

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF SAN PABLO AND ODIN
Agreement No. 12 – Public Safety Equipment**

THIS AGREEMENT, dated this _____ day of _____, 2018, is by and between the City of San Pablo, a municipal corporation organized and existing under the laws of the State of California, ("City"), whose address is 13831 San Pablo Avenue, San Pablo, California 94806, and Odin Systems Inc., ("Consultant"), whose address is 6642 Merchandise Way Ste.200 Diamond Springs, California 95619 for professional services.

RECITALS:

WHEREAS, the City desires to engage a consultant to enhance City-wide Public Safety equipment by installing up to 56 ALPR cameras and 60 situational awareness cameras; converting current 3M cameras to Vigilant; integrating technology software of Vigilant, Hawkeye, and LiveEarth; to include but not limited to: design, purchase, installation, implementation, integration, testing; of the City-wide Security Surveillance System;

WHEREAS, the City desires to engage a professional who will act at all times in the City's best interest will respect the trust and confidence placed in that professional by the City;

WHEREAS, it is the intent of the City to finance the purchase of this equipment and services though Fleetwood Leasing LLC ("Fleetwood") for Fiscal Years 2017/18 through 2020/21, at a total not to exceed cost of \$2,608,530.13 for the purchase of up to 60 situational awareness cameras, 56 ALPR cameras, converting 16 ALPR cameras from 3M to Vigilant, equipment, hardware, software, warranty, service, maintenance, and training with Fleetwood making payments to Consultant upon the City's approval;

WHEREAS, Consultant has represented to City, and does in fact have the special training, skill, competence and expertise necessary to provide the services needed by the City; desires to enter into this Agreement with the City as an independent contractor; and is willing to render such professional services on the following terms and conditions;

NOW, THEREFORE, Consultant and the City agree as follows:

AGREEMENT:

(1) Scope of Service.

Scope of Services

Consultant agrees to provide professional services to the City in the areas of enhancing the City-Wide surveillance equipment by installing up to 56 ALPR cameras and 60 situational awareness cameras; converting current 3M cameras to Vigilant; integrating technology software of Vigilant, Hawkeye, and LiveEarth; to include but not limited to: design, purchase,

installation, implementation, integration, testing ; City-wide Security Surveillance System as described below and in the proposal from

Odin Systems Inc. attached as Exhibit A:

1. Giant Rd. and Miner Ave.

- i. Recommend installing two wood poles and tap power from PG&E.
 - a. Install one pole on the SE Corner, on the East side of Giant Rd. several feet south of Miner Ave.
 - b. Install one pole on the SE corner of Miner Ave approx. 55' East South side on sidewalk, on Miner. (potential Cell option.)
 - c. 4 ALPR cameras for ingress on Miner Ave., egress, ingress on Giant Rd.
 - i. 3 fixed situational cameras and 1 PTZ

2. San Pablo Ave and Stanton Ave.

- a. Recommend installing wood pole in front of 2161 Stanton, on North side of road just East of PG&E pole.
- b. 2 ALPR cameras for ingress coverage to the city.

3. Giant Rd. and Parr Blvd.

- a. 4 ALPR cameras covering NB and SB on Giant, EB and WB on Parr.
- b. 3 fixed situational cameras and 1 PTZ

4. Giant Rd. and Brookside.

- a. 3 ALPR cameras on one pole covering all 3 lanes inbound and outbound at the intersection.
- b. 3 fixed situational cameras and 1 PTZ. LOS to SW side of Giant & Parr

5. Stanton Ave and Miner Ave.

- a. 3 fixed cameras and 1 PTZ camera for situational awareness.

6. San Pablo Dam Rd. and Morrow Dr.

- a. 4 ALPR cameras covering all lanes inbound and outbound.
- b. 3 fixed situational cameras and 1 PTZ camera

7. San Pablo Ave and Rheem Ave.

- a. 4 ALPR cameras covering NB and SB lanes into city
- b. 3 Fixed and 1 PTZ situational cameras

8. 23rd. St. and Market Ave.

- a. 4 Fixed ALPR cameras covering all lanes at the intersection.
- b. 3 Fixed cameras and 1 PTZ camera.

9. 12th St. and Broadway

a. 2 ALPR cameras covering lanes in both directions on separate poles.

10. Amador St. and McBryde Ave.

a. 2 ALPR on one pole

i. Install pole East side of Amador near 2nd or 3rd PG&E pole, North on Amador from McBryde

11. Market Ave and 19th. St.

a. Recommend installing 1 wood pole SE corner and tap power from PG&E.

i. *Install 3 fixed situational cameras and 1 PTZ*

12. Rumrill Blvd. and 19th. St.

b. Recommend installing 1 wooden pole in the center median if possible can cover all directions.

c. Recommend installing 3 wood poles with 10ft. Horizontal arms to allow ALPR lane coverage.

i. *5 ALPR cameras to cover all lanes*

ii. *3 Fixed situational cameras and 1 PTZ.*

13. San Pablo Ave. and La Puerta

a. Recommend installing 1 wood pole and tap power from PG&E.

b. 2 ALPR

14. Road 20 and Abella Circle

a. 3 Fixed situational cameras and 1 PTZ.

15. San Pablo Dam Rd. and Barranca St.

a. 4 Fixed ALPR cameras are covering lanes

b. 3 Situational cameras and 1 PTZ

16. San Pablo Ave and 23rd. and Road 20

a. 3 fixed situational camera and 1 PTZ

17. El Portal and I-80

a. 2 ALPR on NW corner and 2 ALPR on South Corner.

b. *Situational cameras on NW corner.*

18. San Pablo Ave. and Church Lane.

a. 6 Fixed ALPR cameras are covering all lanes of traffic.

b. 3 fixed situational cameras and 1 PTZ

19. El Portal and Rollingwood

a. *Add 6 Fixed ALPR cameras to current camera location*

Warranty Against Defects.

Consultant warrants all work done and goods provided under this Agreement shall: a) meet all conditions of the Agreement; b) shall be free from all defects in design, material and workmanship; and 3) shall be fit for the purposes intended. If any defects occur within 12 months following acceptance or any longer period of time provided by Consultant's or manufacturer's standard warranty, Consultant shall be solely responsible for the correction of those defects for 90 days of labor and the manufacturer of hardware for 1 year for hardware unless specified differently.

Acceptance.

The acceptance of new equipment and software shall not occur until the City inspects the work and affirmatively accepts it as complete and workable.

Labor Code Prevailing Wage. To the extent applicable, Consultant shall comply with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, workers' compensation and prevailing wages including:

- a. No less than the general prevailing rate of per diem wages, and not less than the general prevailing rate of per diem wages for holidays and overtime work, for each craft, classification or type of worker needed to execute the work under this Agreement shall be paid to all workers, laborers and mechanics employed in the execution of the work by the Contractor or any subcontractor doing or contracting to do any part of the work. The appropriate determination of the Director of the California Department of Industrial Relations shall be filed with, and available for inspection, at the City offices. Contractor shall post, at each job site, a copy of the prevailing rate of per diem wages. The Contractor shall forfeit fifty dollars (\$50.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for any public work done under the Agreement by it or by any subcontractor under Contractor.
- b. If public work as defined by the California Labor Code is to be undertaken, Consultant must provide proof that it and its subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.

Quality of Performance

Consultant agrees to perform these services in accordance with the standards of its profession and within the terms of this agreement, and shall at all times be provided on a basis satisfactory to the City Manager, and shall at a minimum be consistent with all goals and objectives set forth herein.

Consultant shall be solely responsible for the quality and suitability of services provided pursuant to this Agreement. The City Manager or designee shall determine whether services provided by Consultant pursuant to this Agreement are satisfactory to the City. If during the course of this Agreement, it is determined services being provided are not satisfactory, Consultant shall take such corrective action as the City may require. Failure to promptly take such action shall constitute a material breach of this Agreement and cause for

termination in the City's discretion. This standard of care is not intended and shall not be construed to impose an obligation on the City within the meaning of Government Code Section 815.6.

Time is of the Essence. In the performance of this agreement, time is of the essence. Consultant shall be available to begin performance of services under this agreement immediately upon written notification of the execution of this agreement. All work as outlined in the scope of services must be completed by December 31, 2018.

(2) Compensation.

Notwithstanding any contrary indications which may be contained in Consultant's proposal, in exchange for the satisfactory performance of services that satisfy and timely achieve the milestones, performance commitments and outcomes identified herein and in the attached exhibits, City hereby agrees to pay a sum not to exceed \$ 2,491,334.48 as set forth in Exhibit A (as follows:

The City will be billed by Fleetwood Finance Leasing LLC, who will issue purchase orders to the Consultant for work to be completed. The City will acknowledge completed work with Fleetwood, who will in turn be responsible for payment to Odin pursuant to the Financing Agreement between the City and Fleetwood. In no event shall Consultant be entitled to compensation for extra work unless an approved change order, or other authorization describing the extra work and payment terms, has been executed by City prior to the commencement of the work.

Invoices must be signed by an authorized representative of Consultant, who shall verify that the invoiced services have been performed. Consultant agrees to provide other documentation of services and costs that may be required by Fleetwood.

(3) Changes In Work-Extra Work. In addition to services described in section 1, the parties may from time to time agree in writing that Consultant, for additional compensation, shall perform additional services. The City and Consultant shall agree in writing to any changes in compensation and/or changes in Consultant's services prior to the commencement of any work. If Consultant deems work it has been directed to perform is beyond the scope of this agreement and constitutes extra work, Consultant shall immediately inform the City in writing of the fact. The City shall make a determination as to whether such work is in fact beyond the scope of this agreement and constitutes extra work. In the event that the City determines that such work does constitute extra work, it shall provide compensation to the Consultant in accordance with an agreed cost that is fair and equitable.

This cost will be mutually agreed upon by the City and Consultant. A supplemental agreement providing for such compensation for extra work shall be negotiated between the City and the Consultant.

(4) Effective Date and Term. The effective date of this Agreement is as set forth on page one and the work shall be completed by December 31, 2018. The Agreement, except

for the indemnification and warranty provisions, shall terminate upon the City's acceptance of the work.

(5) Independent Contractor Status. It is expressly understood and agreed by both parties that Consultant, while engaged in carrying out and complying with any of the terms and conditions of this agreement, is an independent contractor and not an employee of the City. Consultant shall be fully responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. Consultant shall be responsible for its own acts and those of its agents and employees during the term of this agreement. Consultant shall not represent, at any time or in any manner, that Consultant is an employee of the City. Consultant will exercise its judgment in recommending to City the methods by which to accomplish City's objectives and desires. In any case where an opportunity is made available to Consultant, Consultant will determine whether it possesses sufficient training and background to carry out whatever objective is sought by the City. If Consultant accepts an engagement, such an acceptance is deemed an affirmative admission that Consultant possesses the necessary skills, background, and licenses to perform the needed services. Consultant acknowledges that the City will provide no training. Consultant will provide whatever tools and materials that are necessary to complete a client engagement. Consultant is free to accept, and has accepted in the past, other client engagements. Consultant is responsible for purchasing, bringing, providing, and controlling any and all equipment, tools, instruments, etc. needed for completion of the work set forth herein, as well as for maintenance and use of such equipment. It is understood that Consultant is hired on a temporary basis only, and that if the City and/or Consultant desires to continue Consultant's services after expiration or termination of this agreement, Consultant will sign a new contract.

(6) Billings. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person. In no event shall Consultant submit any billing for an amount in excess of the maximum amount of compensation provided in sections (2) and (3).

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by Consultant in the performances of this agreement shall be incurred at the Consultant's discretion. Such expenses shall be Consultant's sole financial responsibility

(7) Advice and Status Reporting. Consultant shall provide the City with timely reports, orally or in writing, of all significant developments arising during performance of its services hereunder, and shall furnish to City such information as is necessary to enable City to monitor the performance of this Agreement, including statements and data demonstrating the effectiveness of the services provided in achieving the goals and objectives contained herein. The City may withhold payments otherwise due to Consultant pending timely delivery of all such reports and information. Consultant shall notify the City Manager of any matters that could adversely affect Consultant's ability or eligibility to continue to perform services under this Agreement, and shall do so immediately after discovery of the same.

(8) Retention of Records. Consultant's complete files, including all records, employee time sheets, and correspondence pertaining to the work as described within the proposal of services submitted to the City shall upon request be available for review by the City, and copies of pertinent reports and correspondence, upon written request, shall be furnished for the files of City. Consultant shall maintain adequate documentation to substantiate all charges for hours and materials charged to City under this agreement. Consultant shall maintain the records and any other records related to the performance of this agreement and shall allow City access to such records for a period of four (4) years after the completion of the work to which records relate.

At City's request, or upon completion or termination of this agreement, Consultant shall return to City all plans, maps, cost estimates, project financial records, reports, and related documents.

All research information, plans, diagrams, financial records, reports, cost estimates or other documents prepared or obtained under the terms of this agreement shall be delivered to and become the property of the City and all data prepared or obtained under this contract shall be made available, upon request, to the City without restrictions or limitations on their use.

Consultant and its subcontractors shall maintain all books, documents, papers, employees' time sheets, accounting records, and other evidence pertaining to cost incurred and shall make such materials available at their respective offices at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract, for inspection by the City, State, F.H.W.A, and/or any authorized representatives of the Federal Government and copies thereof shall be furnished if requested. Consultant also agrees to submit all records, books, documents, and related material for audit evaluation by the City, State, F.H.W.A., or authorized representatives prior to, during, or four (4) years following this Project for the purpose of ascertaining applicable overhead rates, book, and record keeping procedures and other information as necessary.

(9) Written Reports and Documents. In accordance with Government Code section 7550, any document or written report prepared by Consultant for or under the direction of City shall contain the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of such document or written report; provided, however, that the total cost for work performed exceeds five thousand dollars (\$5,000). The contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report. When multiple documents or reports are the subject or product of this agreement, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or reports.

(10) Record and Fiscal Control System. Consultant shall maintain its financial records and fiscal control systems in a manner that meets the approval of the City; it shall maintain personnel and payroll records to adequately identify the source and application of all received funds; withhold income taxes; pay employment (social security), unemployment compensation, worker's compensation and other taxes as may be due; and, procure and maintain a City of San Pablo Business License. Consultant shall maintain an effective system of internal control to assure that funds provided through the City are used solely for authorized purposes.

(11) Access to Records; Audits. The City shall have access at any time during normal business hours and as often as necessary to any bank account and books, records, documents, accounts, files, reports, and other property and papers of Consultant relating to the services to be provided under this Agreement for the purpose of making an audit, review, survey, examination, excerpt or transcript.

(12) Consultant's Testimony. Consultant agrees to consult with City and testify at City's request at no additional cost other than normal witness fees if litigation is brought against City in connection with Consultant's services.

(13) Designation of Primary Provider of Services. This agreement contemplates the services of Consultant firm, ODIN Systems. The primary provider of the services called for by this agreement shall be ODIN Systems, who shall not be replaced without the written consent of City.

(14) Assignment of Personnel. Consultant shall assign only competent personnel to perform services pursuant to this agreement. If City asks Consultant to remove a person assigned to the work called for under this agreement, Consultant agrees to do so immediately regardless of the reason, or the lack of a reason, for City's request.

(15) Assignment and Subcontracting. It is recognized by the parties that a substantial inducement to City for entering into this agreement was, and is, the reputation and competence of Consultant. The assignment of this Agreement by Consultant, or any interest therein, is prohibited without the prior written approval of the City's Chief of Police. Consultant shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the City's Chief of Police.

(16) Insurance.

A. General, Automotive, and Employer's Liability, and Workers' Compensation Provisions. On or before beginning any of the services or work called for by any term of this agreement, Consultant, at its own cost and expense, shall carry, maintain for the duration of the agreement, and provide proof thereof that is acceptable to the City the insurance specified herein below with insurers and under forms of insurance satisfactory in all respects to the City. Consultant shall not allow any subcontractor to commence work on any subcontract until all insurance required of the Consultant has also been obtained for the subcontractor. Consultants shall maintain limits no less than set forth below. If the consultant maintains higher limits than the minimums shown above, the City shall be entitled to coverage for the higher limits maintained by the consultant.

1. General Liability: (Includes operations, products and completed operations.)	\$2,000,000
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Per occurrence for bodily injury, personal injury, and property damage.

2. Automotive Liability:	\$1,000,000
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Per accident for bodily injury and property damage

3. Workers' Compensation: As Required by the State of California. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents and subcontractors.

4. Employers' Liability: **\$1,000,000 each accident;**

\$1,000,000 policy limit bodily injury by disease, **\$1,000,000** each employee bodily injury by disease.

5. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

6. Other Insurance Provisions

The General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

- The City, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Consultant; and with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. General Liability coverage shall be provided in the form of an Additional Insured endorsement (form CG 20 10 11 85, or forms CG2010 version 10/01 and GC 2037 versions 10/01 or equivalent or CG 20 07 for design professional) to the Consultant's insurance policy, or as a separate owner's policy.
- For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice has been provided to the City.
- Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- (i) City, its officers, employees, agents, and volunteers are to be covered as insureds as respects each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents, or volunteers.
- (ii) The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- (iii) An endorsement must state that coverage is primary insurance and that no other insurance affected by the City will be called upon to contribute to a loss under the coverage.
- (iv) Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.
- (vi) Notice of cancellation or non-renewal must be received by City at least thirty days prior to such change.

Deductibles and Self-Insured Retentions. Consultant shall disclose the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this agreement. During the period covered by this agreement, upon express written authorization of City Manager, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The City Manager may condition approval of an increase in deductible or self-insured retention levels upon a requirement that Consultant procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

Notice of Reduction in Coverage. In the event that any coverage required under this section of the agreement is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

7. 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. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

8. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII unless otherwise acceptable to the Entity. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

9. Verification of Coverage

Consultant shall furnish the City with endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that Insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the city, unless the insurance company will not use the City's forms. All endorsements are to be received and approved by the City before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements. As an alternative to the City's forms, the Consultant's insurer may provide complete copies of all required insurance policies, including endorsements effecting the coverage required by the specifications.

10. Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

B. City Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:

- (i) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement;
- (ii) Order Consultant to stop work under this agreement or withhold any payment which becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof;
- (iii) Terminate this agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies City may have and is not the exclusive remedy for Consultant's breach.

(17) Standard of Care. It is understood and agreed that Consultant has the professional skills, experience, and knowledge necessary to perform the work agreed to be performed under this agreement, that City relies upon the professional skills of Consultant to do and perform Consultant's work in a skillful and professional manner consistent with the standard of care of the industry, and Consultant thus agrees to so perform the work. Acceptance by City of the work performed under this agreement does not operate as a release of said Consultant from such professional responsibility for the work performed. It is further understood and agreed that Consultant is apprised of the scope of the work to be performed

under this agreement and Consultant agrees that said work can and shall be performed in a manner consistent with the standards of the profession. This standard of care is not intended and shall not be construed to impose an obligation on the City within the meaning of Government Code Section 815.6.

(18) Indemnification.

A. CONSULTANT shall, to the full extent permitted by law, indemnify, defend (with counsel acceptable to the CITY) and hold harmless CITY, and its employees, officials, volunteers and agents ("Indemnified Parties") from and against any and all losses, claims, damages, costs and liability of every nature arising out of or resulting from the performance of this Agreement by CONSULTANT, its officers, employees, agents, volunteers, subcontractors or sub-consultants, excepting only liability arising from the sole negligence, active negligence or willful misconduct of CITY. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution.

B. The duty to defend is a separate and distinct obligation from the Consultant's duty to indemnify. The Consultant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the City, the City and its directors, officers, and employees, immediately upon tender to the Consultant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of comparative active negligence or willful misconduct by an Indemnified Party does not relieve the Consultant from its separate and distinct obligation to defend City. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if the Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party, Consultant may submit a claim to the City for reimbursement of reasonable attorneys' fees and defense costs.

C. In the event that Consultant or any employee, agent, sub-consultant or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, sub-consultants or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

D. The review, acceptance or approval of the Consultant's work or work product by any Indemnified Party shall not affect, relieve or reduce the Consultant's indemnification or defense obligations. The provisions of this Section are not limited by and do not affect the provisions of this contract relating to insurance.

E. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply.

F. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration, and that these provisions survive the termination of this Agreement.

(19) Licenses. If a license of any kind, which term is intended to include evidence of registration, is required of Consultant, its employees, agents, or subcontractors by federal or state law, Consultant warrants that such license has been obtained, is valid and in good standing, and Consultant shall keep it in effect at all times during the term of this agreement, and that any applicable bond has been posted in accordance with all applicable laws and regulations.

Consultant shall obtain and maintain a City of San Pablo Business License until all contract services are rendered and accepted by the City.

(20) Nondiscriminatory Employment Practices and Compliance with Law.

Consultant represents that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal opportunity employment. Consultant shall not discriminate in the employment of any person because of race, color, national origin, ancestry, physical or mental disability, medical condition, marital status, sex, age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act. Consultant shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Agreement. In performing work and providing services under this Agreement, Consultant shall, at its sole cost and expense, comply with all applicable laws of the United States and the State of California; the Ordinances of the City of San Pablo; and the rules, regulations, orders and directives of their respective administrative agencies and the officers thereof.

(21) Termination.

A. Termination for Convenience. City may terminate this agreement at its sole discretion at any time prior to completion by the Consultant of the services required hereunder. Notice of termination of this agreement shall be given in writing to the Consultant, and shall be sufficient and complete when same is deposited in the United States Mail, postage prepaid and certified, address as set forth in the first paragraph of this agreement. The agreement shall be terminated upon receipt of the Notice of Termination by the Consultant. If the City should terminate this agreement, the Consultant shall be compensated for all work performed prior to the time of receipt of cancellation notice, and shall be compensated for materials ordered by the Consultant or his employees, or services of others ordered by the Consultant or his employees, prior to receipt of notice of cancellation

whether or not such materials or final instruments of services of others have actually been delivered, provided that the Consultant or his employees are not able to cancel such orders for materials or services of others. Compensation for the Consultant in the event of cancellation shall be determined by City in accordance with percentage of project completed and agreed to by the Consultant. In the event of cancellation, all notes, sketches, computations, drawings, and specifications or other data, whether complete or not, remain the property of the Consultant. The City may, at its own expense, make copies or extract information from any such notes, sketches, computations, drawings, and specifications, or other data whether complete or not.

B. Termination for Cause. City may terminate this agreement for cause by providing Consultant with one day's written notice of such termination should Consultant violate any of the terms and conditions of this agreement. In City's discretion and at City's option, such termination for cause may alternatively be accomplished, where Consultant fails to perform any of the obligations required of Consultant within the time and in the manner provided for under the terms of this agreement, within seven days after receipt from the notice of such default. Upon City's termination of this agreement for cause, City reserves the right to complete the work by whatever means City deems expedient and the expense of completing such work, as well as any and all damages to the extent caused by the negligent acts, intentional acts or errors or omissions of the Consultant, shall be charged to the Consultant.

C. Immediate Termination. City may terminate this agreement immediately in any case where the Consultant engages in fraudulent or criminal activities while performing its services under this agreement, or is otherwise determined to lack the necessary skills to accomplish the desired objectives.

(22) Notices. Notices required by this agreement shall be personally delivered or mailed, postage prepaid, as follows:

To Consultant: Odin Systems, Inc.
Attn: Dustin Saylor
6642 Merchandise Way Ste 200
Diamond Springs, Ca 95619

To the City: City Manager
13831 San Pablo Avenue
San Pablo, CA 94806

Each party shall provide the other party with telephone and written notice of any change in address as soon as practicable.

Notices given by personal delivery shall be effective immediately. Notices given by mail shall be deemed to have been delivered forty-eight hours after having been deposited in the United States mail.

(23) Ownership of Materials. Any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by

Consultant pursuant to this agreement shall be the property of the City at the moment of their completed preparation. All materials and records of a preliminary nature such as survey notes, sketches, preliminary plans, computations and other data, prepared or obtained in the performance of this agreement, shall be made available, upon request, to City at no additional charge and without restriction or limitation on their use consistent with the intent of the original design.

(24) Amendments. This agreement may be modified or amended only by a written document executed by both Consultant and City's City Manager and approved as to form by the City Attorney. Such document shall expressly state that it is intended by the parties to amend the terms and conditions of this agreement.

(25) Abandonment by Consultant. In the event the Consultant ceases performing services under this agreement or otherwise abandons the project prior to completing all of the services described in this agreement, Consultant shall, without delay, deliver to City all materials and records prepared or obtained in the performance of this agreement, and shall be paid for the reasonable value of the services performed up to the time of cessation or abandonment, less a deduction for any damages or additional expenses which City incurs as a result of such cessation or abandonment.

Consultant agrees to be financially responsible to compensate City for any costs incurred by City in retaining the services of another to replace Consultant, but only to the extent that the costs of retaining the replacement exceed what remaining amounts would have been paid to Consultant under the contract had Consultant completed the project.

(26) Waiver. The waiver by either party of a breach by the other of any provision of this agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this agreement.

(27) No Third-Party Rights. The parties intend not to create rights in, or to grant remedies to, any third party as a beneficiary of this agreement or of any duty, covenant, obligation, or undertaking established herein.

(28) Severability. Should any part of this agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this agreement, which shall continue in full force and effect, provided that the remainder of this agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

(29) Compliance with Laws. In the performance of this agreement, Consultant shall abide by and conform to any and all applicable laws of the United States, the State of California, and City ordinances. Consultant warrants that all work done under this agreement will be in compliance with all applicable safety rules, laws, statutes and practices, including but not limited to Cal/OSHA regulations.

(30) Controlling Law. This agreement and all matters relating to it shall be governed by the laws of the State of California.

(31) Breach. In the event that Consultant fails to perform any of the services described in this agreement or otherwise breaches the agreement, City shall have the right to pursue all remedies provided by law and equity. Neither payment by the City nor performance by Consultant shall be construed as a waiver of either party's rights or remedies against the other. Failure to require full and timely performance of any provision, at any time, shall not waive or reduce the right to insist upon complete and timely performance of such provision thereafter. Any litigation involving this Agreement or relating to the work shall be brought in Contra Costa County, and Consultant hereby waives the removal provisions of Code of Civil Procedure Section 394.

In the event of any suit, action or proceeding brought by either party for breach of any term hereof or to enforce any provision hereof, the prevailing party shall be entitled to recover its reasonable attorney's fees.

(32) Inspection by Other Agencies. Authorized representatives of the Federal Government, the California Department of Transportation, or other government agencies which gave provided grant funding (if any) for the subject Project and the City may have the right to inspect the work of such services whenever such representatives may deem inspection to be desirable or necessary.

(33) Conflict of Interest. Consultant warrants and covenants that Consultant presently has no interest in, nor shall any interest be acquired in, any matter which will render the services required under the provisions of this agreement a violation of any applicable state, local, or federal law. In the event that any conflict of interest should nevertheless arise, Consultant shall promptly notify City of the existence of such conflict of interest so that the City may determine whether to terminate this agreement. Consultant further warrants its compliance with the Political Reform Act (Gov. Code section 81000 et seq.) respecting this agreement.

Where City Manager determines, based on facts provided by city staff, that Consultant meets the criteria of section 18701 of the FPPC regulations, the individual providing services under this Agreement shall be considered a "designated employee" under the City's conflict of interest code, and shall be required to complete FPPC Form 700 regarding his or her economic interests in a timely manner.

(34) Copyright. Upon City's request, Consultant shall execute appropriate documents to assign to the City the copyright to work created pursuant to this agreement. The issuance of a patent or copyright to Consultant or any other person shall not affect City's rights to the materials and records prepared or obtained in the performance of this agreement. City reserves a license to use such materials and records without restriction or limitation consistent with the intent of the original design, and City shall not be required to pay any additional fee or royalty for such materials or records. The license reserved by City shall continue for a period of fifty years from the date of execution of this agreement unless extended by operation of law or otherwise.

(35) Whole Agreement. This agreement constitutes the entire understanding and agreement of the parties. This agreement integrates all of the terms and conditions

mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

(36) Multiple Copies of Agreement. Multiple copies of this agreement may be executed but the parties agree that the agreement on file in the office of the City Clerk is the version of the agreement that shall take precedence should any differences exist among counterparts of the document.

(37) Employment Practices.

A. Employment of Local Residents. Pursuant to the San Pablo Economic Opportunity Policy, the Consultant and any subcontractors shall contact the San Pablo Economic Development Corporation (“EDC”) at least ten business days prior to hiring or staffing for fulfillment of the Contract, describing number, duties and qualifications needed for available positions, and shall fairly consider for employment any workers referred by the EDC within three business days. “Local Resident” means an individual having an adjusted household income of less than the Area Median Income for Contra Costa County, and domiciled in the City of San Pablo as of the relevant hiring date, with “domiciled” as defined by Section 349(b) of the California Election Code. Discrimination against Local Residents on the basis of their local status is prohibited.

B. Compliance with Law. Consultant represents that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal opportunity employment. Consultant shall not discriminate in the employment of any person because of race, color, national origin, ancestry, physical or mental disability, medical condition, marital status, sex, age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act. Consultant shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Agreement. In performing work and providing services under this Agreement, Consultant shall, at its sole cost and expense, comply with all applicable laws of the United States and the State of California; the Ordinances of the City of San Pablo; and the rules, regulations, orders and directives of their respective administrative agencies and the officers thereof.

(38) Local Subcontracting – Outreach. Consultant shall contact the San Pablo Economic Development Corporation (the “EDC”) at least two weeks prior to any subcontract award, providing notice and details regarding subcontracting opportunity. The EDC shall notify qualified local businesses of subcontracting opportunities, and provide technical assistance to qualified local businesses during the subcontracting bidding process.

IN WITNESS WHEREOF, Consultant has executed this agreement, and the City, by its City Manager, who is authorized to do so, has executed this agreement.

APPROVED AS TO FORM:**CITY OF SAN PABLO**
A Municipal CorporationBy _____
Lynn Tracy Nerland, City AttorneyBy _____
Matt Rodriguez, City Manager**ODIN Systems**By _____
Dustin Saylor, President**ATTEST:**By _____
Elizabeth Pabon-Alvarado, City Clerk

Dated _____

By: _____

Title: _____

Date: _____