

SOFTWARE CONSULTING AGREEMENT

AGREEMENT made this 1 day of June, 20 16, by Abara Software, Inc., whose address is 2975 W Executive Pkwy, Ste. 193 Lehi, UT 84043, hereinafter referred to as the "Consultant", and Tooele County, whose principal place of business is located at 47 S Main St, Tooele, UT 84074, hereinafter referred to as "Client".

WHEREAS, Client desires to engage the services of Consultant to perform, for Client, consulting services regarding custom software solutions as an independent contractor and not as an employee;

NOW, THEREFORE, it is agreed as follows:

1. Term

- 1.1. The respective duties and obligations of the contracting parties shall be an ongoing arrangement commencing on the 1st day of June, 20 16 and may be terminated by either party giving sixty (60) days' written notice to the other party via email using communicated email addresses and/or at the addresses stated above or at an address chosen subsequent to the execution of this agreement and duly communicated to the party giving notice.

2. Consultations

- 2.1 Individual projects and their terms shall be defined by subsequent Statements of Work (SOW) These SOW may be informal and communicated verbally or formal with a produced document stating the work depending on the project.
- 2.2. Consultant shall be available to consult with the county commissioners, the elected officials, and/or the heads of county departments, at reasonable times, concerning matters pertaining to the custom software solutions utilized by, or under consideration of, the Client. Consultant will create all code required to satisfy SOWs as determined by Client. Consultant will take all required steps to ensure that code is written using current software standards, platforms, and utilities and will ensure that code is stored in a safe, accessible location that Client will manage and have full control over.
- 2.2. Consultant shall not perform any tasks relating to project organization, prioritization, or other project management; these functions will be conducted by Client. Consultant will perform software engineering tasks pursuant to subsequent SOWs which will come from project management as determined by Client.
- 2.3. Consultant shall not perform any tasks relating to server administration, maintenance, diagnostics, or any other service relating to the physical network or devices on the network. Client agrees that it shall maintain separate support for all hardware and network devices.
- 2.4. Consultant shall not be responsible for the configuration of web servers including but not limited to the creation of new websites on the web server, configuration of websites on the web server, setup and maintenance of domain names, security certificates, or any other production-related items. Client agrees that it shall maintain separate support for all tasks of this nature. Consultant shall provide the code for websites but it is Client's responsibility to create the actual website on the web server and all relating tasks necessary to ensure that websites are accessible to the public.
- 2.5. Client will provide all necessary software tools for Consultant to complete the SOWs including but not limited to Software Integrated Development Environment (IDE) (currently Microsoft Visual Studio 2012), database (currently Microsoft SQL Server 2008 r2), database management tools (currently tools supplemental to Microsoft SQL Server 2008 r2), Software Subversioning software (currently Visual SVN/Tortoise). If any relating software requires upgrades, Client agrees to procure the upgrades and provide them to Consultant.
- 2.6. Client will provide its own servers, server administrators, test environments, production environments.
- 2.7. Consultant will provide its own computer devices for the purpose of creating necessary code and agrees to maintain its devices with operating system patches and upgrades, antivirus software, backup plans, etc. as necessary to complete its consulting tasks at no charge to Client.

3. Independent Contractor

- 3.1. Both Client and Consultant agree that Consultant will act as an independent contractor in the performance of its duties under this agreement. The parties to this agreement recognize that this agreement does not create any actual or apparent agency, partnership, franchise, or relationship of employer and employee between the parties. Consultant is not authorized to enter into or commit Client to any agreements, and Consultant shall not represent itself as the agent or legal representative of Client.
- 3.2. Accordingly, Consultant shall be responsible for payment of all taxes including Federal, State and local taxes arising out of Consultant's activities in accordance with this agreement, including by way of illustration but not limitation, Federal and State income tax, Social Security tax, unemployment insurance, and any other taxes or insurance as required.
- 3.3. Consultant is free to engage in other consulting contracts as long as Consultant is available for Client during normal business hours and as long as timelines as determined by Client are not affected.
- 3.4. As an independent contractor, Consultant is responsible for payment and coverage for all work related insurances, including but not limited to Worker's Compensation coverage, work related liability coverage and is responsible for any ACA (Affordable Care Act) compliance necessary.

4. Place Where Services Will Be Rendered

- 4.1. Consultant will perform most services in accordance with this agreement at a location and time of Consultant's discretion. In addition the Consultant will perform services on the telephone and at such other places as necessary to perform these services in accordance with this agreement.

Initials (Client)
Initials (Consultant) AR

5. Employment of Others

- 5.1. Client may from time to time request that Consultant arrange for the services of others. All costs to Consultant for those services will be paid by Client but in no event shall Consultant employ others without the prior authorization of Client.

6. Payment to Consultant

- 6.1. Consultant will be paid at the rate of \$ \$65.00 per hour for work performed in accordance with this agreement. Client will reimburse Consultant for reasonable and necessary expenses incurred in the performance of the services including time spent for discovery, programming, testing, deploying, and travel; all other expenses being subject to Client's prior written approval.
- 6.2. Consultant will submit an itemized statement setting forth the time spent and services rendered, and Client will pay Consultant the amounts due as indicated by statements submitted by Consultant within thirty (30) days of receipt. The itemized statement will be delivered to Client via paper or electronic format on the Monday following the week in which any work occurred.
- 6.3. Should the need arise Consultant agrees to work in excess of 40 hours per week. Consultant agrees to seek confirmation from Client that hours in excess of 40 hours per week are warranted before working any overtime hours. Consultant's hourly rate will be the same for all hours worked.

7. Liability

- 7.1. With regard to the services to be performed by Consultant pursuant to the terms of this agreement, Consultant shall not be liable to Client, or to anyone who may claim any right due to any relationship with Client, for any acts or omissions in the performance of services on the part of Consultant or on the part of the agents or employees of Consultant, except when said acts or omissions of Consultant are due to willful misconduct or gross negligence. Client shall hold Consultant free and harmless from any obligations, costs, claims, judgments, attorneys' fees, and attachments arising from or growing out of the services rendered to Client pursuant to the terms of this agreement or in any way connected with the rendering of services, except when the same shall arise due to the willful misconduct or gross negligence of Consultant and Consultant is adjudged to be guilty of willful misconduct or gross negligence by a court of competent jurisdiction.

8. Arbitration

- 8.1. Any controversy or claim arising out of or relating to this agreement, or the breach thereof, shall be settled by arbitration in accordance of the rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator shall be entered in any court having jurisdiction thereof. For that purpose, the parties hereto consent to the jurisdiction and venue of an appropriate court located in Utah County, State of Utah.
- 8.2. In the event that litigation results from or arises out of this Agreement or the performance thereof, the parties agree to reimburse the prevailing party's reasonable attorney's fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing party may be entitled. In such event, no action shall be entertained by said court or any court of competent jurisdiction if filed more than one year subsequent to the date the cause(s) of action actually accrued regardless of whether damages were otherwise as of said time calculable.

9. Confidential Information

- 9.1. Consultant agrees that any information received by Consultant during any furtherance of Consultant's obligations in accordance with this agreement, which concerns the personal, financial or other affairs of Client will be treated by Consultant in full confidence and will not be revealed to any other persons, firms or organizations. Consultant shall not, without the prior written consent of Client, use Client's name in any advertising or promotional literature or publish any articles relating to Client, this agreement, or the services and shall not otherwise refer to the retention of Consultant to render consulting services hereunder.

10. Proprietary Rights

- 10.1. Consultant acknowledges that it has no right to or interest in its work or product resulting from the Services performed hereunder, or any of the documents, reports or other materials created by Consultant in connection with such Services, nor any right to or interest in any copyright therein. Consultant acknowledges that the Services and the products thereof (hereinafter referred to as the "Materials") have been specially commissioned or ordered by Client as "works made-for-hire" as that term is used in the Copyright Law of the United States, and that Client is therefore to be deemed the author of and is the owner of all copyrights in and to such Materials.
- 10.2. Notwithstanding the foregoing, Client acknowledges that Consultant's ability to carry out the work required is heavily dependent upon Consultant's past experience in the industry and in providing similar services to others and they expect to continue such work in the future. Subject to the confidentiality provisions this Agreement, generic information communicated to Client in the course of this project either orally, in the form of presentations, or in documents that report such general industry knowledge is not subject to the terms of 10.1 above.

Initials (Client) _____
Initials (Consultant) CR

IN WITNESS WHEREOF, Consultant and Client have caused this Agreement and Fee Schedule to be executed as of the Effective Date, by the undersigned duly authorized.

Client: Tooele County
Wade Bitner
Signature of Owner or Officer
WADE BITNER
Name Typed or Printed
COMMISSION CHAIRMAN
Title
11 July 2016
Date

Abara Software, Inc.
Cristy Rowley
Signature of Officer
Cristy Rowley
Name Typed or Printed
Contactor
Title
June 9, 2016
Date

ATTEST:

Marilyn K. Gillette
MARILYN K. GILLETTE
TOOELE COUNTY CLERK/AUDITOR



Initials (Client) _____
Initials (Consultant) CR