

**THE CITY OF REDWOOD CITY
INFORMATION TECHNOLOGY SERVICES
GENERAL TERMS AND CONDITIONS**

The CUSTOMER named on the applicable Services Order and the City of Redwood City ("RWC") agree that these General Terms and Conditions ("GTC") are applicable to all Information Technology ("IT") Services provided by RWC to CUSTOMER. Capitalized terms have the meanings defined herein.

1. General.

The GTC describes the general terms and conditions applicable to CUSTOMER's purchase of IT Services from RWC. The GTC together with the applicable Services Orders constitute the entire agreement between the parties. In the event of a conflict between the terms of the GTC and of any Services Order, the terms of the Services Order prevail.

2. Services Orders.

The Services to be performed by RWC are set forth in the applicable Services Order(s). Each Services Order will state the Service, the term for which Service is requested (the "Service Term") and the pricing for the Service. A Services Order is not binding upon RWC unless signed by an authorized RWC representative.

3. Service Commencement Date; Service Term.

The Service Term will be as specified in the Services Order, and will commence on the date specified in the Services Order, or such later date as specified by RWC in a written notice to CUSTOMER. Upon expiration of the Service Term for a particular Services Order, Service will continue under the Services Order on a month to month basis at RWC's then current rates, and either RWC or CUSTOMER may terminate the Service upon 30 days prior written notice. CUSTOMER will pay RWC's then current charges for any moves, additions or changes to any Services Order or Service agreed to by the parties.

4. Compensation; Billing; Payment.

Compensation owed by CUSTOMER for Services rendered by RWC will be as set out in the applicable Services Order(s). Upon execution of a Services Order by CUSTOMER, RWC will invoice CUSTOMER for any non-recurring initial set up fees, and the first monthly recurring charges, if any. Billing for partial months is prorated. Subsequently, RWC will invoice CUSTOMER monthly in advance for any recurring charges for the Services, and in arrears for any Additional Services (defined below) that were requested by CUSTOMER and performed by RWC during the monthly billing period. Payment is due within 30 days of the invoice date.

5. Additional Services.

Additional Services will be performed by RWC only at the request of CUSTOMER and will be charged to CUSTOMER at the RWC fiscal year hourly rate in effect at the time the Additional Services are performed. The hourly rate for work performed during Normal Business Hours, as defined below, is established annually by RWC for each fiscal year.

A. Normal Business Hours: Monday through Friday, 8:00 a.m. through 5:00 p.m. except on the following currently recognized RWC holidays (calendar dates vary depending on the year):

- New Year's Day
- Martin Luther King, Jr. Day
- Presidents Day
- Memorial Day
- 4th of July
- Labor Day
- Veterans Day
- Thanksgiving Day
- Thanksgiving Friday
- Christmas Eve
- Christmas Day
- New Year's Eve

B. Non-Business Hours: All hours outside of Normal Business Hours, as defined above.

6. Reliance on Professional Skill of RWC.

RWC represents that it has the necessary professional skills to perform the Services and Additional Services required and CUSTOMER may rely on such skills of RWC to do and perform the work. RWC will perform all the work in a professional manner.

7. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE GTC OR SERVICES ORDERS, IN NO EVENT WILL RWC BE LIABLE FOR ANY DAMAGES WHATSOEVER FOR LOST PROFITS, LOST REVENUES, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF DATA, THE COST OF PURCHASING REPLACEMENT SERVICES, OR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF THE PERFORMANCE OR FAILURE TO PERFORM UNDER ANY SERVICES ORDER. FURTHER, RWC WILL HAVE NO LIABILITY FOR ANY CLAIM AGAINST CUSTOMER BY A THIRD PARTY IN CONNECTION WITH OR FOR RESPONDING TO EMERGENCY 911 OR OTHER EMERGENCY REFERRAL CALLS. RWC WILL HAVE NO RESPONSIBILITY FOR THE SERVICE QUALITY OR SERVICE OUTAGES (I) CAUSED BY OR CONTRIBUTED TO, DIRECTLY OR INDIRECTLY, BY ANY ACT OR OMISSION OF

CUSTOMER AND/OR ITS AFFILIATES, AGENTS OR REPRESENTATIVES; (II) DUE TO POWER FAILURES (III) DUE TO INTERNET OUTAGES; (III) CAUSED BY THE FAILURE OR MALFUNCTION OF NON-RWC EQUIPMENT OR SYSTEMS; OR (IV) DUE TO CIRCUMSTANCES OR CAUSES BEYOND THE CONTROL OF RWC OR ITS AGENTS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE GTC OR SERVICES ORDERS, RWC'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER HEREUNDER WILL BE LIMITED TO THE ACTUAL FEES PAID BY CUSTOMER TO RWC DURING THE PRECEDING TWELVE (12) MONTHS.

8. Compliance with Law.

All services rendered hereunder by RWC will be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of CUSTOMER, and any federal, state or local governmental agency having jurisdiction in effect at the time the service is rendered.

9. Relationship of Parties.

It is understood that the relationship of RWC to CUSTOMER is that of an independent contractor and all persons working for or under the direction of RWC are its agents or employees and not agents or employees of CUSTOMER.

10. Nonassignment.

The GTC and Services Orders are not assignable either in whole or in part.

11. Amendments.

The GTC and Services Orders may be amended or modified only by written agreement signed by both Parties.

12. Validity.

The invalidity, in whole or in part, of any provisions of the GTC or Services Orders will not void or affect the validity of any other provisions of the GTC or Services Orders.

13 Governing Law/Litigation.

The GTC and Services Orders will be governed by the laws of the State of California and any suit or action initiated by either Party will be brought in the County of San Mateo, California. In the event of litigation between the Parties hereto to enforce any provision of the GTC and Services Orders, the unsuccessful Party will pay the reasonable expenses of litigation of the successful Party.

14. Mediation.

Should any dispute arise out of the GTC or Services Orders, the Parties will meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither Party will

be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, will be paid equally by the Parties. If a mediated settlement is reached, neither Party will be deemed the prevailing party for purposes of the settlement and each Party will bear its own legal costs.

15. Indemnity.

CUSTOMER will defend, indemnify and hold harmless RWC and its officers, City Council, agents, employees and volunteers from and against all claims, damages, losses and expenses (including claims, damages, losses and expenses brought by third parties to this agreement) including attorney fees arising out of, or relating to, RWC's performance of the Services and Additional Services described in the GTC and Services Orders, including any loss of data, except where RWC has been found, in a court of competent jurisdiction, to be solely liable by reason of its gross negligence or willful misconduct.

16. Insurance.

RWC will not insure for any loss or damage to any of CUSTOMER's property of any kind owned or leased by CUSTOMER or its employees, servants or agents even if such property is located on RWC's premises. CUSTOMER represents and warrants that all insurance required hereunder has been or will be obtained prior to the commencement of delivery of Services by RWC under any Services Order. Upon request, CUSTOMER will furnish RWC with certificates of insurance evidencing the required coverage.

A. Liability Insurance.

CUSTOMER will take out and maintain, so long as the GTC remains in effect, such bodily injury liability and property damage liability insurance as will protect RWC while performing work covered by the GTC and Services Orders from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage or loss which may arise in connection with the provision of Services by RWC under the GTC and Services Orders. The amounts of such insurance will be a minimum of Two Million Dollars (\$2,000,000) combined single limit bodily injury and property damage for each occurrence. RWC, its officers, employees and agents will be maintained as additional insured's on said policy. All insurance will be with insurance carriers licensed in the State of California and in good standing with the California Department of Insurance.

B. Self Insurance.

Notwithstanding the above, CUSTOMER will have the right to self-insure against any and all perils and/or liabilities against which it would otherwise be required to insure and will also have the right to effect any such insurance by means of so called "blanket" or "umbrella" policies of insurance. If CUSTOMER decides to self-insure, CUSTOMER must provide RWC with written notice of self-insurance identifying the type of policy coverage and the amount for which it will self-insure.

17. Notices.

All notices required by the GTC or Services Orders will be given to RWC and CUSTOMER in writing, by first class mail, postage paid, addressed as follows:

RWC: The City of Redwood City
Attention: IT Manager
1017 Middlefield Road
Redwood City, CA 94063

CUSTOMER: AS SPECIFIED ON SERVICES ORDER

18. **Termination.** If CUSTOMER fails to make any payment when due and such failure continues for 10 business days after written notice from RWC, or if either party fails to observe or perform any other material term of the GTC or Services Orders and such failure continues for 30 days after written notice from the other party, then the non-defaulting party may: (a) terminate the GTC and/or any Services Order, in whole or in part, and/or (b) subject to the limitations of the GTC, pursue any remedies it may have at law or in equity.

19. **Force Majeure.** Neither party will be liable, nor will any remedy provided by the GTC be available, for any failure to perform any obligations under the GTC or Services Orders (except the obligation to pay invoices for Services delivered) due to causes beyond such party's reasonable control which will include without limitations, acts of God, earthquakes, labor disputes, changes in law, regulation or government policy, riots, war, fire, epidemics, acts or omissions of vendors or suppliers, equipment failures, transportation difficulties, power or internet outages, or other similar occurrences ("force majeure").

**THE CITY OF REDWOOD CITY
INFORMATION TECHNOLOGY SERVICES
SERVICES ORDER**

DATE: 4/2/2018
CUSTOMER NAME: City of Burlingame
CUSTOMER ADDRESS: 501 Primrose Road
Burlingame, CA 94010
Tel:(650) 558-7213
Email:caugustine@burlingame.org

SERVICE COMMENCEMENT DATE: 7/1/2018

PRICING:

INITIAL SET UP FEE: N/A

MONTHLY RECURRING CHARGE: \$55,856.00

HOURLY RATE FOR ADDITIONAL SERVICES*: \$195.70

DURING NORMAL BUSINESS HOURS: \$195.70

DURING NON-BUSINESS HOURS: \$293.55

*SUBJECT TO ANNUAL ADJUSTMENT BY RWC

INITIAL SERVICE TERM: One (1) year

MISCELLANEOUS: The City of Burlingame agrees to pre-purchase 3,425 hours, paid in twelve equal monthly payments at the above hourly rate of \$195.70 during fiscal year 2020-21. Of the 3,425 pre-purchased hours, 3,200 are non-refundable.

Hours used above 3,425 will be invoiced in the July 2021. Unused hours above 3,200, but less than 3,425, will be refunded in the July 2021.

Capitalized terms not defined herein have the meaning set forth in the General Terms and Conditions (GTC) attached hereto.

All charges in this Service Order are exclusive of taxes and fees.

By executing this Service Order, CUSTOMER is requesting, and agrees to pay for the Services identified and described in this Services Order and to be bound by the GTC, which is attached hereto and incorporated by reference.

Without limiting the generality of Section 15 of the GTC, the defense, indemnity, and hold harmless provisions of Section 15 of the GTC shall apply to any malicious activity delivered through email that the spam solution employed by RWC does not catch.

SERVICES TO BE PROVIDED:

One full-time Redwood City IT Staff will be assigned to CUSTOMER on-site to provide infrastructure, network, server, data center, printer, mobile device, desktop, telephone system support, and aid in special technology projects as requested.

In addition, Redwood City Staff will provide "best effort" limited infrastructure support to Central County Fire Department for technologies hosted in Burlingame data center.

RWC IT will assign one software developer to report to CUSTOMER Finance Department. Services provided will consist of modifying or writing new software code in CUSTOMER Universe Database to support financial services, payroll, utility billing, audit, and other sub-systems as requested by CUSTOMER.

RWC will maintain a live copy of CUSTOMER Universe Database on a dedicated server, available to CUSTOMER when requested. In exchange, CUSTOMER will host a live copy of RWC Universe Database on a server housed in CUSTOMER data center. It is the obligation of each party to schedule and notify the other when they will be using the backup system housed on the other's facility for either testing or production. It is the obligation of each party to test their agency's respective backup system housed at the other's facility in order to confirm it is a usable working backup.

RWC will, at no additional cost to CUSTOMER, continue having CUSTOMER email flow through RWC spam protection solution for CUSTOMER protection from viruses and other malware typically delivered through email.

RWC, upon request, will advise, write specifications, implement, and/or maintain any other technology agreed up by both parties and which RWC has the skills and resources to do so.

The individual signing for CUSTOMER represents that he/she is authorized to enter into this Service Order on behalf of CUSTOMER.

("CUSTOMER")

CITY OF REDWOOD CITY

("RWC")

By _____

By _____

Name:

Name:

Title:

Title:

Date:

Date: