractor hereby assigns to City all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any

time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials. Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights.

**6.3 Contractor Works.** Contractor Works means tangible and intangible information and material that: (a) had already been conceived, invented, created, developed or acquired by Contractor prior to the effective date of this Contract; or (b) were conceived, invented, created, or developed by Contractor after the effective date of this Contract, but only to the extent such information and material do not constitute part or all of the Deliverable Materials called for in this Contract. All Contractor Works, and all modifications or derivatives of such Contractor Works, including all intellectual property rights in or pertaining to the same, shall be owned solely and exclusively by Contractor.

**6.4 Subcontracting.** In the event that Contractor utilizes a subcontractor(s) for any portion of the work that comprises the whole or part of the specified Deliverable Materials to the City, the agreement between Contractor and the subcontractor shall include a statement that identifies the Deliverable Materials as a "works for hire" as described in the United States Copyright Act of 1976, as amended, and that all intellectual property rights in the Deliverable Materials, whether arising in copyright, trademark, service mark or other forms of intellectual property rights, belong to and shall vest solely with the City. Further, the agreement between Contractor and its subcontractor shall require that the subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to City, all titles, rights and interests in and to the Deliverable Materials, including all copyrights, trademarks and other intellectual property rights. City shall have the right to review any such agreement for compliance with this provision.

**6.5 Intellectual Property Warranty and Indemnification.** Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any Third-Party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Contractor to produce, at Contractor's own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition



to any other remedy available to the City under law or equity. Contractor further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any Third-Party (Third Party Claim of Infringement). If a Third Party Claim of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

**6.6 Software Licensing.** Contractor represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all Third-Party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

**6.7 Publication.** Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City without prior written consent from the City.

**6.8 Royalties, Licenses, and Patents.** Unless otherwise specified, Contractor shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation. Contractor warrants that the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify and hold harmless the City, its elected officials, officers, and employees from all liability, loss and damages, whether general, exemplary or punitive, suffered as a result of any actual or claimed infringement asserted against the City, Contractor, or those furnishing goods, materials, supplies, or equipment to Contractor under the Contract.

## ARTICLE VII

### INDEMNIFICATION AND INSURANCE

**7.1 Indemnification.** To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Contract by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

**7.2 Insurance.** Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

Contractor shall provide, at a minimum, the following:

**7.2.1 Commercial General Liability.** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

**7.2.2 [RESERVED].**

**7.2.5 Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:

**7.2.5.1 Additional Insured Status.** The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

**7.2.5.2 Primary Coverage.** For any claims related to this contract, Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

**7.2.5.3 Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

**7.2.5.4 Waiver of Subrogation.** Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

**7.2.5.5 Claims Made Policies (applicable only to professional liability).** The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

**7.3 Deductibles/Self Insured Retentions.** All deductibles on any policy shall be the sole responsibility of Contractor and shall be disclosed to City at the time the evidence of insurance is provided. Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

**7.4 Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City.

City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

**7.5 Verification of Coverage.** Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**7.6 Special Risks or Circumstances.** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**7.7 Additional Insurance.** Contractor may obtain additional insurance not required by this Contract.

**7.8 Excess Insurance.** All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

**7.9 Subcontractors.** Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

## ARTICLE VIII

[RESERVED]

## ARTICLE IX

### CITY-MANDATED CLAUSES AND REQUIREMENTS

**9.1 Contractor Certification of Compliance.** By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

**9.1.1 Drug-Free Workplace Certification.** Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

**9.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations:** Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

**9.1.3 Non-Discrimination Requirements.**

**9.1.3.1 Compliance with City's Equal Opportunity Contracting Program (EOCP).** Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall

ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

**9.1.3.2 Non-Discrimination Ordinance.** Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

**9.1.3.3 Compliance Investigations.** Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

**9.1.4 Equal Benefits Ordinance Certification.** Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

**9.1.5 Contractor Standards.** Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

**9.1.6 Noise Abatement.** Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

**9.1.7 [RESERVED]**

**9.1.8 [RESERVED]**

**9.1.9 Product Endorsement.** Contractor shall comply with Council Policy 000-41 concerning product endorsement which requires that any advertisement referring to City as a user of a good or service will require the prior written approval of the Mayor.

**9.1.10 Business Tax Certificate.** Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

**ARTICLE X**

**CONFLICT OF INTEREST AND VIOLATIONS OF LAW**

**10.1 Conflict of Interest Laws.** Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

**10.2 Contractor's Responsibility for Employees and Agents.** Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

**10.3 Contractor's Financial or Organizational Interests.** In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

**10.4 [RESERVED]**

**10.5 Hiring City Employees.** This Contract shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

## ARTICLE XI

### DISPUTE RESOLUTION

**11.1 Mediation.** If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

**11.2 Selection of Mediator.** A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

**11.3 Expenses.** The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

**11.4 Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either Party may have attorneys, witnesses or experts present.

**11.5 Mediation Results.** Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

## ARTICLE XII

### MANDATORY ASSISTANCE

**12.1 Mandatory Assistance.** If a Third-Party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation upon City's request. Contractor's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.



**12.2 Compensation for Mandatory Assistance.** City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the Third-Party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance.

**12.3 Attorneys' Fees Related to Mandatory Assistance.** In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 12.2 are not reimbursable.

### ARTICLE XIII

#### MISCELLANEOUS

**13.1 Headings.** All headings are for convenience only and shall not affect the interpretation of this Contract.

**13.2 Non-Assignment.** Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

**13.3 Independent Contractors.** Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

**13.4 Subcontractors.** All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

**13.5 Covenants and Conditions.** All provisions of this Contract expressed as either covenants

or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

**13.6 Compliance with Controlling Law.** Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

**13.7 Governing Law.** The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

**13.8 Venue.** The venue for any suit concerning solicitations or the Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

**13.9 Successors in Interest.** This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any Party's successor in interest.

**13.10 No Waiver.** No failure of either City or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Contract, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

**13.11 Severability.** The unenforceability, invalidity, or illegality of any provision of this Contract shall not render any other provision of this Contract unenforceable, invalid, or illegal.

**13.12 Drafting Ambiguities.** The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each Party. This Contract shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Contract.

**13.13 Amendments.** Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect. The Purchasing Agent must sign all Contract amendments.

**13.14 Conflicts Between Terms.** If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

**13.15 Survival of Obligations.** All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

**13.16 Confidentiality of Services.** All services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any Third-Party without the prior written consent of City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

**13.17 Insolvency.** If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

(a) **13.18 No Third Party Beneficiaries.** Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any Third-Party

not specifically referenced herein. No Party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

**13.19 Actions of City in its Governmental Capacity.** Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.

## EXHIBIT B

### COMPASS COMPUTER SOLUTIONS, INC. TERMS AND CONDITIONS

#### 9.1 GENERAL PROVISIONS

##### 9.1.1 LIMITATIONS OF LIABILITY

END USER'S REMEDY IN THE EVENT OF DEFAULT OR BREACH BY COMPASS SHALL BE THE RIGHT TO TERMINATE THIS AGREEMENT AND RECOVER THE BALANCE OF UNUSED SUPPORT PAYMENTS OF THE CURRENT AGREEMENT.

##### 9.1.2 INDEMNIFICATION

COMPASS shall hold harmless and indemnify END USER and its officers, employees, and agents, if a claim is brought against END USER alleging that COMPASS' PROGRAMS infringe on a copyright, patent, or other intellectual property rights.

#### 9.3 CONFIDENTIALITY

All services performed by COMPASS, and any subcontractors if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports or any nature, estimates compiled or composed by COMPASS, are for the sole use of END USER, its agents and employees. Neither the documents nor their contents shall be released to any Third-Party without the prior written consent of END USER. This provision does not apply to information that (a) was publicly known, or otherwise known to COMPASS, at the time that it was disclosed to COMPASS by END USER, (b) subsequently becomes publicly known through no act or omission of COMPASS, or (c) otherwise becomes known to COMPASS other than through disclosure by END USER City.

#### 9.4 ASSIGNMENT

Except as specifically provided herein, END USER may not assign, sublicense or transfer, voluntarily, by operation of law or otherwise, its rights hereunder without COMPASS' prior written consent.

#### 9.5 NOTICES

Any notice, demand or request relating to any matter set forth herein shall be in writing and shall be deemed effective when sent, prepaid, certified or registered mail, return receipt requested, or by courier service.

#### 9.6 INVALIDITY

In the event that any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable to the maximum extent possible.

#### 9.7 EXCLUSIVE AGREEMENT; MODIFICATION

This Agreement is the entire agreement between the parties with respect to the subject matter hereof and supersedes all oral or written proposals or understandings concerning such subject matter. This agreement may be modified only pursuant to a writing executed by both parties.

#### 9.9 WAIVER

No waiver shall be deemed to have been made by any Party hereto of any rights hereunder unless such waiver is in writing and signed by the Party making the waiver, and then such waiver shall effective only with respect to the specific instance involved and shall in no way impair or affect any rights of any such Party in any other respect or at any other time.

#### 9.10 INDEPENDENT CONTRACTORS

Each Party to this Agreement is an independent contractor. The parties agree that the officers, agents and employees of one Party are not to be considered the officers, agents and employees of the other and that this Agreement does not create any relationship of employer and employee or of principal agent. END USER has no legal right to contract for, or incur, any liability whatsoever in COMPASS' name. END USER is not authorized to act as an agent of COMPASS in any manner.

#### 9.11 AUTHORITY

Each Party represents that it has the full power and authority to enter into and perform this Agreement.

#### 9.12 AVAILABILITY OF RECORDS

COMPASS shall retain and maintain all records and documents relating to END USER Contracts for five (5) years after receipt of final payment by END USER to COMPASS, and shall make them available for inspection and audit by authorized representatives of the END USER, including the Purchasing Agent or designee.

#### 9.13 LICENSES AND PERMITS

COMPASS shall, without additional expense to END USER, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to the performance of the work or to the products or services to be

provided under this Agreement including, but not limited to, any laws or regulations requiring the use of licensed Contractors to perform parts of the work.

#### 9.14 AMERICANS WITH DISABILITIES ACT

COMPASS agrees to comply with Council Policy 100-04, which establishes that all City contractors, including but not limited to construction contractors, consultants, grantees, and providers of goods and services agree to comply with all applicable titles of the Americans with Disabilities Act. Council Policy 100-04 is by this reference incorporated into this Agreement.

#### 9.15 DRUG-FREE WORKPLACE

COMPASS agrees to comply with Council Policy 100-17, which requires all City construction contractors, consultants, grantees and providers of services to provide a drug-free workplace for the performance of work done in connection with a contract held by the City. Council Policy 100-17 is by this reference incorporated into this Agreement.

#### 9.16 NON-DISCRIMINATION

COMPASS shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. COMPASS shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. COMPASS understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. Contracts between the COMPASS and any subcontractors, vendors, and suppliers performing work under this Agreement shall contain this language.

##### 9.16.1 COMPLIANCE WITH CITY'S EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP).

Compass shall comply with City's EOCP requirements. Compass shall not discriminate against any employee or applicant for employment on any basis prohibited by laws. Compass shall provide equal opportunity in all employment practices. Prime contractors shall ensure that their subcontractors comply with this program. Nothing in this section shall be interpreted to hold a prime contractor liable for any discriminatory practice of its subcontractors.

##### 9.16.2 COMPLIANCE INVESTIGATIONS.

Upon the City's request, Compass agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the

past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Compass for each subcontract or supply contract. Compass further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's

Nondiscrimination in Contracting Ordinance. Compass understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, and other sanctions.

#### 9.17 DUTY TO COOPERATE WITH AUDITOR.

The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Compass' records to confirm contract compliance. Compass shall make reasonable efforts to cooperate with Auditor's requests.



**FIRST AMENDMENT TO THE ANNUAL SUPPORT AND LICENSE AGREEMENT BETWEEN THE CITY  
OF SAN DIEGO  
AND  
COMPASS COMPUTER SOLUTIONS, INC.**

This First Amendment to the Annual Support and License Agreement (First Amendment) is made and entered into by and between the City of San Diego (City) and Compass Computer Solutions, Inc. (Compass), also herein referred to individually as "Party" and collectively as "Parties."

**RECITALS**

A. On January 11, 2018, the City and Compass entered into an Annual Support and License Agreement to provide software programs and related software support services for the City (Agreement); and

B. The Parties now wish to amend the Agreement to: 1) add an additional one (1) year to the term, and one (1) option year, for a total of up to four (4) years; 2) increase the not-to-exceed amount of the compensation paid to Compass under the Agreement by \$15,000, for a total of \$30,000; and 3) update the Contractor Administrator and Notice provisions; and

C. On November 5, 2019, the Director of the City's Purchasing and Contracting Department approved the sole source request to enter into the two (2) year extension to the term contained in this First Amendment.

NOW THEREFORE, in consideration of the above recitals that are hereby incorporated by this reference, the mutual promises contained herein, and other valuable consideration the sufficiency and receipt of which is acknowledged, the Parties agree as follows:

1. Section 3 of the Agreement is **DELETED** in its entirety and is hereby **REPLACED** with the following:

"3. Term. The term of this Agreement commenced on January 11, 2018 and shall remain in effect until January 10, 2021. The City shall have the right in its sole discretion to exercise one (1) additional one (1) year option to extend the term until January 10, 2022. If City chooses to exercise this option, City shall do so in writing to Compass 30 days prior the expiration of the term currently in effect. The total duration of the Agreement, including all options, may not exceed five (5) years unless approved by ordinance of the City Council in accordance with Charter section 99.

If City chooses to terminate the Program Support provisions listed in Section 5 of this Agreement, the Programs' License provisions listed in Section 4 of this Agreement shall remain in full force and City will be able to continue to use the Programs without Compass assistance or Compass program updates of any kind. Either Party may terminate this Agreement at any time and for any reason upon thirty (30) days written notice to the other Party."

2. Sections 6 and 6.1 of the Agreement are **DELETED** in their entirety and are hereby **REPLACED** with the following:

Approved as to form this \_\_\_\_\_ day of  
\_\_\_\_\_, 2019.

MARA W. ELLIOTT, City Attorney

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

**SECOND AMENDMENT TO THE ANNUAL SUPPORT AND LICENSE  
AGREEMENT BETWEEN THE CITY OF SAN DIEGO  
AND  
ELIVE CORPORATION.**

This Second Amendment to the Annual Support and License Agreement ("Second Amendment") is made and entered into by and between the City of San Diego ("City") and Elive Corporation ("Elive," formerly Compass Computer Solutions, "Compass"), also herein referred to individually as "Party" and collectively as "Parties."

**RECITALS**

- A. On January 11, 2018, the City and Compass entered into an Annual Support and License Agreement to provide software programs and related software support services for the City ("Agreement");
- B. On January 8, 2020, the City and Compass entered into a First Amendment to the Agreement ("First Amendment"); and
- C. The Parties now wish to further amend the Agreement to: 1) extend the term to December 31, 2022; and 2) increase the not-to-exceed amount of the compensation paid to Elive Corporation under the Agreement by \$9,000, for a total of \$39,000.

NOW THEREFORE, in consideration of the above recitals that are hereby incorporated by this reference, the mutual promises contained herein, and other valuable consideration the sufficiency and receipt of which is acknowledged, the Parties agree as follows:

1. Section 3 of the Agreement is **DELETED** in its entirety and is hereby **REPLACED** with the following:

- "3. Term. The term of this Agreement shall be for a period of four (4) years from date of approval by the City Attorney in accordance with Charter section 40 (Effective Date), after the Agreement has been executed by the Parties. The total duration of the Agreement, including all renewals, may not exceed five (5) years unless approved by ordinance of the City Council in accordance with Charter section 99.

If City chooses to terminate the Program Support provisions listed in Section 5 of this Agreement, the Programs' License provisions listed in Section 4 of this Agreement shall remain in full force and the City will be able to continue to use the Programs without either Elive's assistance or program updates of any kind. Either Party may terminate this Agreement at any time and for any reason upon thirty (30) days written notice to the other Party."

2. Section 6 of the Agreement is **DELETED** in its entirety and is hereby **REPLACED** with the following:

“6. Compensation. The City will pay Elive annually in advance of the provided services listed in Section 5. The compensation shall consist of an annual fee of \$7,200 for the provision of this software to provide the Services. The total amount paid to Elive shall not exceed \$39,000 for the duration of the Agreement, including any and all option years exercised. The annual amount of compensation paid to Elive for each year in which the Agreement is in effect shall not exceed the amount appropriated for this Agreement as certified by the Comptroller or his designee. Elive is not obligated to provide goods or services in excess of this amount, and does so at its own risk unless this Agreement is amended in a writing duly executed by the Parties increasing this not-to-exceed amount.”

3. This Second Amendment will be effective when it is signed by both Parties and approved by the City Attorney in accordance with Charter section 40.

4. Authority. Each individual executing this Second Amendment on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Second Amendment on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Second Amendment is binding upon such person or entity in accordance with its terms. Each person executing this Second Amendment on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state, and that such entity is qualified to do business in California.

5. All provisions of the Agreement not addressed in this Second Amendment shall remain in full force and effect.

[The remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF, this Second Amendment is executed by the City and Elive acting by and through their authorized officers.

Elive Corporation

CITY OF SAN DIEGO  
A Municipal Corporation

By: <sup>DocuSigned by:</sup> John F Walsh  
0F6C04DAB5834F3...

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

Print Name: John F. Walsh

Print Name: \_\_\_\_\_

Title: CEO

Title: \_\_\_\_\_

Date Signed: 12/1/2021

Date Signed: \_\_\_\_\_

Approved as to form this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

MARA W. ELLIOTT, City Attorney

By: \_\_\_\_\_  
Bret A. Bartolotta  
Deputy City Attorney

**THIRD AMENDMENT TO THE ANNUAL SUPPORT AND LICENSE  
AGREEMENT BETWEEN THE CITY OF SAN DIEGO  
AND  
ELIVE CORPORATION**

This Third Amendment to the Annual Support and License Agreement ("Third Amendment") is made and entered into by and between the City of San Diego ("City") and Elive Corporation ("Elive," formerly Compass Computer Solutions, "Compass"), also herein referred to individually as each a "Party" and collectively as the "Parties."

**RECITALS**

- A. On January 11, 2018, the City and Compass entered into an Annual Support and License Agreement to provide software programs and related software support services for the City ("Agreement"); and
- B. On January 8, 2020, the City and Compass entered into a First Amendment to the Agreement; and
- C. On December 29, 2021, the City and Elive entered into a Second Amendment to the Agreement; and
- D. The Parties now wish to further amend the Agreement to: (i) extend the term two (2) years to December 31, 2024; and (ii) increase the not-to-exceed amount of the compensation paid to Elive Corporation under the Agreement by \$25,000, for a total not to exceed amount of \$64,000; and
- E. The two-year extension of the Agreement will require San Diego City Council approval by Ordinance pursuant to San Diego City Charter section 99 because the term will be longer than five (5) years.

NOW THEREFORE, in consideration of the above recitals that are hereby incorporated by this reference, the mutual promises contained herein, and other valuable consideration the sufficiency and receipt of which is acknowledged, the Parties agree as follows:

1. Section 3 of the Agreement is **DELETED** in its entirety and is hereby **REPLACED** with the following:

- "3. Term. The term of this Agreement shall be for a period of seven (7) years from date of approval by the City Attorney in accordance with Charter section 40 (Effective Date), after the Agreement has been executed by the Parties. The total duration of the Agreement, including all renewals, may not exceed five (5) years unless approved by ordinance of the City Council in accordance with Charter section 99.

If City chooses to terminate the Program Support provisions listed in Section 5 of this Agreement, the Programs' License provisions listed in Section 4 of this Agreement shall remain in full force and the City will be able to continue to use the Programs without either Elive's assistance or program updates of any kind. Either Party may terminate this Agreement at any time and for any reason upon thirty (30) days written notice to the other Party."

2. Section 6 of the Agreement is **DELETED** in its entirety and is hereby **REPLACED** with the following:

"6. Compensation. The City will pay Elive annually in advance of the provided services listed in Section 5. The compensation shall consist of an annual fee of \$8,280 for the provision of this software to provide the Services. The total amount paid to Elive shall not exceed \$64,000 for the duration of the Agreement, including any and all option years exercised. The annual amount of compensation paid to Elive for each year in which the Agreement is in effect shall not exceed the amount appropriated for this Agreement as certified by the Comptroller or his designee. Elive is not obligated to provide goods or services in excess of this amount and does so at its own risk unless this Agreement is amended in a writing duly executed by the Parties increasing this not-to-exceed amount."

3. This Third Amendment will be effective when it is signed by both Parties and approved by the City Attorney in accordance with Charter section 40.

4. Authority. Each individual executing this Third Amendment on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Third Amendment on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Third Amendment is binding upon such person or entity in accordance with its terms. Each person executing this Third Amendment on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state, and that such entity is qualified to do business in California.

5. All provisions of the Agreement (as amended) not addressed in this Third Amendment shall remain in full force and effect.

[The remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF, this Third Amendment is executed by the City and Elive acting by and through their authorized officers.

Elive Corporation

CITY OF SAN DIEGO  
A Municipal Corporation

By: John Walsh

By: C. Abarca

Print Name: John F. Walsh

Print Name: Claudia C. Abarca

Title: CEO

Title: Director, Purchasing & Contracting

Date Signed: 10/24/2022

Date Signed: February 3, 2023

Approved as to form this 7<sup>th</sup> day  
of February, 2023.

MARA W. ELLIOTT, City Attorney

By: [Signature]

Bret A. Bartolotta  
Deputy City Attorney



1/10/2023 #59

(O-2023-81)

ORDINANCE NUMBER O- 21600 (NEW SERIES)

DATE OF FINAL PASSAGE JAN 13 2023

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE THIRD AMENDMENT TO THE ANNUAL SUPPORT AND LICENSE AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND ELIVE CORPORATION TO EXTEND SUCH AGREEMENT BY TWO YEARS AND INCREASE THE MAXIMUM NOT TO EXCEED AMOUNT BY \$25,000.

WHEREAS, the City of San Diego (City) and Elive Corporation (Elive, formerly Compass Computer Solutions, Compass) are parties to that certain Annual Support and License Agreement dated January 11, 2018 (Contract) whereby Elive provides software programs and related software support services to the City; and

WHEREAS, on January 8, 2020, the City and Compass entered into a First Amendment to the Contract; and

WHEREAS, on December 29, 2021, the City and Elive entered into a Second Amendment to the Contract; and

WHEREAS, the Contract is set to expire on December 31, 2022, and the City, through a Third Amendment to the Contract (Third Amendment), is seeking to extend the term of the Contract for two (2) additional years with a \$25,000 increase bringing the maximum not to exceed amount to \$64,000, which will extend the Contract term beyond the five (5) years allowed to be authorized by resolution; and

WHEREAS, on October 25, 2022, the Purchasing and Contracting Department Director approved the Request and Certification for Sole Source Procurement for this Third Amendment; and

WHEREAS, on November 3, 2022, the Council Committee on Budget and Government Efficiency voted to recommend approval of this Third Amendment by the full Council; and

WHEREAS, the Office of the City Attorney has drafted this Ordinance based on the information provided by City staff, with the understanding that this information is complete, true, and accurate; and

WHEREAS, under San Diego Charter section 99, no contract, agreement or obligation extending for a period of more than five years may be authorized except by Ordinance approved by a two-thirds majority vote of the City Council; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor, or his designee, is authorized to execute, for and on behalf of said City, the Third Amendment to extend the Contract by two (2) additional years at an increased maximum not to exceed amount of \$64,000.

Section 2. That the expenditure of an amount not to exceed \$25,000 for the additional two (2) years of the Contract is authorized for the purpose of executing the Third Amendment, contingent upon authorization of the respective fiscal year budget and provided that the Chief Financial Officer or his designee certifies that funds are available in the City treasury for such purposes.

Section 3. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

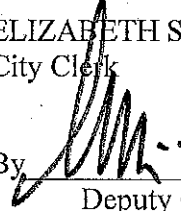
APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Bret A. Bartolotta  
Bret A. Bartolotta  
Deputy City Attorney

BAB:jdf  
10/31/22  
Or.Dept: Treasurer  
Doc. No.: 3115284

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JAN 10 2023.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 1/13/23  
(date)

  
TODD GLORIA, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on JAN 10 2023, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JAN 13 2023

AUTHENTICATED BY:

TODD GLORIA  
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By [Signature], Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

DEC 06 2022, and on JAN 13 2023

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By [Signature], Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- <u>21600</u>

Passed by the Council of The City of San Diego on January 10, 2023, by the following vote:

**YEAS:** LACAVA, WHITBURN, MONTGOMERY STEPPE, VON WILPERT, LEE, CAMPILLO, MORENO, & ELO-RIVERA.

**NAYS:** NONE.

**NOT PRESENT:** CAMPBELL.

**RECUSED:** NONE.

AUTHENTICATED BY:

**TODD GLORIA**

Mayor of The City of San Diego, California

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(Seal)

By: Matthew R. Hilario, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of ORDINANCE NO. **O-21600** (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on **December 6, 2022**, and on **January 13, 2023**.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(SEAL)

By:  \_\_\_\_\_, Deputy