



City Clerk Document No. _____

City Council Meeting Date: 10/27/22

**CITY OF CHANDLER SERVICES AGREEMENT
APPLICATION SUPPORT SERVICES
CITY OF CHANDLER AGREEMENT NO. 4526**

THIS AGREEMENT (Agreement) is made and entered into by and between the City of Chandler, an Arizona municipal corporation (City), and Neudesic, LLC, a California limited liability company (Contractor), (City and Contractor may individually be referred to as Party and collectively referred to as Parties) and made _____, 2022 (Effective Date).

RECITALS

A. City proposes to engage Contractor to perform the Services (defined hereinafter) as more fully described in Exhibit A, which is attached to and made a part of this Agreement by this reference.

B. Contractor is ready, willing, and able to provide the services described in Scope of Services exhibit(s) for the compensation and fees set forth and as described in Attachment 1 to Scope of Services Exhibit, attached to and made a part of this Agreement by this reference.

C. City desires to contract with the Contractor to provide these services under the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual promises contained in this Agreement, City and Contractor agree as follows:

SECTION I: DEFINITIONS

For purposes of this Agreement, the following definitions apply:

Agreement means this legal agreement executed between the City and the Contractor

City means the City of Chandler, Arizona

Contractor means the individual, partnership, or corporation named in the Agreement

Days means calendar days

May, Should mean something that is not mandatory but permissible

Shall, Will, Must mean a mandatory requirement

SECTION II: CONTRACTOR'S SERVICES

Contractor must perform the services described in Scope of Services exhibit(s) to the City's satisfaction

within the terms and conditions of this Agreement and within the care and skill that a person who provides similar services in Chandler, Arizona exercises under similar conditions. All work or services furnished by Contractor under this Agreement must be performed in a skilled and workmanlike manner.

SECTION III: PERIOD OF SERVICE

Contractor must perform the services described in Scope of Services Exhibit for the term of this Agreement.

The term of the Agreement is one year and begins on November 1, 2022 and ends on October 31, 2023 unless sooner terminated in accordance with the provisions of this Agreement. The City and the Contractor may mutually agree to extend the Agreement for up to four additional terms of one year each, or portions thereof. The Parties may mutually agree to extend the Agreement for up to 60 days beyond the expiration of any extension term.

SECTION IV: PAYMENT OF COMPENSATION AND FEES

Contractor's compensation and fees are more fully described in the Scope of Services Exhibit for performance of the services approved and accepted by the City and must not exceed the amount set forth in Attachment 1 to Scope of Services Exhibit. Contractor must submit requests for payment for services approved and accepted during the previous billing period, on a monthly basis, and must include, as applicable, detailed invoices and receipts, a narrative description of the tasks accomplished during the billing period, a list of any deliverables submitted, and any subcontractor's or supplier's actual requests for payment plus similar narrative and listing of their work. Payment for those services negotiated as a lump sum will be made in accordance with the percentage of the work completed during the preceding billing period. Services negotiated as a not-to-exceed fee will be paid in accordance with the work completed on the service during the preceding month. All requests for payment must be submitted to the City for review and approval. The City will make payment for approved and accepted services within 30 days (the "Invoice Due Date") of the City's receipt of such invoice. Contractor bears all responsibility and liability for any and all tax obligations that result from Contractor's performance under this Agreement.

SECTION V: GENERAL CONDITIONS

5.1 Records/Audit. Records of the Contractor's direct personnel payroll, reimbursable expenses pertaining to this Agreement and records of accounts between the City and Contractor must be kept on the basis of generally accepted accounting principles and must be made available to the City and its auditors for up to three years following the City's final acceptance of the services under this Agreement. The City, its authorized representative, or any federal agency, reserves the right to audit Contractor's records between the City and Contractor related to this Agreement to verify the accuracy and appropriateness of all cost and pricing data, including data used to negotiate this Agreement and any amendments. The City reserves the right to decrease the total amount of Agreement price or payments made under this Agreement or request reimbursement from the Contractor following final contract payment on this Agreement if, upon audit of the Contractor's records, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data.

5.2 Alteration in Character of Work. Whenever an alteration in the character of work results in a substantial change in this Agreement, thereby materially increasing or decreasing the scope of services, cost of performance, or Project schedule, the work will be performed as directed by the City. However, before any modified work is started, a written amendment must be approved and executed by the City and the Contractor. Such amendment must not be effective until approved by the City. Additions to, modifications, or deletions from this Agreement as provided herein may be made, and the compensation to be paid to the Contractor may accordingly be adjusted by mutual agreement of the Parties. It is distinctly understood and agreed that no claim for extra work done or materials furnished by the Contractor will be allowed by the City except as provided herein, nor must the Contractor do any work or furnish any materials not covered by this Agreement unless such work is first authorized in writing. Any such work or materials furnished by the Contractor without prior written authorization will be at Contractor's own risk, cost, and expense, and Contractor hereby agrees that without written authorization Contractor will make no claim for compensation for such work or materials furnished.

5.3 Termination for Convenience. The City and the Contractor hereby agree to the full performance of the covenants contained herein, except that the City reserves the right, at its discretion and without cause, to terminate any service provided for in this Agreement, or terminate any portion of the Project for which services have been performed by the Contractor. In the event the City terminates the services, or any part of the services as provided in this Agreement, the City will notify the Contractor at least thirty (30) days' prior notice in writing and immediately after the expiration of the notice period, the Contractor must discontinue advancing the work specified under this Agreement. Upon such termination, abandonment, or suspension, the Contractor must deliver to the City all drawings, plans, specifications, special provisions, estimates and other work entirely or partially completed, together with all unused materials supplied by the City. The Contractor must appraise the work Contractor has completed and submit Contractor's appraisal to the City for evaluation. The City may inspect the Contractor's work to appraise the work completed. The Contractor will receive compensation in full for services performed to the date of such termination. The fee shall be paid in accordance with Section IV of this Agreement, and as mutually agreed upon by the Contractor and the City. If there is no mutual agreement on payment, the final determination will be made in accordance with the Disputes provision in this Agreement. However, in no event may the payment exceed the payment set forth in this Agreement nor as amended in accordance with Alteration in Character of Work. The City will make the final payment within 30 days after the Contractor has delivered the last of the partially completed items and the Parties agree on the final payment. If the City is found to have improperly terminated the Agreement for cause or default, the termination will be converted to a termination for convenience in accordance with the provisions of this Agreement. Contractor reserves the right to terminate this Agreement for convenience, provided there is no active service pending or in progress, upon 30 days advance written notice to the City.

5.4 Termination for Cause. Either Party may terminate this Agreement for Cause upon the occurrence of any one or more of the following events: In the event that (a) the other Party fails to perform pursuant to the terms of this Agreement, (b) the other Party is adjudged a bankrupt or insolvent, (c) the other Party makes a general assignment for the benefit of creditors, (d) a trustee or receiver is appointed for the other Party or for any of the other Party's property (e) the other Party files a petition to take advantage of any

debtor's act, or to reorganize under the bankruptcy or similar laws, (f) the other Party disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or (g) the other Party fails to cure default within the time requested. Where Agreement has been so terminated by a Party, the termination will not affect any rights of the terminating Party against the other Party then existing or which may thereafter accrue.

5.5 Indemnification. A Party ("Indemnitor") shall indemnify, defend, save and hold harmless ("Indemnitor") the other Party and its officers, officials, agents and employees ("Indemnatee") from any and all third-party claims, actions, liabilities, damages, losses or expenses (including court costs, attorneys' fees and costs of claim processing, investigation and litigation) ("Claims") directly arising from a negligent act, error or omission of the Indemnitor or any of its owners, officers, directors, agents, employees, or subcontractors in connection with this Agreement provided that Indemnatee provides prompt notice of any Claim and permits the Indemnitor to have sole control over resolution of such claim. This indemnity includes any claim or amount arising out of or recovered under workers' compensation law or on account of the failure of the Indemnitor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnitor must indemnify Indemnatee from and against any and all Claims, except those arising from Indemnatee's own negligent act, error or omission. The Indemnitor is responsible for primary loss investigation, defense, and judgment costs where this Indemnification applies. The obligations under this provision survive the termination or expiration of this Agreement.

5.6 Limitation of Liability.

- (a) Loss Mitigation. As a material provision of this Agreement, both Parties agree to act in a manner that will serve to mitigate any losses that may be incurred by the other Party through the timely communication of any issue that may arise during the performance of this Agreement.
- (b) Limitation of Liability. **NEITHER PARTY SHALL HAVE ANY LIABILITY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES (INCLUDING LOSS OF PROFIT AND BUSINESS OPPORTUNITIES) REGARDLESS OF WHETHER THE PARTY HAS BEEN ADVISED OF, OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL CONTRACTOR'S LIABILITY UNDER THIS AGREEMENT EXCEED THREE TIMES (3X) THE FEES PAID OR PAYABLE UNDER THE SOW GIVING RISE TO THE CLAIM REGARDLESS OF WHETHER CONTRACTOR HAS BEEN INFORMED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.** As used in this Section, "Contractor" shall include Neudesic, LLC, and Neudesic, LLC's employees, owners, officers, agents, subcontractors, and directors.

5.7 Insurance Requirements. Contractor must maintain insurance under the terms and conditions and for the amounts of coverage set forth in Exhibit B against claims that may arise from or relate to performance of the work under this Agreement by Contractor and its agents, representatives, employees, and subcontractors. Contractor and any subcontractors must maintain this insurance until all of their obligations have been discharged, including any warranty periods under this Agreement. These insurance requirements are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits stated in Exhibit B are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Agreement by the Contractor, the Contractor's

agents, representatives, employees, or subcontractors. Contractor is free to purchase such additional insurance as may be determined necessary.

5.7 Cooperation and Further Documentation. The Contractor agrees to provide the City such other duly executed and mutually agreed documents as may be reasonably requested by the City to implement the intent of this Agreement.

5.8 Notices. Unless otherwise provided, notice under this Agreement must be in writing and will be deemed to have been duly given and received either (a) on the date of service if personally served on the party to whom notice is to be given, or (b) on the date notice is sent if by electronic mail, or (c) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified, postage prepaid and properly addressed as follows:

For the City

Name: City of Chandler
Title: Procurement Officer
Address: 175 S. Arizona Avenue
Chandler, AZ 85225
Phone: 480.782.2400
Email: purchasing @chandleraz.gov

For the Contractor

Name: Crystal Ventura
Title: General Counsel
Address: 200 Spectrum Center Drive, Suite 2000
Irvine, CA 92618
Phone: (800) 805-1805
Email: legal@neudesic.com

5.9 Successors and Assigns. City and Contractor each bind itself, its partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Agreement. Neither the City nor the Contractor may assign, sublet, or transfer its interest in this Agreement without the written consent of the other party. In no event may any contractual relation be created between any third party and the City. The foregoing notwithstanding, City's consent shall not be required if this Agreement is assigned in connection with a sale of all or substantially all of the assets of Contractor, provided that Contractor gives 60 days advance notice of such assignment to the City.

5.10 Disputes. In any dispute arising out of an interpretation of this Agreement or the duties required not disposed of by agreement between the Contractor and the City, the final determination at the administrative level will be made by the City Purchasing and Materials Manager.

5.11 Completeness and Accuracy of Contractor's Work. The Contractor must be responsible for the completeness and accuracy of Contractor's services, data, and other work prepared or compiled under Contractor's obligation under this Agreement and must correct, at Contractor's expense, all willful or negligent errors, omissions, or acts that may be discovered. The fact that the City has accepted or approved the Contractor's work will in no way relieve the Contractor of any of Contractor's responsibilities.

5.12 Withholding Payment. City shall remit full payment for all invoices without offset. City shall notify Contractor in writing of the reason why payment of said invoice (in whole or in part) is withheld prior to the Invoice Due Date. In the event only part of the invoice is withheld, City shall pay the remainder

of the disputed invoice in accordance with the payment terms cited herein. Upon settlement, City shall pay the amount agreed to by the Parties within 30 days after such settlement.

5.13 City's Right of Cancellation. The Parties acknowledge that this Agreement is subject to cancellation by the City under the provisions of Section 38-511, Arizona Revised Statutes (A.R.S.).

5.14 Independent Contractor. For this Agreement the Contractor constitutes an independent contractor. Any provisions in this Agreement that may appear to give the City the right to direct the Contractor as to the details of accomplishing the work or to exercise a measure of control over the work means that the Contractor must follow the wishes of the City as to the results of the work only. These results must comply with all applicable laws and ordinances.

5.15 Project Staffing. Prior to the start of any work under this Agreement, the Contractor must assign to the City the key personnel that will be involved in performing services prescribed in the Agreement. The City may acknowledge its acceptance of such personnel to perform services under this Agreement. At any time hereafter that the Contractor desires to change key personnel while performing under the Agreement, the Contractor must submit the qualifications of the new personnel to the City for review and acknowledgment of acceptance. The Contractor will maintain an adequate and competent staff of qualified persons throughout the performance of this Agreement to ensure acceptable and timely completion of the Scope of Services. If the City objects, with reasonable cause, to any of the Contractor's staff, the Contractor must take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace with new personnel.

5.16 Subcontractors. Prior to beginning the work, the Contractor must furnish the City for approval the names of subcontractors to be used under this Agreement. Any subsequent changes are subject to the City's written prior approval. Notwithstanding the foregoing, Services performed by Neudesic Technologies Private Limited shall not require prior written consent.

5.17 Force Majeure. If either party is delayed or prevented from the performance of any act required under this Agreement by reason of acts of God, pandemic, or other cause beyond the control and without fault of the Party (financial inability excepted), performance of that act may be excused, but only for the period of the delay, if the Party provides written notice to the other Party within ten days of such act. The time for performance of the act may be extended for a period equivalent to the period of delay from the date written notice is received by the other Party.

5.18 Compliance with Laws. Contractor understands, acknowledges, and agrees to comply with the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. All services performed by Contractor must also comply with all applicable City of Chandler codes, ordinances, and requirements as set forth in any applicable SOW. Contractor agrees to permit the City to verify Contractor's compliance.

5.19 No Israel Boycott. By entering into this Agreement, Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of the Agreement, not to engage in a boycott of Israel as defined by state statute as set forth in ARS Sec.35-393.01(a).

5.20 Legal Worker Requirements. A.R.S. § 41-4401 prohibits the City from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A. A breach of this warranty will be deemed a material breach of the Agreement and may be subject to termination of the Agreement.

5.21 Lawful Presence Requirement. A.R.S. §§ 1-501 and 1-502 prohibit the City from awarding a contract to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. This requirement does not apply to business organizations such as corporations, partnerships, or limited liability companies.

5.22 Covenant Against Contingent Fees. Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the Chandler City Council, or any City employee has any interest, financially, or otherwise, in Contractor's firm. For breach or violation of this warrant, the City may annul this Agreement without liability or, at its discretion, to deduct from the Agreement price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

5.23 Non-Waiver Provision. The failure of either Party to enforce any of the provisions of this Agreement or to require performance of the other Party of any of the provisions hereof must not be construed to be a waiver of such provisions, nor must it affect the validity of this Agreement or any part thereof, or the right of either Party to thereafter enforce each and every provision.

5.24 Disclosure of Information Adverse to the City's Interests. To evaluate and avoid potential conflicts of interest, the Contractor must provide written notice to the City, as set forth in this Section, of any work or services performed by the Contractor for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice must be given seven business days prior to commencement of the services by the Contractor for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure must be sent to the City's Purchasing and Materials Manager. An adverse action under this Agreement includes, but is not limited to: (a) using data as defined in the Agreement acquired in connection with this Agreement to assist a third party in pursuing administrative or judicial action against the City; or (b) testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; or (c) using data to produce income for the Contractor or its employees independently of performing the services under this Agreement, without the prior written consent of the City. Contractor represents that except for those persons, entities, and projects identified to the City, the services performed by the Contractor under this Agreement are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the City's interests. Contractor's failure to provide a written notice and disclosure of the information as set forth in this Section constitute a material breach of this Agreement.

5.25 Data Confidentiality and Data Security. As used in the Agreement, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by, obtained by, or transmitted to the Contractor or its subcontractors in the performance of this Agreement. The Parties agree that all data, regardless of form, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the Contractor or its subcontractors in connection with the Contractor's or its subcontractor's performance of this Agreement is confidential and proprietary information belonging to the City. Except as specifically provided in this Agreement, Contractor or its subcontractors must not divulge data to any third party without the City's prior written consent. Contractor or its subcontractors must not use the data for any purposes except to perform the services required under this Agreement. These prohibitions do not apply to the following data provided to the Contractor or its subcontractors have first given the required notice to the City: (a) data which was known to the Contractor or its subcontractors prior to its performance under this Agreement unless such data was acquired in connection with work performed for the City; or (b) data which was acquired by the Contractor or its subcontractors in its performance under this Agreement and which was disclosed to the Contractor or its subcontractors by a third party, who to the best of the Contractor's or its subcontractors knowledge and belief, had the legal right to make such disclosure and the Contractor or its subcontractors are not otherwise required to hold such data in confidence; or (c) data which is required to be disclosed by virtue of law, regulation, or court order, to which the Contractor or its subcontractors are subject. In the event the Contractor or its subcontractors are required or requested to disclose data to a third party, or any other information to which the Contractor or its subcontractors became privy as a result of any other contract with the City, the Contractor must first notify the City as set forth in this Section of the request or demand for the data. The Contractor or its subcontractors must give the City sufficient facts so that the City can be given an opportunity to first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure. Unless prohibited by law, within ten calendar days after completion or termination of services under this Agreement, the Contractor or its subcontractors must promptly deliver, as set forth in this Section, a copy of all data to the City. All data must continue to be subject to the confidentiality requirements of this Agreement. Contractor or its subcontractors assume all liability to maintain the confidentiality of the data in its possession. A violation of this Section may result in immediate termination of this Agreement upon written notice.

5.26 Personal Identifying Information-Data Security. Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times by Contractor and any of its subcontractors. At a minimum, Contractor must encrypt or password-protect electronic files. This includes data saved to laptop computers, computerized devices, or removable storage devices. When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed. In the event that data collected or obtained by Contractor or its subcontractors in connection with this Agreement is believed to have been compromised, Contractor or its subcontractors must immediately notify the City contact. Contractor agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be

Impacted by the breach, provided that such breach or potential breach was directly attributable to a negligent act or omission by Contractor. Contractor agrees that the requirements of this Section must be incorporated into all subcontracts entered into by Contractor. A violation of this Section may result in immediate termination of this Agreement upon written notice. The obligations of Contractor or its subcontractors under this Section must survive the termination of this Agreement. Notwithstanding the foregoing, City shall not provide Contractor with any personal identifying information unless such information is necessary and unavoidable for Contractor to perform services under this Agreement and types of personal identifying information shall be expressly set forth in Scope of Services Exhibit.

5.27 Jurisdiction and Venue. This Agreement is made under and must be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Agreement or to obtain any remedy with respect hereto must be brought in the courts located in Maricopa County, Arizona, and for this purpose, each Party hereby expressly and irrevocably consents to the jurisdiction and venue of such court.

5.28 Survival. All warranties, representations, and indemnifications by the Contractor must survive the completion or termination of this Agreement.

5.29 Modification. Except as expressly provided herein to the contrary, no supplement, modification, or amendment of any term of this Agreement will be deemed binding or effective unless in writing and signed by the Parties.

5.30 Severability. If any provision of this Agreement or the application to any person or circumstance may be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application will not be affected and will be enforceable to the fullest extent permitted by law.

5.31 Integration. This Agreement contains the full agreement of the Parties. Any prior or contemporaneous written or oral agreement between the Parties regarding the subject matter is merged and superseded.

5.32 Time is of the Essence. Time of each of the terms, covenants, and conditions of this Agreement is hereby expressly made of the essence.

5.33 Date of Performance. If the date of performance of any obligation or the last day of any time period provided for should fall on a Saturday, Sunday, or holiday for the City, the obligation will be due and owing, and the time period will expire, on the first day after which is not a Saturday, Sunday or legal City holiday. Except as may otherwise be set forth in this Agreement, any performance provided for herein will be timely made if completed no later than 5:00 p.m. (Chandler time) on the day of performance.

5.34 Reserved.

5.35 Third Party Beneficiary. Nothing under this Agreement will be construed to give any rights or benefits in the Agreement to anyone other than the City and the Contractor, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of City and the Contractor and not for the benefit of any other party.

5.36 Conflict in Language. All work performed must conform to all applicable City of Chandler codes, ordinances, and requirements as outlined in this Agreement. If there is a conflict in interpretation between provisions in this Agreement and those in the Exhibits, the provisions in this Agreement prevail.

5.37 Document/Information Release. Documents and materials released to the Contractor, which are identified by the City as sensitive and confidential, are the City's property. The document/material must be issued by and returned to the City upon completion of the services under this Agreement. Contractor's secondary distribution, disclosure, copying, or duplication in any manner is prohibited without the City's prior written approval. The document/material must be kept secure at all times. This directive applies to all City documents, whether in photographic, printed, or electronic data format.

5.38 Exhibits. The following exhibits are made a part of this Agreement and are incorporated by reference:

Exhibit A - Scope of Services

Attachment 1 to Scope of Services Exhibit A - Compensation and Fees

Exhibit B - Insurance Requirements

Exhibit C - Special Conditions

5.39 Special Conditions. As part of the services Contractor provides under this Agreement, Contractor agrees to comply with and fully perform the special terms and conditions set forth in Exhibit C, which is attached to and made a part of this Agreement.

5.40 Cooperative Use of Agreement. In addition to the City of Chandler and with approval of the Contractor, this Agreement may be extended for use by other municipalities, school districts and government agencies of the State, provided that such entity enters into a participation agreement with Contractor. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City will not be responsible for any disputes arising out of transactions made by other agencies who utilize this Agreement.

5.41 Non-Discrimination and Anti-Harassment Laws. Contractor must comply with all applicable City, state, and federal non-discrimination and anti-harassment laws, rules, and regulations.

5.42 Licenses and Permits. Beginning with the Effective Date and for the full term of this Agreement, Contractor must maintain all applicable City, state, and federal licenses and permits required to fully perform Contractor's services under this Agreement.

5.43 Warranties. Contractor warrants that in connection with its performance under this Agreement: (i) all consulting services shall be performed in a professional and workmanlike manner; (ii) Contractor has sufficient staff and other resources available to it to provide the consulting services required by this Agreement; and (iii) Contractor has full authority to enter into this Agreement and to carry out its obligations under this Agreement.

5.44 Disclaimer of Other Warranties: CONTRACTOR MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER FOR ANY THIRD-PARTY HARDWARE OR SOFTWARE LICENSED OR PURCHASED BY CITY THROUGH CONTRACTOR OR OTHERWISE. CONTRACTOR IS NOT RESPONSIBLE FOR ANY CLAIMS RELATED THERETO AND ANY CLAIMS RELATED TO THIRD-PARTY HARDWARE OR SOFTWARE ARE EXCLUSIVELY BETWEEN CITY, AND THE THIRD-PARTY HARDWARE OR SOFTWARE PROVIDER. CONTRACTOR ALSO DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES RELATING TO THE SUITABILITY OR COMPATIBILITY OF CITY'S EXISTING COMPUTER HARDWARE OR SOFTWARE SYSTEMS TO ACCOMPLISH THE PERFORMANCE OBJECTIVES DESIRED BY CITY IN ANY WORK PRODUCT. CONTRACTOR DISCLAIMS WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE TO ANY WORK PRODUCT, ABSENCE OF CLAIMS TO OR INTERESTS IN ANY WORK PRODUCT ARISING FROM AN ACT OR OMISSION OF CONTRACTOR, ABSENCE OF LIENS OR ENCUMBRANCES, FREEDOM FROM RIGHTFUL CLAIMS OF THIRD PERSONS BY WAY OF INFRINGEMENT OR THE LIKE.

5.45 Emergency Purchases. City reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the Contractor.

5.46 Non-Exclusive Agreement. This Agreement is for the sole convenience of the City of Chandler. The City reserves the right to obtain like goods or services from another source when necessary.

5.47 Budget Approval Into Next Fiscal Year. This Agreement will commence on the Effective Date and continue in full force and effect until it is terminated or expires in accordance with the provisions of this Agreement. The Parties recognize that the continuation of this Agreement after the close of the City's fiscal year, which ends on June 30 of each year, is subject to the City Council's approval of a budget that includes an appropriation for this item as expenditure. The City does not represent that this budget item will be actually adopted. This determination is solely made by the City Council at the time Council adopts the budget.

This Agreement shall be in full force and effect only when it has been approved and executed by the duly authorized City officials.

FOR THE CITY

By: _____

Its: _____ Mayor _____

FOR THE CONTRACTOR

By: Brett Fisher
Brett Fisher

Its: Corporate Vice President, Client Services

APPROVED AS TO FORM:

By: _____
City Attorney *MB*

ATTEST:

By: _____
City Clerk

EXHIBIT A TO AGREEMENT SCOPE OF SERVICES (STAFF AUGMENTATION)

Scope of Work

Neudesic will assign consulting resources under this Scope of Services ("SOW") at the rates detailed herein and as requested by Client. Neudesic consulting resources will work at the direction of the Client and will be qualified to support the following activities:

- 100 hours per month of ad-hoc development work for SHARP SharePoint application.
- Implementation of issue submission workflow (as set forth below).
- Time and materials for:
 - Break-fix and defect resolution.
 - Development time exceeding 100 hours per month.

Goals and Objectives

- Provide support and development for SHARP SharePoint application.
- Implement new ticket triaging workflow.

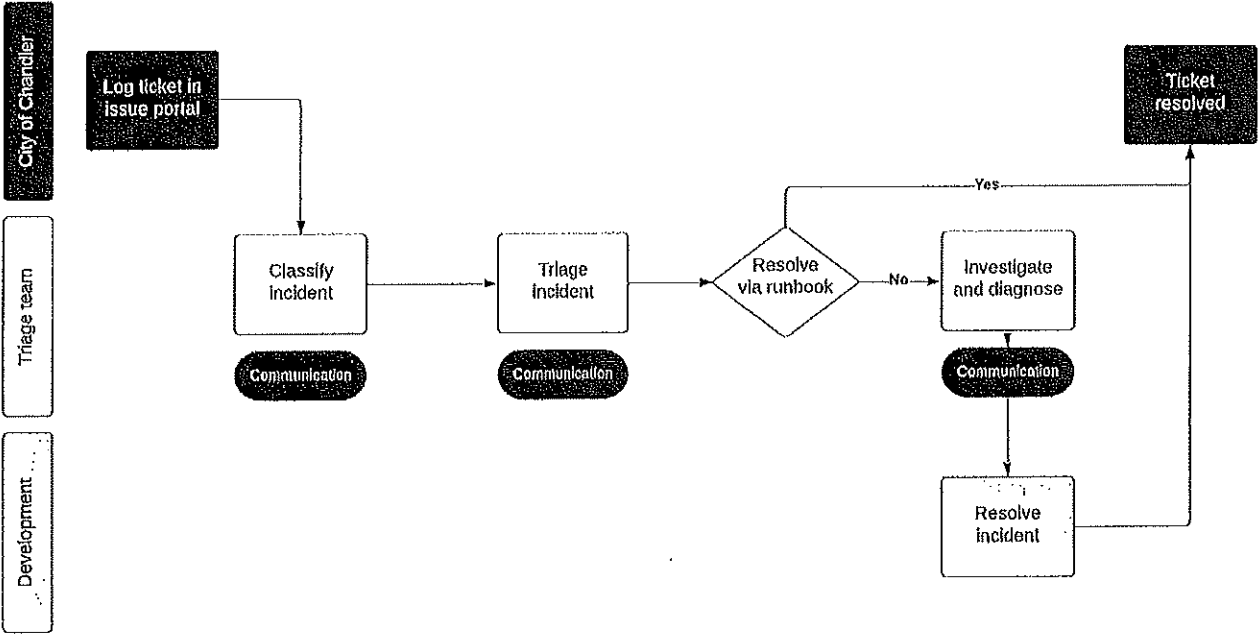
As-is Process

- Weekly status and progress reporting meeting.

Issue Severity and Response Times:

Targeted Incident Management Response Times			
Severity	Issue Description	Response Time	Coverage
1 Critical	Service not available (all users and functions unavailable).	Within 1 hour	8am-5pm MST Mon-Fri
		Within 4 hours	24/7
2 High	Significant degradation of service (large number of users or business critical functions affected).	Within 8 hours	24/7
3 Medium	This includes bug fixes that are not High or Critical.	Within 24 hours	8am-5pm MST Mon-Fri
4 Low	This includes enhancements requested from the Vasa single point of contact (SPOC).	Within 24 hours	8am-5pm MST Mon-Fri

Issue Submission Flow: (Follows on next page)



ATTACHMENT I TO EXHIBIT A
COMPENSATION AND FEES

Provide all-inclusive, firm, fixed fees for each Service in the table below, as applicable:

Description	Fees
Up to 100 monthly hours of SHARP application support	\$13,000 per month
Implementation of issue submission workflow	
SHARP application development and support	

**EXHIBIT B TO AGREEMENT
INSURANCE**

General.

- A. At the same time as execution of this Agreement, the Contractor shall furnish the City a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to City. Provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Workers' Compensation coverage.
- B. The Contractor and any of its subcontractors shall maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the Insurances set forth below.
- C. The Insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
- D. The City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect Contractor from liabilities that might arise out of the performance of the Agreement services under this Agreement by Contractor, its agents, representatives, employees, subcontractors, and the Contractor is free to purchase any additional insurance as may be determined necessary.
- E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve the Contractor from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.

Minimum Scope and Limits of Insurance. The Contractor shall provide coverage with limits of liability not less than those stated below.

- A. *Commercial General Liability-Occurrence Form.* Contractor must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
- B. *Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles*

Vehicle Liability: Contractor must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on Contractor owned or long-term leased vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

- C. *Workers Compensation and Employers Liability Insurance:* Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease for each employee.
- D. *Professional Errors & Omissions Liability & Cyber Liability.* If the Agreement is the subject of any professional services or work performed by the Contractor, or if the Contractor engages in any professional services or work adjunct or residual to performing the work under this Agreement, the Contractor must maintain Professional Errors & Omissions Liability & Cyber Liability insurance coverage for actual or alleged breach of duty, neglect, error, misstatement, misleading statements or omission, solely for acts or omissions committed by Neudesic in providing professional services for, with a minimum per claim and aggregate limit of \$5,000,000. Coverage includes network security, unauthorized access, unauthorized use, receipt or transmission of a malicious code, denial of service attack, unauthorized disclosure or misappropriation of private information, privacy liability, notification costs, credit card monitoring, and fine & penalties incurred by the Client.
- E. Reserved.

Additional Requirements:

The policy shall provide a waiver of subrogation in favor of City for Neudesic's Commercial General Liability and Auto Liability policies.

Additional Policy Provisions Required.

- A. Reserved.
- B. *Insurance Cancellation During Term of Contract/Agreement.*
 - 1. If any of the required policies expire during the life of this Contract/Agreement, the Contractor must forward renewal or replacement Certificates to the City within ten days after the renewal date containing all the required insurance provisions.
 - 2. Each insurance policy required by the insurance provisions of this Contract/Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after 30 days prior written notice has been given to the City, except when

cancellation is for non-payment of premium, then ten days prior notice may be given. Such notice shall be sent directly to Chandler Law-Risk Management Department, Post Office Box 4008, Mailstop 628, Chandler, Arizona 85225. If any insurance company refuses to provide the required notice, the Contractor or its insurance broker shall notify the City of any cancellation, suspension, non-renewal of any insurance with seven days of receipt of insurer's notification to that effect.

A. *City as Additional Insured.* The policies are to contain, or be endorsed to contain, the following provisions:

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City is an additional insured with respect to liability arising out of activities performed by, or on behalf of, the Contractor including the City's general supervision of the Contractor; Products and Completed operations of the Contractor; and automobiles owned, leased, hired, or borrowed by the Contractor.
2. The City must be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Agreement.

**EXHIBIT C TO AGREEMENT
SPECIAL CONDITIONS**

Offshore Performance of Work Prohibited. Due to security and identification protection concerns, direct Services under this Contract must be performed within the borders of the United States. Any Services that are described in the scope of work that directly serve the City and may involve access to secure or sensitive data or personal client data or development or modification of software for the City must be performed within the borders of the United States. Notwithstanding anything to the contrary, and unless stated otherwise in the scope of work, this definition does not apply to indirect or "overhead" services, redundant back-up services, or services that are incidental to the performance of this Contract.

SERVICE LEVELS: Intentionally omitted; not applicable to the Services to be provided by Neudesic.