

SERVICES AGREEMENT

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| 1. <u>Parties</u> | ACCELA | CUSTOMER |
| | Accela, Inc. | City of Tempe, Arizona |
| | 2633 Camino Ramon, Suite 120 | 120 East Fifth Street |
| | Bishop Ranch 3 | Post Office Box 5002 |
| | San Ramon, California 94583 | Tempe, Arizona 85281 |
| | Attention: Contracts Administration | Attention: Cyndy Lawshe |
| | T: 925.659.3200 | T: 480.858.2044 |
| | F: 925.407.2722 | F: N/A |
| | e-Mail: contractsadmin@accela.com | e-Mail: cyndy_lawshe@tempe.gov |

This Services Agreement ("SA") is intended for the exclusive benefit of the Parties; nothing herein will be construed to create any benefits, rights, or responsibilities in any other parties.

2. Term and Termination

- 2.1 Term Provided that Customer signs and returns this SA to Accela **no later than June 28, 2013**, this SA is effective as of the date of Customer's signature ("Effective Date") and will continue until completion of the services deliverables described herein and final acceptance of the deliverables by the Customer.
- 2.2 Termination Either party may terminate if the other party materially breaches this SA and, after receiving a written notice describing the circumstances of the default, fails to correct the breach within ninety (90) calendar days. Upon any termination or expiration of this SA, all rights granted to Customer are cancelled and revert to Accela.

3. Professional Services Accela will provide the implementation, data conversion, and/or training services ("Professional Services") described in the Statement of Work ("SOW") attached hereto as Exhibit A.

- 3.1 Warranty Accela will commence and complete the Professional Services in a good and workmanlike manner, consistent with the practices and standards of care generally-accepted within and expected of Accela's industry.
- 3.2 Customer Cooperation As required, Customer agrees to provide Accela with appropriate access to Customer's facilities, personnel, data systems, and other resources. Customer acknowledges that the implementation process described in this SA is cooperative in nature and that Customer must complete its designated tasks in a timely manner in order for Accela to proceed with and complete the Professional Services. Customer delays during the implementation period may have adverse collateral effects on Accela's overall work schedule. Although Accela will use its best efforts to immediately resume work following such a delay, Customer acknowledges that schedules for the Professional Services may be delayed by more than the number of days delayed by Customer. Customer agrees that if additional time is required to complete the Professional Services because of Customer delays, such time will be charged to Customer at Accela's then-current time-and-materials rates.
- 3.3 Compensation
- 3.3.1 Implementation Fees In exchange for the Professional Services, Customer will pay to Accela the amounts indicated in Exhibit A according to the billing events schedule described therein. The pricing set forth herein reflects information generally known to Accela, supplied to Accela by Customer, and based on Accela's interpretation of the work to be performed. In addition to such amounts, Customer will reimburse Accela for airfare, travel time, lodging,

rental transportation, meals, and other miscellaneous expenses at current rates. Customer will reimburse Accela for data communications charges at the flat, per-day rate specified in Exhibit A. Upon Customer request, Accela will provide scanned or copied receipts of other appropriate documentation supporting claimed expenses and other charges.

- 3.3.2 Payment Terms Amounts are quoted in United States dollars and do not include applicable taxes, if any. Customer will be responsible for payment of all federal, state or provincial, and local taxes and duties, except those based on Accela's income. Accela will endeavor to provide all quotes and invoices with appropriate sales tax. If Customer is exempt from certain taxes, Customer will provide Accela with an appropriate certificate of exemption. Customer will be invoiced for all amounts upon occurrence of the billing events described in Exhibit A. The payment terms of all invoices are net thirty (30) calendar days from the dates of the invoices. Accela may, at its sole discretion, suspend its obligations hereunder without penalty until payments for all past-due billings have been paid in full by Customer.

4. Confidentiality

- 4.1 Definitions "Disclosing Party" and "Recipient" refer respectively to the party which discloses information and the party to which information is disclosed in a given exchange. Either Accela or Customer may be deemed Disclosing Party or Recipient depending on the circumstances of a particular communication or transfer of information. "Confidential Information" means all disclosed information relating in whole or in part to non-public data, proprietary data compilations, computer source codes, compiled or object codes, scripted programming statements, byte codes, or data codes, entity-relation or workflow diagrams, financial records or information, client records or information, organizational or personnel information, business plans, or works-in-progress, even where such works, when completed, would not necessarily comprise Confidential Information. The foregoing listing is not intended by the Parties to be comprehensive, and any information which Disclosing Party marks or otherwise designates as "Confidential" or "Proprietary" will be deemed and treated as Confidential Information. Information which qualifies as "Confidential Information" may be presented to Recipient in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as Confidential Information. Notwithstanding, the following specific classes of information are not "Confidential Information" within the meaning of this Section:
- a) information which is in Recipient's possession prior to disclosure by Disclosing Party;
 - b) information which is available to Recipient from a third party without violation of this SA or Disclosing Party's intellectual property rights;
 - c) information disclosed pursuant to Subsection 4.4 below;
 - d) information which is in the public domain at the time of disclosure by Disclosing Party, or which enters the public domain from a source other than Recipient after disclosure by Disclosing Party;
 - e) information which is subpoenaed by governmental or judicial authority; and
 - f) information subject to disclosure pursuant to a state's public records laws.
- 4.2 Confidentiality Term The obligations described in this Section commence on the Effective Date and will continue until two (2) years following any termination or expiration of this SA ("Confidentiality Term").
- 4.3 Confidentiality Obligations During the Confidentiality Term, Recipient will protect the confidentiality of Confidential Information using the same degree of care that it uses to protect its own information of similar importance, but will in any case use no less than a reasonable degree of care to protect Confidential Information. Recipient will not directly or indirectly disclose Confidential Information or any part thereof to any third party without Disclosing Party's advance express written authorization to do so. Recipient may disclose Confidential Information only to its employees or agents under its control and

direction in the normal course of its business and only on a need-to-know basis. In responding to a request for Confidential Information, Recipient will cooperate with Disclosing Party, in a timely fashion and in a manner not inconsistent with applicable laws, to protect the Confidential Information to the fullest extent possible.

4.4 Publicity During the term of this SA, including the term of any amendment hereto, Accela may publicly disclose its ongoing business relationship with Customer. Such disclosures may indicate Customer's identity and the Accela product(s) and services provided or contracted to be provided to Customer. These disclosures may include press releases or other communications to media, display on Accela web sites, or use in other marketing activities, but will not include non-public information or indicate Customer's express endorsement of Accela's products or services without Customer's prior written authorization.

5. Other Terms and Conditions

5.1 Mutual Indemnification Accela agrees to indemnify, defend, and hold Customer and its officers, agents, and employees harmless against any claims, suits, or damages arising out of physical property damage or bodily injury or death to an individual caused by the negligence or misconduct of Accela or its employees or agents while the terms and conditions of this SA remain enforceable. Customer agrees to indemnify, defend, and hold Accela and its officers, agents, and employees harmless against any claims, suits, or damages arising out of physical property damage or bodily injury caused by the negligence or misconduct of Customer or its employees or agents while the terms and conditions of this SA remain enforceable.

5.2 Limitation of Liability Accela provides no warranty whatsoever for any third-party hardware or software products. Third-party applications which utilize or rely upon the Professional Services may be adversely affected by remedial or other actions performed pursuant to this SA; Accela bears no liability for and has no obligation to remedy such effects. Except as set forth herein, Accela provides all Professional Services "as is" without express or implied warranty of any kind regarding the character, function, capabilities, or appropriateness of such services or deliverables. Except with respect to indemnification obligations as set forth in Section 5.1, claims for attorneys' fees and other costs Customer becomes entitled to recover against Accela as a prevailing party, and the indemnification obligations of Accela for infringement as set forth in Section 3 of the License Agreement between Accela and Customer, in no event will Accela's cumulative liability for any general, incidental, special, compensatory, or punitive damages whatsoever suffered by Customer or any other person or entity exceed the fees paid to Accela by Customer during the twelve (12) calendar months immediately preceding the circumstances which give rise to such claim(s) of liability, even if Accela or its agents have been advised of the possibility of such damages.

5.3 Insurance Coverage Accela will maintain insurance coverage at its sole cost and expense and will provide certificates of insurance to Customer if so requested. The insurance will not be cancelled or terminated without thirty (30) calendar days' advance written notice to Customer.

5.4 Force Majeure If either party is delayed in its performance of any obligation under this SA due to causes or effects beyond its control, that party will give timely notice to the other party and will act in good faith to resume performance as soon as practicable.

5.5 Dispute Resolution This SA is governed by the laws of the State of Arizona. In the event of a dispute, either party may call for escalation by written notice to the other. Within five (5) business days of such notice, each party will designate a representative with authority to make commitments that would resolve the dispute. The parties' representatives will meet in person or by telephone ("Dispute

Conference") within ten (10) business days of their designation and will negotiate in good faith to resolve the dispute. Except to the extent necessary to prevent irreparable harm or to preserve rights or remedies, neither party will initiate litigation until ten (10) business days after a failed attempt at mediation as set forth in Section 5.5.1 below.

- 5.5.1 If the parties cannot themselves resolve a dispute arising out of or related to this SA, they will attempt to resolve such dispute through non-binding mediation in Maricopa County, Arizona, with the parties sharing equally the costs of mediation. The parties shall select an independent mediator experienced in commercial information systems contract disputes, and each shall designate a representative(s) to meet with the mediator in good faith in an effort to resolve the dispute. The specific format for the mediation shall be left to the discretion of the mediator and the designated party representative and may include the preparation of agreed-upon statements of fact or written statements of position furnished to the other party. Except to the extent necessary to prevent irreparable harm or to preserve rights or remedies, neither party will initiate litigation until ten (10) days after the first mediation conference, unless the other party has materially breached its obligations set forth in the preceding sentence.
- 5.5.2 Except where clearly prevented by the area in dispute, both parties shall continue performing their non-disputed obligations under this SA while the dispute is being resolved under this Section unless and until the dispute is resolved or until this SA is terminated as provided herein. Except for disputes relating to the payment of Accela fees as set forth in Section 3.3, the time frame for a party to cure any breach of the terms of this SA shall not be tolled by the pendency of any dispute resolution procedures.
- 5.5.3 Notwithstanding anything contained in this SA to the contrary, the parties shall be entitled to seek injunctive or other equitable relief whenever the facts or circumstances would permit a party to seek such equitable relief in a court of competent jurisdiction.
- 5.6 Assignment Accela may assign its rights and obligations hereunder for purposes of financing or pursuant to corporate transactions involving the sale of all or substantially all of its stock or assets. Accela may subcontract with qualified third parties to provide portions of the Professional Services described hereinabove.
- 5.7 Survival The following provisions will survive the termination or expiration of this SA: Section 3.3 and all subsections thereof, as to Customer's obligation to pay any fees accrued or due at the time of termination or expiration; Section 4 and all subsections thereof; and Section 5 and all subsections thereof with the exceptions of Subsections 5.1, 5.3, and 5.4.
- 5.8 Alternate Terms Disclaimed The parties expressly disclaim any alternate terms and conditions accompanying drafts and/or purchase orders issued by Customer.
- 5.9 Severability and Amendment If any particular provision of this SA is determined to be invalid or unenforceable, that determination will not affect the other provisions of this SA, which will be construed in all respects as if the invalid or unenforceable provision were omitted. No extension, modification, or amendment of this SA will be effective unless it is described in writing and signed by the Parties.
- 5.10 Conflict of Interest This Agreement is subject to cancellation pursuant to the provisions of Arizona Revised Statute ("A.R.S.") § 38-511 regarding conflict of interest.

5.11 Specially Designated Nationals and Blocked Persons List Accela represents and warrants to Customer that neither Accela nor any affiliate or representative of Accela (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order no. 13224, 66 Fed.Reg. 49079 ("Order"); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s); (iii) is engaged in activities prohibited in the Order; or (iv) has been convicted, pleaded nolo contendere, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering. In addition, Accela certifies that it does not have a scrutinized business operation in either Iran or Sudan.

5.12 Equal Opportunity Customer is an equal opportunity, affirmative action employer. Customer hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Agreement, to any person on the basis of race, color, national origin, physical or mental disability, age, sex or veteran status. Customer covenants and agrees that it will comply in all respects with the applicable provisions of the Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, and any other applicable state and federal statutes governing equal opportunity.

5.13 Legal Compliance Accela agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work, products, goods, facilities and services pursuant to the Agreement, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, Arizona Executive Order No. 99-4, and the Arizona Fair and Legal Employment Act, along with all laws, rules and regulations attendant thereto. Accela acknowledges that a breach of this warranty is a material breach of this Agreement and Accela is subject to penalties if awarded by competent court for violation(s) of this provision, including termination of this Agreement. Accela hereby agrees to indemnify, defend and hold Customer harmless for, from and against all losses and liabilities, imposed by statutory authorities on Customer, arising from any and all violations by the Accela.

5.14 Accela Records Accela agrees to retain all books, accounts, reports, files and other records relating to this Agreement pursuant to A.R.S. § 35-214. Accela shall make said records available with prior written notice at all reasonable times for inspection and audit by the Customer during the term of this Agreement.

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5.15 Availability of Funds The parties recognize that the obligations of Customer may be dependent upon the appropriation of funds by the Tempe City Council. Should the Tempe City Council fail to appropriate the necessary funds or funding becomes otherwise not legally available, Customer may reduce the scope of this Agreement if appropriate or cancel or terminate Agreement without further duty or obligation. Customer agrees to notify Accela as soon as reasonably possible after the unavailability of said funds comes to Customer's attention.

ACCELA



Signature

City of Tempe

Mark W. Mitchell, Mayor

COLIN SAMUELS

Name (Printed)

Name (Printed)

ASST. CORP. SECRETARY

Title

ATTEST:

14 JUNE 2013

Date

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney

Exhibit Follows.

END OF DOCUMENT

EXHIBIT A

Statement of Work (SOW) document follows this page.

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