

PROFESSIONAL SERVICES AGREEMENT

FOR AND IN CONSIDERATION of the mutual benefits accruing and expected to accrue hereunder, this Professional Services Agreement ("Agreement") is made as of the ___ day of _____ 2018 ("Effective Date") by and between AssetWorks, with offices at 998 Old Eagle School Road, Suite 1215, Wayne, PA 19087 ("AssetWorks"), and the City of Corpus Christi, with offices at PO Box 9722 Corpus Christi, TX. 78469-9277 ("CUSTOMER"). Intending to be legally bound, the parties hereby mutually agree to the following terms and conditions:

A. BACKGROUND

1. The CUSTOMER may contract with AssetWorks for professional services ("Services") including, without limitation, custom software development, consulting, education, installation, data conversion, training, and software modifications.
2. The CUSTOMER will request the Services and AssetWorks will set forth the Services to be delivered in a quote document ("Order Form") that references the terms of this Agreement.
3. The Order Form may be accompanied by a statement of work but it is not required.
4. The purpose of this Agreement is to set forth the terms and conditions upon which AssetWorks will provide the Services for CUSTOMER in accordance with Order Form that may be added by the parties in the future.

B. RESPONSIBILITIES OF THE PARTIES FOR ENGAGEMENTS

1. No Order Form shall be of any force and effect unless and until executed by both AssetWorks and CUSTOMER.
2. Services will either be on a Time and Material basis or a Fixed Price basis, specified in the Order Form. The Order Form or associated statement of work may or may not include a definitive list of "Deliverables" that must be completed by AssetWorks. In some instances, the Attachment will include a date by which "Deliverables" must be completed.
3. In the event that Services result in greater AssetWorks duties than contemplated by the Order Form, CUSTOMER will work closely and in good faith with AssetWorks to modify the Order Form to ensure that the CUSTOMER's requirements are addressed and AssetWorks' fees shall be adjusted to reflect increased CUSTOMER requirements.
4. Unless specifically addressed in the Order Form, all travel and expenses incurred will be extra and billed at the time of incurrence.

C. REPRESENTATIONS AND WARRANTIES

1. AssetWorks covenants and warrants that it will perform all Services with due diligence, in a professional and careful manner, and in compliance with all applicable laws and governmental regulations.

2. AssetWorks represents and warrants that the Services provided will not infringe any patent, trademark, trade secret, copyright or other intellectual property right of anyone.
3. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH HEREIN, AssetWorks DISCLAIMS ALL WARRANTIES, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, and the stated express warranties are in lieu of all obligations or liabilities on the part of AssetWorks arising out of or in connection with the performance of the Services to be provided herein.

D. RELATIONSHIP OF THE PARTIES

1. The parties are independent contractors and under no circumstances will either be deemed to be an agent, partner, legal representative, employee or joint venture partner of the other party.

E. SUBCONTRACTORS

1. AssetWorks may engage subcontractors to assist in performing Services without the prior written consent of CUSTOMER; provided, AssetWorks shall supervise such sub-contractors and the Services performed by them to the same extent as if AssetWorks performed the work.

F. INTELLECTUAL PROPERTY RIGHTS

1. **SOFTWARE FIRST DEVELOPED**
Unless otherwise provided in an Order Form or associated statement of work AssetWorks grants to the CUSTOMER the same rights, and CUSTOMER undertakes the same obligations with respect thereto, any new software and/or documentation first developed by AssetWorks under this Agreement that the CUSTOMER received pursuant to the Software License Agreement in effect between the parties.
2. **AssetWorks EXISTING SOFTWARE**
AssetWorks retains title to and ownership of all software and enhancements or modifications thereto, and/or documentation furnished to the CUSTOMER under this Agreement to which it had title to or ownership of prior to the commencement of this Agreement.

G. CONFIDENTIAL INFORMATION

1. Because either party may have access to information of the other party that the other party considers to be confidential or proprietary ("Confidential Information"), each party will maintain all Confidential Information in confidence and will use it solely in the discharge of its obligations under this Agreement and any applicable Order Form. Nothing herein will be deemed to restrict a party from disclosing Confidential Information to its employees and subcontractors in the discharge of such obligations.
2. Confidential Information will not include information that (i) is, or becomes, generally known or available through no fault of the, recipient; (ii) is known to the recipient at the time of its receipt from the disclosing party; (iii) the disclosing party provides to a third party without restrictions on disclosure; (iv) is subsequently and rightfully provided to the recipient by a third party without restriction on disclosure; (v) is independently developed by the recipient, without reference to the

disclosing party's Confidential Information; or (vi) is required to be disclosed pursuant to a governmental agency or court subpoena, provided the recipient promptly notifies the disclosing party of such subpoena to allow it reasonable time to seek a protective order or other appropriate relief.

3. Because of the unique nature of the Confidential Information, each party agrees that the disclosing party may suffer irreparable harm in the event the recipient fails to comply with its obligations under this Section G, and that monetary damages may be inadequate to compensate the disclosing party for such breach. Accordingly, the recipient agrees that the disclosing party may, in addition to any other remedies available to it, be entitled to injunctive relief.
4. AssetWorks understands that CUSTOMER is a Texas governmental entity subject to the Texas Public Information Act (Chapter 552 of the Texas Government Code). Should CUSTOMER receive a valid public information request for AssetWorks' confidential information, CUSTOMER will inform AssetWorks of such request and AssetWorks' ability to argue the confidentiality of the information and send the information to the Texas Attorney General in accordance with the Act. Compliance with the Texas Public Information Act shall not be considered a violation of this Agreement.

H. NON-SOLICITATION

1. During the term of this Agreement, and for one year thereafter, neither party will solicit the employment of, or contract for the services of, any person who is/was an employee, agent, or subcontractor of the other party during the term of this Agreement.

I. PAYMENT

1. AssetWorks will be paid for the Services at the rate stated in the Order Form.
2. AssetWorks will issue monthly invoices to CUSTOMER for Services fees and expenses due unless otherwise provided for in a particular Order Form. CUSTOMER will pay AssetWorks' invoices pursuant to the terms of the Order Form or within thirty (30) days of receipt if not specified in the Order Form.
3. AssetWorks reserves the right to apply a late payment charge of 1.5% per month to amounts outstanding more than thirty (30) days after the date of the invoice.

J. TERM OF AGREEMENT

1. This Agreement will commence as of the Effective Date and expires on December 31, 2022, unless earlier terminated pursuant to the terms hereof.
2. CUSTOMER may terminate this Agreement or Order Form if AssetWorks defaults in any of its obligations under such Order Form and AssetWorks is provided with thirty (30) calendar days written notice of such default; provided, there shall be no default and no termination if the breach is cured within the notice period or, if the breach cannot reasonably be so cured, diligent efforts to effect such cure are commenced during that period and are continued until the cure is completed, which shall be within a reasonable time. In the event the default is not cured or diligent efforts to effect a cure are not underway, the Order Form at issue shall terminate, but the Agreement as to any remaining Order Forms shall remain in full force and effect. Once the remaining Order

Forms are completed, the Agreement, in its entirety, shall terminate. If the CUSTOMER chooses to terminate the Agreement due to default, no new Order Forms may be issued.

3. Either party shall have the right to terminate this Agreement if the other party is in default of any obligation hereunder and the defaulting party is provided with thirty (30) calendar days written notice of such default; provided, there shall be no default and no termination if the breach is cured within the notice period or, if the breach cannot reasonably be so cured, diligent efforts to effect such cure are commenced during that period and are continued until the cure is completed, which shall be within a reasonable time.

K. EFFECT OF TERMINATION

1. In the event of the termination of this Agreement under Section J, CUSTOMER shall be liable to AssetWorks for an amount equal to the value of the Services completed up to the effective date of termination.
2. If this Agreement is/are terminated, AssetWorks will, within thirty (30) days after such termination, submit final invoices for Services provided through the effective date of such termination, and CUSTOMER will promptly pay AssetWorks' invoices.

L. INDEMNITIES

1. AssetWorks will defend, indemnify and hold harmless CUSTOMER from and against all claims, liabilities, damages and costs, including attorney fees and other legal expenses ("Claims"), relating to any actual or alleged infringement by any Services of any patent, copyright, trade secret or other intellectual property right or proprietary right of anyone; provided such defense and payments are conditioned on the following: (1) that AssetWorks shall be promptly notified in writing by CUSTOMER following its receipt of any such claim; and (2) CUSTOMER cooperates, as necessary, during the information gathering and defense.

M. INSURANCE

1. At CUSTOMER'S request, AssetWorks will provide CUSTOMER with current certificates of insurance evidencing that AssetWorks has coverage with the limits listed below.

<u>COVERAGE</u>	<u>MINIMUM LIMITS</u>
Commercial General Liability	\$1,000,000/occurrence; \$2,000,000 aggregate
Commercial Auto Liability (Incl "non-owned" vehicle coverage)	\$1,000,000 combined single limit
<u>WORKERS' COMP</u>	<u>STATUTORY LIMITS</u>
Employer's Liability	\$500,000
Commercial Crime	\$1,000,000

N. LIMITATION OF LIABILITY

1. In the event of any claim brought by one party against another hereunder, a party

will be liable only for actual, direct losses or damages incurred, limited to the amount of fees for which AssetWorks contracted under the Order Form that is the subject of the claim provided, the claiming party shall be obliged to take reasonable steps to mitigate its losses or damages.

2. Irrespective of the basis of the claim, neither party will be liable for any special, punitive, exemplary, indirect, incidental or consequential damages of any kind, including, without limitation, lost profits or loss of data, even if it has been advised of the possibility of such damages.

O. GENERAL TERMS

1. Neither AssetWorks nor CUSTOMER will assign or transfer its interest in this Agreement or any Order Form without the prior written consent of the other party.
2. All provisions of this Agreement, which by their nature should survive termination of this Agreement, will so survive.
3. No delay or failure by either party to exercise any right hereunder, or to enforce any provision of this Agreement will be considered a waiver thereof. No single waiver will constitute a continuing or subsequent waiver. To be valid, a waiver must be in writing, but need not be supported by consideration.
4. If any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, such provision will be modified to the minimum extent necessary to make it legal, valid and enforceable, and the remaining provisions of this Agreement will not be affected.
5. This Agreement, including its interpretation and enforcement, will be governed by the substantive laws of the State of Texas excluding its conflict of laws rules.
6. Any communication or notice hereunder must be in writing, and will be deemed given and effective: (i) when delivered personally with proof of receipt; (ii) when sent by e-mail; (iii) when delivered by overnight express; or (iv) three (3) days after the postmark date when mailed by certified or registered mail, postage prepaid, return receipt requested and addressed to a party at its address for notices. Each party's address for notices is stated below. Such address may be changed by a notice delivered to the other party in accordance with the provisions of this Section.

AssetWorks LLC
998 Old Eagle School Rd. - Suite 1215
Wayne, PA 19087
Attn.: John Hines

CUSTOMER:

Attn.:

Copy to:
Director of Contracts
AssetWorks LLC
998 Old Eagle School Rd. - Suite 1215
Wayne, PA 19087
Attn: Sandra McFarland

Copy to:

Attn:

7. In the event of any dispute arising in the performance of this Agreement or any Order Form, AssetWorks and the CUSTOMER will seek to resolve such dispute through good faith, amicable discussions and negotiations. Any specific agreed upon problem escalation procedure will be stated in the related Attachment. In the

event of a conflict between the terms of an Order Form and this Agreement, the Order Form shall control unless otherwise provided in the Order Form. In any action at law or in equity to enforce or interpret the terms of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs, in addition to any other relief ordered by the court. Such fees and costs will include those incurred in connection with the enforcement of any resulting judgment or order, and any post judgment order will provide for the right to receive such attorneys' fees and costs.

8. Neither party will be liable for any failure to perform or any delay in performing any of its obligations hereunder when such failure or delay is due to circumstances beyond its reasonable control and without its fault (Force Majeure), including without limitation, any natural catastrophe, fire, war, riot, strike, or any general shortage or unavailability of materials, components or transportation facilities, or any governmental action or inaction. Upon the occurrence of such event of Force Majeure, the affected party will immediately give notice to the other party with relevant details, and will keep the other party informed of related developments.
9. This Agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous oral, and all prior written, negotiations, commitments and understandings of the parties relating to the subject matter hereof. This Agreement may not be modified except by a writing executed by both parties.
10. The continuation of this Agreement after the close of any fiscal year of the CUSTOMER, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the CUSTOMER's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget. Lack of appropriation does not relieve CUSTOMER from its obligation to pay for services rendered prior to CUSTOMER providing written notice of lack of appropriations.
11. In accordance with Chapter 2270, Texas Government Code, the CUSTOMER may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this Agreement on behalf of AssetWorks verifies that the company does not boycott Israel and will not boycott Israel during the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have entered into this Agreement as of the Effective Date.

AssetWorks LLC

By: 
Gordon Smith

Title: Portfolio Manager

Date: 10/29/2018

CUSTOMER

By: _____

Title: _____

Date: _____