

SERVICES AGREEMENT

THIS AGREEMENT made and entered into the day and year set forth below by and between THE CITY OF FORT COLLINS, COLORADO, a Municipal Corporation, hereinafter referred to as the "City" and VANIR CONSTRUCTION MANAGEMENT, INC., hereinafter referred to as "Service Provider".

WITNESSETH:

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties hereto as follows:

1. Scope of Services. The Service Provider agrees to provide services in accordance with the scope of services attached hereto as Exhibit A for **OASIS Project Management Support** for the Customer Information System (CIS) replacement project, consisting of two (2) pages and incorporated herein by this reference. Irrespective of references in Exhibit A to certain named third parties, Service Provider shall be solely responsible for performance of all duties hereunder.

The City may, at any time during the term of the Agreement, make changes to the scope of the particular services. Such changes shall be agreed upon in writing by the parties by Amendment or Change Order.

2. Contract Period. This Agreement shall commence December 4, 2019 and shall continue in full force and effect until December 3, 2020, unless sooner terminated as herein provided. In addition, at the option of the City, the Agreement may be extended for additional one year periods not to exceed two (2) additional one year periods. Renewals and pricing changes shall be negotiated by and agreed to by both parties. Written notice of renewal shall be provided to the Service Provider and mailed no later than thirty (30) days prior to contract end.
3. Delay. If either party is prevented in whole or in part from performing its obligations by unforeseeable causes beyond its reasonable control and without its fault or negligence, then the party so prevented shall be excused from whatever performance is prevented by such cause. To the extent that the performance is actually prevented, the Service Provider must provide written notice to the City of such condition within fifteen (15) days from the onset of such condition.
4. Early Termination by City/Notice. Notwithstanding the time periods contained herein, the City may terminate this Agreement at any time without cause by providing written notice of termination to the Service Provider. Such notice shall be delivered at least fifteen (15) days prior to the termination date contained in said notice unless otherwise agreed in writing by the parties. All notices provided under this Agreement shall be effective when mailed, postage prepaid and sent to the following addresses:

Service Provider:	City:	Copy to:
Vanir Construction	City of Fort Collins	City of Fort Collins

Management, Inc.	Attn: Lisa Rosintoski	Attn: Purchasing Dept.
Attn: Steven Whitehead	PO Box 580	PO Box 580
4540 Duckhorn Drive, Suite 300	Fort Collins, CO 80522	Fort Collins, CO 80522
Sacramento, CA 95834		

In the event of early termination by the City, the Service Provider shall be paid for services rendered and pre-approved miscellaneous expenses incurred in performance of the work to the date of termination, subject only to the satisfactory performance of the Service Provider's obligations under this Agreement. Such payment shall be the Service Provider's sole right and remedy for such termination.

5. Contract Sum. The City shall pay the Service Provider for the performance of this Contract, subject to additions and deletions provided herein, per the attached Exhibit A.
6. Payments. The City agrees to pay and the Service Provider agrees to accept as full payment for all work done and all materials furnished and for all costs and expenses incurred in performance of the work.

The Service Provider will invoice monthly. Payment shall be made by the City Net 30 days from the date of the invoice and upon acceptance of the work by the City and upon the Service Provider furnishing satisfactory evidence of payment of all wages, taxes, supplies and materials, and other costs incurred in connection with the performance of such work.

7. City Representative. The City will designate, prior to commencement of the work, its representative who shall make, within the scope of his or her authority, all necessary and proper decisions with reference to the services provided under this agreement. All requests concerning this agreement shall be directed to the City Representative.
8. Independent Service Provider. The services to be performed by Service Provider are those of an independent service provider and not of an employee of the City of Fort Collins. The City shall not be responsible for withholding any portion of Service Provider's compensation hereunder for the payment of FICA, Workmen's Compensation or other taxes or benefits or for any other purpose.
9. Subcontractors. Service Provider may not subcontract any of the Work set forth in the Exhibit A, Statement of Work without the prior written consent of the city, which shall not be unreasonably withheld. If any of the Work is subcontracted hereunder (with the consent of the City), then the following provisions shall apply: (a) the subcontractor must be a reputable, qualified firm with an established record of successful performance in its respective trade performing identical or substantially similar work, (b) the subcontractor will be required to comply with all applicable terms of this Agreement, (c) the subcontract will not create any contractual relationship between any such subcontractor and the City, nor will it obligate the City to pay or see to the payment of any subcontractor, and (d) the work of the subcontractor will be subject to inspection by the City to the same extent as the work of the Service Provider.

10. Personal Services. It is understood that the City enters into the Agreement based on the special abilities of the Service Provider and that this Agreement shall be considered as an agreement for personal services. Accordingly, the Service Provider shall neither assign any responsibilities nor delegate any duties arising under the Agreement without the prior written consent of the City.
11. Acceptance Not Waiver. The City's approval or acceptance of, or payment for any of the services shall not be construed to operate as a waiver of any rights or benefits provided to the City under this Agreement or cause of action arising out of performance of this Agreement.
12. Warranty.
 - a. Service Provider warrants that all work performed hereunder shall be performed with the highest degree of competence and care in accordance with accepted standards for work of a similar nature.
 - b. Unless otherwise provided in the Agreement, all materials and equipment incorporated into any work shall be new and, where not specified, of the most suitable grade of their respective kinds for their intended use, and all workmanship shall be acceptable to City.
 - c. Service Provider warrants all equipment, materials, labor and other work, provided under this Agreement, except City-furnished materials, equipment and labor, against defects and nonconformances in design, materials and workmanship/workwomanship for a period beginning with the start of the work and ending twelve (12) months from and after final acceptance under the Agreement, regardless whether the same were furnished or performed by Service Provider or by any of its subcontractors of any tier. Upon receipt of written notice from City of any such defect or nonconformances, the affected item or part thereof shall be redesigned, repaired or replaced by Service Provider in a manner and at a time acceptable to City.
13. Default. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this agreement, such party may be declared in default thereof.
14. Remedies. In the event a party has been declared in default, such defaulting party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail himself of any other remedy at law or equity. If the non-defaulting party commences legal or equitable actions against the defaulting party, the defaulting party shall be liable to the non-defaulting party for the non-defaulting party's reasonable attorney fees and costs incurred because of the default.
15. Binding Effect. This writing, together with the exhibits hereto, constitutes the entire agreement between the parties and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors,

heirs, personal representatives, successors and assigns of said parties.

16. Indemnity/Insurance.

- a. The Service Provider agrees to indemnify and save harmless the City, its officers, agents and employees against and from any and all actions, suits, claims, demands or liability of any character whatsoever brought or asserted for injuries to or death of any person or persons, or damages to property arising out of, result from or occurring in connection with the performance of any service hereunder.
- b. The Service Provider shall take all necessary precautions in performing the work hereunder to prevent injury to persons and property.
- c. Without limiting any of the Service Provider's obligations hereunder, the Service Provider shall provide and maintain insurance coverage naming the City as an additional insured under this Agreement of the type and with the limits specified within Exhibit B, consisting of one (1) page, attached hereto and incorporated herein by this reference. The Service Provider before commencing services hereunder, shall deliver to the City's Purchasing Director, P. O. Box 580, Fort Collins, Colorado 80522 one copy of a certificate evidencing the insurance coverage required from an insurance company acceptable to the City.

17. Entire Agreement. This Agreement, along with all Exhibits and other documents incorporated herein, shall constitute the entire Agreement of the parties. Covenants or representations not contained in this Agreement shall not be binding on the parties.

18. Law/Severability. The laws of the State of Colorado shall govern the construction interpretation, execution and enforcement of this Agreement. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

19. Prohibition Against Employing Illegal Aliens. Pursuant to Section 8-17.5-101, C.R.S., et. seq., Service Provider represents and agrees that:

- a. As of the date of this Agreement:
 1. Service Provider does not knowingly employ or contract with an illegal alien who will perform work under this Agreement; and
 2. Service Provider will participate in either the e-Verify program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the United States Department of Homeland Security (the "e-Verify Program") or the Department Program (the "Department Program"), an employment verification program established pursuant to Section 8-17.5-102(5)(c) C.R.S. in order to confirm the employment eligibility of all newly hired employees to perform work under this Agreement.
- b. Service Provider shall not knowingly employ or contract with an illegal alien to perform

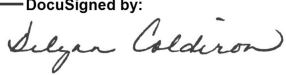
- work under this Agreement or knowingly enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien to perform work under this Agreement.
- c. Service Provider is prohibited from using the e-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
 - d. If Service Provider obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Service Provider shall:
 - 1. Notify such subcontractor and the City within three days that Service Provider has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
 - 2. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the illegal alien; except that Service Provider shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
 - e. Service Provider shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation that the Department undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.
 - f. If Service Provider violates any provision of this Agreement pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the City may terminate this Agreement. If this Agreement is so terminated, Service Provider shall be liable for actual and consequential damages to the City arising out of Service Provider's violation of Subsection 8-17.5-102, C.R.S.
 - g. The City will notify the Office of the Secretary of State if Service Provider violates this provision of this Agreement and the City terminates the Agreement for such breach.
20. Special Provisions. Special provisions or conditions relating to the services to be performed pursuant to this Agreement are set forth in Exhibit C - Confidentiality, consisting of three (3) pages, attached hereto and incorporated herein by this reference.

THE CITY OF FORT COLLINS, COLORADO

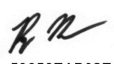
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By: 
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Gerry Paul
Purchasing Director

DATE: 1/13/2020

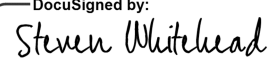
ATTEST:

DocuSigned by:

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City Clerk

APPROVED AS TO FORM:

DocuSigned by:

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Assistant City Attorney II

VANIR CONSTRUCTION MANAGEMENT, INC.

DocuSigned by:
By: 
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Steven Whitehead, President

Date: 1/13/2020

EXHIBIT A
SCOPE OF SERVICES (includes Compensation)
OASIS PROJECT MANAGEMENT SUPPORT

Background on OASIS Project

The City of Fort Collins Utilities is replacing their customer information system (CIS) and adding Operational Support System (OSS) to address growth, ease of service for their existing utility services and the addition of the delivery of broadband services to their customers. In 2018, the City selected the OPEN International Open SmartFlex (OSF) system as their new platform and has initiated its implementation. Currently, the CIS/OSS conversion project, known as the OASIS project, has delivered some capabilities to their production operation in support of broadband sales and service but has yet to implement the new system for the remaining utilities. This project is intended to support the City's effort to achieve full conversion of their existing CIS to the OPEN OSF platform.

Project Management Deliverables

The anticipated deliverables from the Project Manager support services for the OASIS project include:

- Creation, maintenance, and support of a Project Management Dashboard that will enable City management to track project progress and status.
- Definition, assessment and allocation of proper resources to support the OASIS project.
- Administration of the City's contract with OPEN for project and production support deliveries, including cost control administration and negotiation support.
- Project reporting to appropriate management teams involved in the OASIS project.
- Facilitation of project activities, operations, and deliverables to achieve targeted schedule and budget goals.
- Represent the OASIS project in support of other City initiatives where inter-dependencies are expected.

Tasks to be Performed

In providing project management support for the OASIS Project, the Vanir team will support the efforts of the City and its Open OSF consultant team to deliver the scoped improvements.. To this end, the following tasks will be performed:

Task 1. OPEN Contract and OASIS Project Cost Administration. The Project Manager will thoroughly review the City's contract and existing change orders with OPEN to derive an understanding of in-scope deliverables, contract terms, and financial obligations. Throughout the course of the OASIS project, the Project Manager will assess and make recommendations on project change order needs including cost estimates for any required changes. The Project Manager will review all payment requests from OPEN and all suppliers, vendors, or other third-party expenses associated with the project. The Project Manager will assist the City in assessing any liability claims from any OASIS project vendors and negotiating a resolution to such claims.

Task 2. OASIS Project Schedule and City Resource Load Management. The OPEN Project Manager is responsible for delivering and maintaining a project schedule for the OASIS Project. The OASIS Project Manager will provide weekly input to this schedule regarding City-owned tasks and deliverables. The OASIS Project Manager will work with City team members to develop, update, and maintain resource allocations throughout the project, including coordinating their availability to the project to assure that the City provides timely participation and deliverables. The OASIS Project Manager will track any exceptions to the project schedule and the causative factors for such deviations.

Task 3. Transition and Change Management Planning Support for the OPEN OSF System Adoption. The OASIS Project Manager will assist in the development of transition plans for the adoption of the OPEN OSF system for all utilities. A mapping of service or operational interruptions will be identified. The OASIS Project Manager will assist the City in developing a Change Management plan and provide recommendations for delivery of change management services.

Task 4. OASIS Project Operations Facilitation and Coordination. The OASIS Project Manager will assist the City and OPEN project teams to implement reasonable project workflows, communication procedures, work environments, and execution of development deliverables. Key will be the facilitation and enforcement of OASIS project decisions that affect project deliverables to assure timely project execution. The OASIS Project Manager will assist City leadership in enabling resources to be dedicated to the project as needed throughout.

Task 5. OASIS Project Reporting and Communications. The OASIS Project Manager will be responsible for all critical project reporting, documentation, and communications that relate to key project decisions, operations, and management. The City will provide administrative support to assist the OASIS Project Manager. The OASIS Project Manager will attend routine meetings of project leadership teams, providing an update on project status, open issues and risks, and any additional resource requirements.

Schedule

All tasks are to be performed as needed throughout the duration of the project. The contracted time frame for Project Management Support Services is from December 2019 through November 2020.

Budget

The not to exceed budget is \$150,000. The hourly billing rate for the Project Manager will be \$175/hour and Michelle M. Frey, PhD, the Executive Director for Water for Vanir, will serve as the OASIS Project Manager. The total hours allocated for the OASIS Project Manager is 840 hours for a total labor budget of \$147,000 and \$3,000 in miscellaneous expenses.

**EXHIBIT B
INSURANCE REQUIREMENTS**

1. The Service Provider will provide, from insurance companies acceptable to the City, the insurance coverage designated hereinafter and pay all costs. Before commencing work under this bid, the Service Provider shall furnish the City with certificates of insurance showing the type, amount, class of operations covered, effective dates and date of expiration of policies, and containing substantially the following statement:

“The insurance evidenced by this Certificate will not reduce coverage or limits and will not be cancelled, except after thirty (30) days written notice has been received by the City of Fort Collins.”

In case of the breach of any provision of the Insurance Requirements, the City, at its option, may take out and maintain, at the expense of the Service Provider, such insurance as the City may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Service Provider under this Agreement. The City, its officers, agents and employees shall be named as additional insureds on the Service Provider's general liability and automobile liability insurance policies for any claims arising out of work performed under this Agreement.

2. Insurance coverages shall be as follows:

- A. **Workers' Compensation & Employer's Liability.** The Service Provider shall maintain during the life of this Agreement for all of the Service Provider's employees engaged in work performed under this agreement:

1. Workers' Compensation insurance with statutory limits as required by Colorado law.
2. Employer's Liability insurance with limits of \$100,000 per accident, \$500,000 disease aggregate, and \$100,000 disease each employee.

- B. **Commercial General & Vehicle Liability.** The Service Provider shall maintain during the life of this Agreement such commercial general liability and automobile liability insurance as will provide coverage for damage claims of personal injury, including accidental death, as well as for claims for property damage, which may arise directly or indirectly from the performance of work under this Agreement. Coverage for property damage shall be on a "broad form" basis. The amount of insurance for each coverage, Commercial General and Vehicle, shall not be less than \$1,000,000 combined single limits for bodily injury and property damage.

In the event any work is performed by a subcontractor, the Service Provider shall be responsible for any liability directly or indirectly arising out of the work performed under this Agreement by a subcontractor, which liability is not covered by the subcontractor's insurance.

EXHIBIT C CONFIDENTIALITY

IN CONNECTION WITH THE SERVICES to be provided by Professional under this Agreement, the parties agree to comply with reasonable policies and procedures with regard to the exchange and handling of confidential information and other sensitive materials between the parties, as set forth below.

1. Definitions.

For purposes of this Agreement, the party who owns the confidential information and is disclosing same shall be referenced as the "Disclosing Party." The party receiving the Disclosing Party's confidential information shall be referenced as the "Receiving Party."

2. Confidential Information.

Confidential Information controlled by this Agreement refers to information which is not public and/or is proprietary and includes by way of example, but without limitation, City customer information, utility data, service billing records, customer equipment information, location information, network security system, business plans, formulae, processes, intellectual property, trade secrets, designs, photographs, plans, drawings, schematics, methods, specifications, samples, reports, mechanical and electronic design drawings, customer lists, financial information, studies, findings, inventions, and ideas.

To the extent practical, Confidential Information shall be marked "Confidential" or "Proprietary." Nevertheless, Professional shall treat as Confidential Information all customer identifiable information in any form, whether or not bearing a mark of confidentiality or otherwise requested by the City, including but not limited to account, address, billing, consumption, contact and other customer data. In the case of disclosure in non-documentary form of non-customer identifiable information, made orally or by visual inspection, the Disclosing Party shall have the right, or, if requested by the Receiving Party, the obligation to confirm in writing the fact and general nature of each disclosure within a reasonable time after it is made in order that it is treated as Confidential Information. Any information disclosed to the other party prior to the execution of this Agreement and related to the services for which Professional has been engaged shall be considered in the same manner and be subject to the same treatment as the information disclosed after the execution of this Agreement with regard to protecting it as Confidential Information.

3. Use of Confidential Information.

Receiving Party hereby agrees that it shall use the Confidential Information solely for the purpose of performing its obligations under this Agreement and not in any way detrimental to Disclosing Party. Receiving Party agrees to use the same degree of care Receiving Party uses with respect to its own proprietary or confidential information, which in any event shall result in a reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information. Except as otherwise provided herein, Receiving Party shall keep confidential and not disclose the Confidential Information. The City and Professional shall cause each of their directors, officers, employees, agents, representatives, and subcontractors to become familiar with, and abide by, the terms of this section, which shall survive this Agreement as an on-going obligation of the Parties.

Professional shall not use such information to obtain any economic or other benefit for itself, or any third party, other than in the performance of obligations under this Agreement.

4. Exclusions from Definition.

The term “Confidential Information” as used herein does not include any data or information which is already known to the Receiving Party or which before being divulged by the Disclosing Party (1) was generally known to the public through no wrongful act of the Receiving Party; (2) has been rightfully received by the Receiving Party from a third party without restriction on disclosure and without, to the knowledge of the Receiving Party, a breach of an obligation of confidentiality; (3) has been approved for release by a written authorization by the other party hereto; or (4) has been disclosed pursuant to a requirement of a governmental agency or by operation of law.

5. Required Disclosure.

If the Receiving Party is required (by interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process, or by federal, state, or local law, including without limitation, the Colorado Open Records Act) to disclose any Confidential Information, the Parties agree the Receiving Party will provide the Disclosing Party with prompt notice of such request, so the Disclosing Party may seek an appropriate protective order or waive the Receiving Party’s compliance with this Agreement.

The Receiving Party shall furnish a copy of this Agreement with any disclosure.

6. Notwithstanding paragraph 5, Professional shall not disclose Confidential Information to any person, directly or indirectly, nor use it in any way, except as required or authorized in writing by the City.

7. Red Flags Rules.

Professional must implement reasonable policies and procedures to detect, prevent and mitigate the risk of identity theft in compliance with the Identity Theft Red Flags Rules found at 16 Code of Federal Regulations part 681. Further, Professional must take appropriate steps to mitigate identity theft if it occurs with one or more of the City’s covered accounts and must as expeditiously as possible notify the City in writing of significant breaches of security or Red Flags to the City.

8. Data Protection and Data Security.

In addition to the requirements of paragraph 7, Professional shall have in place information security safeguards designed to conform to or exceed industry best practices regarding the protection of the confidentiality, integrity and availability of utility and customer information and shall have written agreements requiring any subcontractor to meet those standards. These information security safeguards (the “Information Security Program”) shall be materially consistent with, or more stringent than, the safeguards described in this Exhibit.

a) Professional’s information security safeguards shall address the following elements:

- Data Storage, Backups and Disposal
- Logical Access Control (e.g., Role-Based)
- Information Classification and Handling
- Secure Data Transfer (SFTP and Data Transfer Specification)
- Secure Web Communications
- Network and Security Monitoring
- Application Development Security

- Application Security Controls and Procedures (User Authentication, Security Controls, and Security Procedures, Policies and Logging)
- Incident Response
- Vulnerability Assessments
- Hosted Services
- Personnel Security

b) Subcontractors. Professional may use subcontractors, though such activity shall not release or absolve Professional from the obligation to satisfy all conditions of this Agreement, including the data security measures described in this Exhibit, and to require a substantially similar level of data security, appropriate to the types of services provided and Customer Data received, for any subcontractor Professional may use. Accordingly, any release of data, confidential information, or failure to protect information under this Agreement by a subcontractor or affiliated party shall be attributed to Professional and may be considered to be a material breach of this Agreement.

9. Confidential Information is not to be stored on any local workstation, laptop, or media such as CD/DVD, USB drives, external hard drives or other similar portable devices unless the Professional can ensure security for the Confidential Information so stored. Work stations or laptops to be used in the Work will be required to have personal firewalls on each, as well as have current, active anti-virus definitions.
10. The Agreement not to disclose Confidential Information as set forth in this Exhibit shall apply during the term of the Work and at any time thereafter unless specifically authorized by the City in writing.
11. If Professional breaches this Agreement, in the City's sole discretion, the City may immediately terminate this Agreement and withdraw Professional's right to access Confidential Information.
12. Notwithstanding any other provision of this Agreement, all material, i.e., various physical forms of media in which Confidential Information is contained, including but not limited to writings, drawings, tapes, diskettes, prototypes or products, shall remain the sole property of the Disclosing Party and, upon request, shall be promptly returned, together with all copies thereof to the Disclosing Party. Upon such return of physical records, all digital and electronic data shall also be deleted in a non-restorable way by which it is no longer available to the Receiving Party. Written verification of the deletion (including date of deletion) is to be provided to the Disclosing Party within ten (10) days after completion of engagement, whether it be via termination, completion or otherwise.
13. Professional acknowledges that the City may, based upon the representations made in this Agreement, disclose security information that is critical to the continued success of the City's business. Accordingly, Professional agrees that the City does not have an adequate remedy at law for breach of this Agreement and therefore, the City shall be entitled, as a non-exclusive remedy, and in addition to an action for damages, to seek and obtain an injunction or decree of specific performance or any other remedy, from a court of competent jurisdiction to enjoin or remedy any violation of this Agreement.