

**Standard City of San José Consultant Agreement**  
(Non-Capital Projects)

This Agreement is between the City of San José, a municipal corporation (“City”), and 3DI, Inc., a California Corporation (“Consultant”).

This Agreement is made and entered into this 3rd day of March 2023 (“Contract Date”).

THE CITY AND CONSULTANT AGREE AS FOLLOWS:

**1. AGREEMENT SCOPE**

- 1.1 General:** This Agreement sets forth the terms and conditions under which the Consultant will provide professional consulting services to the City.
- 1.2 Exhibits:** This Agreement consists of this agreement form and the following exhibits, which are incorporated herein by reference:
- Exhibit A:** Scope of Basic Services
  - Exhibit A-3:** Final System Acceptance
  - Exhibit A-4:** Payment Card Industry (PCI) Requirements
  - Exhibit B:** Compensation
  - Exhibit C:** Insurance Requirements
  - Exhibit D:** Notice of Exercise of Option to Extend Agreement Form
  - Exhibit E:** Software Subscription Agreement
  - Exhibit F:** Software Maintenance and Support
  - Exhibit G:** Privacy and Disclosure Policy
- 1.3 Director:** “Director” means the Director of the Housing Department or the Director’s designee.
- 1.4 Business Days:** “Business Day” and “Business Days” means the day(s) on which City Hall is open to conduct business.
- 1.5 Entire Agreement:** This Agreement is the final, complete, and exclusive understanding of the parties as to the matters contained herein. It supersedes all prior communications and understandings regarding such matters.
- 1.6 Amendments:** This Agreement may be modified only by a written amendment executed by the parties.

## 2. AGREEMENT TERM

- 2.1** **Initial Term:** The Agreement term is from the Contract Date to June 30, 2024 inclusive, unless terminated earlier pursuant to Section 19 below (“Initial Term”).
- 2.2** **Optional Term:** After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for up to four (4) additional one-year terms (“Option Term(s)”) up through June 30, 2028.
- 2.2.1** **Notice:** The City shall provide the Consultant with no less than thirty (30) calendar days’ prior written notice of its intention to exercise its option to extend the term of this Agreement. See Exhibit D for Notice of Exercise of Option to Extend Agreement Form.
- 2.2.2** **Appropriation of Funds Contingency:** The City’s funding of this Agreement shall be on a fiscal year basis (July 1 to June 30) and is subject to annual appropriations. The Consultant acknowledges that the City, a municipal corporation, is precluded by the California State Constitution and other laws from entering into obligations that financially bind future governing bodies, and that, therefore, nothing in this Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of this Agreement. Accordingly, the parties agree that any Option Term(s) is contingent upon the appropriation of funds by the City. This Agreement will terminate immediately if funds necessary to continue the Agreement are not appropriated. Despite the foregoing, the City shall pay Consultant for any services performed in accordance with this Agreement up to the date of termination.

## 3. SCOPE OF SERVICES

- 3.1** **Basic Services:** “Basic Services” means the services set forth in **Exhibit A**. The Consultant must perform the Basic Services to the Director’s satisfaction.
- 3.2** **Additional Services:** “Additional Services” means the following: (a) services that are included in the Basic Services but exceed the specified level of the Basic Services, or (b) services that relate but are not included in the Basic Services.
- 3.2.1** **Authorization:** The City will not compensate Consultant for any Additional Services without the Director’s prior written authorization.
- 3.2.2** **Director’s Authorization:** The Director may authorize the Consultant to perform Additional Services up to the cumulative, maximum amount set forth in **Exhibit B** for such services. The Director must authorize the Consultant to perform Additional Services through a written amendment executed by both parties. The written amendment must set forth the scope of the Additional Services, the schedule for completing such services, and the amount and method of compensating the Consultant for such services. The Director is authorized to execute the amendment for Additional Services for the City.

## 4. INTENTIONALLY OMITTED

## 5. CITY'S CONTRACT MANAGER

The City's contract manager for this Agreement is:

Name: Rosa Ly	Phone No.: 408-975-4465
Department: Housing	Email: Rosa.Ly@sanjoseca.gov
Address: 200 E. Santa Clara Street, 12th Floor, San José, CA 95113	

The Director can change the above contract manager by giving the Consultant written notice.

## 6. CONSULTANT'S STAFFING

- 6.1 Consultant's Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant's contract manager, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the Basic Services. If any individual identified below is required to file a Statement of Economic Interests, Form 700 ("Form 700"), and the individual does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, the Consultant must comply with the requirements of Subsection 17.2 below.
- 6.2 Duty of Confidentiality:** All data, documents, discussions or other information developed or received by or for one Party in performance of this Agreement are confidential and must not be disclosed to any person except as authorized by the other Party, or as required by law. The receiving Party warrants that all employees utilized by it in performing Services are under a written obligation to the receiving Party requiring the employee to maintain the confidentiality of information of the other Party to the extent permitted by law.
- 6.3 Replacement of Employees:** During the course of performance of Services, City may request replacement of an employee or a proposed employee, provided that there is reasonable cause. In such event, Contractor shall, within five (5) working days of receipt of such request from City, provide a substitute employee of sufficient skill, knowledge, and training to perform the applicable Services. If, within the first thirty (30) days after an employee's commencement of Services, City notifies Contractor (1) such employee's level of performance is unacceptable, (2) such employee has failed to perform as required, or (3) such employee, in City's sole opinion, lacks the skill, knowledge or training to perform at the required level, then Contractor will be required to review the work performed by said employee, confirm the quality of work, and correct any items the Contractor deems incorrect. If City requests replacement of an employee for the above-referenced reasons after such thirty (30) day time period, or at any time for a reason other than the reasons indicated above. City shall not be required to pay for, and shall be entitled to a refund of, any sums paid to Contractor for such employee's Services after the date of City's requested replacement of such employee.

<u>Consultant's Contract Manager</u>		<u>Required to File Form 700?</u>			
		<b>Yes Already Filed  (Insert Date Filed)</b>	<b>Yes Need to File</b>	<b>No</b>	
Name: Mihir Desai	Phone No.: 714-257-1100			X	
Address: 3 Pointe Drive, Suite 307 Brea, CA 92821	Email: marketing@3disystems.com				
<u>Other Staffing</u>					
<u>Name:</u>	<u>Assignment:</u>	<u>Email:</u>			
1.					
2.					
3.					

- 6.4 Contract Manager's Authority:** The Consultant's contract manager is authorized to act on behalf of the Consultant.
- 6.5 Staffing Changes:** The Director's prior written approval is required for the Consultant to remove, replace, or add to any of its staffing identified in this provision.
- 6.6 Number of Employees:** Consultant warrants it will provide sufficient employees to complete the services ordered within the applicable time frames established pursuant to this Agreement. Furthermore, Consultant shall, at its expense, supply all tools, equipment, and other materials necessary to perform the services contemplated in this Agreement.
- 6.7 Skill of Employees:** Consultant warrants that employees shall have sufficient skill, knowledge, and training to perform services and that the services shall be performed in a professional and workmanlike manner.

## 7. USE OF SUBCONSULTANTS

**7.1 Authority to Use:** Whichever of the following is marked applies to this Agreement:

- The Consultant can **not** use any subconsultants without the Director's prior written approval.
- The Consultant will use the following subconsultants for the specified areas of work. The Consultant can not remove, replace, or add to any of the subconsultants identified in this provision without the Director's prior written approval.

Subconsultant's Name	Area of Work
1.	

**7.2** **Subconsultant Work:** The Consultant warrants all services and deliverables provided by any subconsultants it uses, and represents that each such subconsultant is specially trained, experienced, and competent to perform its portion of the work.

## 8. INDEPENDENT CONTRACTOR

**8.1** **General:** The Consultant has complete control over its operations and employees and is an independent contractor. The Consultant is not an agent or employee of the City and shall not represent or act as the City's agent or employee. The Consultant does not have any rights to retirement benefits or other benefits accruing to City employees, and expressly waives any claim it may have to any such rights.

**8.2** **Subcontractors:** As an independent contractor, the Consultant has complete control over its subconsultants, subcontractors, suppliers, agents and any other person or entity with whom the Consultant contracts in furtherance of this Agreement (collectively "Subcontractors"). Subject to the requirements of Section 7 of this Agreement, the Consultant is solely responsible for selecting, managing, and compensating its Subcontractors, and for ensuring they comply with this Agreement.

**8.3** **Indemnity:** The Consultant shall place in each subcontractor agreement indemnity obligations in favor of the City in the exact form and substance of those contained in Section 11 below.

## 9. STANDARD OF PERFORMANCE

**9.1** **Standard of Performance:** The Consultant represents that it possesses all necessary training, licenses and permits needed to perform the Basic Services. The Consultant represents that its performance of the Basic Services will conform to the standard of practice of a professional that specializes in performing professional services of a like nature and complexity.

**9.2** **System Acceptance:** Upon final completion of all components of the Affordable Housing Compliance System ("System") implementation, City and Consultant shall conduct an Acceptance Test. The criteria for the Acceptance Test shall be as set forth in the Scope of Basic Services (Exhibit A-3). System Acceptance shall occur upon successful completion of the Acceptance Tests. The System may not be placed into use in a production environment until the System Acceptance test has been successfully completed and approved in writing by City in the form of Exhibit A-3, "Final System Acceptance".

If, in the discretion of City, the System does not meet the requirements of the Acceptance Test specifications, City may permit Consultant to repair, replace or reconfigure the software components or the System so that the same meets the Acceptance Test specifications in all material respects, all at no additional expense to City, and if such repair or replacement does not after a reasonable period of time result in the System's material compliance with the Acceptance Test specifications, City may return the System to Consultant, at Consultant's expense and without liability to City, and any amounts paid by City for the System shall be promptly refunded by Consultant to City. All warranties shall become effective and begin to run upon the successful completion of the Acceptance Test and the City's execution of the Final System Acceptance Certificate.

Payment for any part or parts of the System or services provided hereunder, or inspection or testing thereof by City, shall not constitute acceptance or relieve Consultant of its obligations

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

- 9.3 Maintenance Service:** Upon Final System Acceptance as specified in Exhibit A-3, the terms of the maintenance of the System shall be as set forth in Exhibit F, entitled "Software Maintenance and Support", attached hereto and incorporated herein.
- 9.4 Data and Facilities:** Consultant acknowledges that it has in its possession all applicable specifications and drawings, and all other documents to which reference is made herein and/or which are matched hereto, and all such data are adequate to enable Consultant to fairly determine its ability to perform the work called for herein at the price and in accordance with the schedule set forth herein. Consultant represents that it now has or can readily procure without assistance of City all facilities, machinery and equipment necessary for the performance of this Agreement.
- 9.5 Operability:** Consultant warrants that the Software will be delivered to the City malware free and will not contain any timers, counters, or preprogrammed devices that will cause the Software to become erased, inoperable, or incapable of processing in the manner as documented in the contract documents specified.
- 9.6 Upgrades:** Consultant agrees to maintain the Software to operate on all compatible upgrades of the hardware product line and operations system used by City.

## 10. COMPENSATION

- 10.1 Maximum Total Compensation:** The maximum amount the City will pay the Consultant for all professional fees, costs, charges, and expenses related to performing Basic Services and any Additional Services is \$100,000 ("Maximum Total Compensation").
- 10.2 Intentionally Omitted.**
- 10.3 Exhibit B - Compensation:** The City will pay the Consultant up to the Maximum Total Compensation in accordance with **Exhibit B**.
- 10.3.1 Compensation Table:** **Exhibit B** sets forth a compensation table establishing the manner in which the City will pay the Maximum Compensation to the Consultant ("Compensation Table"). The Compensation Table is subject to the terms and conditions set forth below in Subsections 10.4 through 10.7.
- 10.3.2 Schedule of Rates and Charges:** If the City will compensate the Consultant for any Basic Services on a time-and-materials basis, then **Exhibit B** also sets forth a schedule of the Consultant's rates and charges ("Schedule of Rates and Charges"). The Schedule of Rates and Charges is subject to the following requirements:
- 10.3.2.1 Premium Pay:** "Premium Pay" is a special pay rate for working during times that are less desirable, such as weekends, holidays, or late shifts. The City will not pay Consultant Premium Pay.

**10.3.2.2**      **No Increases:** The City will *not* increase the Schedule of Rates and Charges during the Agreement term.

**10.3.2.3**      **Conflict:** In the event of a discrepancy between this Section and the Schedule of Rates and Charges, this Section governs.

**10.4**      **Compensation Table – Part 1:** Part 1 of the Compensation Table addresses compensation for the various tasks included in the Basic Services. The following terms and conditions apply to Part 1 of the Compensation Table.

**10.4.1**      **Task Numbers (Column 1):** Column 1 sets forth the task number(s) for which the City will compensate the Consultant. Each task number corresponds to the same task number in **Exhibit A**. If a task number included in **Exhibit A** is not included in the Compensation Table, then the City will not compensate the Consultant separately for that task, and payment for such task is deemed included in the other task(s) for which the Consultant is receiving compensation.

**10.4.2**      **Basis of Compensation (Column 2):** Column 2 identifies whether the City will pay the Consultant for the task(s) on a time-and-materials basis or on a fixed-fee (lump-sum) basis.

**10.4.3**      **Invoice Period (Column 3):** Column 3 identifies when the Consultant must submit its invoice for payment. If invoicing is monthly, the Consultant must submit its invoice to the City by the 10<sup>th</sup> Business Day of each month for work completed during the previous month. If invoicing is upon the completion of a task or group of tasks, the Consultant must submit its invoice to the Director within 20 Business Days following completion of the task(s) to the Director's satisfaction. If invoicing is upon the completion of all work, the Consultant must submit its invoice to the Director within 20 Business Days following completion of all work to the Director's satisfaction.

**10.4.3.1**      **Invoice:** Each invoice must include sufficient information and supporting documents to establish to the Director's satisfaction that the Consultant is entitled to the payment requested. The City will pay the undisputed portion of the invoice amount within 20 Business Days of the Director's approval of such undisputed amount.

**10.4.3.2**      **Invoices Based on Time and Materials:** If time and materials is the basis of compensation, then the Consultant will base its invoice on the hours, professional fees, costs, and charges associated with the work completed during the invoice period. If the Consultant is entitled to reimbursable expenses and/or separate payment for subconsultant costs, the invoice will include such expenses and/or costs associated with the work completed during the invoice period. The City will compensate the Consultant in accordance with the Schedule of Rates and Charges included in **Exhibit B**.

**10.4.3.3**      **Monthly Invoices Based on Fixed Fee:** If the Consultant invoices monthly for a "fixed fee," then the Consultant will base its monthly invoice on the percentage of work completed during the previous month. If the Consultant is entitled to reimbursable expenses and/or separate payment for subconsultant costs, the invoice will include such expenses and/or costs incurred during the previous month.

**10.4.4**      **Compensation (Column 4):** Column 4 sets forth the total compensation the City will pay the Consultant for completing the task(s).

**10.4.4.1 Time & Materials:** If time and materials is the basis of compensation, then the amount in Column 4 is a “not-to-exceed” or maximum amount. Any hours worked for which payment would result in a total exceeding the amount in Column 4 is at no cost to the City. If the Consultant completes the task(s) for less than the amount set forth in Column 4, the Director (in the Director’s sole discretion) *may* use the cost savings to increase the budget of another task. The Director must authorize such reallocation of cost savings in writing.

**10.4.4.2 Fixed Fee:** If “fixed fee” is the basis of compensation, then the Consultant must complete the task(s) for the amount set forth in Column 4. Any hours worked for which payment would result in a total exceeding the amount in Column 4 are at no cost to the City.

**10.5 Compensation Table – Part 2:** Part 2 of the Compensation Table indicates whether or not the City will reimburse the Consultant separately for expenses incurred in providing the work. The following terms and conditions apply if the City reimburses the Consultant separately for expenses.

**10.5.1 Subconsultants:** The cost of subconsultants is not treated as a reimbursable expense. Subsection 10.6 of this Agreement addresses payment for the cost of subconsultants.

**10.5.2 Maximum Amount of Reimbursable Expenses:** The City will reimburse the Consultant for expenses up to the maximum amount set forth in the last column of Part 2. Any expenses that the Consultant incurs in excess of the stated maximum are at no cost to the City.

**10.5.3 Expenses That Are Reimbursable:** Any reimbursement to the Consultant is limited to the expenses set forth below in the Reimbursable Expense Schedule. The City will reimburse these expenses at actual cost only unless a markup is specified.

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Telephone and facsimile transmission charges.	No Markup
4.	The rental of any specialized equipment to the extent the City’s contract manager has preapproved, in writing, the cost of such rental.	As specified, not to exceed 10%
5.	With the written pre-authorization of the City’s contract manager, mileage, and other travel-related expenses to the same extent that the City reimburses its employees pursuant to the Employee Travel Policy (City Policy Manual, Sections 1.8.2 and 1.8.3). The Consultant acknowledges that it has received a copy of Sections 1.8.2 and 1.8.3 and is familiar with these sections of the Employee Travel Policy.	No Markup
6.	Any other expenses expressly identified in <b>Exhibit B</b> as being reimbursable.	As specified, not to exceed 10%



**10.6 Compensation Table – Part 3:** Part 3 indicates whether the City will compensate the Consultant separately for subconsultant costs incurred in providing any part of the services. If the City will compensate the Consultant for subconsultant costs, the City will do so in accordance with the following terms and conditions.

**10.6.1 Actual Costs:** The Consultant can invoice the City for no more than the actual cost of each subconsultant plus a specified markup not to exceed 5 percent.

**10.6.2 Schedule of Rates and Charges:** Any subconsultant rates and charges set forth in the Schedule of Rates and Charges, if one is included in **Exhibit B**, must be the subconsultant's actual rates and charges exclusive of any markup. The City will compensate the Consultant in accordance with those rates and charges.

**10.6.3 Maximum Amount:** The City will compensate the Consultant for all subconsultants in a total amount not to exceed the amount set forth in the last column of Part 3. Any additional subconsultant costs that the Consultant incurs in excess of the specified maximum amount are at no cost to the City.

**10.7 Compensation Table – Part 4:** Part 4 sets forth the maximum compensation that the Director can authorize for Additional Services in accordance with Subsection 3.2 above. Any Additional Services performed by the Consultant that would result in compensation exceeding this maximum amount is at no cost to the City.

**10.8 Tax Forms Required:** The following are conditions on the City's obligation to process any payment pursuant to this Agreement:

**10.8.1 U.S. Based Person or Entity:** If the Consultant is a U.S. based person or entity, the Consultant acknowledges and agrees that the Consultant is required to provide the City with a properly completed Internal Revenue Service Form W-9 before the City will process payment. If the Consultant is a U.S. based person or entity but has neither a permanent place of business in California nor is registered with the California Secretary of State to do business in California, the Consultant acknowledges and agrees that the Consultant is required to provide the City with a properly completed California Franchise Tax Board form related to nonresident withholding of California source income.

**10.8.2 Non-U.S. Based Person or Entity:** If the Consultant is not a U.S. based person or entity, the Consultant acknowledges and agrees that the Consultant is required to provide the City with the applicable Internal Revenue Service form related to its foreign status and a California Franchise Tax Board form related to nonresident withholding before the City will process payment.

## 11. INDEMNIFICATION

**11.1 Obligation:** The Consultant shall defend, indemnify, and hold harmless the City and its officers, employees and agents against all claims, losses, damages, injuries, expenses, or liabilities that – directly or indirectly, or in whole or in part – arise out of, pertain to, or relate to any of the following:

- The Consultant's negligent performance of all or any part of the Basic Services and any Additional Services; or
- Any negligent act or omission, recklessness, or willful misconduct of the Consultant, any of its Subcontractors, anyone directly or indirectly employed by either the Consultant or any of its Subcontractors, or anyone that they control; or

- Any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the City's use of any services, deliverables or other items provided by the Consultant pursuant to the requirements of this Agreement; or
- Any breach of this Agreement.

**11.2 Limitation on Obligation:** The obligation in Subsection 11.1 above shall not apply to the extent that any claim, loss, damage, injury, expense or liability results from the sole negligence or willful misconduct of the City or its officers, employees, or agents.

**11.3 Duty to Defend:** The Consultant's obligation in Subsection 11.1 above applies to the maximum extent allowed by law and includes defending the City, its officers, employees, and agents as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the City's written request, the Consultant, at its own expense, shall defend any suit or action that is subject to the obligation in Subsection 11.1 above.

**11.4 Insurance:** The City's acceptance of any insurance in accordance with Section 12 does not relieve the Consultant from its obligations under this Section 11. The Consultant's obligations under this Section 11 apply whether or not the insurance required by the Agreement covers any damages or claims for damages.

**11.5 Survival:** The Consultant's obligations under this Section 11 survive the expiration or earlier termination of the Agreement.

## 12. INSURANCE REQUIREMENTS

**12.1 General:** The Consultant shall comply with the insurance requirements set forth in **Exhibit C** for the Agreement term.

**12.2 Documentation:** Before performing any services, the Consultant must submit to the City's designated risk manager ("Risk Manager"), for the Risk Manager's written approval, all documents demonstrating compliance with the requirements of **Exhibit C**.

**12.3 Changes:** The Risk Manager may amend or waive, in writing, any of the requirements contained in **Exhibit C**.

## 13. LICENSE GRANTS

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

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

**13.3 Ownership of Data:** The City shall maintain ownership and control of the Data throughout the Agreement period and in perpetuity. Contractor shall have the right to use the Data

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

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

#### 14. DISCLOSURE OF WORK PRODUCT

- 14.1 Prohibition:** Except as authorized by the Director or as otherwise required by law, the Consultant shall not disclose any of the following to a third party: (a) Work Product, (b) discussions between the City and Consultant, or (c) information prepared, developed, or received by the Consultant or any of its Subcontractors in the course of performing services pursuant to this Agreement.
- 14.2 Notification:** The Consultant will immediately notify the Director if it is requested by a third party to disclose any Work Product, discussions, or information that the Consultant is otherwise prohibited from disclosing.
- 14.3 Limit on Prohibition:** The prohibition in Subsection 14.1 above does not apply to disclosures between the Consultant and its Subcontractors that are needed to perform the Basic Services.
- 14.4 Warranty Against Infringement:** If any article sold hereunder is covered, or is purported to be covered by any patent or copyright, Consultant agrees to defend, indemnify and hold harmless the City, its officers, agents and employees, from and against it by any and all suits, claims, judgments and cost instituted or recovered against it by any person or persons whomsoever, on account of the purchase, use or resale of such article by City in violation or claimed violation of any rights under patent or copyright.
- 14.5 Privacy and Disclosure:** Consultant agrees in the performance of the services to comply with City's Privacy and Disclosure Policy set forth in Exhibit G, entitled "Privacy and Disclosure Policy", which is attached hereto and incorporated herein. Consultant shall ensure that all webpages that it creates are consistent with the Policy. Consultant further agrees that it shall treat all information received through the performance of this Agreement in strict accordance with the Policy.
- 14.6 Survival:** This Section 14 survives the expiration or earlier termination of this Agreement.

#### 15. AUDIT/INSPECTION OF RECORDS

- 15.1 Retention Period:** The Consultant shall retain the following records (collectively "Records") for a minimum of 3 years from the date of the City's final payment to the Consultant under this Agreement or for any longer period required by law:
- All ledgers, books of accounts, invoices, vouchers, canceled checks, and other records relating to the Consultant's charges for performing services, or to the Consultant's expenditures and disbursements charged to the City; and

- All Work Product and other records evidencing Consultant's performance.

**15.2 Producing Records:** At any time during the Agreement term or during the period of time that the Consultant is required to retain the Records, the City Manager, the Director, the City Attorney, the City Auditor, or a designated representative of any of these officers may request, in writing, production of all or a portion of the Records. The Consultant shall produce the requested Records at City Hall during normal business hours, or at any other location and time mutually agreed upon by the parties. The Consultant shall produce the requested Records at no cost to the City.

**15.3 State Auditor:** In accordance with Government Code Section 8546.7, the Consultant may be subject to audit by the California State Auditor with regard to the Consultant's performance of this Agreement if the compensation under this Agreement exceeds \$10,000.

## **16. NON-DISCRIMINATION/NON-PREFERENCE**

**16.1 Prohibition:** The Consultant shall not discriminate against, or grant preferential treatment to, any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.

**16.2 Intentionally Omitted.**

**16.3 Subcontracts:** The Consultant shall include Subsection 16.1 of this Agreement in each subcontract that it enters into in furtherance of this Agreement.

## **17. CONFLICT OF INTEREST**

**17.1 General:** The Consultant represents that it is familiar with the local and state conflict of interest laws and agrees to comply with those laws in performing this Agreement. The Consultant certifies that, as of the Contract Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. The Consultant shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. The Consultant has the obligation of determining if the way it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest and shall immediately notify the City in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest.

**17.2 Filing Form 700:** In accordance with the California Political Reform Act (Government Code Section 81000 et seq.), the Consultant shall cause each person performing services under this Agreement, and identified as having to file a Form 700 to do each of the following:

- Disclose the categories of economic interests in Form 700 as required by the Director.
- Complete and file the Form 700 no later than 30 calendar days after the person begins performing services under this Agreement and all subsequent Form 700s in conformance with the requirements specified in the California Political Reform Act: and
- File the original Form 700 with the City's Clerk with a copy submitted to the Director.

**17.3 Future Services:** The Consultant acknowledges each of the following about performing future services for the City:

- The Consultant's performance of the services required by this Agreement may create an actual or appearance of a conflict of interest about the Consultant performing or participating in the performance of some related **future** services, particularly if the services required by this Agreement comprise one element or aspect of a multi-phase process or project.
- Such an actual or appearance of a conflict of interest would be a ground for the City to disqualify the Consultant from performing or participating in the performance of such future services; and
- The Consultant is solely responsible for considering what potential conflicts of interest, if any, performing the services required by this Agreement might have on its ability to obtain contracts to perform future services.

## **18. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY**

**18.1 General:** The Consultant shall perform its obligations under the Agreement in conformance with City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single Serving Bottled Water," and City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy."

**18.2 Prohibition of City Funding for Purchase of Single Serving Bottled Water:** The City's policy is that City funds should not be used for the purchase of single-serving bottled water except for any of the following:

- Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services.
- Situations where there is a high risk of cross-contamination with non-potable water; or
- Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water need to be distributed for health and safety reasons.

An invoice seeking reimbursement from City for the cost of single-serving bottled water under one of the above exceptions must be accompanied by a waiver form provided by the City and signed by the Director.

**18.3 Environmentally Preferable Procurement Policy:** The Environmentally Preferable Procurement Policy, along with a brief policy description, is located on the City's website at the following link: <https://www.sanjoseca.gov/your-government/environment/business-school-resources/for-schools/environmentally-preferable-procurement>. Environmental procurement policies and activities related to the completion of Consultant's work will include, whenever practicable, but are not limited to:

- The use of recycled and/or recyclable products in daily operations (i.e. 30%, 50%, 100% PCW paper, chlorine process free, triclosan free hand cleaner, etc.).
- The use of Energy-Star Compliant equipment.

- The use of alternative fuel and hybrid vehicles, and implementation of protocols aimed at increasing the efficiency of vehicle operation.
- The implementation of internal waste reduction and reuse protocol(s); and
- Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products.

## 19. TERMINATION

- 19.1 For Convenience:** The Director may terminate this Agreement at any time and for any reason by giving the Consultant written notice of the termination. The written notice must set forth the effective date of the termination, which must be at least 7 Business Days after the date of the written notice.
- 19.2 For Cause:** The Director may terminate this Agreement immediately upon written notice for any material breach by the Consultant. If the Director terminates the Agreement for cause and obtains the same services from another consultant at a greater cost, the Consultant is responsible for such excess cost in addition to any other remedies available to the City.
- 19.3 Delivery of Work:** If the Director terminates the Agreement – whether for convenience or for cause – the Director has the option of requiring the Consultant to provide to the City any finished or unfinished Work Product prepared by the Consultant up to the date of Consultant’s receipt of the written notice of termination.
- 19.4 Compensation:** The City will pay the Consultant the reasonable value of services satisfactorily rendered by the Consultant to the City up to the date of Consultant’s receipt of the written notice of termination. For services to be “satisfactorily rendered,” the Director must determine that the Consultant provided them in accordance with the terms and conditions of this Agreement. The Director will determine the reasonable value of satisfactorily rendered services based on the Compensation Table and any Schedule of Rates and Charges attached to this Agreement.
- 19.5 Receipt of Notice:** For purposes of this provision, the Consultant’s receipt of the written notice of termination will be determined based on the date of actual receipt or based on Subsection 20.2 below, whichever occurs first.

## 20. NOTICES

- 20.1 Manner of Giving Notice:** All notices and other communications required by this Agreement must be in writing, and must be made via e-mail, personal service or United States mail, postage prepaid.
- 20.2 When Effective:** A notice or other communication that is e-mailed is effective when sent provided the sender receives an acknowledgement from the intended recipient (e.g. return receipt, return e-mail, or another written acknowledgement). A notice or other communication that is personally served is effective when personally delivered. A notice or other communication that is mailed is effective 3 calendar days after deposit in the United States mail.
- 20.3 To Whom Given:** All notices and other communications between the parties regarding the Agreement must be given to the individuals identified below using the appropriate contact information for giving notice:

To the City: City of San José  
Housing Department  
Attn: Rosa Ly  
200 E. Santa Clara Street  
San José, CA 95113  
408-975-4465  
[Rosa.Ly@sanjoseca.gov](mailto:Rosa.Ly@sanjoseca.gov)

To the Consultant: 3Di, Inc.  
Attn: Mihir Desai  
3 Pointe Drive, Suite 307  
Brea, CA 92821  
714-257-1100  
[marketing@3disystems.com](mailto:marketing@3disystems.com)

- 20.4 Changing Contact Information:** Either party may change its contact information for receiving written notices and communications regarding the Agreement by providing notice of such change to the other party pursuant to this Section 20.

## 21. MISCELLANEOUS

- 21.1 Gifts Prohibited:** The Consultant represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City officer or designated employee from accepting any gift. The Consultant shall not offer any City officer or designated employee any gift prohibited by Chapter 12.08. The Consultant's violation of this Subsection 21.1 is a material breach.
- 21.2 Disqualification of Former Employees:** The Consultant represents that it is familiar with Chapter 12.10 of the City's Municipal Code, which generally prohibits a former City officer and a former designated employee from providing services to the City connected with his/her former duties or official responsibilities. The Consultant shall not use either directly or indirectly any officer, employee, or agent to perform any services if doing so would violate Chapter 12.10. The Consultant's violation of this Subsection 21.2 is a material breach.
- 21.3 Waiver of a Violation:** The City's waiver of any violation of this Agreement by the Consultant is not a waiver of any other violation by the Consultant.
- 21.4 Acceptance of Services Not a Waiver:** The City's acceptance of any service or deliverable is not a waiver or release of any professional duty of care applicable to such service or deliverable, or of any right of indemnification, any insurance requirements, or any other term or condition of this Agreement.
- 21.5 Compliance with Laws:** The Consultant shall perform all services consistent with all applicable federal, state, and local laws, ordinances, codes, and regulations. This obligation is not limited in any way by the Consultant's obligation to comply with any specific law, ordinance, code, or regulation set forth elsewhere in this Agreement.
- 21.6 Business Tax:** The Consultant represents and warrants that it currently has a City business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the Agreement term.
- 21.7 Assignability:** Except to the extent this Agreement authorizes the Consultant to use subconsultants, the Consultant shall not assign any part of this Agreement without the Director's prior written consent. The Director, at the Director's discretion, may void this Agreement if a violation of this provision occurs.

- 21.8 Governing Law:** California law governs the construction and performance of this Agreement.
- 21.9 Disputes:** Any litigation resulting from this Agreement will be filed and resolved by a federal or state court in California.
- 21.10 Survival of Provisions:** If a court finds any part of this Agreement unenforceable, all other parts shall remain enforceable.
- 21.11 Headings:** The section and exhibit headings are for convenience only and are not to be used in its construction.
- 21.12 Execution in Counterparts:** This Agreement may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.
- 21.13 Use of Electronic Signatures:** Unless otherwise prohibited by law or City policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the City.



**IN WITNESS WHEREOF, the City and Consultant have caused this Agreement to be executed by their respective duly authorized representatives as follows.**

**NOTE:** The Consultant must sign one of the following representations. **The City will not process this Agreement unless the Consultant has signed one of the provisions.**

*Mihir Desai*

Email: mihir.desai@3disystems.com  
Date: 03/03/2023 GMT

The Consultant certifies that the Consultant has a permanent place of business in California or is registered with the California Secretary of State to do business in California. The Consultant will file a California tax return and withhold on payments of California source income to nonresidents when required. If the Consultant ceases to have a permanent place of business in California or ceases to do any of the above, the Consultant will promptly notify the City at the address specified in Subsection 20.3 of this Agreement.

Or

If the Consultant is unable to make the above certification, the Consultant acknowledges and agrees to provide the City with the applicable tax forms issued by the Internal Revenue Service and California Franchise Tax Board, as applicable, as specified in Section 10.8 of this Agreement.

**City of San José**

*Sarah Zarate*

Email: sarah.zarate@sanjoseca.gov  
Date: 03/03/2023 GMT

Name: Sarah Zarate  
Title: Director, Office of the City Manager

**Consultant**

*Mihir Desai*

Email: mihir.desai@3disystems.com  
Date: 03/03/2023 GMT

Name: Mihir Desai  
Title: Vice President and CFO

**Approval as to Form (City Attorney):**

- Form Approved by the Office of the City Attorney**  
(Maximum Total Compensation is \$100,000 or less, and standard provisions of the form are not altered.)
- Approved as to Form:**  
Attorney  
Christopher Alexander  
Deputy City Attorney III U  
christopher.alexander@sanjoseca.gov

*Christopher Alexander*

Email: christopher.alexander@sanjoseca.gov  
Date: 03/03/2023 GMT

Name: Christopher Alexander  
Title: Deputy City Attorney

## EXHIBIT A: SCOPE OF BASIC SERVICES

(Non-Capital Projects)

The Consultant shall provide services and deliverables as set forth in this **Exhibit A**. The Consultant shall provide all services and deliverables required by this **Exhibit A** to the satisfaction of the Director.

---

**General Description of Project:** Consultant shall develop a new rent roll portal and implement complex changes to the newly developed rent roll portal for the Housing Department.

---

**Task No. 1:** Conduct a discovery and design process to determine the feature requirements.

- A. Services:** This discovery and design process shall include, but is not limited to interviews, needs assessments, mock-ups, and/or reviewing relevant materials.
- B. Deliverable:** The Consultant will provide the following to the City's Contract Manager: interviews, needs assessments, mock-ups, and/or reviewing relevant materials to conduct a discovery and design process to determine the feature requirements.
- C. Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following times is marked:

On or before the following date:

On or before 45 Business Days from execution of the agreement.

**Task No. 2:** Develop the new rent roll portal.

- A. Services:** The development of the new rent roll portal shall include, but is not limited to updating relevant fields, updating relevant reporting and security features, adding relevant interfaces, auditing relevant functionality, updating relevant security features, updating and/or adding any additional features deemed relevant.
- B. Deliverable:** The Consultant will provide the following to the City's Contract Manager: Develop the new rent roll portal.
- C. Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following times is marked:

On or before the following date:

On or before 60 Business Days from execution of the agreement.

**Task No. 3:** Testing of the new rent roll portal.

- A. **Services:** The testing of the new rent roll portal shall include but is not limited to testing all updates internally to verify features are working properly, access to the testing site to review the changes, implementing changes to the platform to fix any issues.
- B. **Deliverable:** The Consultant will provide the following to the City's Contract Manager: Testing of the new rent roll portal.
- C. **Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following times is marked:
  - On or before the following date:
  - On or before 75 Business Days from execution of the agreement.

**Task No. 4:** Conduct support for the new rent roll portal.

- A. **Services:** The support for the new rent roll portal shall include, but is not limited to periodic status check-ins, updates to the written user guide to include new features and processes, hosting webinars, hosting trainings, email support for all users of the platform, managing all cloud hosting needs for the application.
- B. **Deliverable:** The Consultant will provide the following to the City's Contract Manager: Conduct support for the new rent roll portal.
- C. **Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following times is marked:
  - On or before the following date: June 30, 2024.
  - On or before \_\_\_\_ Business Days from \_\_\_\_\_.

## **EXHIBIT A-1 SCOPE OF SERVICES**

The following Scope of Services defines the principal activities and responsibilities of Consultant and the City of San José (hereinafter "City") for the implementation of the Affordable Housing Compliance System.

City of San José  
Housing Department

**Lead:** Rosa Ly

**Project Title:** Affordable Housing Compliance System

**Project Summary:**

Data integration and management platform for Housing Department employees to manage affordable housing portfolio

**Challenge Statement:**

To create a rent roll reporting process that makes better use of technology synergies and information resonances to 1) reduce the workload for owners and/or operators of multi-family developments ("Borrowers") who submit information and Housing Department staff that reviews and reports on the information, 2) improve reporting capabilities and flexibility, and 3) provide easier access to information by management for analysis and decision making.

An initial proof of concept of the Affordable Housing Compliance System ("AHCS") will be completed during the Startup in Residency period, which will take place from the date of execution of the agreement and until four (4) months after the execution of the agreement ("Residency Period"). The application that is developed during this Residency Period will have two main users: Asset Management Specialists (from the City) and borrowers. During this Residency Period, the following application features will be developed, deployed, and tested ("Residency Period Scope"):

- Borrowers will be able to take data from their property management data system and enter it directly into the AHCS
- Borrowers will be able to upload data from their property management data system using a standardized CSV defined by the platform
- Asset Management Specialists will be able to define Utility Allowances, Rent and Income Limits, Affordability Restrictions, and other Reference Data within the AHCS
- The AHCS will be able to determine property compliance using property data and restrictions defined by the Asset Management Specialists
- The AHCS will make compliance and summary level data available to Asset Management Specialists for all relevant portfolio properties
- The AHCS will record snapshots of data to facilitate retention of data year over year
- The AHCS will allow for regular software updates without violating the integrity of the data already in the system

Work on the following will tentatively commence immediately after the Residency Period through six (6) months after. At that point, the Affordable Housing Compliance System should be fully operational and ready for public release.

- User management system that will allow administrator to add, remove, and send invitations to borrowers and Asset Management Specialists to join the platform
- Password management system for borrowers and Asset Management Specialists

- Integration with Salesforce (assuming CSJ and Salesforce can offer adequate permissions and access to relevant resources and data)
- Read Affordability Restrictions from Salesforce into the platform when checking compliance
- Reporting tool that allows for the creation of custom ad hoc reports using fields defined in the rent roll; example reporting requests follow:
  - How many residents are 50% rent burdened?
  - What is the number of section 8 voucher holders?
  - What percentage of tenants had a rent increase last year?
  - How many tenants live and work in San José?
  - Email notification system to notify borrowers of rent roll deadlines
  - Export feature to convert rent rolls to PDF documents
  - Rent roll customization that allows CSJ users to add or remove fields and specify data types to be collected by borrowers
  - Error logging and application analytics to monitor the health of the software over time and allow speedy response in case of emergency
  - Write Summary Data back to Salesforce once compliance analysis is complete, to enable further reporting



## **EXHIBIT A-4 PAYMENT CARD INDUSTRY (PCI) REQUIREMENTS**

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

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

**A. Build and Maintain a Secure Network**

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

**B. Protect Cardholder Data**

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

**C. Maintain a Vulnerability Management Program**

1. Use and regularly update anti-virus software or programs
2. Develop and maintain secure systems and applications

**D. Implement Strong Access Control Measures**

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

**E. Regularly Monitor and Test Networks**

1. Track and monitor all access to network resources and cardholder data
2. Regularly test security systems and processes

**F. Maintain an Information Security Policy**

1. Maintain a policy that addresses information security for all personnel

- **Certification:** Consultant agrees to promptly provide, from time to time at the request of the CITY, current evidence, in form and substance reasonably satisfactory to CITY, of

compliance with PCI-DSS and PA-DSS, which has been properly certified by an authority recognized by the payment card industry for that purpose. If during the term of this Agreement, Consultant undergoes, or has reason to believe that it will undergo, and adverse change in its certification or compliance status with the PCI-DSS or PA-DSS or other material payment card industry standards, it will promptly notify the CITY of such circumstances.

- III. Audit:** Consultant agrees to, at Consultants own expense, perform an independent audit of any System used to store, process, or transmit payment cardholder data by an independent third party on a quarterly basis to ensure the System is and continues to satisfy PCI-DSS. At a minimum, the audit shall scan for all known methods used by hackers to access private information, vulnerabilities that would allow malicious software (i.e. viruses and worms) to gain access to or disrupt the network devices.
- IV. Material Breach:** Failure by Consultant to comply with any provision of this Exhibit shall constitute a material breach of this Agreement.
- V. Notifications:** Should the Consultant have a failure of security protocols such that customer data is compromised, the Consultant shall immediately notify the City.



**EXHIBIT B: COMPENSATION**

**Section 1 – Compensation Table**

Part 1 – Compensation for Basic Services						
Column 1	Column 2		Column 3			Column 4
Task Nos.	Basis of Compensation		Invoice Period			Compensation
1-3	<input checked="" type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$34,650
4	<input type="checkbox"/> Time & Materials	<input checked="" type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$65,350
	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
Part 2 – Reimbursable Expenses						
<input checked="" type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.			<input type="checkbox"/> Expenses are separately reimbursable in accordance with Subsection 10.5 of this Agreement. The maximum amount of reimbursable expenses is:			\$
Part 3 – Subconsultant Costs						
<input checked="" type="checkbox"/> Subconsultant costs are <b>not</b> separately compensable. The amount(s) in Column 4 of Part 1 include(s) payment for subconsultants.			<input type="checkbox"/> Subconsultant costs are separately compensable in accordance with Subsection 10.6 of this Agreement. The maximum amount of compensation for subconsultant costs is:			\$
Part 4 – Additional Services						
<input checked="" type="checkbox"/> No money is budgeted for Additional Services, and the Director can not authorize any Additional Services.			<input type="checkbox"/> The Director may authorize the Consultant to perform Additional Services up to the following maximum amount:			\$
<b>Maximum Total Compensation</b> (sum of Parts 1 through 4):						\$100,000

**Section 2 – Schedule of Rates and Charges**

- Omitted.** No Schedule of Rates and Charges is included because the City will not be compensating the Consultant for any Basic Services on a “time & materials” basis.
- The following is the Schedule of Rates and Charges applicable to this Agreement:

	One-Time	Year 1	Year 2	Year 3	Year 4 (Optional)	Year 5 (Optional)
<b>Section 1: Application Development Services</b>						
Project Management	\$ 34,650.00					
Requirements Analysis						
Design (includes UX/UI Design) & Discovery						
Development (Build, Configure & Integration)						
System Testing						
Implementation/Deployment						
Training						
Post-Implementation Stabilization						
<b>Total Software and Service Costs</b>	<b>\$ 34,650.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>Section 2: Ongoing Maintenance, Operation &amp; Support (SaaS)</b>						
Monthly Subscription Cost for Maintenance & Operation		\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00
Number of Months		12	12	12	12	12
<b>Total Annual Subscription Cost</b>	<b>\$ -</b>	<b>\$ 36,000.00</b>	<b>\$ 36,000.00</b>	<b>\$ 36,000.00</b>	<b>\$ 36,000.00</b>	<b>\$ 36,000.00</b>
Other SaaS Cost (Optional)						
<b>Total SaaS Costs</b>	<b>\$ -</b>	<b>\$ 36,000.00</b>	<b>\$ 36,000.00</b>	<b>\$ 36,000.00</b>	<b>\$ 36,000.00</b>	<b>\$ 36,000.00</b>
<b>Total Costs</b>	<b>\$ 34,650.00</b>	<b>\$ 36,000.00</b>	<b>\$ 36,000.00</b>	<b>\$ 36,000.00</b>	<b>\$ 36,000.00</b>	<b>\$ 36,000.00</b>

\*One-time refers to initial start up costs. Year one refers to contract date to June 30, 2023 and each next year refers to the next City fiscal year.

<b>Number of Rental Units/years</b>		
	Tier 1: 0-2,125,000 Rental Units/year	Included in base pricing
	Tier 2: 125,001-250,000 Rental Units/year	Base+\$1000/month
	Tier 3: 250,001-500,000 Rental Units/year	Base+\$1850/month
	Tier 4: over 500,000 Rental Units/year	TBD
<b>Optional SaaS Services</b>		
	Enhanced backup or archive	TBD (based on service and consumption level)
	Use of PaaS services such as Image Processing, ESRI GIS, Speech Processing, Machine Learning, AWS Connect, etc.	TBD (based on service and consumption level)
<b>Number of Support Hours</b>		
	10 hours/month	Included in base pricing

	20 hours/month	Base+\$1000/month
	30 hours/month	Base+\$2000/month
	40 hours/month	Base+\$3000/month
	More than 40 hours/month	TBD
<b>Application Development &amp; Systems Integration</b>		
	Standard 3Di Engage Housing implementation and integration with ESRI GIS, ADFS, and Amazon Connect	Included in base pricing
	Additional Custom Application Development (based on effort level estimated for each custom application) – the indicative rates by function are mentioned in Hourly Project Charges Table below	
	Other (e.g., Travel, Per Diem, Materials)	At cost or standard reimbursement rates

Resource Category	Onsite/Onshore			Offshore		
	Junior-Level	Mid-Level	Senior-Level	Junior-Level	Mid-Level	Senior Level
Project Manager	\$ 135.00	\$ 160.00	\$ 185.00	\$ 48.00	\$ 53.00	\$ 58.00
Project Coordinator	\$ 110.00	\$ 135.00	\$ 160.00	\$ 40.00	\$ 47.00	\$ 53.00
Business Analyst	\$ 95.00	\$ 125.00	\$ 145.00	\$ 40.00	\$ 45.00	\$ 53.00
Tech Lead/ Solution Architect	\$ 115.00	\$ 155.00	\$ 175.00	\$ 40.00	\$ 46.00	\$ 58.00
Infrastructure Architect	\$ 100.00	\$ 145.00	\$ 175.00	\$ 43.00	\$ 48.00	\$ 58.00
Database Architect	\$ 100.00	\$ 145.00	\$ 175.00	\$ 40.00	\$ 45.00	\$ 53.00
Database Designer/Developer	\$ 100.00	\$ 145.00	\$ 175.00	\$ 43.00	\$ 48.00	\$ 58.00
Databases Administrator	\$ 100.00	\$ 135.00	\$ 175.00	\$ 43.00	\$ 48.00	\$ 58.00
System Administrator	\$ 80.00	\$ 100.00	\$ 125.00	\$ 37.00	\$ 42.00	\$ 48.00
Network/Infrastructure Engineers	\$ 90.00	\$ 110.00	\$ 135.00	\$ 40.00	\$ 45.00	\$ 53.00
Oracle WebCenter/SOA/BPM Architect	\$ 120.00	\$ 175.00	\$ 210.00	\$ 43.00	\$ 48.00	\$ 58.00
Oracle SOA/BPM Developers	\$ 105.00	\$ 155.00	\$ 180.00	\$ 43.00	\$ 48.00	\$ 58.00
Oracle/Web Center & Fusion Middleware/ADF Developers	\$ 105.00	\$ 155.00	\$ 180.00	\$ 43.00	\$ 48.00	\$ 58.00
Java/J2EE Developers	\$ 90.00	\$ 130.00	\$ 155.00	\$ 40.00	\$ 45.00	\$ 53.00
Microsoft Dot.Net Developers	\$ 90.00	\$ 120.00	\$ 135.00	\$ 37.00	\$ 43.00	\$ 48.00
Open Source/PHP Developers	\$ 80.00	\$ 95.00	\$ 120.00	\$ 37.00	\$ 43.00	\$ 48.00
Mobile Application Developers (IOS/Android/Windows Mobile)	\$ 95.00	\$ 125.00	\$ 145.00	\$ 37.00	\$ 43.00	\$ 48.00
UX (User Experience) Architect	\$ 135.00	\$ 155.00	\$ 175.00	\$ 43.00	\$ 50.00	\$ 58.00
Graphic/UI Designer	\$ 90.00	\$ 110.00	\$ 130.00	\$ 32.00	\$ 37.00	\$ 43.00
HTML/Javascript/CSS Developers	\$ 80.00	\$ 95.00	\$ 110.00	\$ 32.00	\$ 37.00	\$ 43.00
QA Lead/Manager	\$ 110.00	\$ 135.00	\$ 160.00	\$ 34.00	\$ 40.00	\$ 48.00
QA Consultant	\$ 75.00	\$ 90.00	\$ 110.00	\$ 32.00	\$ 38.00	\$ 43.00

## EXHIBIT C: INSURANCE REQUIREMENTS

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

### I. Minimum Scope and Limit of Insurance

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

Type of Insurance	Minimum Limit
<p><b>1 Commercial General Liability</b> The coverage provided by Insurance Services Office "occurrence" form CG 0001, including coverages for contractual liability, personal injury/advertising injury, products/completed operations, broad form property damage, independent contractors, products and completed operations.</p>	<p>\$1,000,000 per occurrence for bodily injury, personal injury and property damage or \$2,000,000 annual aggregate.</p>
<p><b>2 Automobile Liability</b> The coverage provided by Insurance Services Office form number CA 0001. Coverage shall be included for all owned, non-owned and hired automobiles.</p>	<p>\$1,000,000 combined single limit per accident for bodily injury and property damage.</p>
<p><b>3 Workers' Compensation and Employer Liability</b> A: Workers Compensation as required by Statute and as required by the Labor Code of the State of California. B: Employers' Liability</p>	<p>Coverage A: Statutory Coverage B: \$1,000,000 each accident/ each employee injury by disease</p>
<p><b>4 Technology Errors and Omissions</b> Including coverages for negligent acts, errors, or omissions arising from professional services provided under this contract.</p>	<p>Not less than \$1,000,000 each claim and annual aggregate.</p>
<p><b>5 Cyber Liability</b>  Data recovery and privacy liability insurance covering liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering products provided under this agreement. This may be met through a standalone policy or included as a component in a Commercial General Liability Policy.</p>	<p>Not less than \$2,000,000 each claim and annual aggregate.</p>

Any limits requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a "follow form" or umbrella basis.

### II. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager.

### III. Other Insurance Provisions

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

**1. General Liability and Automobile Liability Coverages**

- a. The City, its officials, employees, and agents are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, Vendor; products and completed operations of Vendor; premises owned, leased or used by Vendor; or automobiles owned, leased, hired or borrowed by Vendor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and agents.
- b. Vendor's insurance coverage shall be primary insurance as respects the City, its officials, employees, and agents. Any insurance or self-insurance maintained by the City, its officials, employees, and agents shall be excess of Vendor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or agents.
- d. Coverage shall state that Vendor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, and agents.

**2. Workers' Compensation and Employers Liability**

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

**3. Claims Made Coverages**

If coverage is obtained on a "claims made" policy form, the retroactive date shall precede the date services were initiated with the City and the coverage shall be maintained for a period of three (3) years after termination of services under this Agreement.

**4. All Coverages**

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

**IV. Acceptability of Insurance**

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

**V. Verification of Coverage**

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

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

Proof of insurance shall be emailed in pdf format to: Riskmgmt@sanjoseca.gov:

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

**VI. Subcontractors**

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

**EXHIBIT D: NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT**

<b>AGREEMENT TITLE:</b> <b>DATE:</b>	
<b>CONSULTANT</b> <b>Name:</b> <b>Address:</b> <b>Email:</b>	
<b>DATE OF OPTION:</b>	

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

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

<b>OPTION NO.</b>	
-------------------	--

**NEW OPTION TERM**

Begin Date:	
End Date:	

<b>MAXIMUM COMPENSATION for New Option Term:</b>	
--	--

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

CITY OF SAN JOSE a municipal corporation  By _____ Name: Title:
--



## **EXHIBIT E** **SOFTWARE SUBSCRIPTION AGREEMENT**

This Software Subscription Agreement is made on the City's execution date (the "Effective Date") between 3Di Inc. ("Consultant") and the City of San José, a municipal corporation (hereinafter "City").

**Grant of License to Access and Use Service.** Consultant hereby grants to City, including to all City's Authorized Users, a non-exclusive, non- sublicensable, non-assignable, royalty-free, and worldwide license to access and use the Affordable Housing Compliance System (the "Service") solely for the City's internal business operations.

### **Service Levels.**

- **Applicable Levels.** Consultant shall provide the Service to the City with a System Availability of at least approximately 95% during each calendar month.
- **System Maintenance.** Consultant may:
  - Take the Service offline for scheduled maintenances for which it provides City the schedule for in writing (though this scheduled maintenance time will not count as System Availability)
  - Change its schedule of maintenances on one month written notice to City
- **System Availability Definition.**
  - **Percentage of Minutes per Month.** "System Availability" means the percentage of minutes in a month that the key components of the Service are operational.
  - **Not included in "System Availability".** "System Availability" will not include any minutes of downtime resulting from:
    - Scheduled maintenance
    - Events of force majeure
    - Malicious attacks on the system
    - Issues associated with City's computing devices, local area networks or internet service provider connections
    - Consultant's inability to deliver services because of City's acts or omissions

**Data Protection.** City shall implement reasonable safeguards to prevent unauthorized access to, use of, or disclosure of the disclosing party's Data.

**Data Privacy.** Consultant may collect, use, and process City's data only according to City's Privacy Policy.

**Statistical Information.** Consultant may anonymously compile statistical information related to the performance of the Service for purpose of improving the Service, but only if such information does not identify the data as City's or otherwise include City's name.

### **Publicity.**

- **Consent.** Neither party will use the other party's name, logo, or trademarks, or issue any press release or public announcement regarding this agreement, without the other party's written consent, unless specifically permitted under this agreement or required by Law.
- **Cooperation.** The parties shall cooperate to draft all appropriate press release and other public announcement relating to the subject matter of this agreement and the relationship between the parties.

### **Consultant 's Representations**

- **Ownership.** Consultant is the exclusive legal owner of the Service, including all Intellectual Property included in the Service and granted under the deliverables.
- **No Conflicting Grant.** Consultant has not granted and is not obligated to grant any license to a third party that would conflict with the Service.

### **User Obligations**

- **Hardware Obligations.** City shall be responsible for obtaining and maintaining all computer hardware, software, and communications equipment needed to internally access the Service

### **Restricted Uses.** City will not:

- Upload or distribute any files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of the Service
- Modify, disassemble, decompile, or reverse engineer the Service,
- Probe, scan, test the vulnerability of, or circumvent any security mechanism used by, the sites, servers, or networks connected to the Service
- Take any action that imposes an unreasonably or disproportionately large load on the sites, servers, or networks connected to the Service
- Copy or reproduce the Service
- Access or use any other clients' or their users' data through the Service
- Maliciously reduce or impair the accessibility of the Service
- Use the service to post, promote, or transmit any unlawful, harassing, libelous, abusive, threatening, harmful, hateful, or otherwise objectionable material
- Transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability

**Ownership of Intellectual Property.** Consultant will retain all interest in and to the Services, including all documentation, modifications, improvements, upgrades, derivative words, and all other Intellectual Property rights in connection with the Service, including Consultant's name, logos, and trademarks reproduced through the Service.

### **Subscription Fee**

The total value of the yearly subscription is \$36,000. This covers all Premium Maintenance and Support including functionality defined in the project scope, as well as all additional upgrades automatically added to the City's version of the software as defined by Consultant or other Consultant clients.

## EXHIBIT F SOFTWARE MAINTENANCE AND SUPPORT

### Premium Maintenance and Support

Premium Maintenance and Support ("Premium Support") services entitles the Customer to the following:

- Telephone or electronic support to help the Customer locate and correct problems with the Software
- Bug fixes and code corrections to correct Software malfunctions to bring the Service into substantial conformity with the operating specifications
- Air extensions, enhancements, and other changes that the Consultant makes or adds to the Service and which the Consultant offers without charge, to all other Subscribers of the Service

### Response and Resolution Goals

**Severity 1:** The Production system / application is down, seriously impacted and there is no reasonable workaround currently. Upon confirmation of receipt, the Consultant will begin continuous work on the issue, and a customer resource must be available at any time to assist with problem determination.

Once the issue is reproducible or once we have identified the Software defect, the Consultant support will provide reasonable effort for workaround or solution within 24 hours.

**Severity 2:** The system or application is seriously affected. The issue is not critical and does not comply with the Severity 1 conditions. There is no workaround currently available or the workaround is cumbersome to use.

The Consultant will work during normal business hours to provide reasonable effort for workaround or solution within 7 business days, once the issue is reproducible.

**Severity 3:** The System or application is moderately affected. The issue is not critical, and system has not failed. The issue has been identified and does not hinder normal operation, or the situation may be temporarily circumvented using an available workaround.

The Consultant will work during normal business hours to provide reasonable effort for workaround or solution within 10 business days, once the issue is reproducible.

**Severity 4:** Non-critical issues.

The Consultant will seek during normal business hours to provide a solution in future releases of the Service.

### Scope

Premium Maintenance and Support includes functionality defined in the project scope, as well as all additional upgrades that may be automatically added to the City's version of the software as defined by the Consultant or other relevant Consultant clients.

## **EXHIBIT G**

### **PRIVACY AND DISCLOSURE POLICY**

The purpose of this statement is to define the City of San José's policy about the collection and use of personally identifiable information (PII). PII is any information relating to an identified or identifiable individual who is the subject of the information.

Users of the City Web Site should be informed of the following:

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

#### **Anonymous information**

- This type of information does not identify specific individuals and is automatically transmitted by City browser. This information consists of:
- The URL (Uniform Resource Locator or address) of the web page user previously visited.
- The domain names and/or IP addresses which are numbers that are automatically assigned to City computer whenever user are connected to the Internet or World Wide Web.
- The browser version user is using to access the site.

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

#### **1 Personally Identifiable Information (PII)**

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

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

#### **2 Access to Personally Identifiable Information**

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

#### **3 Email Addresses**

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

#### **4 Use of "Cookies"**

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

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

#### **6 Security**

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

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

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

#### **8 Electronic Signatures and Payments**

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

#### **9 Disclaimer**

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

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

##### *9.2 Access to Information*

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

### 9.3 *Non-City Web Sites*

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

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