



SERVICES AGREEMENT

THIS AGREEMENT made the ____ day of _____, 2017, by and between City of Roseville, a municipal corporation, having its principal offices at Roseville, CA, hereinafter referred to as "Client," and CherryRoad Technologies Inc., with offices located at 301 Gibraltar Drive, Suite 2C, Morris Plains, New Jersey 07950, hereinafter referred to as "Consultant" in the following manner:

WITNESSETH:

WHEREAS, the Client is desirous of entering into an agreement with Consultant for work requested by the Client, and

NOW THEREFORE, the parties hereto, in consideration of the covenants, agreements, terms, and conditions herein contained, do agree as follows:

1. **Scope of Services:** The Statement of Work, attached as Exhibit A and incorporated as part of this Agreement, shall define the scope of services ("Services") for this engagement. Client acknowledges that the performance of the Services under this Agreement will be an interdependent effort with employees and agents from both Consultant and Client working together to perform the Services. Both parties agree to fully cooperate with each other in the performance of the Services and to meet the obligations assigned to each party in Exhibit A. Each party shall be responsible for the acts and omissions of its own employees and agents.
2. **Payment Terms:** A schedule of deliverables and progress payments has been defined based on the pricing outlined in Exhibit A to this Agreement. Exhibit A explicitly overrides any pricing and payment schedules referenced in Consultant's original proposal and in the Client's RFP. Consultant will invoice Client as identified in Exhibit A. Client agrees to remit payment for properly submitted invoices within thirty (30) days of receipt of invoice.
3. **Order of Precedence:** If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) the terms and conditions set forth in this Agreement; 2) the Statement of Work; 3) Consultant's Proposal 4) Client's Enterprise Resource Planning (ERP) System and Implementation Services, originally due 07/29/2016 and all associated addenda.
4. **Work Stoppage:** In the event Client fails to pay Consultant for work successfully completed in accordance with the terms of this Agreement, or if Client fails to meet its obligations identified in Exhibit A of this Agreement Consultant may temporarily cease any and all work under this Agreement ("Work Stoppage"), provided Consultant gives Client at least ten (10) calendar days' notice and Client fails to cure within such ten (10) calendar days. In such event, if the period of time for such Work Stoppage is more than ten (10) calendar days, Consultant shall have the right to terminate for cause. In the event Client cures by making full payment after the Work Stoppage and/or demonstrates to Consultant's satisfaction its

ability to meet its obligations prior to any termination, Consultant will return to work within a reasonable time, but in no event more than thirty (30) calendar days thereafter.

In the event the matter is resolved either between the parties or through dispute resolution in accordance with this Agreement and Consultant agrees to return to work hereunder, then Consultant shall have no liability for any changes, modifications or alterations made during the Work Stoppage by non-Consultant employees or subcontractors to the work previously performed prior to the Work Stoppage.

- 5. New Services:** For a period extending 12 months from date of go-live of the final phase as identified in Exhibit A, Client may request in writing, in compliance with its public purchasing system, that Consultant perform certain services that are not specifically described in Exhibit A hereto but are related to the Services ("New Services"). These New Services shall be limited to the type of services previously delivered by the Consultant under Exhibit A or which are typically provided by Consultant to its public sector customers in the course of performing similar implementation services for those public sector customers. Notwithstanding the above, Consultant shall have the right to decline Client's request to provide such services, during that 12 month period, if the Consultant reasonably believes that: i) the services requested by the Client are outside the above criteria for New Services or ii) are for a customization that Consultant deems, in its reasonable opinion to be detrimental to meeting its performance obligations under this Agreement or iii) Client has failed to pay, per the terms of this Agreement, for New Services previously requested. In the event the Consultant agrees to perform such New Services, then Consultant shall perform such New Services on a time and materials basis, at an hourly rate not to exceed that described in Exhibit A unless otherwise agreed upon in writing, for each of the Consultant personnel assigned to perform such New Services. Requests for New Services will be limited to increments of no less than eight hours. Consultant shall commence performing the applicable New Services within thirty (30) calendar days of written notice from the Client's Project Manager.
- 6. Warranty:** For a period of three months from the date of Final Acceptance of each module and for One Time System Events that would occur beyond the standard warranty term, Consultant warrants that (A) ALL WORK PERFORMED IN CONNECTION WITH THIS AGREEMENT SHALL BE PERFORMED IN A COMPETENT, PROFESSIONAL AND WORKMANLIKE MANNER, AND SHALL BE OF INDUSTRY STANDARD QUALITY; (B) ALL WORK PERFORMED AND ALL DELIVERABLES SHALL COMPLY WITH APPLICABLE LAWS; AND (C) ALL WORK PERFORMED AND ALL DELIVERABLES SHALL BE PROVIDED IN ACCORDANCE WITH AND SHALL CONFORM IN ALL MATERIAL RESPECTS TO ANY SPECIFICATIONS AND REQUIREMENTS SET FORTH IN THIS AGREEMENT INCLUDING CONSULTANT'S RESPONSES TO THE FUNCTIONAL REQUIREMENTS IDENTIFIED AS SOW EXHIBIT 6 - FUNCTIONAL REQUIREMENTS. For purposes of this section, One Time System Events shall include Client's year-end close, CAFR development, 1099 generation, fixed asset depreciation, encumbrance rollover, interest apportionment, budget development (including operation, personnel/position, and capital) and load of budget to GL, W-2 generation, benefit open enrollment, and any required tax reporting.

Consultant represents and warrants that it shall: (a) provide the Services in a professional and workmanlike manner; (b) provide the Services with promptness and diligence and in accordance with the accepted practices and professional standards of leading providers performing services similar to the Services; and (c) use an adequate number of qualified

individuals with suitable training, education, experience and skill to perform the Services. To receive warranty remedies, Client must report any deficiencies to Consultant in writing within the Warranty Period. Consultant shall promptly and diligently correct all deficiencies in the Services or Work identified by Client during the Warranty Period provided that the defective Services or Work is not caused any inappropriate, improper or unforeseen usage of the Work or Services by the Client unless such actions are taken at the direction of the Consultant. If the deficiency is related to a software issue beyond the control of Consultant, Consultant shall work in good faith with Oracle to resolve the situation or develop a work around solution that materially meets the Client's requirements as set forth in the Statement of Work.

THE WARRANTIES CONTAINED HEREIN AND IN THE STATEMENT OF WORK ARE CONSULTANT'S SOLE AND EXCLUSIVE WARRANTIES. CONSULTANT AFFIRMATIVELY EXCLUDES ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE SERVICES PROVIDED INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT THE CONSULTANT KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE) WHETHER ARISING BY LAW OR BY REASON OF CUSTOM OF THE TRADE.

7. **Indemnification:** Consultant shall, at all times hereafter, indemnify, hold harmless and, defend Client, and its officers, agents, and employees from and against any and all third-party claims, suits, actions, demands, causes of actions of any kind or nature, including all costs, expenses and attorneys' fees, arising out of any negligent or willful misconduct of Consultant and its employees and subcontractors in the performance of this Agreement. Client shall fully cooperate with Consultant in the course of any such defense, including, without cost, providing resources, information, and individuals deemed reasonably necessary by Client to effectively defend any such action. Client agrees not to intentionally interfere or otherwise undermine any defense, negotiations, or settlement conducted by Consultant to resolve any such matter.
8. **Termination:** This Agreement may be terminated upon the following events:

Termination by Mutual Agreement. In the event the parties mutually agree in writing, this Agreement may be terminated on the terms and dates stipulated therein.

Termination Without Cause. Client shall have the right to terminate this Agreement without cause by providing Consultant with thirty (30) calendar days' written notice.

Termination for Cause. In the event of a material breach, either party may provide the other party with written notice of the material breach, with such sufficient detail so the party can readily understand the claim for material breach. The other party shall have thirty (30) calendar days from the date of its receipt of such notification to cure such material breach. If the material breach is not cured within that time period, the non-breaching party may terminate this Agreement immediately.

Termination for Lack of Funds. In the event the funds to finance this Agreement become unavailable or are not allocated, Client shall provide Consultant with thirty (30) calendar

days' written notice of termination. Nothing in this Agreement shall be deemed or construed to prevent the parties from negotiating a new Agreement in this event.

Upon termination of this Agreement for any reason, including expiration, Consultant shall place no further orders nor enter into subcontracts for materials or services unless it is necessary in accordance with agreed upon wind-down disentanglement procedures. Consultant shall, upon receipt of termination notice, unless otherwise directed by the Client (i) take such action as may be necessary for the protection and preservation of the Client's materials and property; and (ii) shall act in good faith to mitigate costs to Client.

In the event of termination of this Agreement, Client shall pay for completed Work delivered as well as for Work performed by Consultant through the date of termination, including completed milestones/deliverables and partially completed milestones/deliverables (on a percentage of completion basis) that was not yet completed or received by the Client but was performed pursuant to this Agreement. Upon payment for such Work, Client shall be entitled to all completed and uncompleted Work.

In the event of any termination, Client and Consultant shall mutually agree upon "wind-down" disentanglement procedures to include, without limitation, the scope, staffing, and costs required by such procedures. Such services shall be paid to Consultant on a time and materials basis at the rates listed in this Agreement. If this Agreement is terminated by Client for cause, Consultant shall deliver Client data in a commercially reasonable form to Client and assist and cooperate with necessary transition tasks at no additional cost.

Notwithstanding any other provisions of this Agreement, the provisions regarding insurance, indemnification, confidentiality, limitation of liability, non-solicitation and any other provisions which by their terms survive, shall survive the termination or expiration of this Agreement.

- 9. Insurance:** Consultant agrees to continuously maintain, in full force and effect, the following minimum policies of insurance during the term of this Agreement.

COVERAGE	LIMITS OF LIABILITY
Workers' Compensation	Statutory
Commercial General Liability	\$1,000,000 each occurrence \$2,000,000 aggregate
Personal Injury:	\$1,000,000 each occurrence \$2,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit
Professional Liability (errors and omissions)	\$1,000,000 per claim \$2,000,000 aggregate

- a. Form. Consultant shall submit a certificate evidencing such coverage for the period covered by this Agreement in a form satisfactory to Risk Management and the City Attorney, prior to undertaking any work hereunder. Any insurance written on a claims made basis is subject to the approval of Risk Management and the City Attorney.

b. **Additional Insureds.** Consultant shall also provide a separate endorsement form or section of the policy showing Client, its officers, agents, employees and volunteers as additional insureds for each type of coverage, except for Workers' Compensation and Professional Liability. Such insurance shall specifically cover the contractual liability of Consultant. The additional insured coverage under Consultant's policy shall be primary and noncontributory, as evidenced by a separate endorsement or section of the policy, and shall not seek contribution from Client's insurance or self-insurance. In addition, the additional insured coverage shall be at least as broad as the Insurance Services Office ("ISO") CG 20 01 Endorsement. Any available insurance proceeds in excess of the specified minimum insurance coverage requirements and limits shall be available to the additional insureds. Furthermore, the requirements for coverage and limits shall be: (1) the minimum coverage and limits specified in this Agreement; or (2) the full coverage and maximum limits of any insurance proceeds available to the named insureds, whichever is greater.

c. **Cancellation/Modification.** Consultant shall provide ten (10) days written notice to Client prior to cancellation or modification of any insurance required by this Agreement.

d. **Umbrella/Excess Insurance.** The limits of insurance required in this Agreement may be satisfied by a combination of primary and excess insurance. Any excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of Client (if agreed to in a written contract) before Client's own insurance shall be called upon to protect it as a named insured.

e. **Subcontractors.** Consultant agrees to include in its contracts with all subcontractors the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, to the extent they apply to the scope of the subcontractor's work.

Furthermore, Consultant shall require its subcontractors to agree to be bound to Consultant and Client in the same manner and to the same extent as Consultant is bound to Client under this Agreement. Additionally, Consultant shall obligate its subcontractors to comply with these same provisions with respect to any tertiary subcontractor, regardless of tier. A copy of Client's indemnity and insurance provisions will be furnished to the subcontractor or tertiary subcontractor upon request.

f. **Self-Insured Retentions.** All self-insured retentions ("SIR") must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or Client. Client reserves the right to obtain a full certified copy of any insurance policy and endorsements. The failure to exercise this right shall not constitute a waiver of such right.

g. **Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss under a Workers Compensation, Commercial General Liability or Automobile Liability policy. All Workers Compensation, Commercial General Liability and Automobile Liability policies shall be endorsed with a waiver of subrogation in favor of Client, its officers, agents, employees and volunteers for all work performed by Consultant, its employees, agents and subcontractors.

h. **Liability/Remedies.** Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Consultant of liability in excess of such coverage, nor shall it preclude Client from taking such other actions as are available to it under any other provisions of this Agreement or law.

10. Subcontractors: Consultant shall not be entitled to subcontract the performance obligations provided herein to any other party without the prior written consent of Client, which shall not be unreasonably withheld, conditioned, or delayed. Consultant shall not be allowed to assign any rights, except monies which may become due under this Agreement,

without the prior written approval of Client, such approval not to be unreasonably withheld, conditioned, or delayed.

Consultant shall be fully responsible for all acts and omissions of its subcontractors to the same extent that Consultant is responsible for the acts and omissions of persons directly employed by it. Nothing in this Agreement shall create any contractual relationship between any subcontractor and Client or any obligation on the part of Client to pay or to see the payment of any monies due any subcontractor.

- 11. Records to be kept by Consultant:** Consultant and its subcontractors shall maintain all files and records relating to the services performed hereunder during the term of this Agreement and for a period of not less than one (1) year after the date of termination or expiration. Provided, however, that in the event of litigation or settlement of claims arising from the performance of this Agreement, Consultant and its subcontractors shall maintain all files and records until such litigation, appeals or claims are resolved. Duly authorized representatives of Client shall have right of access during normal business hours and after reasonable notice to Consultant's and subcontractors' files and records relating to the services performed hereunder, and may review and copy the files and records at appropriate stages during performance of the services and during the one (1) year period following termination or expiration of this Agreement. Consultant shall include this provisions in its contracts with all subcontractors.
- 12. Force Majeure:** Neither party shall be liable to the other for any failure or delay in performance hereunder due to circumstances beyond its reasonable control including, but not limited to acts of God; labor disputes; and governmental and judicial action not the fault of the party causing such failure or delay in performance. Upon receipt of notice of failure or delay in performance caused by the foregoing, performance time shall be considered extended for a period of time equivalent to the time lost as a result of any such delay. If either party is unable to continue to perform for a period of thirty (30) calendar days from the date such notice was issued, then either party may terminate this Agreement.
- 13. Non-Disclosure:** During the term of this Agreement, Client will have access to and become acquainted with Consultant's written and oral confidential and proprietary Information. Such information shall not be disclosed by Client to any third-party without the prior written consent of Consultant, or as required by law subject to compliance with the procedure set forth in this Section.

During the term of this Agreement, Consultant will have access to and become acquainted with Client's written and oral confidential and proprietary information. Such information shall not be disclosed by Consultant to any third-party without the prior written consent of Client, or as required by law subject to compliance with the procedure set forth in this Section.

The following information shall not be considered confidential and proprietary information for the purposes of this Agreement: information previously known when received from the other party; information freely available to the general public; information which is now or hereafter becomes publicly known by other than a breach hereof; information which is developed by one party independently of any disclosures made by the other party of such information; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

If either party is confronted with legal action or believes applicable law requires it to disclose any portion of the other party's confidential and proprietary information protected hereunder, that party shall promptly notify the other, at which point the other party may provide input as to what information it believes to be confidential and proprietary and/or seek to obtain a protective order or other similar order. Unless directed otherwise by a court order, Client shall retain full and complete discretion in determining the scope and extent of its obligation to disclose information and/or documents relating to this Agreement as required by the Public Records Act or any other applicable law.

The parties acknowledge that a breach of the provisions of this Section will result in immediate irreparable harm to the aggrieved party, and the aggrieved party shall be entitled to immediate temporary, preliminary, and permanent injunctive or other equitable relief.

- 14. Dispute Resolution:** Any dispute, disagreement, claim or controversy between the parties arising out of or relating to this Agreement (the "Disputed Matter") shall be resolved by mutual agreement by first having the Project Manager for Consultant and the Project Manager or Project Leader for Client meet to endeavor to resolve such dispute. If a resolution to such dispute does not occur during such meeting or within three (3) business days thereafter, the parties agree to elevate the dispute to a meeting of the Client's Project Steering Committee. If a resolution of such dispute does not occur during such meeting or within five (5) business days thereafter, the parties agree to elevate the dispute to the Vice President or President level of Consultant and Client's City Manager. If either of the representatives at this level concludes, after a good faith attempt to resolve the Disputed Matter, that amicable resolution through continued negotiation does not appear likely, either party may seek relief by mediation and/or legal action.

During the pendency of a dispute between the parties, Consultant will not interrupt or suspend or terminate the provision of Services to Client or perform any action that prevents, impedes, or reduces in any way the provision of Services, unless the nature of the dispute makes progress of the Services infeasible.

- 15. Non-Discrimination:** Consultant agrees that it will not discriminate against any person(s) because of age, ancestry, race, color, creed, marital status, political affiliation, religion, disability, national origin, citizenship, sex, or sexual orientation.
- 16. Notice:** Any notice hereunder by one party to the other party shall be given in writing by personal delivery, facsimile, regular mail, overnight mail, or certified mail with proper postage, to the party at the address designated in this Agreement. Any notice shall be effective on the date it is received by the addressee. Either party may change its address for notice purposes by giving the other party notice of such change in accordance with this paragraph.

Notices shall be addressed as follows:

CLIENT:

Contract Administrator: Nafees Coleman, MS, PMP ERP Project Manager
Client's Address: 316 Vernon Street, Suite 300, Roseville, CA 95678
(916) 774-5163

CONSULTANT:

CherryRoad Technologies Inc.
301 Gibraltar Drive, Suite 2C
Morris Plains, NJ 07950
Attn: Barbara M. Robinson
Phone: (973) 541-4212
Fax: (973) 541-2545

17. Waiver or Modification of Agreement:

- a) Both parties understand and agree that any and all changes and modifications to the terms and conditions of this Agreement shall be by mutual written agreement of both parties.
- b) No waiver or modification of this Agreement or of any covenant, condition, or limitation contained herein shall be valid unless it is reduced to written form and duly executed by the parties. No evidence of any waiver or modification of the terms herein shall be offered or received into evidence in any proceeding, mediation, arbitration, or litigation between the parties arising, in any manner, out of this Agreement, unless such waiver or modification is in writing and duly executed by the parties.
- c) No waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement nor as a waiver of any other default, breach, condition precedent, or any other right hereunder.

18. Governing Law: The validity, performance and enforcement of this Agreement shall be governed by and be construed in accordance with the laws of the State of California, without regard to the conflicts of law rules thereof and the state courts or the federal courts of California shall have exclusive jurisdiction and venue over the parties with respect to any dispute or Disputed Matter arising under this Agreement. By signing this Agreement, each party consents to personal jurisdiction in state and federal courts located in California and agrees to not raise any defense to same.

19. Non-Solicitation of Employees: Consultant and Client agree that neither party shall directly or indirectly solicit for employment any employee of the other party. This clause shall remain in effect during the term of this agreement and for a period of one year after the termination of this agreement, unless prior written consent of the other party is first obtained.

20. Independent Contractor Status: Client expressly acknowledges that Consultant is an "independent contractor", and nothing in this Agreement is intended nor shall be construed to create an agency relationship, an employer/employee relationship, a joint venture relationship, or any other relationship allowing Client to exercise control or direction over the

manner or method by which Consultant or its subcontractor performs hereunder. Client shall neither have nor exercise any control or direction over the methods by which the Consultant shall perform its work and functions other than as provided in this Agreement. No party shall have the authority to bind the other or otherwise incur liability on behalf of each other.

- 21. Change Orders:** Modifications to the Statement of Work shall be mutually agreed upon in writing between the parties and will be governed by the terms and conditions of this Agreement. Changes in scope will be based on either a fixed fee or a time and materials basis, using rates consistent those identified in Exhibit A and will result in the issuance of a Change Order by Client. Consultant shall not be obligated to provide the work required by the change in the Statement of Work and Client shall not be obligated to pay for any work until such time as the Change Order is agreed to in writing by both Consultant and Client.
- 22. Severability:** A determination for any reason that any provision of this Agreement is void, invalid, or unenforceable by a court of appropriate jurisdiction shall not affect the enforceability or validity of any other provision of this Agreement or the whole of this Agreement, but such term(s) or provision(s) shall be deemed modified to the extent necessary. The parties shall cooperate and use their best efforts to amend this Agreement in such a way as to confer upon the parties (to the greatest extent possible) the benefits and rights which they would have possessed under the Agreement as a whole, had the invalidated provisions remained in effect. Failing such agreement by the parties, the Agreement shall be construed by the court (to the greatest extent possible) in such a way as to confer upon the parties the benefits and rights which they would have possessed under the Agreement as a whole, had the invalidated provision(s) remained in effect.
- 23. Headings or Captions:** The paragraph headings or captions used in this Agreement are for identification purposes only and do not limit or construe the contents of the paragraphs.
- 24. Limitation on Liability:** EXCEPT WITH RESPECT TO THE INDEMNIFICATION, NON-DISCLOSURE OBLIGATIONS SET FORTH HEREIN, OR A PARTY'S WILLFUL OR GROSSLY NEGLIGENT MISCONDUCT, AND NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES OR OTHER MONETARY LOSS, ARISING OUT OF OR RELATED TO THIS AGREEMENT AND ANY ACTIONS OR OMISSIONS WITH RESPECT THERETO, WHETHER OR NOT ANY SUCH MATTERS OR CAUSES ARE WITHIN A PARTY'S CONTROL OR DUE TO NEGLIGENCE OR OTHER FAULT ON THE PART OF A PARTY, ITS AGENTS, AFFILIATES, EMPLOYEES OR OTHER REPRESENTATIVES, AND REGARDLESS OF WHETHER SUCH LIABILITY ARISES IN TORT, CONTRACT, BREACH OF WARRANTY OR OTHERWISE. ANY LIABILITY INCURRED BY CONSULTANT IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO TWO TIMES THE AMOUNT OF THIS AGREEMENT.
- 25. Key Personnel:** The Client shall have the ability to interview and approve key personnel proposed by Consultant for the project which approval shall not be unreasonably withheld. The Client shall have the right to dismiss key personnel from the project by informing the Consultant of reason for dismissal. Other than for reasons outside of Consultant's control (e.g., death disability, illness, family or medical leave or cessation of employment with Consultant), Consultant shall not remove or transfer a person filling a Key Personnel role without the prior written approval of Client, which approval shall not be unreasonably withheld.

26. Work Products: Consultant shall grant Client, a perpetual, irrevocable, non-assignable, non-exclusive license to all work product and deliverables created by Consultant for Client under this Agreement for which payment has been made or provided to Client at no charge ("Work"). Consultant shall acquire no rights in any property or information of Client or licensors of Client, except as otherwise expressly provided in this Agreement.

Further, Consultant will retain ownership of all intellectual property, knowledge, techniques, procedures, routines, templates, and methods which have been developed by Consultant in its regular course of business and not for specific use in performance of this Contract, and used in the provision of services ("Consultant Tools"). For Work which has been paid for by Client or provided to Client for no charge, Consultant shall grant Client a perpetual, irrevocable, non-assignable, non-exclusive license to all Contractor Tools that Consultant embeds in or provides with any Work or that are otherwise used in connection with the Services. Consultant further grants Client a right to modify, reproduce, or otherwise use the Work or Consultant Tools in connection with its internal business or to share Consultant Tools or Work with other public sector entities for their internal business use.

27. Point of Contact: Should an occasion arise wherein a management decision is necessary to proceed, Client's Project Manager shall serve as the Client point of contact on all matters to be reviewed and considered.

28. Term of Agreement: From the date of execution through completion of the Services and any renewal options exercised pursuant to the CherryRoad CSA.

29. Entire Agreement: This Agreement, together with the exhibits constitutes the entire agreement between the parties hereto and is a complete and exclusive statement, and all prior agreements, discussions, and understandings are merged herein.

30. Binding Effect: Each party, and each person signing on behalf of a party, represents and warrants that it, he or she has full legal capacity and authority on its own behalf and on behalf of its predecessors, successors, and assigns heretofore and hereafter, to enter into and perform the respective obligations under this Agreement without any additional consent or approval. In addition, each of the parties hereby agrees, represents, and warrants that the execution, delivery, and performance of this Agreement do not conflict in any material respect with or constitute a material breach or material default under the terms and conditions of any material documents, agreements, or other writings to which it is a party. This Agreement shall be binding upon, and inure to the benefit of the parties hereto, their representatives, employees, agents, independent contractors, successors and assigns.

31. Counterparts: This Agreement may be executed in one or more counterparts. All executed counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

32. Participation by Other Local Government Agencies: Consultant agrees to allow other government entities or agencies to purchase services pursuant to the terms and conditions of this Agreement if such agencies are authorized, by law or their governing bodies, to execute such purchases. Client shall not be a party to such purchases and assumes no liability or responsibility associated with such purchases.

- 33. Good Faith of Parties:** In the performance of this Agreement or in considering any requested approval, acceptance, or extension of time, the parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.
- 34. CherryRoad/Oracle Public Sector Cloud Services Agreement v.1:** The CherryRoad/Oracle Public Sector Cloud Services Agreement v.1 (the "CherryRoad CSA") is attached hereto as Exhibit B and its terms are fully incorporated herein. The terms and conditions of the CherryRoad CSA shall govern any Cloud Services ordered by Client through the CherryRoad CSA and Cloud Services Ordering Document. CherryRoad represents that it is an authorized reseller of the Oracle Cloud Services and that it has the authority and right to enter into the CherryRoad CSA through which Client shall order Oracle Cloud Services. All rights, remedies, warranties, obligations and representations made or given to or by Oracle in the CherryRoad CSA shall also be rights given to Consultant or Client, as may be applicable. The CherryRoad CSA terms and conditions shall take precedence in the event of a conflict with the terms and conditions of this Agreement including any exhibits, except that section 24 of this Agreement shall take precedence with respect to CherryRoad's limitation of liability. For the avoidance of doubt, Consultant shall invoice Client for Cloud Services and Client agrees to remit payment to Consultant for submitted invoices within thirty (30) days of receipt of invoice. Any additional Cloud Services that Client wishes to purchase shall be incorporated into an amendment to this Agreement.
- 35. Cloud Services Ordering Document:** The Cloud Services Ordering Document is attached hereto as Exhibit C and its terms are fully incorporated herein.
- 36. ADP GMSA:** To the extent that Client desires to purchase or use ADP's services through Consultant, the parties shall amend this Agreement to reflect same.

IN WITNESS WHEREOF, the City of Roseville, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attested to by its City Clerk under the authority of Resolution No. _____, adopted by the Council of the City of Roseville on the ____ day of _____, 2017, and Consultant has caused this Agreement to be executed.

CITY OF ROSEVILLE, a municipal corporation

BY: _____

ROB JENSEN

City Manager

ATTEST:

BY: _____

SONIA OROZCO

City Clerk

APPROVED AS TO FORM:

BY: _____

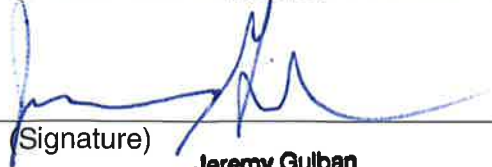
ROBERT R. SCHMITT

City Attorney

APPROVED AS TO SUBSTANCE:

BY: _____

CHERRYROAD TECHNOLOGIES INC.



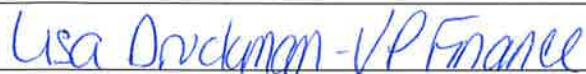
(Signature)

Jeremy Gulban
Chief Executive Officer

(Name & Title)



(Signature)



(Name & Title)

EXHIBIT A
STATEMENT OF WORK

EXHIBIT B

CHERRYROAD/ORACLE PUBLIC SECTOR CLOUD SERVICES AGREEMENT

EXHIBIT C
CLOUD SERVICES ORDERING DOCUMENT