

CITY OF LATHROP SOFTWARE AS A SERVICE AGREEMENT WITH CHOSEN VENDOR TO PROVIDE RECREATION REGISTRATION SOFTWARE MANAGEMENT SYSTEM

THIS AGREEMENT, dated for convenience this **February 9, 2026** is by and between **CHOSEN VENDOR** (“CONSULTANT”) and the **City of Lathrop**, a California municipal corporation (“CITY”);

RECITALS:

WHEREAS, CONSULTANT provided a proposal as a response to the Request for Proposals (RFP) submitted by Parks and Recreation Department; and

WHEREAS, CITY selected the CONSULTANT pursuant to said RFP response; and

WHEREAS, CONSULTANT is willing to render such recreation registration software management system, as hereinafter defined, on the following terms and conditions;

NOW, THEREFORE, CONSULTANT and the CITY agree as follows:

AGREEMENT

(1) Scope of Service

Subject to CONSULTANT’s digital services terms and conditions, CONSULTANT grants to CITY and its Authorized Users a limited, worldwide, non-exclusive, non-transferable right during the Term to use the recreation registration software management system (“Services”) in accordance with Kaizen’s T&Cs and the Order Form provided by CONSULTANT, attached hereto as Exhibit “A” and incorporated herein by reference. CONSULTANT represents it is prepared to and can diligently perform these services in accordance with the customary standards of its profession and to CITY’S satisfaction. The fee proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved of in advance and in writing, by the CITY.

(2) Compensation

CITY hereby agrees to pay CONSULTANT a sum not to exceed \$106,197 for the five (5) year term for the recreation software registration software management system, incorporated herein by reference, notwithstanding any contrary indications, which is attached hereto as Exhibit "A".

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CONSULTANT shall be paid any uncontested sum due and payable within thirty (30) days of receipt of billings containing all information pursuant to Paragraph 5 below. All fees are due annually in advance unless otherwise specified in Exhibit A, In no event shall CONSULTANT be entitled to compensation for work not included in Exhibit "A", unless a written change order or authorization describing the extra work and payment terms has been executed by CITY's authorized representative prior to the commencement of the work.

(3) Effective Date and Term

The effective date of this Agreement is **XXX**, and it shall terminate no later than **XXX**.

(4) Independent Contractor Status

It is expressly understood and agreed by both parties that CONSULTANT, while engaged in carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and not an employee of the CITY. As an independent contractor, CONSULTANT is responsible for controlling the means and methods to complete the scope of work described in Exhibit "A" to City's satisfaction. CONSULTANT expressly warrants not to represent, at any time or in any manner, that CONSULTANT is an employee of the CITY.

(5) Billings

CITY will pay CONSULTANT the fees and any other amounts owing under this Agreement, as specified in the applicable Order Form. Any additional services or hardware not set forth in an Order Form may be subject to additional fees. Unless otherwise specified in the Order Form, CITY will pay all amounts due within 30 days of the date of the applicable invoice. Any amount not paid when due will be subject to finance charges equal to 1.5% of the unpaid balance per month or the highest rate permitted by applicable usury law, whichever is less, determined and compounded daily from the date due until the date paid. Except as specifically authorized by CITY, CONSULTANT shall not bill CITY for duplicate services performed by more than one person. In no event shall CONSULTANT submit any billing for an amount in excess of the rates or the maximum amount of compensation provided in section (2) for either task or for the entire Agreement, unless modified by a properly executed change order.

(6) Advice and Status Reporting

CONSULTANT shall provide the CITY with timely reports, orally or in writing, of all significant developments arising during performance of its services hereunder, and shall furnish to CITY such information as is necessary to enable CITY to monitor the performance of this Agreement. CONSULTANT shall submit to CITY such reports, diagrams, drawings and other work products developed pursuant to the Scope of

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Services.

(7) Auditing

CONSULTANT agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. No more than once per calendar year, CONSULTANT agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon thirty days' advance written notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with the requirement. CONSULTANT further agrees to maintain such records for a period of three (3) years after final payment under this agreement.

(8) Assignment of Personnel

CONSULTANT acknowledges that the CITY has relied on CONSULTANT's capabilities and on the qualifications of CONSULTANT's principals and staff as identified in its proposal to CITY. The services shall be performed by, or under the direct supervision, of CONSULTANT's Authorized Representative: _____. CITY shall be notified by CONSULTANT of any change of its Authorized Representative.

CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement.

(9) Assignment and Subcontracting

It is recognized by the parties hereto that a substantial inducement to CITY for entering into this Agreement was, and is, the professional reputation and competence of CONSULTANT. Neither this Agreement nor any interest therein may be assigned by CONSULTANT without the prior written approval of CITY'S authorized representative, except that CONSULTANT may assign this Agreement without CITY's consent to a successor (including a successor by way of merger, acquisition, sale of assets, or operation of law) if the successor agrees to assume and fulfill all of the CONSULTANT's obligations under this Agreement. CONSULTANT shall not subcontract any portion of the performance contemplated and provided for herein, other than the subcontractors noted in the proposal, without prior written approval of the CITY'S authorized representative.

(10) Insurance

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On or before beginning any of the services or work called for by any term of this Agreement, CONSULTANT, at its own cost and expense, shall carry, maintain for the duration of the Agreement, and provide proof thereof that is acceptable to the CITY the insurance specified in subsections (a) through (c) below with insurers and under forms of insurance satisfactory in all respects to the CITY. CONSULTANT shall not allow any subcontractor to commence work on any subcontract until all insurance required of the CONSULTANT has also been obtained for the subcontractor. Verification of this insurance shall be submitted and made part of this Agreement prior to execution.

- (a) Workers' Compensation. CONSULTANT shall, at CONSULTANT'S sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by CONSULTANT. Said Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than one million dollars (\$1,000,000). In the alternative, CONSULTANT may rely on a self-insurance program to meet these requirements provided that the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or the CONSULTANT, if a program of self-insurance is provided, shall waive all rights of subrogation against the CITY for loss arising from work performed under this Agreement.

- (b) Commercial General and Automobile Liability Insurance. CONSULTANT, at CONSULTANT'S own cost and expense, shall maintain commercial general and automobile liability insurance for the period covered by this Agreement in an amount not less than one million dollars (\$1,000,000) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) and Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 (any auto).

Each of the following shall be included in the insurance coverage or

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added as an endorsement to the policy:

- (i) CITY, its officers, employees, agents, and volunteers are to be covered as insured with respect to each of the following: liability arising out of activities performed by or on behalf of CONSULTANT, including the insider's general supervision of CONSULTANT; products and completed operations of CONSULTANT; premises owned, occupied or used by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents, or volunteers.
 - (ii) The insurance shall cover on an occurrence or an accident basis, and not on a claim made basis.
 - (iii) An endorsement must state that coverage is primary insurance and that no other insurance affected by the CITY will be called upon to contribute to a loss under the coverage.
 - (iv) Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
 - (v) Insurance is to be placed with California-admitted insurers with a Best's rating of no less than A: VII.
 - (vi) Notice of cancellation or non-renewal must be received by CITY at least thirty days prior to such change.
- (c) Professional Liability. CONSULTANT, at CONSULTANT'S own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than Two Million Dollars (\$2,000,000) per claim made and per policy aggregate covering the licensed professionals' errors and omissions, as follows:
- (i) Any deductible or self-insured retention shall not exceed \$250,000 per claim.
 - (ii) Notice of cancellation, material change, or non-renewal must be received by the CITY at least thirty days prior to such change shall be included in the coverage or added as an endorsement to the policy.
 - (iii) The policy must contain a cross liability or severability of interest clause.

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(iv) The following provisions shall apply if the professional liability coverages are written on a claims made form:

1. The retroactive date of the policy must be shown and must be before the date of the Agreement.
2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
3. If coverage is canceled or not renewed and it is not replaced with another claims made policy form with a retroactive date that precedes the date of this Agreement, CONSULTANT must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The CITY shall have the right to exercise at the CONSULTANT'S cost, any extended reporting provisions of the policy should the CONSULTANT cancel or not renew the coverage.
4. A copy of the claim reporting requirements must be submitted to the CITY prior to the commencement of any work under this Agreement.

(d) Deductibles and Self-Insured Retentions. CONSULTANT shall disclose the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. During the period covered by this Agreement, upon express written authorization of the CITY's authorized representative, CONSULTANT may increase such deductibles or self-insured retentions with respect to CITY, its officers, employees, agents, and volunteers. The CITY's authorized representative may condition approval of an increase in deductible or self-insured retention levels upon a requirement that CONSULTANT procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

(e) Notice of Reduction in Coverage. In the event that any coverage required under subsections (a), (b), or (c) of this section of the Agreement is reduced, limited, or materially affected in any other manner, CONSULTANT shall provide written notice to CITY at CONSULTANT'S earliest possible opportunity and in no case later than five days after CONSULTANT is notified of the change in coverage.

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- (f) In addition to any other remedies CITY may have if CONSULTANT fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, CITY may, at its sole option:
- (i) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
 - (ii) Order CONSULTANT to stop work under this Agreement or withhold any payment which becomes due to CONSULTANT hereunder, or both stop work and withhold any payment, until CONSULTANT demonstrates compliance with the requirements hereof;
 - (iii) Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies CITY may have and is not the exclusive remedy for CONSULTANT'S breach.

(11) Indemnification - CONSULTANT'S Responsibility

As to the CONSULTANT'S work hereunder, it is understood and agreed that (a) CONSULTANT has the professional skills necessary to perform the work, (b) CITY relies upon the professional skills of CONSULTANT to perform the work in a skillful and professional manner, and (c) CONSULTANT thus agrees to so perform.

Acceptance by CITY of the work performed under this Agreement does not operate as a release of said CONSULTANT from such professional responsibility for the work performed. It is further understood and agreed that CONSULTANT is apprised of the scope of the work to be performed under this Agreement and CONSULTANT agrees that said work can and shall be performed in a fully competent manner in accordance with the standard of care applicable to CONSULTANT'S profession.

CONSULTANT shall indemnify, defend, and hold CITY, its officers, employees, agents, and volunteers harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of a third party claim alleging any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused by the willful misconduct or grossly negligent acts or omissions of CONSULTANT, its employees, subcontractors, or agents in performance of its obligations under this Agreement, or on account of the performance or character of this work, except for any such claim arising out of the negligence or willful misconduct of the CITY, its officers, employees, agents, or volunteers. It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from

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liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

(12) Licenses

If a license of any kind, which term is intended to include evidence of registration, is required of CONSULTANT, its employees, agents, or subcontractors by federal or state law, CONSULTANT warrants that such license has been obtained, is valid and in good standing, and CONSULTANT shall keep it in effect at all times during the term of this Agreement.

(13) Business Licenses

CONSULTANT shall obtain and maintain a CITY of Lathrop Business License until all Agreement services are rendered and accepted by the CITY.

(14) Termination

Either party may terminate this Agreement (including all Order Forms) if the other party does not cure its material breach of this Agreement within 30 days of receiving written notice of the material breach from the non-breaching party. Termination in accordance with this Section 14 will take effect when the breaching party receives written notice of termination from the non-breaching party, which notice must not be delivered until the breaching party has failed to cure its material breach during the 30-day cure period. If CITY fails to timely pay any undisputed fees, CONSULTANT may, without limitation to any of its other rights or remedies, suspend performance of the Services until it receives all amounts due. .

(15) Funding

CONSULTANT agrees and understands that renewal of this agreement in subsequent years is contingent upon action by the City Council consistent with the appropriations limits of Article XIII (B) of the California Constitution and that the Council may determine not to fund this agreement in subsequent years. Any such termination shall be effective only at the end of the then-current fiscal year and only upon all of the following conditions being met: (a) At least thirty (30) days' prior written notice to CONSULTANT, upon becoming aware that future funding will not be appropriated; (b) Written certification by an authorized financial officer of the CITY stating that funding is not available and cannot be lawfully reallocated or otherwise obtained to meet the CITY's obligations under this Agreement; (c) Payment of all fees and amounts properly due for Services rendered through the effective date of termination; and (d) Confirmation that CITY is not reallocating available funds to procure substantially similar services from another vendor during the upcoming fiscal year. CITY shall use reasonable efforts to secure continued

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funding to support the Agreement and shall promptly notify CONSULTANT of any funding risk that may affect ongoing performance

(16) Notices

All contracts, appointments, approvals, authorizations, claims, demands, Change Orders, consents, designations, notices, offers, requests and statements given by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if (1) personally served, (2) sent by the United States mail, postage prepaid, (3) sent by private express delivery service, or (4) in the case of a facsimile transmission, if sent to the telephone FAX number set forth below during regular business hours of the receiving party and followed with two (2) Days by delivery of a hard copy of the material sent by facsimile transmission. Personal service shall include, without limitation, service by delivery and service by facsimile transmission.

To City: City of Lathrop
City Clerk
390 Towne Centre
Lathrop, CA 95330

Copy to: City of Lathrop
Information Systems Department
390 Towne Centre
Lathrop, CA 95330
MAIN: (209) 941-7430
FAX: (209) 941-7449

To Consultant: CHOSEN VENDOR

(17) Miscellaneous

- (a) Consent. Whenever in this Agreement the approval or consent of a party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.
- (b) Contract Terms Prevail. All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and attached exhibits, the terms of this Agreement shall prevail.
- (c) Controlling Law. The parties agree that this Agreement shall be governed and construed by and in accordance with the Laws of the State of California.

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- (d) Definitions. The definitions and terms are as defined in these specifications, including Exhibit A.
- (e) Force Majeure. Neither party shall be deemed to be in default on account of any delay or failure to perform its obligations under this Agreement, which directly results from an Act of God or an act of a superior governmental authority.
- (f) Headings. The paragraph headings are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.
- (g) Incorporation of Documents. All documents constituting the Agreement documents described in Section 1 hereof and all documents which may, from time to time, be referred to in any duly executed amendment hereto are by such reference incorporated in the Agreement and shall be deemed to be part of this Agreement.
- (h) Integration. This Agreement and any amendments hereto between the parties constitute the entire Agreement between the parties concerning the Project and Work, and there are no other prior oral or written agreements between the parties that are not incorporated in this Agreement.
- (i) Modification of Agreement. This Agreement shall not be modified or be binding upon the parties unless such modification is agreed to in writing and signed by the parties.
- (j) Reservation of Rights. CONSULTANT grants to CITY a limited right to use the Services and related Documentation under this Agreement. CITY will not have any rights to the Services, related Documentation, or Usage Data except as expressly granted in this Agreement. CITY acknowledges that all right, title and interest in and to all works of authorship, inventions, discoveries, improvements, methods, processes, formulas, designs, techniques, information, and other intellectual property (a) conceived, discovered, developed or otherwise made (as necessary to establish authorship, inventorship, or ownership) by CONSULTANT, solely or in collaboration with others, in the course of performing the Services; or (b) that form all or part of a deliverable provided as part of the Services, whether developed as part of the Services or separately, but excluding third party materials, and all derivatives thereof as well as the Documentation and Usage Data is and shall remain exclusively with CONSULTANT. CONSULTANT reserves to itself all rights to the Services, related Documentation, and Usage Data not expressly granted to CITY in accordance with this Agreement.
- (k) Provision. Any agreement, covenant, condition, clause, qualification, restriction, reservation, term or other stipulation in the Agreement shall define

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or otherwise control, establish or limit the performance required or permitted or to be required of or permitted by either party. All provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.

- (l) Severability. The invalidity in whole or part of any provision of this Agreement shall not void or affect the validity of any other provision of this agreement. If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the provisions of this Agreement not so affected shall remain in full force and effect.
- (m) Status of CONSULTANT. In the exercise of rights and obligations under this Agreement, CONSULTANT acts as an independent contractor and not as an agent or employee of CITY.

CONSULTANT shall not be entitled to any rights and benefits accorded or accruing to the City Council members, officers or employees of CITY, and CONSULTANT expressly waives any and all claims to such right and benefits.

- (n) Successors and Assigns. The provisions of this Agreement shall inure to the benefit of, and shall apply to and bind, the successors and assigns of the parties.
- (o) Venue. In the event that suit is brought by either party hereunder, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of San Joaquin or in the United States District Court for the Eastern District of California.
- (p) Recovery of Costs. The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs, including reasonable attorney's fees, incurred or expended in connection with such action against the non-prevailing party.

(18) Notice to Proceed

Prior to commencing work under this agreement, CONSULTANT shall receive a written "Notice to Proceed" from CITY. A Notice to Proceed shall not be issued until all necessary insurances have been received. City shall not be obligated to pay CONSULTANT for any services prior to issuance of the Notice to Proceed.

(19) Signatures

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The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY. This agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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Approved as to Form: City of Lathrop

Salvador Navarrete Date
City Attorney

Recommended for Approval: City of Lathrop

Tony Fernandes Date
Director of Information Systems Department

Approved by:
Resolution No. _____

City of Lathrop
390 Towne Centre Drive
Lathrop, CA 95330

Stephen J. Salvatore Date
City Manager

Consultant: CHOSEN VENDOR

Fed ID # _____
Business License # _____

Name Date
Title

Name Date
Title

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EXHIBIT A

ORDER FORM AND DIGITAL SERVICES TERMS AND CONDITIONS