

**MASTER SERVICES AGREEMENT BETWEEN  
THE CITY OF SAN LEANDRO AND  
VISIONARY INTEGRATION PROFESSIONALS LLC**

This MASTER SERVICES AGREEMENT (“MSA”) is made by and between the CITY OF SAN LEANDRO (“City”) and VISIONARY INTEGRATION PROFESSIONALS, LLC., a Delaware limited liability company, with its principal place of business at 80 Iron Point Circle, Suite 100, Folsom, California 95630 (“VIP”) (together sometimes referred to as the “Parties”).

This is a master services agreement between the parties and not a commitment for a specific project or piece of work. VIP and City will jointly develop and agree to a separate Statement of Work(s) (“SOW”), which will be incorporated into this MSA, for each specific project related to this MSA. Each project will have a defined scope, deliverables, tasks, timeline, and budget. For each fully executed SOW, the City will issue a separate Purchase Order (“PO”) for the agreed upon amount. The total of all SOWs cannot exceed the amount specified in Section 2 of this MSA.

**RECITALS**

A. The parties desire to enter into this MSA, effective January 4, 2022, in order to provide a statement of their respective rights and responsibilities in connection with the provision of the Consulting Services to City by VIP.

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, the parties hereto agree as follows:

**AGREEMENT**

**1. SCOPE OF SERVICES**

VIP agrees to provide the services specified in any SOW, to be attached as Exhibit(s) to this MSA, and modified by any “Change Order to Statement of Work,” if applicable (collectively, “Services”). The SOW and all Change Orders to SOW are collectively referred to as the “Project Documents”. NO STATEMENT OF WORK OR CHANGE ORDER TO STATEMENT OF WORK IS VALID WITHOUT THE SIGNATURE OF BOTH PARTIES. In the event there are conflicting terms among the various documents, the order of precedence is as follows: 1) Project Documents; 2) Exhibit(s) including SOWs and Change Orders to SOWs and 3) this MSA.

**1.2 Standard of Performance.** VIP shall perform all services required pursuant to this MSA in the manner and according to the standards observed by a competent practitioner of the profession in which VIP is engaged.

- 1.3 Assignment of Personnel.** VIP shall assign only competent personnel to perform services pursuant to this MSA. In the event that City, in its sole discretion, at any time during the term of this MSA, desires the reassignment of any such persons, VIP shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 Time.** VIP shall devote such time to the performance of services pursuant to this MSA as may be reasonably necessary to meet the standard of performance provided in Subsection 1.2 above and to satisfy VIP's obligations hereunder.
- 1.5 City of San Leandro Living Wage Rates.** This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). VIP's attention is directed to the San Leandro Municipal Code, Title 1, Chapter 6, Article 6. VIP must submit completed self-certification forms and comply with the LWO if covered.

**Section 2. COMPENSATION.** City hereby agrees to pay VIP a sum not to exceed \$600,000 through SOWs developed through the terms of this MSA. This is notwithstanding any contrary indications that may be contained in VIP's proposal, for services to be performed and reimbursable costs incurred under this MSA. City shall pay VIP for services rendered pursuant to this MSA at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to VIP for services rendered pursuant to this MSA. VIP shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, VIP shall not bill City for duplicate services performed by more than one person.

VIP and City acknowledge and agree that compensation paid by City to VIP under this MSA is based upon VIP's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of VIP. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which VIP and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this MSA.

- 2.1 Invoices.** VIP shall submit invoices, not more often than once a month during the term of this MSA, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:
- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
  - The beginning and ending dates of the billing period;
  - For each SOW included on the invoice, the SOW number, SOW actual hours by role used in the current billing month, the approved SOW role bill rate and the total amount for that role. In addition, the invoice will include the remaining available hours for each role as defined in the approved/defined SOW. A grand billing total will be included by SOW. If the invoice is for SOW progress payment, a 10% withhold amount will be included for each role and subtracted from the invoice total for that period. An

aggregated monthly 10% withhold will be tracked and maintained per role until the final SOW approval is received and invoiced.

- A MSA level Budget Summary table containing the original MSA dollar amount, the MSA dollar amount of prior billings, the total due this period, the remaining balance available under the MSA, and the percentage available/remaining;
- VIP's signature;
- VIP shall give separate notice to the City when the total number of hours worked by VIP and any individual employee, agent, or subcontractor of VIP reaches or exceeds 800 hours within a 12-month period under this MSA and any other agreement between VIP and City. Such notice shall include an estimate of the time necessary to complete work described in SOWs and the estimate of time necessary to complete work under any other agreement between VIP and City, if applicable.

**2.2 Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed as defined in the approved SOWs. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay VIP.

**2.3 Final Payment.** City shall pay the last 10% of the total sum due to each SOW pursuant to this MSA within 60 days after completion and approval of the SOW services and submittal to City of a final invoice, if all SOW required services and work products have been satisfactorily performed.

**2.4 Total Payment.** City shall pay for the services to be rendered by VIP pursuant to this MSA. City shall not pay any additional sum for any expense or cost whatsoever incurred by VIP in rendering services pursuant to this MSA. City shall make no payment for any extra, further, or additional service pursuant to this MSA.

In no event shall VIP submit any invoice for an amount in excess of the maximum amount approved in individually executed SOWs and in the overall MSA. The MSA must be amended prior to the submission of such an invoice exceeding the MSA maximum budget threshold by a properly executed change order or amendment.

**2.5 Hourly Fees.** Fees for work performed by VIP on an hourly basis for each MSA SOW shall not exceed the maximum amounts shown on the compensation and rate schedule attached hereto as Exhibit B.

**2.6 Reimbursable Expenses.** Reimbursable expenses are specified in SOW(s). Expenses not listed in SOWs are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this MSA that shall not be exceeded.

- 2.7 Payment of Taxes.** VIP is solely responsible for the payment of employment taxes incurred under this MSA and any similar federal or state taxes.
- 2.8 Payment upon Termination.** In the event that the City or VIP terminates this MSA pursuant to Section 8, the City shall compensate the VIP for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. VIP shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 Authorization to Perform Services.** VIP is not authorized to perform any services or incur any costs whatsoever under the terms of this MSA until receipt of authorization from the Contract Administrator.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, VIP shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this MSA. City shall make available to VIP only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for VIP's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City.

**Section 4. INSURANCE REQUIREMENTS.** Before fully executing this MSA, VIP, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the VIP and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, VIP shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work. VIP shall maintain the insurance policies required by this section throughout the term of this MSA. The cost of such insurance shall be included in the VIP's bid or proposal. VIP shall not allow any subcontractor to commence work on any subcontract until VIP has obtained all insurance required herein for the subcontractor(s) and provided evidence to City that such insurance is in effect. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. VIP shall maintain all required insurance listed herein for the duration of this MSA.

**4.1 Workers' Compensation.**

- 4.1.1 General Requirements.** VIP shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by VIP. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with



limits of not less than \$1,000,000 per accident. In the alternative, VIP may rely on a self-insurance program to meet these requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the VIP, its employees, agents, and subcontractors.

**4.1.2 Submittal Requirements.** To comply with Subsection 4.1, VIP shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section; and
- b. Waiver of Subrogation Endorsement as required by the section.

**4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 General Requirements.** VIP, at its own cost and expense, shall maintain commercial general liability insurance for the term of this MSA in an amount not less than \$1,000,000 and automobile liability insurance for the term of this MSA in an amount not less than \$1,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this MSA. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this MSA or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this MSA, including the use of owned and non-owned automobiles.

**4.2.2 Minimum Scope of Coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

**4.2.3 Additional Requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the VIP; or automobiles owned, leased, hired, or borrowed by the VIP.
- c. VIP hereby agrees to waive subrogation which any insurer or contractor may require from VIP by virtue of the payment of any loss. VIP agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation.
- d. For any claims related to this MSA or the work hereunder, the VIP's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the VIP's insurance and shall not contribute with it.

**4.2.4 Submittal Requirements.** To comply with Subsection 4.2, VIP shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section;
- b. Additional Insured Endorsement as required by the section;
- c. Waiver of Subrogation Endorsement as required by the section; and
- d. Primary Insurance Endorsement as required by the section.

**4.3 Professional Liability Insurance.**

**4.3.1 General Requirements.** VIP, at its own cost and expense, shall maintain for the period covered by this MSA professional liability insurance for licensed professionals performing work pursuant to this MSA in an amount not less than \$1,000,000 covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

**4.3.2 Claims-Made Limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the MSA.

- b. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the MSA or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this MSA, VIP shall purchase an extended period coverage for a minimum of 5 years after completion of work under this MSA.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this MSA.

**4.3.3 Additional Requirements.** A certified endorsement to include contractual liability shall be included in the policy.

**4.3.4 Submittal Requirements.** To comply with Subsection 4.3, VIP shall submit the Certificate of Liability Insurance in the amounts specified in the section.

#### **4.4 Cyber Liability Insurance.**

**4.4.1 General Requirements.** VIP, at its own cost and expense, shall maintain cyber liability insurance for the term of this MSA in an amount not less than \$1,000,000.00 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by VIP in this MSA and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress; invasion of privacy violations; information theft; damage to or destruction of electronic information; release of private information; alteration of electronic information; extortion; and network security. The policy shall provide coverage for liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering technology services:

- Violation or infringement of any right of privacy, including breach of security and breach of security/privacy laws, rules or regulations globally, now or hereinafter constituted or amended;
- Data theft, damage, unauthorized disclosure, destructions, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential City information in whatever form, transmission of a computer virus or other type of malicious code; and participation in a denial of service attack on third party computer systems;
- Loss or denial of service;
- No cyber terrorism exclusion;

Such coverage must include technology/professional liability including breach of contract, privacy and security liability, privacy regulatory defense and payment of civil fines, payment of credit card provider penalties, and breach response costs, including without limitation, notification costs, forensic analysis, credit protection services, call center

services, identity theft protection services, and crisis management/public relations services.

**4.4.2 Claims-Made Limitations.** The following provisions shall apply if the cyber liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the MSA.
- b. Insurance must be maintained, and evidence of insurance must be provided for at least 5 years after completion of the MSA or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this MSA, VIP shall purchase an extended period coverage for a minimum of 5 years after completion of work under this MSA.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this MSA.

**4.4.3 Additional Requirements.** A certified endorsement to include contractual liability shall be included in the policy.

**4.4.4 Submittal Requirements.** To comply with Subsection 4.4, VIP shall submit the Certificate of Liability Insurance in the amounts specified in the section.

**4.5 All Policies Requirements.**

**4.5.1 Acceptability of Insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

**4.5.2 Verification of Coverage.** Prior to beginning any work under this MSA, VIP shall furnish City with complete copies of all Certificates of Liability Insurance delivered to VIP by the insurer, including complete copies of all endorsements attached to the policies. All copies of Certificates of Liability Insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the VIP beginning work, it shall not waive the VIP's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

**4.5.3 Deductibles and Self-Insured Retentions.** VIP shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this MSA. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or

self-insured retentions as respects the City, its officers, employees, and volunteers; or the VIP shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

**4.5.4 Wasting Policies.** No policy required by this Section 4 shall include a “wasting” policy limit (i.e. limit that is eroded by the cost of defense).

**4.5.5 Endorsement Requirements.** Each insurance policy required by Section 4 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days’ prior written notice has been provided to the City.

**4.5.6 Subcontractors.** VIP shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**4.6 Submittal of Proof of Insurance Coverage.** All certificates of insurance and original endorsements effecting coverage required in this Section 4 must be electronically submitted through the City’s online insurance document management program, PINS Advantage. Contractor shall comply with all requirements provided by City related to the PINS Advantage program.

**4.7 Remedies.** In addition to any other remedies City may have if VIP fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for VIP’s breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the MSA;
- Order VIP to stop work under this MSA or withhold any payment that becomes due to VIP hereunder, or both stop work and withhold any payment, until VIP demonstrates compliance with the requirements hereof; and/or
- Terminate this MSA.

**Section 5. INDEMNIFICATION AND CONSULTANT’S RESPONSIBILITIES.** Refer to the attached Exhibit C, which is incorporated herein and made a part of this MSA.

**Section 6. STATUS OF CONSULTANT.**

**6.1 Independent Contractor.** At all times during the term of this MSA, VIP shall be an independent contractor and shall not be an employee of City. City shall have the right to

control VIP only insofar as the results of VIP's services rendered pursuant to this MSA and assignment of personnel pursuant to Subsection 1.3; however, otherwise City shall not have the right to control the means by which VIP accomplishes services rendered pursuant to this MSA. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, VIP and any of its employees, agents, and subcontractors providing services under this MSA shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 VIP Not an Agent.** Except as City may specify in writing, VIP shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. VIP shall have no authority, express or implied, pursuant to this MSA to bind City to any obligation whatsoever.

**Section 7. LEGAL REQUIREMENTS.**

- 7.1 Governing Law.** The laws of the State of California shall govern this MSA.
- 7.2 Compliance with Applicable Laws.** VIP and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. VIP's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.
- 7.3 Other Governmental Regulations.** To the extent that this MSA may be funded by fiscal assistance from another governmental entity, VIP and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits.** VIP represents and warrants to City that VIP and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. VIP represents and warrants to City that VIP and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this MSA any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, VIP and any subcontractors shall obtain and maintain during the term of this MSA valid Business Licenses from City.
- 7.5 Nondiscrimination and Equal Opportunity.** VIP shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by VIP under this MSA.

VIP shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this MSA, including but not limited to the satisfaction of any positive obligations required of VIP thereby.

VIP shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this MSA.

**Section 8. TERMINATION AND MODIFICATION.**

**8.1 Termination.** City may cancel this MSA at any time and without cause upon 30 days written notification to VIP.

VIP may cancel this MSA upon 60 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, VIP shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon VIP delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to VIP or prepared by or for VIP or the City in connection with this MSA.

**8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this MSA beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this MSA, as provided for herein. VIP understands and agrees that, if City grants such an extension, City shall have no obligation to provide VIP with compensation beyond the maximum amount provided for in this MSA. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse VIP for any otherwise reimbursable expenses incurred during the extension period.

**8.3 Amendments and Change Orders.** Requests for an Amendment to the MSA and/or Change to an individual SOW must be submitted in accordance with the terms of this Section, hereby referred to as the "Change Management Process."

**8.3.1** Either Party may request changes to this MSA, including changes in terms, scope, schedule, and pricing or compensation, or pursuant to statutory and regulatory changes, through a written amendment signed by an individual authorized to bind each Party ("**Amendment**")

**8.3.2** SOW Change Orders. The Parties may agree to make changes that do not impact the pricing of individual SOWS (including payment schedules) or termination date by a change order ("**Change Order**"). Change Orders may include technical changes, changes to SOW interim milestones, assignment of key personnel, etc. Change Orders must be signed by an individual authorized to bind each Party.

**8.3.2.1** VIP shall submit a proposal for any SOW change requests, whether requested by City or initiated by VIP. The proposal will:

**8.3.2.2** Describe the change in sufficient detail to avoid any ambiguity;



- 8.3.2.3 Describe the impact on any task, activity or deliverables or work product;
- 8.3.2.4 Provide a cost estimate, including the effort required by hours, skill requirements (e.g., software developer, project manager, etc.), expenses, if any, and associated costs;
- 8.3.2.5 Identify any impact (increase or decrease) on the project budget; and
- 8.3.2.6 Identify the impact on the project timeline.

8.3.3 Once the Parties agree on the SOW change, the SOW shall be changed in writing. The change will not be effective until the Change Order is signed by both Parties. No oral changes (Amendments or Change Orders) are authorized. If the proposed SOW change requires a MSA amendment, the MSA Amendment process in Section 8.3.1 will be followed.

**8.4** **Assignment and Subcontracting.** City and VIP recognize and agree that this MSA contemplates personal performance by VIP and is based upon a determination of VIP's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this MSA was and is the professional reputation and competence of VIP. VIP may not assign this MSA or any interest therein without the prior written approval of the Contract Administrator. VIP shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

**8.5** **Survival.** All obligations arising prior to the termination of this MSA and all provisions of this MSA allocating liability between City and VIP shall survive the termination of this MSA.

**8.6** **Options upon Breach by VIP.** If VIP materially breaches any of the terms of this MSA, City's remedies shall include, but are not limited to, the following:

**8.6.1** Immediately terminate the MSA;

**8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by VIP pursuant to this MSA;

**8.6.3** Retain a different consultant to complete the work described in any SOW not finished by VIP; or

**8.6.4** Charge VIP the difference between the cost to complete the work described in any SOW that is unfinished at the time of breach and the amount that City would have paid VIP pursuant to Section 2 if VIP had completed the work.

## **Section 9. KEEPING AND STATUS OF RECORDS.**

**9.1** **Records Created as Part of VIP's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or

any other documents or materials, in electronic or any other form, that VIP prepares or obtains pursuant to this MSA and that relate to the matters covered hereunder shall be the property of the City. VIP hereby agrees to deliver those documents to the City upon termination of the MSA. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this MSA are prepared specifically for the City and are not necessarily suitable for any future or other use. City and VIP agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties.

- 9.2 VIP's Books and Records.** VIP shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this MSA for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the VIP to this MSA.
- 9.3 Inspection and Audit of Records.** Any records or documents that Subsection 9.2 of this MSA requires VIP to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this MSA exceeds \$10,000.00, the MSA shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the MSA.

**Section 10. MISCELLANEOUS PROVISIONS.**

- 10.1 Attorneys' Fees.** If a party to this MSA brings any action, including an action for declaratory relief, to enforce or interpret the provision of this MSA, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this MSA, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this MSA is invalid, void, or unenforceable, the provisions of this MSA not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this MSA shall not void or affect the validity of any other provision of this MSA.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this MSA does not constitute a waiver of any other breach of that term or any other term of this MSA.

- 10.5 Successors and Assigns.** The provisions of this MSA shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 Use of Recycled Products.** VIP shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** VIP may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place VIP in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

VIP shall not employ any City official in the work performed pursuant to this MSA. No officer or employee of City shall have any financial interest in this MSA that would violate California Government Code Section 1090 *et seq.*

VIP hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If VIP was an employee, agent, appointee, or official of the City in the previous 12 months, VIP warrants that it did not participate in any manner in the forming of this MSA. VIP understands that, if this MSA is made in violation of California Government Code Section 1090 *et seq.*, the entire MSA is void and VIP will not be entitled to any compensation for services performed pursuant to this MSA, including reimbursement of expenses, and VIP will be required to reimburse the City for any sums paid to the VIP. VIP understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of California Government Code Section 1090 *et seq.*, and, if applicable, will be disqualified from holding public office in the State of California.

At City's sole discretion, VIP may be required to file with the City a Form 700 to identify and document VIP's economic interests, as defined and regulated by the California Fair Political Practices Commission. If VIP is required to file a Form 700, VIP is hereby advised to contact the San Leandro City Clerk for the Form 700 and directions on how to prepare it.

- 10.8 Solicitation.** VIP agrees not to solicit business at any meeting, focus group, or interview related to this MSA, either orally or through any written materials.
- 10.9 Contract Administration.** This MSA shall be administered by \_\_\_\_\_ ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 Notices.** Any written notice to VIP shall be sent to:  
Attention: Stephen Carpenter  
80 Iron Point Circle, Suite100  
Folsom, CA 95630  
legal@trustvip.com

Any written notice to City shall be sent to:  
City of San Leandro  
Community Development Department  
c/o Tom Liao  
835 East 14<sup>th</sup> Street  
San Leandro, CA 94577

With a copy to:  
City of San Leandro  
Department of Finance  
c/o Purchasing Agent  
835 East 14<sup>th</sup> Street  
San Leandro, CA 94577

**10.11 Integration.** This MSA, including the scope of work attached hereto and incorporated herein as Exhibits A, B, C, and D represents the entire and integrated agreement between City and VIP and supersedes all prior negotiations, representations, or agreements, either written or oral.

<u>Exhibit A</u>	Form Statement of Work ("SOW")
<u>Exhibit B</u>	MSA Compensation Schedule and Rates
<u>Exhibit C</u>	Indemnification
<u>Exhibit D</u>	COVID-19 Compliance Requirements

**10.12 Counterparts.** This MSA may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**10.13 Certification per Iran Contracting Act of 2010.** In the event that this contract is for one million dollars (\$1,000,000.00) or more, by VIP's signature below VIP certifies that VIP, and any parent entities, subsidiaries, successors or subunits of VIP are not identified on a list created pursuant to subdivision (b) of Section 2203 of the California Public Contract Code as a person engaging in investment activities in Iran as described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5 of the California Public Contract Code, as applicable.

## **Section 11. CONFIDENTIAL INFORMATION**

**11.1** During the term of this Agreement, either Party may have access to confidential material or information ("**Confidential Information**") belonging to the other Party or the other Party's customers, vendors, subcontractors, or partners. Confidential Information includes the disclosing Party's proprietary information, computer programs and codes, business plans, customer/member lists and information, financial records, partnership arrangements and licensing plans or other information, materials, records, writings, or data that is marked confidential or that due to its character and nature, a reasonable person under like circumstances would treat as confidential. Confidential Information

will be used only for the purposes of this Agreement and related internal administrative purposes. Each Party agrees to protect the other's Confidential Information at all times and in the same manner as each protects the confidentiality of its own confidential materials, but in no event with less than a reasonable standard of care.

**11.2** Confidential Information does not include information which: (a) is already known to the other Party at the time of disclosure; (b) is or becomes publicly known through no wrongful act or failure of the receiving Party; (c) is independently developed without use or benefit of the other's Confidential Information; (d) is received from a third party which is not under and does not thereby breach an obligation of confidentiality; or (e) is a public record, not exempt from disclosure pursuant to California Public Records Act, Government Code Section 6250, *et seq.*, applicable provisions of California Welfare and Institutions Code, or other State or Federal laws, regardless of whether such information is marked as confidential or proprietary.

**11.3** Disclosure of the Confidential Information will be restricted to the receiving Party's employees, consultants, suppliers, or agents on a "need to know" basis in connection with the Services, who are bound by confidentiality obligations no less stringent than these prior to any disclosure. The receiving Party may disclose Confidential Information pursuant to legal, judicial, or administrative proceeding or otherwise as required by law; provided that the receiving Party shall give reasonable prior notice, if not prohibited by applicable law, to the disclosing Party and shall assist the disclosing Party, at the disclosing Party's expense, to obtain protective or other appropriate confidentiality orders, and further provided that a required disclosure of Confidential Information to an agency or Court does not relieve the receiving Party of its confidentiality obligations with respect to any other party.

**11.4** Except as to the confidentiality of trade secrets, these confidentiality restrictions and obligations will terminate three (3) years after the expiration or termination of the Agreement, unless the law requires a longer period. Upon termination or expiration of the Agreement or upon written request of the disclosing Party, the receiving Party shall promptly return to the disclosing Party or destroy all documents, notes, and other tangible materials representing the disclosing Party's Confidential Information and all copies, including electronic copies, unless retention is otherwise permitted under the Agreement. This obligation to return materials or copies does not extend to automatically generated computer back-up or archival copies generated in the ordinary course of the receiving Party's information systems procedures, provided that the receiving Party shall make no further use of such copies and that the requirements of this Agreement, including this **Section Error! Reference source not found.** shall continue to apply to such materials or copies.

## **Section 12.**

**12.1** "Intellectual Property" means patents, copyrights, trademarks, trade secrets and other proprietary information, including proprietary or licensed tools, templates, methods and know-how, and any derivatives thereof.

**12.2** Deliverables created specifically for City pursuant to this Agreement are the property of City ("Deliverables"). Deliverables do not include VIP's IP including proprietary or licensed tools, templates, methods, and know-how, and any derivatives thereof ("VIP IP"). All VIP IP shall remain the sole and exclusive property of VIP.

**12.3** VIP shall not incorporate any VIP IP into the Deliverables that would limit City's use of the Deliverables without City's written approval. To the extent that VIP incorporates any VIP IP into the Deliverables, VIP hereby grants to City a non-exclusive, irrevocable, perpetual, worldwide, royalty-free license to use and reproduce the VIP IP to the extent required to fully utilize the Deliverables.

**12.4** VIP acknowledges and agrees that, notwithstanding any provision herein to the contrary, City's Intellectual Property ("**City IP**") in the information, documents and other materials provided to VIP shall remain the sole and exclusive property of City, and City grants to VIP a non-exclusive, royalty-free, non-transferable license to use and reproduce City IP solely for the purposes of performing its obligations under this Agreement. VIP shall return any information, documents or materials provided by City pursuant to this Agreement and all copies thereof (including Confidential Information, as defined in Section **Error! Reference source not found.**, below) upon the earlier of City's request or the expiration or termination of this Agreement, unless retention is permitted or required by the terms of this Agreement.

**SIGNATURES ON FOLLOWING PAGE**

The Parties have executed this MSA as of the Effective Date. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

CITY OF SAN LEANDRO

VISIONARY INTEGRATION PROFESSIONALS, LLC

DocuSigned by:  
*Fran Robustelli*  
C063C023AF624E3  
\_\_\_\_\_  
Frances Robustelli, City Manager

DocuSigned by:  
*Stephen D. Carpenter*  
D9A5B342965D405  
\_\_\_\_\_  
Stephen Carpenter, Chief Administrative Officer

Attest:

DocuSigned by:  
*Kelly Clancy*  
F21D2CC0C7F54D6  
\_\_\_\_\_  
Leticia I. Miguel, City Clerk

acting for

\_\_\_\_\_  
VIP's DIR Registration Number  
(if applicable)  
DocuSigned by:



Approved as to Fiscal Authority:

DocuSigned by:  
*Susan Hsieh*  
838644B85C6148C  
\_\_\_\_\_  
Susan Hsieh, Finance Director

Approved as to Form:

DocuSigned by:  
*Richard Pio Roda*  
7B41538F6D5F470  
\_\_\_\_\_  
Richard D. Pio Roda, City Attorney

Per Section 10.7: Form 700 Required

DocuSigned by:  
*Tom Liao*  
FA2C94E0C46947B  
\_\_\_\_\_  
Tom Liao, Department Head



**EXHIBIT A****STATEMENT OF WORK****Statement of Work No. 1  
Sprint 0**

This Statement of Work No. 1 (“**Statement of Work**” or “**SOW**”) is appended to and made a part of the Master Services Agreement (“**Agreement**”) dated September 27, 2021 between City of San Leandro (“**City**”), and **Visionary Integration Professionals LLC (“VIP”)**, effective upon the second signature below (“**SOW Effective Date**”). Except as specifically agreed herein, the terms of the Agreement shall apply to the work anticipated by this Statement of Work.

**1. OVERVIEW**

The City has engaged VIP to support the Accela Remediation Project (which, together with all other tasks, duties, obligations, responsibilities, deliverables and other activities of VIP set forth in this SOW, shall be collectively referred to as the “**Services**”).

**2. SERVICES**

VIP shall perform the Services for City, as outlined in this SOW Section 4 - Deliverables.

**3. TERM**

3.1 Term. The term of this SOW will commence on the SOW Effective Date and shall continue ten (10) weeks (“**SOW Term**”) past the SOW Effective Date.

**4. DELIVERABLES**

In connection with VIP’s performance of the Services, VIP shall deliver the following deliverables to City by the due dates and in the formats listed and described below (the “**Deliverables**”):

	<b><i>Deliverable (and/or Phase)</i></b>	<b><i>Format / Description / Acceptance Criteria</i></b>	<b><i>Output</i></b>	<b><i>Due Date</i></b>
4.1	Item 1 - Initial Project Schedule	A high-level schedule will be developed for Phase 1 of the Remediation Project. Schedule will include sprints, UAT, training, and other activities to support Phase 1 of the project.	MS Project Schedule	End of Week 1
4.2	Item 2 – Project Kickoff Meeting and Development of Materials	A project kickoff presentation will be developed and presented. The kickoff will include an introduction to the project, as well as an overview of the project methodology and high-level project activities.	PowerPoint presentation used to present various topics to the project team and executives during the project kickoff meeting.	End of Week 2

4.3	Item 3 – Setup of Project Tools (JIRA, Confluence)	The necessary agile software tools will be set up for the City and training will be provided for the project team. Software licenses for specified users will also be setup.	The setup and configuration of JIRA and Confluence. Additionally, at least one training session for each of the tools will be held with project resources to understand how the products will be utilized within the project.	End of Week 8
4.4	Item 4 - Accela Core Team Training	Accela Core Team Training will be provided to the project team members that will be involved in the analysis and configuration sessions and are working with the Functional team to make product decisions.	Multi-day training course for the product team members.	End of Week 3
4.5	Item 5 – Initial Sprint Roadmap Analysis	Working with the City, an initial product roadmap will be developed. This activity includes identifying high level product requirements, arranging the product requirements into logical groups, estimating requirement effort at a high level and prioritizing requirements.	Initial product backlog in JIRA.	End of Week 8
4.6	Item 6 - SOW #2	Scope the work contained in the next SOW.	MS Word document defining SOW #2	End of Week 7
4.7	Item 7 – Project Management	General project management and reporting tasks for the project.	Weekly project status meetings with status reports in Confluence	End of Week 8

4.8 Acceptance Criteria: Upon City's receipt of a Deliverable from VIP, City shall have three (3) business days to provide VIP with written notice (e-mail will suffice) either (i) approving the Deliverable or (ii) rejecting the Deliverable and providing instructions to correct any deficiencies ("Acceptance Period"). Upon receipt of the latter, VIP shall then have two (2) business days to correct any deficiencies in accordance with City's instructions and to resubmit the Deliverable to City, commencing a new Acceptance Period. If City fails to provide VIP with written notice within any Acceptance Period, the applicable Deliverable will be deemed accepted by City.

## 5. COMPENSATION

### 5.1 Fees

In consideration of VIP's full and complete performance of the Services, City shall pay to VIP the following fees ("**Fees**") as defined in the below SOW Cost Table.

The Cost Table identifies the project role, estimated hours, hourly rate, and estimated total cost. It is expected that each individual staff person could work greater or fewer hours than as designated below.

### **SOW Cost Table**

<b>Role</b>	<b>Estimated Hours</b>	<b>Hourly Rate</b>	<b>Total Estimated Cost</b>
Engagement Manager (Remote)	18	\$205.00	\$3,690.00
Project Manager Support (Remote)	82	\$115.00	\$9,430.00
SCRUM Master (Remote)	10	\$195.00	\$1,950.00
Technical Lead (Remote)	10	\$195.00	\$1,950.00
Functional Lead (Remote)	223	\$195.00	\$43,485.00
Senior Data Conversion Consultant (including Reports) (Remote)	17	\$195.00	\$3,315.00
<b>Subtotal</b>	<b>360</b>		<b>\$63,820.00</b>

VIP will be compensated based on the above hourly rates. Each Vendor Role has an associated hourly rate, which VIP will multiply by the number of hours of Services actually completed in order to determine the amount of fees to invoice monthly. The Vendor Roles and the respective hourly rates are set forth above. Also included in the total funding is a line for 10% Unanticipated Task funding, to be utilized with prior project authorization.

#### 5.2 Invoices

Invoices shall be submitted and paid in monthly based upon the actual work performed. In lieu of timesheets, each monthly invoice shall include a 10% fee withhold to be released upon final SOW completion approval. This invoicing method has been utilized successfully and gives product owners control of final SOW approval (i.e. sprints) before the withhold is paid.

#### 5.3 Maximum Amount of Compensation

**VIP's total compensation for all Services performed and Deliverables delivered under this SOW, including all Fees and expenses, shall not exceed Sixty-Three Thousand Eight Hundred and Twenty Dollars (\$63,820), except by an amendment to this SOW signed by both parties.**

**IN WITNESS WHEREOF**, the parties have caused this Statement of Work No. 1 to be subscribed as of the SOW Effective Date.

**City of San Leandro (“City”)**

**Visionary Integration Professionals  
 (“VIP”)**

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

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

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

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

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

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

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

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

**Exhibit B****MSA Compensation Schedule and Rates**

<b>VIP Defined Services Role</b>	<b>Maximum Hourly Rate</b>
Engagement Manager (Remote)	\$205.00
SCRUM Master (Remote)	\$195.00
Project Manager Support (Remote)	\$115.00
Solution Architect (Remote)	\$195.00
Technical Lead (Remote)	\$195.00
Functional Lead (Remote)	\$195.00
Implementation Consultant (Remote)	\$180.00
Senior Data Conversion Consultant (Remote)	\$195.00
Senior Interface Consultant (Remote)	\$195.00
Report Analyst / Developer (Remote)	\$180.00
Senior Trainer Lead (Remote)	\$170.00

\*Individual onsite travel will be negotiated on a case-by-case basis and a mutually agreeable reimbursement approach will be defined.

## EXHIBIT C

### INDEMNIFICATION

VIP shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, elected officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with VIP's performance of the services called for or its failure to comply with any of its obligations contained in this MSA, except such Liability caused by the sole negligence or willful misconduct of City.

The VIP's obligation to defend and indemnify shall not be excused because of the VIP's inability to evaluate Liability or because the VIP evaluates Liability and determines that the VIP is not liable to the claimant. The VIP must respond within 30 days to the tender of any claim for defense and indemnity by the City. If the VIP fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the VIP under and by virtue of this MSA as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the VIP accepts or rejects the tender of defense, whichever occurs first.

VIP shall also indemnify, defend and hold harmless the City from all suits or claims for infringement of any patent rights, copyrights, trade secrets, trade names, trademarks, service marks, or any other proprietary rights of any person or persons because of the City or any of its officers, employees, volunteers, or agents use of articles, products things, or services supplied in the performance of VIP's services under this MSA, however, the cost to defend charged to VIP shall not exceed VIP's proportionate percentage fault.

## EXHIBIT D

The novel coronavirus (“COVID-19”) has been declared a worldwide pandemic by the World Health Organization. The City of San Leandro is currently in a local emergency and state of emergency due to the COVID-19 pandemic.

COVID-19 is extremely contagious and is believed to spread mainly from person-to-person contact, through touched surfaces, and in airborne particles. As a result, federal, state, and local governments, including the City of San Leandro, and federal, state, county, and local health agencies recommend social distancing and additional cleaning protocols to limit the spread of the disease. The City has taken steps and put in place preventative measures recommended by federal, state, and local health agencies to reduce the spread of COVID-19. These measures include steps each person must take to prevent the spread of COVID-19 and include, but are not limited to, requiring face coverings, frequent hand washing and/or use of hand sanitizer, social distancing where possible, limiting of person-to-person contact, frequent cleanings of high-touch surfaces, and avoiding entering any building if they have COVID-19 symptoms.

VIP shall obey all local orders and abide by all applicable preventative measures recommended by federal, state, county, and local health agencies and any preventative measures specifically implemented by the City. VIP agrees that when entering any City buildings, VIP will follow all COVID-19 related signage, wear a face covering, follow all social distancing protocols, and abide by any other COVID-19 preventative measure that are in place when performing the services described in this MSA. VIP shall also adhere to any subsequently communicated COVID-19 preventative measures as directed by City staff. The COVID-19 preventative measures are subject to change over time, and VIP shall maintain knowledge of and adhere to the current COVID-19 preventative measures when interacting with City employees, officials, volunteers, agents, and representatives, and when entering City buildings.



RESOLUTION THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

RESOLUTION NO. 2022-007

**RESOLUTION OF THE CITY OF SAN LEANDRO CITY COUNCIL TO APPROVE A MASTER SERVICES AGREEMENT WITH VISIONARY INTEGRATION PROFESSIONALS, LLC FOR DEVELOPMENT AND IMPROVEMENTS TO THE ACCELA PERMITTING SYSTEM (IN AN AMOUNT NOT TO EXCEED \$600,000)**

**WHEREAS**, Staff developed a Master Services Agreement (“MSA”) in order to best implement improvements to the Accela system recommended in a needs assessment conducted in 2020; and

**WHEREAS**, the City Council is familiar with the contents thereof; and

**WHEREAS**, the City Manager recommends approval of said agreement with Visionary Integration Professionals, LLC.

**NOW, THEREFORE**, the City Council of the City of San Leandro does hereby **RESOLVE** as follows:

That a sole source procurement under Cal. Pub. Cont. Code section 3400(c)(2) is approved in order to match products and services currently in use; and

That the Master Services Agreement is approved for a not to exceed amount of \$600,000 and the first Statement of Work (SOW #1) is approved for a not to exceed amount of \$63,820.00 and the City Manager is hereby authorized to execute payment and all documents on behalf of the City, in a form approved by the City Attorney; and

That the City Manager is authorized to take all actions necessary or appropriate to carry out and implement the terms of the agreement and to administer the City’s obligations, responsibilities, and duties to be performed under the agreement; and

That an appropriation of funds in the amount of \$63,820.00 from the 688 IT Fund Balance to the IT Operating Budget (Account 688-01-121-5120) is hereby authorized to fund the first Statement or Work (SOW #1).

Introduced by Councilmember Aguilar and passed and adopted this 4<sup>th</sup> day of January 2022, by the following vote:

Members of the Council:

AYES: Councilmembers Aguilar, Azevedo, Ballew, Cox, Lopez, Simon, Mayor Cutter (7)

NOES: None (0)

ABSENT: None (0)

ATTEST: Kelly Clancy for  
Leticia I. Miguel, City Clerk