ITEM # 19-0955

SPINNAKER SUPPORT

MASTER SERVICES AGREEMENT

This **MASTER SERVICES AGREEMENT** ("**Agreement**") is made as of **December 31, 2019** (the "**Effective Date**"), by and between Spinnaker Support, LLC, a Colorado limited liability company with its principal place of business at 5445 DTC Parkway, Suite 850, Greenwood Village, CO 80111 ("**Spinnaker**") and the party identified below (the "**Customer**").

Name of Customer: **City of Santa Fe**	Contact Name: **Joshua Elicio** **Director, Information Technology**
Address: **2651 Siringo Rd. Bldg. F** **Santa Fe, MN 87505**	Phone: **505-955-5576**
State/Country of Corporate Formation: **New Mexico, USA**	E-Mail: **juelicio@santafenm.gov**

The terms and conditions of this Agreement (including the attached Standard Terms and Conditions which are incorporated herein by reference) will apply to all Services performed hereunder. Any different or additional terms of a related purchase order, confirmation or similar form signed by the parties after the date hereof shall have no force or effect on this Agreement or its subject matter, and pre-printed or standard terms of Customer's purchase order are specifically excluded.

For purposes of this Agreement, Spinnaker is contracting with Customer for and on behalf of Spinnaker individually, and collectively for Spinnaker's current and future Affiliates. The parties agree that any Affiliate of Spinnaker may contract for the performance of Services hereunder by mutually executing with Customer a written Statement of Work. Each such Statement of Work will be subject to this Agreement as if each were a separate agreement between Customer and the Spinnaker entity executing that Statement of Work (the "Executing Entity"). All obligations and liabilities arising from each such Statement of Work shall be solely between the Executing Entity and Customer. For the purposes of each Statement of Work, all references to "Spinnaker" in this Agreement shall mean, for purposes of that Statement of Work only, the Executing Entity.

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument. Signatures to this Agreement transmitted by facsimile, email, portable document format (.pdf) or by any other electronic means intended to preserve the original graphic and pictorial appearance of this Agreement shall have the same effect as the physical delivery of the paper document bearing original signatures.

ACCEPTED AND AGREED TO:

Customer: CITY OF SANTA FE:

JAREL LAPAN-HILL,
INTERIM CITY MANAGER

DATE: 12/30/19

CONTRACTOR: SPINNAKER SUPPORT, LLC:

See Attached
NAME

TITLE

DATE:
CRS#

Registration #

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

CITY ATTORNEY'S OFFICE:

12/27/19
ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED:

Patrick Lee for Mary McCoy
MARY MCCOY, FINANCE DIRECTOR

Business Unit Line Item

DocuSign Envelope ID: 633FC738-B474-423B-8AE1-3DA55E270A10

ACCEPTED AND AGREED TO:

Customer: CITY OF SANTA FE:

JAREL LAPAN-HILL,
INTERIM CITY MANAGER

DATE: 12/30/19

CONTRACTOR: SPINNAKER SUPPORT, LLC:

DocuSigned by:
Kurt Moydell
AE0BC83233574C8...

NAME

Senior Vice President

TITLE

DATE: 27-Dec-2019

CRS# 03300738001

Registration # 19-00128376

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

CITY ATTORNEY'S OFFICE:

ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED:

MARY MCCOY, FINANCE DIRECTOR

Business Unit Line Item

1. DEFINITIONS. As used in this Agreement or any attachment hereto:

1.1 "**Affiliate**" means, with respect to a party, any person or entity that is directly or indirectly controlled by, under common control with, or that controls such party. For purposes of this definition, "controls," "control" and "controlling" mean the direct or indirect ownership or control (whether through contract or otherwise) of shares entitled to more than fifty percent (50%) of the vote for the election of directors in the case of corporate entities and in the case of non-corporate entities, more than fifty percent (50%) of the equity interest with the power to direct management policies, or the direct or indirect power to direct or cause the direction of the management or policies of the party.

1.2 "**Deliverable**" means any item provided by Spinnaker to Customer as a result of the Services, which may include, findings, analyses, conclusions, opinions, designs, programs, enhancements, updates, fixes and/or source and object code.

1.3 "**Intellectual Property Rights**" means all known or hereafter existing worldwide copyrights, trademarks, service marks, trade secrets, patents, patent applications, know-how, moral rights, contract rights and other proprietary rights.

1.4 "**Licensor**" means the applicable licensor of a Third Party Product.

1.5 "**Licensor Terms and Conditions**" means the terms and conditions applicable to access and/or use of any Third Party Product, including any confidentiality, license and/or other agreement with the applicable Licensor(s), and any "terms of use" or similar terms imposed by such Licensor(s).

1.6 "**Services**" means the consulting, support, training, integration, implementation and other professional services to be performed by Spinnaker for Customer under this Agreement pursuant to one or more Statement(s) of Work.

1.7 "**Spinnaker Tools**" means (a) all software, documentation, tools, routines, programs, designs, technology, ideas, know-how, processes, techniques and inventions that Spinnaker utilizes in connection with its performance of the Services and that Spinnaker makes, develops, conceives or reduces to practice, either (i) prior to, contemporaneously with, or subsequent to the performance of the Services, or (ii) in the course of performing the Services, and (b) all enhancements, modifications, improvements and derivative works of each and any of the foregoing.

1.8 "**Statement of Work**" means a written statement of work executed by the parties that describes the specific Services to be performed by Spinnaker hereunder.

1.9 "**Third Party Product(s)**" means any third-party licensed software product(s) or other third-party material(s) in Customer's custody and/or control.

1.10 Capitalized terms not specifically defined in this Section shall have the respective meanings ascribed to them in this Agreement.

2. PERFORMANCE OF SERVICES.

2.1 Statements of Work. The specific Services to be performed by Spinnaker under this Agreement shall be set forth in one or more Statements of Work mutually agreed to by the parties. A Statement of Work shall not be binding unless signed by both parties, and upon such signing, shall be attached to and incorporated into this Agreement.

2.2 Additional Services. Any additional services required by Customer that are outside the scope of a Statement of Work ("**Additional Services**") shall be performed at Spinnaker's then-current consulting rates on a time and materials basis; that is, Customer shall pay Spinnaker for the time spent performing the relevant Additional Services, plus applicable materials, taxes and expenses. Notwithstanding the foregoing, for Additional Services, Spinnaker shall bill a minimum of one (1) labor hour for each new, unique request for assistance placed with Spinnaker (as evidenced by an assigned unique case number), with billing in ¼ hour increments thereafter (rounding up to the next whole ¼ hour of labor).

2.3 Change Orders; Conflicts. In the event either party requires a material change to a Statement of Work, such party will provide a written change order to the other for approval, specifying the change required (each a "**Change Order**"). Each party agrees that a Change Order may necessitate a change in the delivery schedule and/or fees due under the applicable Statement of Work. No Change Order will be binding upon either party until it is signed by the authorized representatives of both parties. Each Statement of Work and Change Order will be governed by the terms of this Agreement. In the event of a conflict between the terms and conditions of this Agreement and those of a Statement of Work or Change Order (if any), the following order of precedence shall apply: (i) Change Order (if any), (ii) Statement of Work, (iii) this Agreement.

3. FEES AND PAYMENT.

3.1 Fees. Customer will timely pay Spinnaker all fees as specified in the applicable Statement of Work. Unless otherwise expressly provided in this Agreement or the applicable Statement of Work, all fees are non-refundable.

3.2 Payment Terms. Unless otherwise expressly provided in this Agreement or the applicable Statement of Work, Customer will pay Spinnaker all amounts due under this Agreement within fifteen (15) days after the date of the invoice, therefore. All payments must be made in U.S. dollars and shall be paid by electronic funds transfer (ACH or SWIFT) or wire transfer to the account specified in the invoice received, or to such other account as Spinnaker may designate from time to time. Customer shall pay any applicable wire transfer fees. Any amounts not paid when due will accrue interest at the lesser of one and one-half percent (1½%) per month or the maximum rate permitted by applicable law from the due date until paid. Without limiting any other remedy available to Spinnaker, Spinnaker reserves the right to suspend any Services during any period in which Customer has failed to timely pay any amounts due and payable.

3.3 Taxes. Fees exclude, and Customer will make all payments of fees to Spinnaker free and clear of, all applicable

sales, use and other taxes and all applicable export and import fees, customs, duties and similar charges. When applicable, Spinnaker may include any taxes that it is required to collect as a separate line item on an invoice.

3.4 Travel and Other Expenses. Services provided hereunder shall be provided at Spinnaker's principal places of business. Should Customer request or it be otherwise necessary that Spinnaker send personnel to any Customer site or other location in connection with the Services, Customer shall pay Spinnaker's reasonable travel, meals and lodging expenses. Under such circumstances, Customer shall also pay actual costs for supplies and other expenses reasonably incurred by Spinnaker, which are not of the sort normally provided or covered by Spinnaker, provided that Customer has approved in advance the purchase of such supplies and other expenses. If Customer so requires, Spinnaker shall submit written evidence of each expenditure to Customer prior to receiving reimbursement of such costs and expenses.

4. CUSTOMER OBLIGATIONS. Customer shall provide Spinnaker with such resources, information, software access and assistance as Spinnaker may reasonably request in connection with the performance of the Services. Customer acknowledges and agrees that Spinnaker's ability to successfully perform the Services in a timely manner is contingent upon its receipt from Customer of such information, resources, software access and assistance. Spinnaker shall have no liability for deficiencies in the Services resulting from the acts or omissions of Customer, its agents or employees. Without limiting the generality of the foregoing, Customer acknowledges and agrees that Customer's obligations include the following:

4.1 Primary Contact. Customer shall designate one (1) primary point of contact under each Statement of Work who shall be responsible for managing the relationship between Spinnaker and Customer thereunder, including providing reasonable assistance to Spinnaker with technical and non-technical issues related to the applicable Services.

4.2 Access to Third Party Products. Customer acknowledges and agrees that Spinnaker is performing the Services solely for the benefit of Customer, and that Spinnaker's ability to perform the Services may require Spinnaker's access (either through remote access or direct physical access on Customer's premises) and use of certain Third Party Products. In connection therewith, Customer hereby represents that it has the right to provide Spinnaker with access to, and use of, any and all portions of such Third Party Products in connection with Spinnaker's performance of the Services, including, if applicable, the right to customize and/or configure each such Third Party Product for the benefit of Customer. Customer agrees to immediately notify Spinnaker of any changes made (actual or attempted) by the applicable Licensor to Customer's license and access rights to such Third Party Product(s), including changes to the applicable Licensor Terms and Conditions, that may affect Spinnaker's ability to continue performing the Services. Customer shall defend and hold Spinnaker, its officers, employees, personnel, agents and representatives harmless from and against any and all claims, liabilities, damages and expenses (including reasonable attorneys' fees), arising out of Customer's breach of this Section, including any breach of Customer's representations hereunder, up to the limits of liability covered by its insurance for such defenses, liabilities, claims, damages and expenses.

4.3 Personnel. Customer shall provide sufficient, qualified and knowledgeable personnel capable of (a) performing Customer's obligations as described in this Agreement and each Statement of Work and (b) making necessary and timely decisions on behalf of Customer.

5. WARRANTIES.

5.1 Performance. Spinnaker warrants to Customer that the Services will be performed in a professional manner consistent with industry standards. Spinnaker shall, as its sole obligation and Customer's sole and exclusive remedy for any breach of the warranty set forth in this Section, re-perform the Services which gave rise to the breach, or at Spinnaker's option, refund the fees paid by Customer for the Services which gave rise to the breach; provided that Customer notifies Spinnaker in writing of the breach within thirty (30) days following performance of the defective Services, specifying the breach in reasonable detail.

5.2 Disclaimers. THE EXPRESS WARRANTIES IN THIS SECTION 5 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICES, AND SPINNAKER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. NO SPECIFIC RESULTS FROM THE PERFORMANCE OF THE SERVICES ARE ASSURED OR GUARANTEED. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES PROVIDED HEREIN.

6. INFRINGEMENT CLAIMS. Spinnaker will defend at its own expense any action against Customer brought by a third-party to the extent that the action is based upon a claim that Customer's use of any Deliverable infringes any U.S. patent or copyright or misappropriates any trade secret of a third-party, and Spinnaker will pay those costs and damages finally awarded against Customer in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Customer (a) notifying Spinnaker promptly in writing of such action, (b) giving Spinnaker sole control of the defense thereof and any related settlement negotiations and (c) cooperating and, at Spinnaker's request and expense, assisting in such defense. If any Deliverable becomes, or in Spinnaker's opinion is likely to become, the subject of an infringement claim, Spinnaker may, at its option and expense, either (i) procure for Customer the right to continue using the Deliverable, (ii) replace or modify the Deliverable so that it becomes non-infringing or (iii) terminate Customer's right to use the Deliverable and refund Customer the fees paid for such portion of the Deliverable which is allegedly infringing, upon which Customer shall have

no further rights in and to the subject Deliverable. Notwithstanding the foregoing, Spinnaker will have no obligation under this Section 6 or otherwise with respect to any infringement claim based upon (A) any use of the Deliverable not in accordance with this Agreement or for purposes not intended by Spinnaker, (B) any use of the Deliverable in combination with other services, products, equipment, software or data not intended by Spinnaker to be used with the Deliverable, (C) any information, software code or other materials furnished to Spinnaker by Customer, its agents, representatives and suppliers, including Customer's specifications, (D) any unauthorized and/or unlicensed activities by Customer, its agents, representatives and suppliers, including any violation by Customer of Section 4.2, or (E) any modification of the Deliverable by any person other than Spinnaker or its authorized agents or subcontractors; and Customer shall defend and hold Spinnaker, its officers, employees, personnel, agents and representatives harmless from and against any and all claims, liabilities, damages and expenses (including reasonable attorneys' fees) based upon any of the foregoing up to the limits of liability covered by its insurance for such defenses, liabilities, claims, damages and expenses. THIS SECTION 6 STATES SPINNAKER'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS RELATED TO THE SERVICES AND ANY DELIVERABLE UNDER THIS AGREEMENT.

7. OWNERSHIP.

7.1 Work Product. Except as provided in Section 7.2, the parties hereby agree that any and all Customer-specific work product (the "**Work Product**") which is produced as a result of the Services performed by Spinnaker under this Agreement, including any Intellectual Property Rights therein, shall be the property of Customer.

7.2 Spinnaker Property. Notwithstanding the foregoing in Section 7.1, as between the parties, Spinnaker shall retain all Intellectual Property Rights in and to any and all Spinnaker Tools which have general applicability apart from the Work Product (collectively, the "**Spinnaker Property**"). Subject to Customer's payment of all applicable fees, Spinnaker grants Customer a non-exclusive, non-transferable license, without rights to sublicense, to use the Spinnaker Property that is incorporated into a Deliverable solely for Customer's own internal business purposes in connection with the use of such Deliverable.

7.3 Third Party Products. Notwithstanding anything contained herein to the contrary, Spinnaker acknowledges and agrees that it has no claim of ownership in and to any Third Party Products or any Intellectual Property Rights therein.

8. LIMITATION OF LIABILITY. SPINNAKER'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH ANY SERVICES PROVIDED UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO SPINNAKER UNDER THE STATEMENT OF WORK UNDER WHICH SUCH SERVICES ARE PERFORMED DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA, LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING FROM OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED, HOWEVER, THIS LIMITATION SHALL NOT APPLY TO CUSTOMER'S BREACH OF SECTION 4.2. CUSTOMER ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES AND THAT SPINNAKER WOULD NOT ENTER INTO THIS AGREEMENT OR ANY STATEMENT OF WORK WITHOUT THESE LIMITATIONS ON SPINNAKER'S LIABILITY.

9. CONFIDENTIALITY.

9.1 Protection of Confidential Information. Each party (the "**Disclosing Party**") may from time to time disclose to the other party (the "**Receiving Party**") certain information regarding the business of the Disclosing Party and its suppliers, including technical, marketing, financial, employee, planning and other confidential or proprietary information ("**Confidential Information**"). Any information that the Receiving Party knew or should have known, under the circumstances, is considered confidential or proprietary by the Disclosing Party will be considered Confidential Information of the Disclosing Party. Without limiting the generality of the foregoing, the Spinnaker Tools shall be considered Spinnaker's Confidential Information.

9.2 Protection of Confidential Information. The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access and disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

9.3 Exceptions. The Receiving Party's obligations under Section 9.2 with respect to any Confidential Information of the Disclosing Party will terminate if such information: (a) was already known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) was disclosed to the Receiving Party by a third-party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) was independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i)

approved in writing by the Disclosing Party, (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

9.4 Return of Confidential Information. The Receiving Party will return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Disclosing Party and/or upon the expiration or termination of this Agreement (except for any computer records or files that have been created pursuant to the Receiving Party's automatic archiving and back-up procedures and the removal of which is not technically reasonable). Upon request from the Disclosing Party, the Receiving Party will certify in writing signed by an officer of the Receiving Party that it has fully complied with its obligations under this Section

9.5 Confidentiality of Agreement. Except as expressly permitted hereunder, neither party will disclose any terms of this Agreement to anyone other than its attorneys, accountants and other professional advisors except (a) as required by law, or (b) pursuant to the mutual agreement of the parties, or (c) in connection with a financial investment in such party's business or (d) in connection with a contemplated transfer of such party's business permitted by Section 12.3 (provided that any third-party to whom the terms of this Agreement is to be disclosed is under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder).

10. TERM AND TERMINATION.

10.1 Term. This term of this Agreement shall commence on the Effective Date and shall continue for a period of one (1) year.

10.2 Termination. Either party may terminate this Agreement or any uncompleted Statement(s) of Work if the other party (a) breaches any material provision of this Agreement or the applicable Statement(s) of Work and does not cure such breach within thirty (30) days after receiving written notice thereof; (b) shall formally declare bankruptcy, insolvency, reorganization, liquidation or receivership; or (c) shall have instigated against it bankruptcy, insolvency, reorganization, liquidation or receivership proceedings, and shall fail to remove itself from such proceedings within ten (10) days from the date of institution of such proceedings. Notwithstanding the foregoing, Spinnaker may also terminate this Agreement or any uncompleted Statement(s) of Work immediately upon written notice in the event (i) Customer fails to pay any amounts payable hereunder within ten (10) days after receiving written notice from Spinnaker that payment is due, or (ii) Customer breaches Section 4.2. The termination or expiration of a single Statement of Work shall not cause the automatic termination of any other Statement of Work.

10.3 Effects of Termination. Expiration or termination of this Agreement for any reason shall not release either party from liability which at said time has already incurred to the other party. In the event a Statement of Work is still in effect upon the expiration of this Agreement, such Statement of Work shall remain in effect and shall continue to be governed by the terms and conditions of this Agreement unless and until such Statement of Work is completed or otherwise terminated in accordance with this Agreement. Except as otherwise expressly set forth herein, the following provisions will survive expiration or termination of this Agreement pursuant to their terms, together with any other provisions necessary for their construction and enforcement: Sections 1, 3, 4.2 (with respect to Customer's representations), 5, 6, 7, 8, 9, 10.3 and 12, together with any accrued payment obligations. Without limiting the foregoing, upon termination or expiration of this Agreement or any Statement(s) of Work for any reason, any amounts owed to Spinnaker under this Agreement or the applicable Statement(s) of Work before such termination or expiration will be immediately due and payable, including any amounts due for Services performed and expenses incurred prior to such termination or expiration and any reasonable and necessary travel or out-of-pocket expenses incurred after such termination or expiration, without regard to whether any invoices had or had not been issued.

11. SUPPORT SERVICES. In the event the Services hereunder include software support for any Third Party Products ("**Support Services**"), the terms and conditions set forth in this Section (in addition to the other terms and conditions contained herein) shall apply to such Support Services.

11.1 Supported Products. As used in this Section or any Statement of Work, "**Supported Product(s)**" means any Third Party Product(s) for which Spinnaker agrees to provide Support Services pursuant to a Statement of Work, including all fixes and updates thereto provided to Customer by the applicable Licensor as part of the standard delivered core product. Except as otherwise stated in the applicable Statement of Work, Supported Products do not include any customizations, modifications or any country or region-specific functionality or localizations that were not provided to Customer by the applicable Licensor as part of the standard delivered core product.

11.2 Customer Obligations. In addition to those obligations of Customer set forth in Section 4, Customer acknowledges and agrees that Customer's obligations with respect to Support Services include the following:

(a) Personnel. Customer shall provide sufficient, qualified and knowledgeable personnel capable of (a) facilitating the testing of software fixes, updates and workarounds for the Supported Products (if applicable) and (b) customizing, installing and configuring code fixes and updates provided by Spinnaker or a third-party as needed for use with the Supported Products (if applicable).

(b) Final Testing of Fixes and Updates. For any Spinnaker-provided fixes and/or updates to Supported Products, Customer shall be solely responsible for all final system testing to ensure that such fixes and updates perform as documented with the applicable Supported Products, and Customer shall not move any fixes or updates into a production

environment unless and until Customer has successfully completed all such final system testing.

(c) No Back-Ups. Customer acknowledges and agrees that Spinnaker will not make or store copies of any Supported Products for Customer. Customer shall be solely responsible for making and storing emergency backups of the Supported Products.

11.3 Remote Access to Deliverables and Spinnaker Tools. Notwithstanding anything contained herein to the contrary, Customer acknowledges and agrees that in the event Spinnaker, as part of any Support Services, provides Customer with remote access to Deliverables or Spinnaker Tools, such access and right to use shall immediately cease upon the expiration or termination of this Agreement or the applicable Statement of Work.

12. GENERAL.

12.1 Compliance. Customer shall comply with all applicable laws and regulations in its use of the Services and Deliverables, including any such laws and regulations related to export and import controls.

12.2 Assignments. Neither party may assign or transfer, by operation of law or otherwise, any of its rights under this Agreement to any third-party without the other's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be null and void. Notwithstanding the foregoing, each party shall have the right, upon providing notice to the other party (but not requiring the other party's consent), to assign this Agreement to an Affiliate or any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise.

12.3 Force Majeure. Except for any payment obligations, neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause which is beyond the reasonable control of such party.

12.4 Notices. All notices required in connection with this Agreement will be in writing and deemed effectively given: (a) upon personal delivery to the party to be notified; (b) on the date on which such notice is delivered by email with confirmation that the email has been received and read; or (c) one (1) business day after deposit with a nationally/internationally recognized overnight courier that provides tracking and verification of delivery. All notices shall be sent to the address set forth on the cover page of this Agreement. Either party may change its address by giving notice of the new address to the other party in writing.

12.5 Governing Law and Venue. This Agreement will be governed by and interpreted in accordance with the laws of the State of New Mexico, United States, without reference to its choice of laws rules. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any action or proceeding arising from or relating to this Agreement shall be brought exclusively in a federal or state court in Santa Fe, New Mexico, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

12.6 Remedies. Except as provided in Sections 5 and 6, the parties' rights and remedies under this Agreement are cumulative. Each party acknowledges that any breach of Sections 4.2, 7, 9 and/or 12.13 of this Agreement would cause irreparable injury to the other party for which monetary damages would not be an adequate remedy, and therefore, the other party will be entitled to injunctive relief.

12.7 Waivers. All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

12.8 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be deemed modified and will be interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.

12.9 Subcontractors. Customer acknowledges and agrees that Spinnaker may hire subcontractors to perform certain Services hereunder. Spinnaker will be responsible for the direction and coordination of the services of each subcontractor and Customer will have no obligation to pay any subcontractor directly.

12.10 Relationship of Parties. The relationship of the parties established under this Agreement is that of independent contractors and neither party is a partner, employee, agent or joint venture partner of or with the other, and neither party has the right or authority to assume or create any obligation on behalf of the other party.

12.11 Construction. The headings used for the sections of this Agreement are for information purposes and convenience only and in no way define, limit, construe or describe the scope or extent of the sections. The word "including" or any variation thereof means "including, without limitation" and will not be construed to limit any general statement that such word or variation thereof follows. The language used in this Agreement will be deemed to be the language chosen by the parties to express the parties' collective mutual intent, and no rule of strict construction will be applied against any party.

12.12 Non-Solicitation of Personnel. Customer recognizes that the employees and independent contractors of Spinnaker, and such employees' and independent contractors' loyalty and service to Spinnaker, constitute a valuable asset of Spinnaker. Accordingly, Customer hereby agrees, during the term of this Agreement and for two (2) years thereafter, not to make any offer of employment to, nor enter into a consulting relationship with, any person who was employed or retained by Spinnaker during the previous two (2) years. Any violation of this provision shall constitute a material breach of this Agreement, and upon any such breach, Customer shall pay to Spinnaker liquidated damages consisting of the amount of all compensation (e.g., salary, bonuses, fees, etc.) paid or to be paid by Customer to the person during the first twelve (1) months after such person was hired/retained by Customer. Each party acknowledges and agrees that the amount of liquidated

damages stated herein is a good faith estimate of the training and personnel related investment costs Spinnaker will lose if a Spinnaker employee or independent contractor is hired or retained by Customer. In the event this Section is deemed unenforceable for any reason, Spinnaker shall nevertheless be entitled to recover its actual damages resulting from Customer's breach.

12.13 Data Processing Addendum. To the extent that Spinnaker has access to or processes any Customer Personal Data, Spinnaker shall comply with the terms of **Exhibit B – Data Processing Addendum**.

12.14 Entire Agreement. This Agreement, together with any attachments, addendums, and exhibits hereto (including all Statements of Work), constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings and communication, whether written or oral. This Agreement and each Statement of Work shall not be modified except by a subsequently dated written amendment signed on behalf of Spinnaker and Customer by their duly authorized representatives.

13. **Termination.** This Agreement may be terminated by either party upon thirty (30) days written notice to the other party. Spinnaker shall render a final report of the services performed up to the date of termination and shall turn over to the Customer original copies of all work product, research, or Deliverables; prepared under this Agreement to the extent such Deliverables were not previously provided to Customer.

14. **Indemnification.** Subject to the Defense Conditions, Spinnaker shall indemnify, hold harmless and defend the Customer from all losses, damag,3s, claims or judgments, including payments of all reasonable attorneys' fees and costs on account of any suit, claim, action or demand brought by a third party to the extent arising from Spinnaker's breach under this Agreement and/or Spinnaker's negligent performance, under this Agreement as well as the negligent performance of Spinnaker's employees, agents, representatives and sub-contractors.

15. **New Mexico Tort Claim Act.** Any liability incurred by the Customer in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims; Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The Customer and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

16. **Appropriations.** The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Customer for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Customer, this Agreement, shall terminate upon written notice being given by the Customer to the Spinnaker. The Customer's decision as to whether sufficient appropriations are available shall be accepted by the Spinnaker and shall be final.

17. **Release**. Spinnaker agrees not to purport to bind the Customer to any obligation not assumed herein by the Customer unless the Spinnaker has express written authority to do so, and then only within the strict limits of that authority.

18. **Insurance.** Spinnaker shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. Spinnaker shall furnish the Customer with proof of insurance of Spinnaker's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

19. **Records and Audit.** Spinnaker shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time, and nature of services rendered. These records shall be subject to inspection by the Customer, the Department of Finance and Administration, and the State Auditor, upon at least thirty (30) days' notice prior written notice (unless a shorter period is required by law). The Customer shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the rights of the Customer to recover Excessive or Illegal Payments. Any such audit shall be conducted at Spinnaker's offices, during Spinnaker's normal business hours, and no more frequently than once during any 12-month period.

20. **Choice of Law.** This Agreement shall be deemed to be made, governed by, and construed in accordance with the las of the Municipality and the State of New Mexico, without giving effect to the conflict of law principles thereof.

Exhibit B- Data Processing Addendum

This Data Processing Addendum **("Addendum")** forms part of Agreement between parties. The terms used in this Addendum shall have the meanings set forth in this Addendum. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Agreement.

1. **Definitions.**
   1.1 **"Controller," "Processor," "Data Subject," "Personal Data," "Processing," "Supervisory Authority,"** and **"Personal Data Breach"** shall have the same meaning as in the Data Protection Laws;
   1.2 **"Customer Personal Data"** means any Personal Data Processed by Spinnaker or any Spinnaker Affiliate on behalf of Customer or any Customer Affiliate pursuant to or in connection with the Agreement or any related Statement of Work;
   1.3 **"Data Protection Laws"** shall mean the EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council (**"GDPR"**), as well as any other applicable national rule and legislation on the protection of personal data in the European Union that is already in force or that will come into force during the term of this Addendum, including any measure, guideline and opinion issued by the data protection authorities, the Working Party under Article 29 of Directive 95/46/EC, the European Data Protection Board under Article 63 *et seq.* of the GDPR and any other competent authority, and any data protection laws substantially amending, replacing or superseding the GDPR following any exit by the United Kingdom from the European Union, or, and to the extent applicable, the data protection or privacy laws of any other Member State of the EEA;
   1.4 **"EEA"** means the European Economic Area as well as any country for which the European Commission has published an adequacy decision as published at https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outside-eu/adequacy-protection-personal-data-non-eu-countries_en;
   1.5 **"Restricted Transfer"** means the onward transfer of Customer Personal Data that is located in the EEA to Spinnaker in a country that is not in the EEA, where such transfer would be prohibited by Data Protection Laws in the absence of the Standard Contractual Clauses or another adequate transfer mechanism as approved by the European Commission;
   1.6 **"Standard Contractual Clauses"** or sometimes also referred to the "EU Model Clauses" means the contractual clauses.
   1.7 **"Subprocessor"** means any Processor (including any third party and any Spinnaker Affiliate) appointed by Spinnaker to Process Customer Personal Data on behalf of Customer or any Customer Affiliate.
2. **Data Processing Terms**. While providing the Services to Customer and Customer Affiliates pursuant to the Agreement, Spinnaker and Spinnaker Affiliates may Process Customer Personal Data on behalf of Customer or any Customer Affiliate as per the terms of this Addendum. Spinnaker agrees to comply with the following provisions with respect to any Customer Personal Data submitted by or for Customer or any Customer Affiliate to the Services or otherwise collected and Processed by or for Customer or any Customer Affiliate by Spinnaker or any Spinnaker Affiliate.
3. **Processing of Customer Personal Data**. Spinnaker shall not Process Customer Personal Data other than on Customer's documented instructions unless Processing is required by Data Protection Laws to which Spinnaker is subject, in which case Spinnaker shall to the extent permitted by Data Protection Laws inform Customer of that legal requirement before Processing Customer Personal Data. For the avoidance of doubt, the Agreement and any related Statement of Work entered into by Customer shall be constitute documented instructions for the purposes of this Addendum. Customer shall be responsible for: (1) giving adequate notice and making all appropriate disclosures to Data Subjects regarding Customer's use and disclosure and Spinnaker's Processing of Customer Personal Data; and (2) obtaining all necessary rights, and, where applicable, all appropriate and valid consents to disclose such Customer Personal Data to Spinnaker and to permit the Processing of such Customer Personal Data by Spinnaker for the purposes of performing Spinnaker's obligations under the Agreement or as may be required by Data Protection Laws. Customer shall notify Spinnaker of any changes in, or revocation of, the permission to use, disclose, or otherwise Process Customer Personal Data that would impact Spinnaker's ability to comply with the Agreement or applicable Data Protection Laws.
4. **Confidentiality.** Spinnaker shall take reasonable steps to ensure that individuals that process Customer Personal Data are subject to obligations of confidentiality or are under an appropriate statutory obligation of confidentiality.
5. **Security.** Taking into account the state of the art, the costs of implementation and the nature, scope, context, and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Spinnaker shall in relation to Customer Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk.
6. **Subprocessing.** Spinnaker may engage such Subprocessors as Spinnaker considers reasonably appropriate for the processing of Customer Personal Data in accordance with this Addendum, provided that Spinnaker shall notify Customer of the addition or replacement of such Subprocessor and Customer may, on reasonable grounds, object to a Subprocessor by notifying Spinnaker in writing within 10 days of receipt of Spinnaker's notification, giving reasons for Customer's objection. Upon receiving such objection, Spinnaker shall: (1) work with Customer in good faith to make available a commercially reasonable change in the provision of the Services which avoids the use of that proposed Subprocessor; and (2) where such change cannot be made within 10 days of Spinnaker's receipt of Customer's notice, Customer may by written notice to Spinnaker with immediate effect terminate the portion of the Agreement or relevant SOW to the extent that it relates to the Services which

require the use of the proposed Subprocessor. This termination right is Customer's sole and exclusive remedy to Customer's objection of any Subprocessor appointed by Spinnaker. Spinnaker shall require all Subprocessors to enter into an agreement with equivalent effect to the Processing terms contained in this Addendum. Spinnaker shall remain fully liable for all the acts and omissions of each Subprocessor.

7. **Data Subject Rights.** Spinnaker shall promptly notify Customer if it receives a request from a Data Subject under any Data Protection Laws in respect to Customer Personal Data. In the event that any Data Subject exercises any of its rights under the Data Protection Laws in relation to Customer Personal Data, Spinnaker will shall use reasonable commercial efforts to assist Customer in fulfilling its obligations as Controller following written request from Customer, provided that Spinnaker may charge Customer on a time and materials basis in the event that Spinnaker considers, in its reasonable discretion, that such assistance is onerous, complex, frequent, or time consuming.

8. **Personal Data Breach.** In the event of a Personal Data Breach, Spinnaker will notify Customer without undue delay after becoming aware of the Personal Data Breach. Such notification may be delivered to an email address provided by Customer or by direct communication (for example, by phone call or an in-person meeting). Customer is solely responsible for ensuring that the appropriate notification contact details are current and valid. Spinnaker will take reasonable steps to provide Customer with information available to Spinnaker that Customer may reasonably require to comply with its obligations as Controller to notify impacted Data Subjects or Supervisory Authorities.

9. **Data Protection Impact Assessment and Prior Consultation.** In the event that Customer considers that the Processing of Customer Personal Data requires a privacy impact assessment to be undertaken or requires assistance with any prior consultations to any Supervisory Authority of Customer, following written request from Customer, Spinnaker shall use reasonable commercial efforts to provide relevant information and assistance to Customer to fulfil such request, provided that Spinnaker may charge Customer on a time and materials basis in the event that Spinnaker considers, in its reasonable discretion, that such assistance is onerous, complex, frequent, or time consuming.

10. **Deletion or Return of Customer Personal Data**. Unless otherwise required by applicable Data Protection Laws, following termination or expiration of the Agreement Spinnaker shall, at Customer's option, delete or return all Customer Personal Data and all copies to Customer.

11. **Relevant Records and Audit Rights.** Spinnaker shall make available to Customer on request all information reasonably necessary to demonstrate compliance with this Addendum and allow for and contribute to audits, including inspections by Customer or an auditor mandated by Customer, not being competitors of Spinnaker **("Mandated Auditor")** of any premises where the Processing of Customer Personal Data takes place in order to assess compliance with this Addendum. Spinnaker shall provide reasonable cooperation to Customer in respect of any such audit and shall at the request of Customer, provide Customer with relevant records of compliance with its obligations under this Addendum. Spinnaker shall promptly inform Customer if, in its opinion, a request infringes the Data Protection Laws or any other confidentially obligations with Spinnaker's other Customers. Customer agrees that: (1) audits may only occur during normal business hours, and where possible only after reasonable notice to Spinnaker (not less than 20 days' advance written notice); (2) audits will be conducted in a manner that does not have any adverse impact on Spinnaker's normal business operations; (3) Customer or any Mandated Auditor will comply with Spinnaker's standard safety, confidentiality, and security procedures in conducting any such audits; and (4) any records, data, or information accessed by Customer or any Mandated Auditor in the performance of any such audit will be deemed to be the Confidential Information of Spinnaker. To the extent any such audit incurs in excess of 20 hours of Spinnaker personnel time, Spinnaker may charge Customer on a time and materials basis for any such excess hours.

12. **International Data Transfer.** In the event that any Customer transfers any Customer Personal Data to Spinnaker in a country outside the EEA, Customer on behalf of itself and each Customer Affiliate as data exporter and Spinnaker on behalf of itself and each Spinnaker Affiliate as data importer shall enter into the Standard Contractual Clauses which terms shall take precedence over those in this Addendum. In the event that the Standard Contractual Clauses cease to be recognized as a legitimate basis for the transfer of Personal Data to an entity located outside the EEA, Customer shall cooperate with Spinnaker to identify and implement an alternative legitimate basis to the extent that one is required by the Data Protection Laws. The Standard Contractual Clauses shall come into effect on the later of: (1) the data exporter becoming a party to them; (2) the data importer becoming a party to them; and (3) commencement of the relevant Restricted Transfer.

13. **General Terms.** Any obligation imposed on Spinnaker under this Addendum in relation to the Processing of Personal Data shall survive any termination or expiration of this Addendum. To the extent that Data Protection Laws do not apply to the Processing of Customer Personal Data, this Addendum shall be governed by the governing law of the Agreement. With regard to the subject matter of this Addendum, the provisions of this Addendum shall prevail over the Agreement with regard to data protection obligations for Personal Data of a Data Subject under Data Protection Laws.

SPINNAKER SUPPORT

STATEMENT OF WORK
DATED: 12/31/2019
MAINTENANCE SUPPORT SERVICES: JD EDWARDS

This Statement of Work is attached to, and is made a part of, that certain Master Services Agreement between Spinnkaer Support, LLC ("Spinnaker"), and City of Santa Fe ("Customer") effective December 31, 2019 (the "Agreement"). Unless explicitly stated otherwise in this Statement of Work, any capitalized terms shall have the meaning given to them in the Agreement.

1. Supported Products

Customer acknowledges and agrees that the environments and products listed in this Statement of Work are intended to represent Customer's supported landscape as of the date of execution. To that end, Customer understands that Spinnaker will limit its Services under this Statement of Work to the Production System(s) in Table A-1, the Supported Product Modules listed in Tables B-1, and Tax and Regulatory Coverage listed in Table C-1, and any material change to Customer's supported landscape will result in increased fees which will be negotiated and agreed upon before Services are provided.

A. Production System. The Production System(s) components in scope for support have been identified by the Customer as follows:

Table A-1

Production Environment # 1	
JD Edwards Software Release:	EnterpriseOne 8.12
E1 Update Level:	
E1 Service Pack/Tools Release:	8.98.3
Customer's System Physical Location:	USA, Santa Fe NM 87505
Customer's System Hosted by 3rd Party? If Yes, please list hosting company.	No
Customer's Support Team Location(s):	USA, Santa Fe NM 87505
Customer's Support Team Spoken Language(s):	English
E1 Enterprise Server Platform:	iSeries V7R1
E1 Database Server Platform:	iSeries V7R1 DB2 V7R1
E1 Deployment Server Platform:	Websphere
Remote System Access Method: (Spinnaker's Method to Customer System)	Secure Access VPN, FOB, or Other Team Viewer or Equivalent, Version/Release
Supported Runtime Languages:	English
Licensor Maintenance End Date:	09/30/2014

B. Supported Product Modules. The Supported Product Modules are the application modules identified by Customer and listed in the table below, limited to the Production System specified in Table A-1, including any development, test, or QA environments related to or used in support of the Production System(s), with Tax and Regulatory Coverage as specified in Table C-1 below and as consistent with the standard product as delivered by the Licensor.

Table B-1

Supported JD Edwards Product Modules (List application modules requiring support)	Production Environment(s) In Scope
Foundation: Foundation environment runtime applications including Address Book. See Section 2.A. for more information regarding Foundation Code and Tools.	1
Financials: A/R, Credit Management, A/P, General Accounting, Financial Reporting, Fixed Assets, Modeling, Planning and Budgeting, Service Billing, Job Code Accounting, Contract Billing, Enterprise Report Writer	1
HR/Payroll: Time Accounting, Time Entry, HR and PR Foundation, Employee Information, Human Resources, Benefits Administration, Payroll	1
Distribution: Inventory Management, Sales Order Management, Procurement	1
Manufacturing: Work Order Processing	1

2. Services

Customer acknowledges and agrees that Spinnaker will provide Services under this Statement of Work to Customer under Customer's license agreement with the Licensor as a service provider working on Customer's behalf, and that Spinnaker may make customizations, modifications, and recommendations for changes to the Supported Products on Customer's behalf. Services provided pursuant to this Statement of Work shall include:

A. Onboarding and Archiving (Initial Term Only). *Not Applicable for this Statement of Work*

B. Product Maintenance Support. Spinnaker will provide product diagnostic services, product fixes, and/or operational workarounds for Software Issues (as defined herein) identified for the Supported Products.

i. **Software Break-Fix Support.** Spinnaker will diagnose and create fixes and/or workarounds for Software Issues reported for the Supported Products defined in Table B-1. A "**Software Issue**" is defined as a code defect that meets all of the following criteria: the code defect is (i) found by Customer in the online or batch code of the Supported Products in a production, test, development, or production equivalent environment or in updates and fixes provided to Customer by the Licensor up through the date that Customer terminates its support services agreement with the Licensor for the Supported Products; (ii) is reported by Customer to Spinnaker during the Support Period; (iii) materially impacts Customer's ability to process data within the Supported Products; and (iv) causes the failure of a material feature or function of the Supported Products.

ii. **Use of Fixes and Updates.** Fixes and updates provided by Spinnaker pursuant to this Statement of Work may only be used in the number of production environments listed in the Supported Products. Customer may use the provided fixes and updates in other environments as needed to test fixes and updates prior to moving the fixes and updates into production.

iii. **Proprietary Code, Third-Party Products, and Language Support.** Customer understands and acknowledges that neither the Customer nor Spinnaker have access to the binary source code for these products. Therefore, Spinnaker's support for these products will be limited to assistance with diagnostics, troubleshooting, and operational workarounds for the proprietary source code, software tool sets, middleware, or any third-party products that are integrated or bundled with or embedded in the Supported Products. For purposes of example only, such proprietary source code and third party products include, but are not limited to, operating systems, database systems, application servers, web servers, compilers, Citrix, online and batch processing tools, reporting tools, tax processing updates, and analytic tools. Additionally, this Statement of Work expressly excludes any support for any Software Issues related to language runtime objects other than English, unless otherwise specified above.

iv. **General Inquiry Support.** For the Supported Products, Spinnaker will provide support for general inquiries related the usage and configuration of standard (out-of-the-box) software, tools and applications and used in a manner consistent with the Licensor's published technical documentation.

v. **Customizations.** Spinnaker will provide break-fix support, troubleshooting and debugging assistance, including the creation of fixes and/or workarounds for reported issues related to custom code, provided that such customizations have been developed and implemented using the original Licensor's tools and to such Licensor's development standards. It is further required that all such customizations have been tested and proven functionally stable in a development and/or test environment and have undergone reasonable, industry-standard functional, regression, and scalability testing prior to production go-live.

vi. **Integrations and Interfaces.** Customer remains responsible for maintenance of their integrations and interfaces. Where there is an in-bound or out-bound touch point to the Supported Product Modules, Spinnaker will provide troubleshooting and debugging support for integrations and interfaces and will make recommendations for issue resolution.

vii. **Vulnerability and Security Management.** Spinnaker will provide mitigations, compensating controls, advice and recommendations for published security vulnerabilities impacting the Supported Products. Additionally, Spinnaker offers optional security product solutions through our partners. If requested by Customer through an attached Security Solution Addendum, Spinnaker will assist in the implementation of any partner solution(s), subject to Customer's acceptance of the additional terms and conditions related to that solution specified in the addendum.

C. **Tax and Regulatory Support.** During the Support Period and in countries where tax and regulatory updates are developed by and delivered directly from the Licensor as base code; (i) Spinnaker will provide tax and regulatory updates for the Supported Countries and related Covered Applications listed in Table C-1; (ii) such updates will include data collection and mandatory regulatory reporting for the base code of the Supported Products; and (iii) such updates may only be used as an adjunct to the Supported Products in order for the software to operate in accordance with the Licensor's published technical documentation for the Supported Products. If no applications or countries are listed in Table C-1, Spinnaker is not responsible for providing tax and regulatory updates to Customer.

For Supported Countries and jurisdictions where the Customer, while receiving maintenance from Licensor for the Supported Product, has been solely responsible for engaging third-party vendors to support tax and regulatory processing, Customer will remain solely responsible for purchasing and licensing said tax and regulatory update software from a third-party vendor to provide such software to enable proper payroll, sales, property, Internet, VAT, and use tax processing with the Supported Products during the Support Period. Customer understands and agrees such costs and fees paid to the third-party vendor are separate from the Fees defined under this Statement of Work, and Customer is responsible for contracting directly with the third-party for such updates.

Customer also represents that its tax and regulatory software, whether provided by the Licensor or another third-party vendor, is currently implemented and at its most current version level; Company tax and regulatory updates are limited to Licensor applications in use at the time of maintenance service transition to Spinnaker; new tax and regulatory requirements within a Supported Country or jurisdiction in which the Customer operates are limited to data updates, form changes, and minor configuration adjustments; and, tax and regulatory changes dictated by the authorities in a Supported Country or jurisdiction requiring that net new functionality be developed, are considered out of scope of this Statement of Work.

Table C-1

Tax and Regulatory Scope by Country Please list all instances where Customer is using the Production System and Supported Product Modules to meet tax and regulatory filing requirements through the generation of reports, forms (i.e. W-2, 1099, etc.), or through direct interface with a local regulatory authority (e.g. submitting statutory financials or e-invoicing requirements).		
Country (Supported Countries)	**Covered Product Modules - Tax or regulatory requirement**	**Form or Report (if applicable)**
USA	Financials – Account Payable, Financial Reporting	1099 and related forms
USA	HR/Payroll - Payroll	W2 and related forms

D. **Ancillary Support.** Spinnaker will provide the following services to supplement the ongoing support and delivery of its maintenance support services.

i. **Interoperability** – Spinnaker will provide advisory support including issue analysis/troubleshooting, solution recommendations, and testing assistance with interoperability issues between the Supported Products and the operating platform, including other interfacing third-party applications.

ii. **Cloud Migration** – Spinnaker will provide advice and recommendations for the analysis and adoption of cloud strategies affecting the Support Products.

iii. **Virtualization** – Spinnaker will provide technology advice to Customer for virtualization initiatives affecting the Supported Products.

iv. **Upgrade Support** – Spinnaker will provide advice and recommendations for Customer's planned upgrade to a newer release of the Supported Products, subject to Customer having all required license rights to such release. If so desired, and if the Supported Product Modules in the new release remain consistent with the Supported Product Modules defined herein, Customer may amend this Statement of Work to include the new release, without requiring further amendments.

v. **Performance Tuning** – Spinnaker will provide performance tuning analysis, advice and recommendations for the Supported Products using proprietary and commercially available tools.

vi. **Database** - Spinnaker will provide advisory support for the database infrastructure and related technical diagnostic services for the Supported Products.

vii. **Systems Administration** – Spinnaker will provide technical and systems support that includes technical troubleshooting, analysis, resolution advice and recommendations for the Support Products.

viii. **Software Installation Support** – Spinnaker will provide advice and recommendations for the execution of installation scripts and configuration of the technical foundation software within the Supported Products during the re-installation of the software as a result of a reported issue with the Customer's development, test, or production environments.

ix. **Software Support Lifecycle Guidance** – Spinnaker will provide advice and guidance to Customer for purposes of re-engaging with the Licensor of the Supported Products for software support re-instatement, re-licensing and associated pricing practices.

3. Service Level

A. **Response Time Commitment**. Customer will alert Spinnaker of a support request by submitting a ticket using Spinnaker's Ticket Tracking System, which Customer will have access to, and Spinnaker will monitor, 24x7x365. The Customer-assigned Severity/Priority for each ticket will dictate the appropriate Service Level for the ticket as detailed in the table below.

Severity/Priority Level	Response Time for First Live Contact After Ticket Entry	Resolution Actions and Target Resolution Times*
P1 – Critical Priority An urgent ticket that requires immediate assistance. No work-around is available.	**Within 15 Minutes, 24x7x365**	P1 and P2 tickets receive Spinnaker's highest priority. Following first contact, action continues until resolution. Spinnaker's support teams will engage higher level knowledge resources, escalating until resolved. Target Resolution Times* are: • P1 – Critical Priority: Less than 2 Days • P2 – High Priority: Less than 5 Days
P2 – High Priority A serious ticket that requires immediate assistance. A work-around may be available.		
P3 – Medium Priority A non-urgent ticket that requires assistance during standard business work-day coverage	**Same Day or Within 1 Business Day****	Work begins on P3 and P4 tickets within one Business Day of receipt. Following first contact, Spinnaker's support teams work these tickets each Business Day, until completion, and as needed, higher level knowledge resources are called upon to achieve resolution. Target Resolution Times* are: * P3 – Medium Priority: Less than 7 Days * P4 – Low Priority: Less than 10 Days
P4 – Low Priority A minor ticket, a question or ticket that requires minor research or low-priority assistance during standard business work-day coverage.		

* Target Resolution Times depend on the Severity/Priority Level of each Ticket. Resolution Time or Severity/Priority may be adjusted if a workaround has been established, or if Customer agrees the Severity/Priority of a Ticket can be reduced. Delays

in final resolution times may occur depending on the complexity of a ticket, responsiveness of Customer users or other resources, and other prevailing matters.

** For P3 and P4 requests, standard business work-day coverage will be available five (5) days per week, Monday through Friday, from 8:00 AM until 5:00 PM in the local time zone(s) of the Customer's support team location defined in Table A-1 and where the ticket originated ("Business Day").

4. Term

The initial term for the Services under this Statement of Work shall commence on December 1, 2020 and shall continue until August 31, 2020. Unless otherwise terminated pursuant to the Agreement, and provided the Services hereunder continue to be generally available from Spinnaker, this Statement of Work may be renewed for successive renewal terms of one (1) year by mututal written consent of both parties at least thirty (30) days prior to the end of the then-current term. The initial term and all renewal terms of this Statement of Work shall be referred to as the "**Support Period**".

5. Fees

The fees applicable for Services under this Statement of Work shall be as follows:

Term of Support Period	Amount
Year 1: 01/01/2020 to 08/31/2020	$34,997

A. Initial Term: During the Initial Term, as describe in Section 4, the following activities will occur:
1. 01/01/2020 through 08/31/2020 – Full Support described as those services defined in Sections 2B, 2C and 2D.

B. Customer will be invoiced for the initial term of support upon execution of this statement of work and payment remittance will be subject to the terms and conditions of the Agreement. Invoicing for any subsetuqent years will occur in advance of the anniversary date of this agreement.

C. Fees for any subsequent year(s) of the Support Period shall be equal to the fees for the immediately preceding year plus 3%.

D. Invoices for fees and payment remittance shall be subject to the terms and conditions of the Master Services Agreement.

6. Delivery of Software and Maintenance & e-Delivery Taxability

Spinnaker will use commercially reasonable efforts to deliver any product or operational fixes, tax or regulatory updates or other electronic or hard copy deliverables provided under this Statement of Work ("Deliverables") by making it available at the Customer location in: **Santa Fe, NM**

7. Customer Contacts

Primary Business Contact		Primary Accounts Payable Contact	
Name:	Steven Santistevan, Enterprise Applications Services Manager	**Name:**	Steven Santistevan, Enterprise Applications Services Manager
Address1:	2651 Siringo Rd. Bldg F	**Address1:**	2651 Siringo Rd. Bldg F
Address2:		**Address2:**	
Country:	United States	**Country:**	United States
City, St, Zip:	Santa Fe, NM 87504	**City, St, Zip:**	Santa Fe, NM 87504
Phone:	505.955.5579	**Phone:**	505.955.5579
Fax:		**Fax:**	
Email:	sdsantistevan@santafenm.gov	**Email:**	sdsantistevan@santafenm.gov

8. Additional Terms

A. Customer authorizes Spinnaker to use Customer personnel, as reasonably requested and available, to participate in reference discussions with prospective customers of Spinnaker.

{Signature block appears on the next page}

ACCEPTED AND AGREED TO:

CUSTOMER: CITY OF SANTA FE	**SPINNAKER SUPPORT, LLC**
Signed: _____	Signed: _____
Printed: _____	Printed: _____
Title: _____	Title: _____
Date: _____	Date: _____

For legal sufficiency:
Erin McSherry, City Attorney
12/27/19