

TAX SOFTWARE AND IMPLEMENTATION SERVICES AGREEMENT

THIS TAX SOFTWARE AND IMPLEMENTATION SERVICES AGREEMENT (this “Agreement”) is made and entered into this ____ day of _____, 2023, (the “Effective Date”, as defined in Section 3 below), by and between the CITY OF MANASSAS PARK, a Virginia municipal corporation, its successors and assigns (collectively, the “City”), and AVENITY, INC., a Virginia corporation, its successors and assigns (collectively, the “Contractor”).

WITNESSETH:

WHEREAS, the City desires to contract for tax billing software and implementation services (the “Project”); and

WHEREAS, the City advertised a request for proposals for the Project dated March 30, 2022 (the “RFP”), a copy of which is attached to this Agreement as Exhibit A and incorporated herein by this reference; and

WHEREAS, in response to the RFP, the Contractor submitted a proposal for the Project dated May 2, 2022 and comprised of a Technical Proposal, a Cost Proposal, a Response to Attachment B of the RFP, and a Response to Attachment C1 of the RFP (collectively, the “Proposal”), copies of which are attached to this Agreement as Exhibit B-1, Exhibit B-2, Exhibit B-3, and Exhibit B-4, respectively, and incorporated herein by this reference; and

WHEREAS, the City has determined that the Contractor’s Proposal is responsive to the RFP and meets the needs of the City, and that the Contractor is responsible, qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and tasks set forth in this Agreement, and therefore desires to contract with the Contractor in accordance with the terms and conditions of the Proposal, the RFP, and the Virginia Public Procurement Act.

NOW, THEREFORE, in consideration of the foregoing recitals, each of which is hereby incorporated herein by this reference, and the terms, conditions, covenants, and obligations contained herein, the parties hereto agree as follows:

1. SCOPE OF SERVICES.

A. The Contractor shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are set forth in the Proposal (the “Scope of Services”). The work performed will be bound by the terms of this Agreement, including all exhibits. Where a conflict exists between this Agreement and any exhibit, this Agreement shall control.

B. The City will enter into one or more separate license agreements (each, a “License Agreement”) with the Contractor for any software installed pursuant to this Agreement in substantially the form attached hereto as Exhibit C and incorporated herein by reference, including a CountyOne Express Software License Agreement (as defined in Exhibit C), and other

agreements contemplated by this Agreement, which will be subject to the terms and conditions attached hereto as Exhibit D and incorporated herein by reference; provided, however, that if any such license agreement, such other agreement contemplated by this Agreement, or such terms and conditions conflicts with any term(s) or condition(s) of this Agreement, the term(s) or condition(s) of this Agreement shall control.

2. TERM.

The initial term of this Agreement (the “Initial Term”) shall commence on the date on which it has been fully signed on behalf of both the City and the Contractor (the “Effective Date”) and shall expire on the date the first License Period (as defined in Exhibit C) of the First License Agreement expires. The term of this Agreement will automatically extend for additional 1-year periods (each, a “Renewal Term”; and, together with the Initial Term, individually referred to as the “Term”), unless either party provides notice to the other party at least sixty (60) days prior to the expiration of the then-current Term that it will not renew the then-current Term upon its expiration. This Agreement shall be deemed to have been terminated as of the expiration date of such then-current Term and shall thereafter have no further force and/or effect, except for those provisions that by definition necessarily survive the termination of this Agreement (*e.g.*, liability).

3. COMPENSATION AND METHOD OF PAYMENT.

A. Payments for services included in the Scope of Services shall be made following the performance of such services in accordance with the fee schedule included in Exhibit B-2.

B. No payment shall be made for any service rendered by the Contractor except for services identified and set forth in this Agreement.

C. The Contractor shall submit to the City Manager or his designee, on a form approved by the City Manager, an invoice for services rendered. The City shall make payment to the Contractor within thirty (30) days following receipt thereof.

D. For all work outside the Scope of Services, the Contractor shall submit a task proposal based on direction by the City. The City shall pay the Contractor for such work consistent with the rates used to prepare the fee schedule included in Exhibit B-2.

E. The Contractor reserves the right to suspend or terminate work and this Agreement if any unpaid account exceeds sixty (60) days.

4. MAINTENANCE OF RECORDS; REPORTS AND INSPECTIONS.

A. The Contractor, at such times and in such forms as the City may require, shall furnish the City such statements, records, reports, data, and information as the City may request pertaining to matters covered by this Agreement.

B. The Contractor shall retain all books, records, documents, data and other material relevant to all matters covered, directly or indirectly, by this Agreement for a period of two (2) years after the expiration of this Agreement. The Contractor shall at all reasonable times during

any Term and said 2-year period, and as often as the City may deem necessary in its sole discretion, make available for examination and permit the City or its designated authorized representative to audit and inspect all such books, records, documents, data and other material.

C. The City Manager or his designee shall have full access and right to examine any of said books, records, documents and other materials at all reasonable times during any Term and said 2-year period.

5. INDEPENDENT CONTRACTOR RELATIONSHIP.

A. The parties intend that an independent Contractor/City relationship will be created by this Agreement. No employee, agent, or representative of the Contractor shall be deemed to be an employee, agent, or representative of the City for any purpose, and the employees, agents, and representatives of the Contractor are not entitled to any of the benefits the City provides for its employees. The Contractor will be solely and entirely responsible for its acts and for the acts of its employees, agents, representatives, and subcontractors during the performance of work contemplated by this Agreement.

B. In the performance of the work contemplated herein, the Contractor shall be an independent contractor with the authority to control and direct the performance of the details of the work; provided, however, that the results of the work contemplated herein must meet the approval of the City and shall be subject to the City's general rights of inspection and review to secure the satisfactory completion thereof.

6. CONTRACTOR'S EMPLOYEE/AGENTS/REPRESENTATIVES.

The City may at its sole discretion require the Contractor to remove any employee(s), agent(s), or representative(s) from employment on the Project. The Contractor may, however, employ such individuals(s) on other projects not related to the Project. The Contractor may request that the City remove or replace a project manager or other hired representative from the Project if that person is compromising the successful completion of the Project on the schedule agreed upon by both the City and the Contractor.

7. INSURANCE.

A. The Contractor shall procure and maintain, for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, or subcontractors. The Contractor shall provide a certificate of insurance from its insurance company (a "Certificate of Insurance") evidencing:

1) COMMERCIAL GENERAL LIABILITY. Commercial General Liability insurance written on an occurrence basis with limits no less than two million dollars (\$2,000,000) combined single limit per occurrence and four million dollars (\$4,000,000) aggregate for personal injury, bodily injury and property damage.

2) **AUTOMOBILE LIABILITY.** Automobile Liability insurance with limits no less than two million dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage.

3) **PROFESSIONAL LIABILITY.** Professional Liability (Errors and Omissions) insurance written on a Claims Made basis with limits no less than one million dollars (\$1,000,000).

4) **WORKERS COMPENSATION.** Workers Compensation insurance written on an occurrence basis with limits no less than one half million dollars (\$500,000) combined single limit per occurrence.

B. The City shall be listed as an additional insured on all liability insurance policies with respect to work performed by or on behalf of the Contractor, including any umbrella insurance policy used to required coverage listed above, and a copy of the endorsement naming the City as an additional insured shall be attached to each Certificate of Insurance. Each Certificate of Insurance shall warrant that the City shall receive thirty (30) days advance notice of cancellation of the relevant insurance policy. The City reserves the right to request certified copies of any required insurance policies.

C. The Contractor's insurance shall contain a clause stating that coverage 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.

8. HOLD HARMLESS; INDEMNIFICATION.

A. The Contractor shall indemnify and hold the City and its agents, employees, and officers harmless from, and shall process and defend at its own expense, any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City and/or its agents, employees, and/or officers arising out of, in connection with, or incident to the execution of this Agreement and/or the Contractor's defective performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the gross negligence of the City, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor, its agents, representatives, employees, and subcontractors; and provided further, that nothing herein shall require the Contractor to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. The provisions of this section shall survive the expiration or termination of this Agreement.

B. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

9. CONTRACTOR CERTIFICATIONS.

A. The Contractor certifies that:

1) The Contractor and all its subcontractors and agents used in conjunction with the performance of this Agreement are and shall remain authorized to transact business in the Commonwealth of Virginia as either a domestic or foreign business entity.

2) Neither the Contractor nor any of its subcontractors or agents used in conjunction with the performance of this Agreement has been debarred from contracting for goods or services by the Commonwealth of Virginia or any Virginia public body.

B. The City may void this Agreement if the Contractor fails to comply with the requirements of this Section.

10. TREATMENT OF ASSETS.

A. Title to all property furnished by the City shall remain in the name of the City. All information furnished by the City is private, confidential, and proprietary, and shall be the exclusive and sole property of the City and shall not be reproduced, disclosed, or used by the Contractor for any reason other than in the performance of this Agreement.

B. With the exception of proprietary software, baseline training, and user documentation, the City shall be the sole and exclusive owner of all goods and services produced pursuant to this Agreement, including but not limited to tangible items, information, works, derivative works, results, strategies, taxonomies, writing, drawings, plans, images, intellectual property, and data compilations of any form whatsoever (collectively, "Works"), which Works shall be the exclusive and sole property of the City and shall not be otherwise reproduced, disclosed, or used by the Contractor elsewhere, for any reason unrelated to its performance of this Agreement.

C. To the extent that the services are provided relating to detailed designs not originated and furnished by the City, or by a process or method the use of which is not specifically directed by the City, the Contractor guarantees that the sale or use of such services or the use of such process or method hereunder will not infringe any third-party United States or foreign patents, trademarks, trade names, copyrights, or trade secrets, and shall indemnify and save the city and its customers harmless from any expenses, loss, cost, damage, or liability which may be incurred on account of infringement or alleged infringement of patent rights, trademarks, trade names, copyrights, or trade secrets with respect to such services. The Contractor shall defend, at its own expense, any action or claim in which such infringement is alleged, provided the Contractor is notified within a reasonable period of time of such action or claim against the City. Indemnification shall not apply to infringements arising from use in combination with other items where infringement would not have occurred from the normal use of which the article supplied by the Contractor was designed.

11. PRIVACY; SECURITY

A. The Contractor, its directors, officers, managers, employees, agents, assignees, delegates, and subcontractors (collectively, the "Recipients") might acquire access to and/or come into possession of certain personal, confidential, and/or proprietary information of the City, its officers, employees, agents, contractors, and/or customers in various forms, formats, medias and

data compilation of any kind (the “Confidential Information”), such Confidential Information including but not limited to the following:

- 1) personally identifiable information, including names, physical addresses, IP addresses, social security numbers, governmental identification numbers, banking and financial information, of certain individuals and citizens of the United States of America and other countries;
- 2) information that describes the design, function, operation, or access control features of any City building, utility, or property, and any security system used to control access to any City building, utility, or property;
- 3) information concerning security or safety plans for City buildings or property;
- 4) information regarding the City’s proprietary ideas for proposed products or services, and any design, utility, patents, processes, technology and other descriptive information relating thereto;
- 5) the fact that the City is considering a number of strategic alternatives relating to its ideas, inventions, business or assets;
- 6) information and materials relating to plans for research and development, other product ideas, other service ideas, techniques, marketing and selling, business plans, and licenses and contracts to which the City is a party or is currently in negotiations;
- 7) information and materials relating to technical data, developments, inventions, processes, methods, business methods and models, formulas, technology, designs, drawings, engineering, and hardware configuration information (whether regarding its proposed products or services or otherwise);
- 8) information and materials relating to the City’s proprietary technology (including the proposed products or services), software, hardware, equipment and systems, now owned or hereafter acquired and further developed, and related intellectual property, patents, software, products, processes and technology;
- 9) trade secrets; and
- 10) any other information that derives or may derive economic value, either directly or indirectly, from being confidential and/or proprietary to the City.

B. The Contractor shall ensure that at all times that the Recipients keep all Confidential Information confidential and hold all Confidential Information in trust and confidence, and shall not disclose any of the Confidential Information to any other person or third party, except as expressly permitted herein or by applicable law.

C. The Contractor shall ensure and be responsible for the following:

1) Each Recipient shall protect the Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination and/or publication of the Confidential Information as the Recipient uses to protect its own confidential and/or proprietary information of a like nature. The Confidential Information shall be used by the Recipients only as necessary to perform this Agreement, and the Recipients shall not modify, reverse engineer, disassemble, alter, create other works from or confusingly or substantially similar to, or otherwise use the Confidential Information for their or any third party's profit or benefit.

2) Each Recipient agrees to share the Confidential Information only with a limited number of the Recipient's directors, officers, employees, financing sources, legal counselors, consultants, and agents who need to know such information in connection with the performance of this Agreement (collectively, the "Representatives"). The Recipient shall not disclose any of the Confidential Information to the Recipient's affiliates until the City has given its approval in writing, which approval may be withheld by the City in its sole discretion. If the City gives it written approval, the Recipient shall ensure that all individuals who are given access to the Confidential Information (a) are provided a copy of this Agreement and specifically informed of the confidential nature of the Confidential Information, and (b) agree to be bound by and will conduct their work in accordance with the terms of this Agreement. Regardless, the Recipient shall be responsible for any breach of this Agreement by any and all of those who gain access to any of the Confidential Information via or on behalf of the Recipient.

3) Upon termination of this Agreement or earlier upon demand by the City, all of the Confidential Information, including copies, written notes, photographs, and memoranda thereof or relating thereto – whether or not produced or provided by the City – shall be destroyed or returned to the City Manager at the address specified in Section 24 below, unless otherwise authorized in writing by the City. Destruction of such documents shall be certified by an officer of the Recipient. The Recipient shall waive, and cause its Representatives to waive, any requirement for the securing or posting of any bond in connection with such remedy

4) Notwithstanding the foregoing, in the event that a Recipient is required by law or regulation to disclose any of the Confidential Information, the Recipient shall: (a) provide the City with prompt notice of such requirement prior to the disclosure; (b) give the City all available information, reasonable assistance and necessary authority to enable the City to take the measures that the City, in its sole discretion, may deem appropriate or necessary to protect the Confidential Information from disclosure; (c) cooperate fully with the City in contesting such disclosure and/or in obtaining a protective order; and (d) limit what is disclosed to the maximum extent possible under law or regulation.

D. A Recipient's obligation hereunder to hold the Confidential Information confidential does not apply to any of the Confidential Information that the Recipient shows (a) was or is published or otherwise made available to the general public through no act or failure to act on the part of the Recipient; or (b) was known to the Recipient at the time of the Recipient acquired access to or came into possession of the Confidential Information.

12. COMPLIANCE WITH LAWS.

A. The Contractor and all subcontractors and agents shall, in the performance of this Agreement, comply with all applicable federal, state, and local laws, ordinances, regulations, and policies, including certification and operation of facilities, programs, and accreditation, obtaining all necessary permits and licenses, including the licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

B. The Contractor specifically agrees to pay any applicable fees or charges which may be due on account of this Agreement.

13. ASSIGNMENTS/SUBCONTRACTING.

A. The Contractor shall not assign or delegate its rights or obligations under this Agreement or any portion of this Agreement without the written consent of the City Manager or his designee. Any such consent must be sought in writing by the Contractor not less than thirty (30) days prior to the date of any proposed assignment or delegation. The City Manager or his designee reserves the right to reject without cause any such assignment or delegation. Notwithstanding the foregoing, claims for compensation due or to become due the Contractor from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment shall be promptly furnished to the City Manager.

B. Any rights, work or services assigned or delegated hereunder and any subcontract or sub-subcontract shall be subject to procurement procedures where applicable as set forth in local, state and/or federal statutes, ordinances, regulations and guidelines as well as each provision of this Agreement, which must be acknowledged and agreed to in writing by each such assignee, delegatee, subcontractor, and sub-subcontractor.

C. Any subcontract and sub-subcontract not listed in this Agreement must have express advance written approval by the City. Every approved subcontractor and sub-subcontractor must provide its federal tax identification number (*i.e.*, Social Security Number for an individual; Employer Identification Number for all others).

14. PAYMENT TO SUBCONTRACTORS.

A. Within seven (7) days following receipt of payments made pursuant to this Agreement, the Contractor shall take one of the following actions with regard to subcontractors:

1) Pay the subcontractor its proportionate share of the total payment received from the City for the work performed by the subcontractor; or

2) Notify the City Manager and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's proportionate share of the payment from the City and the reason(s) for nonpayment.

B. The Contractor shall pay interest to all subcontractors on all amounts owed by the Contractor to subcontractors that remains unpaid after seven (7) days following receipt by the Contractor of a payment made pursuant to this Agreement by the City. The interest required by this Subsection will accrue at the rate of one percent (1%) per month. The interest requirement set forth in this Subparagraph shall not be construed to be an obligation of the City and this Agreement shall not be amended or modified for the purpose of providing reimbursement for such interest charges.

C. The Contractor shall include in each of its subcontracts a requirement that each subcontractor include or otherwise be subject to the payment and interest requirements of this Section with respect to sub-subcontracts.

15. PROHIBITED INTEREST.

No officer or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds hereof.

16. CHANGES.

Either party may request changes or additions to the Scope of Services and performance to be provided hereunder; provided, however, that no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Any such change or addition shall be attached to and made part of this Agreement as an amendment.

17. MODIFICATIONS TO TASKS AND MISCELLANEOUS PROVISIONS.

A. All work proposed by the Contractor is based on current government ordinances and fees in effect as of the date of this Agreement.

B. Any changes to the scope or cost of the services proposed by this Agreement resulting from a change to current government ordinances and/or fees may, at the sole option of the City, be treated as work outside the Scope of Services pursuant to Subsection 3D above or deleted from the Scope of Services.

C. The City shall make provision for access to the property and/or project and adjacent properties as necessary for performing the services contemplated herein.

18. TERMINATION; DEFAULT AND REMEDY.

A. If funds are not appropriated by the Governing Body for the purposes of this Agreement for any fiscal year (from and including July 1 through and including the following June 30) subsequent to the fiscal year in which this Agreement is entered into, then the City may terminate this Agreement by providing at least thirty (30) days' advance written notice to the Contractor.

B. In addition to any other reason provided in this Agreement, the City may terminate this Agreement, and any work or delivery required hereunder, for cause from time to time, either in whole or in part, for any of the following reasons.

1) If the Contractor or any subcontractor substantially violates any of the provisions of this Agreement;

2) If the Contractor substantially fails to perform any part of this Agreement;

3) If the Contractor repeatedly fails or becomes unable to perform the services under this Agreement as required herein, or fails to provide services under this Agreement for a period of seventy-two (72) hours;

4) If the Contractor (i) becomes insolvent in a bankruptcy sense; (ii) is generally not paying its debts as they become due, or within a reasonable time thereafter; (iii) suffers, voluntarily or involuntarily, the entry of an order by any court or governmental authority authorizing the appointment of or appointing of a custodian, receiver, trustee, or other officer with similar powers with respect to it or any portion of its property which remains undismissed for a period of ninety (90) days; (iv) suffers, voluntarily or involuntarily, with or without judicial or governmental authorization, any such custodian, receiver, trustee, or other officer with similar powers to take possession of any part of its property which third party remains in possession for an excess of ninety (90) days; (v) suffers, voluntarily or involuntarily, the filing of a petition respecting an assignment for the benefit of creditors which is not dismissed for a period of ninety (90) days; (vi) be dissolved; (vii) becomes the subject of any proceeding, suit, or action at law or in equity under or relating to any bankruptcy, reorganization or arrangement of debt, insolvency, readjustment of debt, receivership, liquidation, or dissolution law or statute or amendments thereto to be commenced by or against it or against any of its property which remains undismissed for a period of ninety (90) days; (viii) voluntarily suspends substantially all of its business operations; (ix) is merged with, acquired by, or otherwise absorbed by any individual, corporation, or other business entity or organization of any kind except for any individual corporation or other business entity or organization which is controlled by, controlling, or under common control with the Contractor; or (x) takes action for the purpose of any of the foregoing,

C. Termination shall be effected by providing a written notice of termination (a “Notice”), signed by the City Manager or the Deputy City Manager, to the Contractor, which will state the extent and effective date of termination. For a termination for cause, the Notice will also state the manner in which the Contractor is in default and the cure period, if any. The Contractor will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

D. The Contractor shall be paid its costs, including contract close-out costs, on work performed up to the time of termination. Upon receipt of a Notice, the Contractor shall:

1) Cease any further deliveries or work due under this Agreement, on the effective date and to the extent that is specified in the Notice.

2) Place no further orders with any subcontractors, except as may be necessary to perform that portion of this Agreement not subject to the termination.

3) Terminate all subcontracts except those made with respect to contract performance not subject to the termination.

4) Settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the City's Finance Director.

5) Use its best efforts to mitigate any damages which may be sustained by the Contractor as a consequence of termination under this section.

6) Account for any property in its possession belonging to the City and dispose of it in a manner as directed by the City.

E. After complying with the provisions of subsection D above, the Contractor shall, no later than six (6) months after the effective date of the termination, submit to the City Manager or the Deputy City Manager a termination claim.

F. If the Contractor fails to perform any part of this Agreement during an emergency declared by the City Manager or other authorized official, and such failure seriously threatens the health, safety or welfare of the City's citizens, the City Manager or his designee may, in his sole discretion, provide verbal notice to the Contractor of his intention to terminate the services of the Contractor and, if after serving such verbal notice the violation is not corrected to the City Manager's reasonable satisfaction by the deadline stated in such verbal notice, the City may then terminate this Agreement and take over the work and prosecute it to completion by contract or by any other method it may deem advisable. The Contractor shall treat such verbal notice as a Notice and shall comply with the provisions of subsection C above. Any such verbal notice shall be followed by a written Notice memorializing the verbal notice, said written Notice to be provided within a reasonable period of time, taking into consideration the nature and extent of the emergency.

G. The Contractor shall continue the performance of this Agreement to the extent not terminated under the provisions of this section.

H. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

19. DISPUTES; APPEALS.

A. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by this Agreement shall be decided by the Deputy City Manager. The decision of the Deputy City Manager shall be final and conclusive unless the Contractor submits to the City Manager a written and signed request for a hearing on the dispute no later than two (2) weeks following the date of such decision.

B. If the City terminates this Agreement or any work or delivery required hereunder for cause, the Contractor may submit to the City Manager a written and signed request for a hearing on the termination no later than two (2) weeks following its receipt of the Notice.

C. The City Manager shall hold a hearing on the dispute or termination within two (2) weeks following receipt of the request for a hearing from the Contractor. The Contractor will be afforded an opportunity to be heard by the City Manager and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor will proceed diligently with the performance of this Agreement and in accordance with the City's decision. The decision of the City Manager shall not be arbitrary or unreasonable and will be made within thirty (30) days following the hearing.

D. The Contractor shall not bring an action against the City, its officers, employees, or agents arising out of or relating to a dispute or termination before the decision has been issued by the City Manager. The City Manager's decision shall be final unless the Contractor brings an action against the City in a court of competent jurisdiction listed in Subsection 26B below within six (6) months following the City Manager's decision.

20. NONDISCRIMINATION.

A. During the performance of this Agreement:

1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

3) Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.

B. The Contractor will include the provisions of the foregoing Subsection A in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

21. DRUG-FREE WORKPLACE.

A. During the performance of this Agreement, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken

against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

B. For the purposes of this section, “drug-free workplace” means a site for the performance of work done by the Contractor in connection with this Agreement, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Agreement.

22. COMPLIANCE WITH FEDERAL IMMIGRATION LAW.

The Contractor does not, and shall not during the performance of this Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

23. THIRD PARTY RIGHTS.

Nothing herein is intended to confer rights of any kind in any third party. No member, officer, or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

24. NOTICE.

Except for notice provided to the parties in accordance with the procedures established for requesting work set forth in the Scope of Services, notice and other correspondence provided for in or required by this Agreement shall be hand delivered or sent by overnight mail or certified U.S. mail to City Manager Laszlo Palko or Deputy City Manager Keith Nguyen at 100 Park Central Plaza, Manassas Park, Virginia 20111, by fax at (703) 335-0053, or by email at l.palko@manassasparkva.gov or k.nguyen@manassasparkva.gov, as appropriate, and to the Contractor at the address, fax number, or email address designated on the Contractor’s signature page of this Agreement. Such notice shall be deemed received (i) upon actual receipt, (ii) on the same day if hand-delivered or sent via fax or email, (iii) the following day if sent using overnight mail, or (iv) three days later if sent using certified U.S. mail.

25. ATTORNEYS’ FEES AND COSTS.

If any legal action or proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorneys’ fees and other costs incurred in such action or proceeding.

26. JURISDICTION AND VENUE.

A. This Agreement has been and shall be construed as having been made and delivered within the Commonwealth of Virginia and shall be governed by laws of the Commonwealth of Virginia, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in a court of competent jurisdiction in Prince William County, Virginia or the United States District Court for the Eastern District of Virginia, Alexandria Division.

27. SEVERABILITY; WAIVER.

A. If, for any reason, any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void or unenforceable, the remaining parts, terms, and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be illegal, invalid, void or unenforceable.

B. If any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void or unenforceable with respect to particular circumstances, such part, term, or provision shall nevertheless remain in full force and effect in all other circumstances.

C. If it should appear that any provision hereof is in conflict with any statutory provision of the Commonwealth of Virginia, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and this Agreement shall be deemed as having been modified to conform to such statutory provisions.

D. One or more waivers by the City of any default shall not be deemed to be a waiver of any subsequent default. Waiver of any provision of this Agreement shall not be construed to be modification of the terms of this Agreement, unless stated to be such in writing, signed by the City's authorized representative. The forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of that or any other provision of this Agreement.

28. AMBIGUITY; MEANING OF "CITY".

A. The Contractor acknowledges that it has been afforded the opportunity to have this Agreement reviewed by legal counsel and expressly agrees that any ambiguity herein shall be resolved in favor of the City.

B. The term "City", as used in this Agreement, shall mean the person, board, commission, committee, or other sub-unit or official of the City having the legal obligation or right to act on behalf of the City, as the context may require.

29. MISCELLANEOUS.

A. This Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination.

B. Both parties recognize time is of the essence in the performance of the provisions of this Agreement.

C. Headings and captions are provided in this Agreement for ease of reference only and shall not be used to construe or interpret any provision of this Agreement.

D. Neither party shall be held liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, other major environmental disturbances, or unusual weather conditions.

E. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original; but all of which together shall constitute one and the same instrument. The delivery of an executed counterpart of this Agreement by fax or as a PDF or similar attachment to an email shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

{Signature pages follow}

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

CONTRACTOR:

AVENITY, INC., a Virginia corporation

Address: _____

Fax No.: _____

Email: _____

Federal Tax ID No.: _____

Virginia SCC ID No.: _____

By: _____

Name: _____

Title: _____

ATTEST:

Name: _____

Title: _____

CITY OF MANASSAS PARK,
a Virginia municipal corporation

By: _____
Laszlo Palko, City Manager

ATTEST:

Lana Conner, City Clerk

APPROVED AS TO FORM:

Dean H. Crowhurst, City Attorney

EXHIBIT A
REQUEST FOR PROPOSALS

EXHIBIT B-1

TECHNICAL PROPOSAL

EXHIBIT B-2
COST PROPOSAL

EXHIBIT B-3

RESPONSE TO ATTACHMENT B OF THE RFP

EXHIBIT B-4

RESPONSE TO ATTACHMENT C1 OF THE RFP

EXHIBIT C
FORM LICENSE AGREEMENT

EXHIBIT D

FORM TERMS AND CONDITIONS

TAX SOFTWARE AND IMPLEMENTATION SERVICES AGREEMENT

THIS TAX SOFTWARE AND IMPLEMENTATION SERVICES AGREEMENT (this “Agreement”) is made and entered into this ____ day of ____, 2023, (the “Effective Date”, as defined in Section 3 below), by and between the CITY OF MANASSAS PARK, a Virginia municipal corporation, its successors and assigns (collectively, the “City”), and AVENITY, INC., a Virginia corporation, its successors and assigns (collectively, the “Contractor”).

WITNESSETH:

WHEREAS, the City desires to contract for tax billing software and implementation services (the “Project”); and

WHEREAS, the City advertised a request for proposals for the Project dated March 30, 2022 (the “RFP”), a copy of which is attached to this Agreement as Exhibit A and incorporated herein by this reference; and

WHEREAS, in response to the RFP, the Contractor submitted a proposal for the Project dated May 2, 2022 and comprised of a Technical Proposal, a Cost Proposal, a Response to Attachment B of the RFP, and a Response to Attachment C1 of the RFP (collectively, the “Proposal”), copies of which are attached to this Agreement as Exhibit B-1, Exhibit B-2, Exhibit B-3, and Exhibit B-4, respectively, and incorporated herein by this reference; and

WHEREAS, the City has determined that the Contractor’s Proposal is responsive to the RFP and meets the needs of the City, and that the Contractor is responsible, qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and tasks set forth in this Agreement, and therefore desires to contract with the Contractor in accordance with the terms and conditions of the Proposal, the RFP, and the Virginia Public Procurement Act.

NOW, THEREFORE, in consideration of the foregoing recitals, each of which is hereby incorporated herein by this reference, and the terms, conditions, covenants, and obligations contained herein, the parties hereto agree as follows:

1. SCOPE OF SERVICES.

A. The Contractor shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are set forth in the Proposal (the “Scope of Services”). The work performed will be bound by the terms of this Agreement, including all exhibits. Where a conflict exists between this Agreement and any exhibit, this Agreement shall control.

B. The City will enter into one or more separate license agreements (each, a “License Agreement”) with the Contractor for any software installed pursuant to this Agreement in substantially the form attached hereto as Exhibit C and incorporated herein by reference, including a CountyOne Express Software License Agreement (as defined in Exhibit C), and other agreements contemplated by this Agreement, which will be subject to the terms and conditions attached hereto as Exhibit D and incorporated herein by reference; provided, however, that if any such license

agreement ~~must not conflict~~, such other agreement contemplated by this Agreement, or such terms and conditions conflicts with ~~the terms any term(s) or condition(s)~~ of this Agreement, the term(s) or condition(s) of this Agreement shall control.

2. **TERM.**

The initial term of this Agreement (the “Initial Term”) shall commence on the date ~~of execution of this Agreement (the “on which it has been fully signed on behalf of both the City and the Contractor (the “Effective Date”)~~ and shall expire ~~upon completion and acceptance by the City on the date the first License Period (as defined in Exhibit C) of the Project First License Agreement expires.~~ The term of this Agreement will automatically extend for additional 1-year periods (each, a “Renewal Term”; and, together with the Initial Term, individually referred to as the “Term”), unless either party provides notice to the other party at least sixty (60) days prior to the expiration of the then-current Term that it will not renew the then-current Term upon its expiration. This Agreement shall be deemed to have been terminated as of the expiration date of such ~~expiration~~then-current Term and shall thereafter have no further force and/or effect, except for those provisions that by definition necessarily survive the termination of this Agreement (e.g., liability).

3. **COMPENSATION AND METHOD OF PAYMENT.**

A. Payments for services included in the Scope of Services shall be made following the performance of such services in accordance with the fee schedule included in Exhibit B-2.

B. No payment shall be made for any service rendered by the Contractor except for services identified and set forth in this Agreement.

C. The Contractor shall submit to the City Manager or his designee, on a form approved by the City Manager, an invoice for services rendered. The City shall make payment to the Contractor within thirty (30) days following receipt thereof.

D. For all work outside the Scope of Services, the Contractor shall submit a task proposal based on direction by the City. The City shall pay the Contractor for such work consistent with the rates used to prepare the fee schedule included in Exhibit B-2.

E. The Contractor reserves the right to suspend or terminate work and this Agreement if any unpaid account exceeds sixty (60) days.

4. **MAINTENANCE OF RECORDS; REPORTS AND INSPECTIONS.**

A. The Contractor, at such times and in such forms as the City may require, shall furnish the City such statements, records, reports, data, and information as the City may request pertaining to matters covered by this Agreement.

B. The Contractor shall retain all books, records, documents, data and other material relevant to all matters covered, directly or indirectly, by this Agreement for a period of two (2) years after the expiration of this Agreement. The Contractor shall at all reasonable times during any Term and said 2-year period, and as often as the City may deem necessary in its sole discretion, make available for examination and permit the City or its designated authorized representative to audit and inspect all such books, records, documents, data and other material.

C. The City Manager or his designee shall have full access and right to examine any of said books, records, documents and other materials at all reasonable times during any Term and said 2-year period.

5. INDEPENDENT CONTRACTOR RELATIONSHIP.

A. The parties intend that an independent Contractor/City relationship will be created by this Agreement. No employee, agent, or representative of the Contractor shall be deemed to be an employee, agent, or representative of the City for any purpose, and the employees, agents, and representatives of the Contractor are not entitled to any of the benefits the City provides for its employees. The Contractor will be solely and entirely responsible for its acts and for the acts of its employees, agents, representatives, and subcontractors during the performance of work contemplated by this Agreement.

B. In the performance of the work contemplated herein, the Contractor shall be an independent contractor with the authority to control and direct the performance of the details of the work; provided, however, that the results of the work contemplated herein must meet the approval of the City and shall be subject to the City's general rights of inspection and review to secure the satisfactory completion thereof.

6. CONTRACTOR'S EMPLOYEE/AGENTS/REPRESENTATIVES.

The City may at its sole discretion require the Contractor to remove any employee(s), agent(s), or representative(s) from employment on ~~City projects~~ the Project. The Contractor may, however, employ such individuals(s) on other projects not related to ~~City projects~~ the Project. The Contractor may request that the City remove or replace a project manager or other hired representative from the Project if that person is compromising the successful completion of the Project on the schedule agreed upon by both the City and the Contractor.

7. INSURANCE.

A. The Contractor shall procure and maintain, for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, or subcontractors. The Contractor shall provide a certificate of insurance from its insurance company (a "Certificate of Insurance") evidencing:

1) **COMMERCIAL GENERAL LIABILITY.** Commercial General Liability insurance written on an occurrence basis with limits no less than two million dollars (\$2,000,000) combined single limit per occurrence and four million dollars (\$4,000,000) aggregate for personal injury, bodily injury and property damage.

2) **AUTOMOBILE LIABILITY.** Automobile Liability insurance with limits no less than two million dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage.

3) **PROFESSIONAL LIABILITY.** Professional Liability (Errors and Omissions) insurance written on a Claims Made basis with limits no less than ~~five~~ one million dollars (~~\$5~~ 1,000,000).

4) **WORKERS COMPENSATION.** Workers Compensation insurance written on an occurrence basis with limits no less than one half million dollars (\$500,000) combined single limit per occurrence.

B. The City shall be listed as an additional insured on all liability insurance policies with respect to work performed by or on behalf of the Contractor, including any umbrella insurance policy used to required coverage listed above, and a copy of the endorsement naming the City as an additional insured shall be attached to each Certificate of Insurance. Each Certificate of Insurance shall warrant that the City shall receive thirty (30) days advance notice of cancellation of the relevant insurance policy. The City reserves the right to request certified copies of any required insurance policies.

C. The Contractor's insurance shall contain a clause stating that coverage 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.

8. HOLD HARMLESS; INDEMNIFICATION.

A. The Contractor shall indemnify and hold the City and its agents, employees, and officers harmless from, and shall process and defend at its own expense, any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City and/or its agents, employees, and/or officers arising out of, in connection with, or incident to the execution of this Agreement and/or the Contractor's defective performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the gross negligence of the City, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor, its agents, representatives, employees, and subcontractors; and provided further, that nothing herein shall require the Contractor to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. The provisions of this section shall survive the expiration or termination of this Agreement.

B. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

9. CONTRACTOR CERTIFICATIONS.

A. The Contractor certifies that:

1) The Contractor and all its subcontractors and agents used in conjunction with the performance of this Agreement are and shall remain authorized to transact business in the Commonwealth of Virginia as either a domestic or foreign business entity.

2) Neither the Contractor nor any of its subcontractors or agents used in conjunction with the performance of this Agreement has been debarred from contracting for goods or services by the Commonwealth of Virginia or any Virginia public body.

B. The City may void this Agreement if the Contractor fails to comply with the requirements of this Section.

10. TREATMENT OF ASSETS.

A. Title to all property furnished by the City shall remain in the name of the City. All information furnished by the City is private, confidential, and proprietary, and shall be the exclusive and sole property of the City and shall not be reproduced, disclosed, or used by the Contractor for any reason other than in the performance of this Agreement.

B. With the exception of proprietary software, baseline training, and user documentation, the City shall be the sole and exclusive owner of all goods and services produced pursuant to this Agreement, including but not limited to tangible items, information, works, derivative works, results, strategies, taxonomies, writing, drawings, plans, images, intellectual property, and data compilations of any form whatsoever (collectively, "Works"), which Works shall be the exclusive and sole property of the City and shall not be otherwise reproduced, disclosed, or used by the Contractor elsewhere, for any reason unrelated to its performance of this Agreement.

C. To the extent that the services are provided relating to detailed designs not originated and furnished by the City, or by a process or method the use of which is not specifically directed by the City, the Contractor guarantees that the sale or use of such services or the use of such process or method hereunder will not infringe any third-party United States or foreign patents, trademarks, trade names, copyrights, or trade secrets, and shall indemnify and save the city and its customers harmless from any expenses, loss, cost, damage, or liability which may be incurred on account of infringement or alleged infringement of patent rights, trademarks, trade names, copyrights, or trade secrets with respect to such services. The Contractor shall defend, at its own expense, any action or claim in which such infringement is alleged, provided the Contractor is notified within a reasonable period of time of such action or claim against the City. Indemnification shall not apply to infringements arising from use in combination with other items where infringement would not have occurred from the normal use of which the article supplied by the Contractor was designed.

11. PRIVACY; SECURITY

A. The Contractor, its directors, officers, managers, employees, agents, assignees, delegates, and subcontractors (collectively, the "Recipients") might acquire access to and/or come into possession of certain personal, confidential, and/or proprietary information of the City, its officers, employees, agents, contractors, and/or customers in various forms, formats, medias and data compilation of any kind (the "Confidential Information"), such Confidential Information including but not limited to the following:

- 1) personally identifiable information, including names, physical addresses, IP addresses, social security numbers, governmental identification numbers, banking and financial information, of certain individuals and citizens of the United States of America and other countries;
- 2) information that describes the design, function, operation, or access control features of any City building, utility, or property, and any security system used to control access to any City building, utility, or property;
- 3) information concerning security or safety plans for City buildings or property;

4) information regarding the City's proprietary ideas for proposed products or services, and any design, utility, patents, processes, technology and other descriptive information relating thereto;

5) the fact that the City is considering a number of strategic alternatives relating to its ideas, inventions, business or assets;

6) information and materials relating to plans for research and development, other product ideas, other service ideas, techniques, marketing and selling, business plans, and licenses and contracts to which the City is a party or is currently in negotiations;

7) information and materials relating to technical data, developments, inventions, processes, methods, business methods and models, formulas, technology, designs, drawings, engineering, and hardware configuration information (whether regarding its proposed products or services or otherwise);

8) information and materials relating to the City's proprietary technology (including the proposed products or services), software, hardware, equipment and systems, now owned or hereafter acquired and further developed, and related intellectual property, patents, software, products, processes and technology;

9) trade secrets; and

10) any other information that derives or may derive economic value, either directly or indirectly, from being confidential and/or proprietary to the City.

B. The Contractor shall ensure that at all times that the Recipients keep all Confidential Information confidential and hold all Confidential Information in trust and confidence, and shall not disclose any of the Confidential Information to any other person or third party, except as expressly permitted herein or by applicable law.

C. The Contractor shall ensure and be responsible for the following:

1) Each Recipient shall protect the Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination and/or publication of the Confidential Information as the Recipient uses to protect its own confidential and/or proprietary information of a like nature. The Confidential Information shall be used by the Recipients only as necessary to perform this Agreement, and the Recipients shall not modify, reverse engineer, disassemble, alter, create other works from or confusingly or substantially similar to, or otherwise use the Confidential Information for their or any third party's profit or benefit.

2) Each Recipient agrees to share the Confidential Information only with a limited number of the Recipient's directors, officers, employees, financing sources, legal counselors, consultants, and agents who need to know such information in connection with the performance of this Agreement (collectively, the "Representatives"). The Recipient shall not disclose any of the Confidential Information to the Recipient's affiliates until the City has given its approval in writing, which approval may be withheld by the City in its sole discretion. If the City gives it written approval, the Recipient shall ensure that all individuals who are given access to the Confidential Information (a) are provided a copy of this Agreement and specifically informed of the confidential nature of the

Confidential Information, and (b) agree to be bound by and will conduct their work in accordance with the terms of this Agreement. Regardless, the Recipient shall be responsible for any breach of this Agreement by any and all of those who gain access to any of the Confidential Information via or on behalf of the Recipient.

3) Upon termination of this Agreement or earlier upon demand by the City, all of the Confidential Information, including copies, written notes, photographs, and memoranda thereof or relating thereto – whether or not produced or provided by the City – shall be destroyed or returned to the City Manager at the address specified in Section 24 below, unless otherwise authorized in writing by the City. Destruction of such documents shall be certified by an officer of the Recipient. The Recipient shall waive, and cause its Representatives to waive, any requirement for the securing or posting of any bond in connection with such remedy

4) Notwithstanding the foregoing, in the event that a Recipient is required by law or regulation to disclose any of the Confidential Information, the Recipient shall: (a) provide the City with prompt notice of such requirement prior to the disclosure; (b) give the City all available information, reasonable assistance and necessary authority to enable the City to take the measures that the City, in its sole discretion, may deem appropriate or necessary to protect the Confidential Information from disclosure; (c) cooperate fully with the City in contesting such disclosure and/or in obtaining a protective order; and (d) limit what is disclosed to the maximum extent possible under law or regulation.

D. A Recipient's obligation hereunder to hold the Confidential Information confidential does not apply to any of the Confidential Information that the Recipient shows (a) was or is published or otherwise made available to the general public through no act or failure to act on the part of the Recipient; or (b) was known to the Recipient at the time of the Recipient acquired access to or came into possession of the Confidential Information.

12. COMPLIANCE WITH LAWS.

A. The Contractor and all subcontractors and agents shall, in the performance of this Agreement, comply with all applicable federal, state, and local laws, ordinances, regulations, and policies, including certification and operation of facilities, programs, and accreditation, obtaining all necessary permits and licenses, including the licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

B. The Contractor specifically agrees to pay any applicable fees or charges which may be due on account of this Agreement.

13. ASSIGNMENTS/SUBCONTRACTING.

A. The Contractor shall not assign or delegate its rights or obligations under this Agreement or any portion of this Agreement without the written consent of the City Manager or his designee. Any such consent must be sought in writing by the Contractor not less than thirty (30) days prior to the date of any proposed assignment or delegation. The City Manager or his designee reserves the right to reject without cause any such assignment or delegation. Notwithstanding the foregoing, claims for compensation due or to become due the Contractor from the City under this

Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment shall be promptly furnished to the City Manager.

B. Any rights, work or services assigned or delegated hereunder and any subcontract or sub-subcontract shall be subject to procurement procedures where applicable as set forth in local, state and/or federal statutes, ordinances, regulations and guidelines as well as each provision of this Agreement, which must be acknowledged and agreed to in writing by each such assignee, delegatee, subcontractor, and sub-subcontractor.

C. Any subcontract and sub-subcontract not listed in this Agreement must have express advance written approval by the City. Every approved subcontractor and sub-subcontractor must provide its federal tax identification number (*i.e.*, Social Security Number for an individual; Employer Identification Number for all others).

14. PAYMENT TO SUBCONTRACTORS.

A. Within seven (7) days following receipt of payments made pursuant to this Agreement, the Contractor shall take one of the following actions with regard to subcontractors:

1) Pay the subcontractor its proportionate share of the total payment received from the City for the work performed by the subcontractor; or

2) Notify the City Manager and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's proportionate share of the payment from the City and the reason(s) for nonpayment.

B. The Contractor shall pay interest to all subcontractors on all amounts owed by the Contractor to subcontractors that remains unpaid after seven (7) days following receipt by the Contractor of a payment made pursuant to this Agreement by the City. The interest required by this Subsection will accrue at the rate of one percent (1%) per month. The interest requirement set forth in this Subparagraph shall not be construed to be an obligation of the City and this Agreement shall not be amended or modified for the purpose of providing reimbursement for such interest charges.

C. The Contractor shall include in each of its subcontracts a requirement that each subcontractor include or otherwise be subject to the payment and interest requirements of this Section with respect to sub-subcontracts.

15. PROHIBITED INTEREST.

No officer or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds hereof.

16. CHANGES.

Either party may request changes or additions to the Scope of Services and performance to be provided hereunder; provided, however, that no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Any such change or addition shall be attached to and made part of this Agreement as an amendment.

17. MODIFICATIONS TO TASKS AND MISCELLANEOUS PROVISIONS.

A. All work proposed by the Contractor is based on current government ordinances and fees in effect as of the date of this Agreement.

B. Any changes to the scope or cost of the services proposed by this Agreement resulting from a change to current government ordinances and/or fees may, at the sole option of the City, be treated as work outside the Scope of Services pursuant to Subsection 3D above or deleted from the Scope of Services.

C. The City shall make provision for access to the property and/or project and adjacent properties as necessary for performing the services contemplated herein.

18. TERMINATION; DEFAULT AND REMEDY.

A. If funds are not appropriated by the Governing Body for the purposes of this Agreement for any fiscal year (from and including July 1 through and including the following June 30) subsequent to the fiscal year in which this Agreement is entered into, then the City may terminate this Agreement by providing at least thirty (30) days' advance written notice to the Contractor.

B. In addition to any other reason provided in this Agreement, the City may terminate this Agreement, and any work or delivery required hereunder, for cause from time to time, either in whole or in part, for any of the following reasons.

1) If the Contractor or any subcontractor substantially violates any of the provisions of this Agreement;

2) If the Contractor substantially fails to perform any part of this Agreement;

3) If the Contractor repeatedly fails or becomes unable to perform the services under this Agreement as required herein, or fails to provide services under this Agreement for a period of seventy-two (72) hours;

4) If the Contractor (i) becomes insolvent in a bankruptcy sense; (ii) is generally not paying its debts as they become due, or within a reasonable time thereafter; (iii) suffers, voluntarily or involuntarily, the entry of an order by any court or governmental authority authorizing the appointment of or appointing of a custodian, receiver, trustee, or other officer with similar powers with respect to it or any portion of its property which remains undismissed for a period of ninety (90) days; (iv) suffers, voluntarily or involuntarily, with or without judicial or governmental authorization, any such custodian, receiver, trustee, or other officer with similar powers to take possession of any part of its property which third party remains in possession for an excess of ninety (90) days; (v) suffers, voluntarily or involuntarily, the filing of a petition respecting an assignment for the benefit of creditors which is not dismissed for a period of ninety (90) days; (vi) be dissolved; (vii) becomes the subject of any proceeding, suit, or action at law or in equity under or relating to any bankruptcy, reorganization or arrangement of debt, insolvency, readjustment of debt, receivership, liquidation, or dissolution law or statute or amendments thereto to be commenced by or against it or against any of its property which remains undismissed for a period of ninety (90) days; (viii) voluntarily suspends substantially all of its business operations; (ix) is merged with, acquired by, or otherwise absorbed by any individual, corporation, or other business entity or organization of any kind except for any

individual corporation or other business entity or organization which is controlled by, controlling, or under common control with the Contractor; or (x) takes action for the purpose of any of the foregoing,

C. Termination shall be effected by providing a written notice of termination (a “Notice”), signed by the City Manager or the Deputy City Manager, to the Contractor, which will state the extent and effective date of termination. For a termination for cause, the Notice will also state the manner in which the Contractor is in default and the cure period, if any. The Contractor will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

D. The Contractor shall be paid its costs, including contract close-out costs, on work performed up to the time of termination. Upon receipt of a Notice, the Contractor shall:

1) Cease any further deliveries or work due under this Agreement, on the effective date and to the extent that is specified in the Notice.

2) Place no further orders with any subcontractors, except as may be necessary to perform that portion of this Agreement not subject to the termination.

3) Terminate all subcontracts except those made with respect to contract performance not subject to the termination.

4) Settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the City’s Finance Director.

5) Use its best efforts to mitigate any damages which may be sustained by the Contractor as a consequence of termination under this section.

6) Account for any property in its possession belonging to the City and dispose of it in a manner as directed by the City.

E. After complying with the provisions of subsection ~~CD~~ above, the Contractor shall, no later than six (6) months after the effective date of the termination, submit to the City Manager or the Deputy City Manager a termination claim.

F. If the Contractor fails to perform any part of this Agreement during an emergency declared by the City Manager or other authorized official, and such failure seriously threatens the health, safety or welfare of the City’s citizens, the City Manager or his designee may, in his sole discretion, provide verbal notice to the Contractor of his intention to terminate the services of the Contractor and, if after serving such verbal notice the violation is not corrected to the City Manager’s reasonable satisfaction by the deadline stated in such verbal notice, the City may then terminate this Agreement and take over the work and prosecute it to completion by contract or by any other method it may deem advisable. The Contractor shall treat such verbal notice as a Notice and shall comply with the provisions of subsection C above. Any such verbal notice shall be followed by a written Notice memorializing the verbal notice, said written Notice to be provided within a reasonable period of time, taking into consideration the nature and extent of the emergency.

~~B. The Contractor shall be liable to the City for all reasonable costs occasioned by the~~

~~City in taking over the work and prosecuting it to completion following termination of this Agreement for cause. The Contractor shall make payment promptly upon demand by the City.~~

G. The Contractor shall continue the performance of this Agreement to the extent not terminated under the provisions of this section.

H. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

19. DISPUTES; APPEALS.

A. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by this Agreement shall be decided by the Deputy City Manager. The decision of the Deputy City Manager shall be final and conclusive unless the Contractor submits to the City Manager a written and signed request for a hearing on the dispute no later than two (2) weeks following the date of such decision.

B. If the City terminates this Agreement or any work or delivery required hereunder for cause, the Contractor may submit to the City Manager a written and signed request for a hearing on the termination no later than two (2) weeks following its receipt of the Notice.

C. The City Manager shall hold a hearing on the dispute or termination within two (2) weeks following receipt of the request for a hearing from the Contractor. The Contractor will be afforded an opportunity to be heard by the City Manager and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor will proceed diligently with the performance of this Agreement and in accordance with the City's decision. The decision of the City Manager shall not be arbitrary or unreasonable and will be made within thirty (30) days following the hearing.

D. The Contractor shall not bring an action against the City, its officers, employees, or agents arising out of or relating to a dispute or termination before the decision has been issued by the City Manager. The City Manager's decision shall be final unless the Contractor brings an action against the City in a court of competent jurisdiction listed in Subsection 26B below within six (6) months following the City Manager's decision.

20. NONDISCRIMINATION.

A. During the performance of this Agreement:

1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

3) Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.

B. The Contractor will include the provisions of the foregoing Subsection A in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

21. DRUG-FREE WORKPLACE.

A. During the performance of this Agreement, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

B. For the purposes of this section, "drug-free workplace" means a site for the performance of work done by the Contractor in connection with this Agreement, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Agreement.

22. COMPLIANCE WITH FEDERAL IMMIGRATION LAW.

The Contractor does not, and shall not during the performance of this Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

23. THIRD PARTY RIGHTS.

Nothing herein is intended to confer rights of any kind in any third party. No member, officer, or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

24. NOTICE.

Except for notice provided to the parties in accordance with the procedures established for requesting work set forth in the Scope of Services, notice and other correspondence provided for in or required by this Agreement shall be hand delivered or sent by overnight mail or certified U.S. mail to City Manager Laszlo Palko or Deputy City Manager Keith Nguyen at 100 Park Central Plaza, Manassas Park, Virginia 20111, by fax at (703) 335-0053, or by email at

l.palko@manassasparkva.gov or l.palko@manassasparkva.gov or k.nguyen@manassasparkva.gov, k.nguyen@manassasparkva.gov, as appropriate, and to the Contractor at the address, fax number, or email address designated on the Contractor's signature page of this Agreement. Such notice shall be deemed received (i) upon actual receipt, (ii) on the same day if hand-delivered or sent via fax or email, (iii) the following day if sent using overnight mail, or (iv) three days later if sent using certified U.S. mail.

25. ATTORNEYS' FEES AND COSTS.

If any legal action or proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorneys' fees and other costs incurred in such action or proceeding.

26. JURISDICTION AND VENUE.

A. This Agreement has been and shall be construed as having been made and delivered within the Commonwealth of Virginia and shall be governed by laws of the Commonwealth of Virginia, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in a court of competent jurisdiction in Prince William County, Virginia or the United States District Court for the Eastern District of Virginia, Alexandria Division.

27. SEVERABILITY; WAIVER.

A. If, for any reason, any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void or unenforceable, the remaining parts, terms, and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be illegal, invalid, void or unenforceable.

B. If any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void or unenforceable with respect to particular circumstances, such part, term, or provision shall nevertheless remain in full force and effect in all other circumstances.

C. If it should appear that any provision hereof is in conflict with any statutory provision of the Commonwealth of Virginia, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and this Agreement shall be deemed as having been modified to conform to such statutory provisions.

D. One or more waivers by the City of any default shall not be deemed to be a waiver of any subsequent default. Waiver of any provision of this Agreement shall not be construed to be modification of the terms of this Agreement, unless stated to be such in writing, signed by the City's authorized representative. The forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of that or any other provision of this Agreement.

28. AMBIGUITY; MEANING OF “CITY”.

A. The Contractor acknowledges that it has been afforded the opportunity to have this Agreement reviewed by legal counsel and expressly agrees that any ambiguity herein shall be resolved in favor of the City.

B. The term “City”, as used in this Agreement, shall mean the person, board, commission, committee, or other sub-unit or official of the City having the legal obligation or right to act on behalf of the City, as the context may require.

29. MISCELLANEOUS.

A. This Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination.

B. Both parties recognize time is of the essence in the performance of the provisions of this Agreement.

C. Headings and captions are provided in this Agreement for ease of reference only and shall not be used to construe or interpret any provision of this Agreement.

D. Neither party shall be held liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, other major environmental disturbances, or unusual weather conditions.

E. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original; but all of which together shall constitute one and the same instrument. The delivery of an executed counterpart of this Agreement by fax or as a PDF or similar attachment to an email shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

{Signature pages follow}

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

CONTRACTOR:

AVENITY, INC., a Virginia corporation

Address: _____

Fax No.: _____

Email: _____

Federal Tax ID No.: _____

Virginia SCC ID No.: _____

By: _____

Name: _____

Title: _____

ATTEST:

Name: _____

Title: _____

CITY OF MANASSAS PARK,
a Virginia municipal corporation

By: _____
Laszlo Palko, City Manager

ATTEST:

Lana Conner, City Clerk

APPROVED AS TO FORM:

Dean H. Crowhurst, City Attorney

EXHIBIT A
REQUEST FOR PROPOSALS

EXHIBIT B-1

TECHNICAL PROPOSAL

EXHIBIT B-2
COST PROPOSAL

EXHIBIT B-3

RESPONSE TO ATTACHMENT B OF THE RFP

EXHIBIT B-4

RESPONSE TO ATTACHMENT C1 OF THE RFP

EXHIBIT C

FORM LICENSE AGREEMENT

EXHIBIT D

FORM TERMS AND CONDITIONS