

## EXHIBIT B

### **AGREEMENT FOR APPLICATION HOSTING AND TECHNOLOGY SUPPORT SERVICES**

This Agreement for Application Hosting and Technology Support Services (hereinafter the "Agreement") is entered into by and between the City of San Fernando with offices located at 117 Macneil Street, San Fernando, CA 91340 and the City of Burbank with offices located at 275 East Olive Avenue, Burbank, CA 91502, referred to individually as Party and collectively as Parties.

#### **1.0 BACKGROUND AND OBJECTIVES**

This Agreement is entered into in connection with San Fernando's decision to engage the City of Burbank to provide certain information technology hosting and support services related to the City of San Fernando's business operations. This Agreement and the Exhibits set forth all terms and conditions governing the relationship between the City of Burbank and the City of San Fernando.

#### **2.0 TERM**

The term of this Agreement shall be one (1) year, commencing on \_\_\_\_\_, and shall automatically renew each year unless terminated by either party with a minimum of 90 days notice.

#### **3.0 SERVICES**

The City of Burbank shall provide the services and shared equipment platform (hereinafter jointly referred to as the "Services") as set forth in Exhibit A – Statement of Work, attached hereto and made a part hereof. Supplemental services may be procured by the City of San Fernando in accordance with 4.0 hereof.

#### **4.0 SUPPLEMENTAL SERVICES**

The City of Burbank shall not be compensated for any work performed that is in addition to or falls outside of the Statement of Work set forth in Exhibit A unless such additional services are authorized in advance and in writing by the City Council or City Manager of the City of San Fernando. A detailed change order proposal stating the additional services will be prepared by the City of Burbank and submitted to the City of San Fernando for its review and approval. The City of Burbank will be responsible for assisting the City of San Fernando in defining, documenting and quantifying the change order. The City of San Fernando will be responsible for timely turnaround of a decision on the approval of the change order request. All terms and conditions of the change order proposal (including any applicable payment terms) will be incorporated into a Supplemental Service Agreement ("SSA") a sample of which is annexed hereto as shown in Schedule 1. The City of Burbank will not be required to perform activities that are not specifically stated in the Statement of Work without a fully executed SSA signed by both Parties.

#### **5.0 CONFIDENTIALITY**

##### **5.1 The City of San Fernando Confidential Information**

With respect to information relating to The City of San Fernando's business that is confidential and clearly so designated ("The City of San Fernando Confidential Information"), the City of Burbank will instruct its personnel to keep such information confidential by using the same degree of care and discretion that they use with similar information of the City of Burbank which the City of Burbank regards as confidential. However, the City of Burbank shall not be required to keep confidential any information which: (i) is or becomes publicly available; (ii) is already in the City of Burbank's possession; (iii) is independently developed by the City of Burbank outside the scope of this Agreement; (iv) is rightfully obtained from third parties; or (v) is required by law or court order to be disclosed. In addition, the City of Burbank shall not be required to keep confidential any ideas, concepts, methodologies, inventions, discoveries, developments, improvements, know-how or techniques developed by the City of Burbank in the course of its services hereunder.

## **5.2 The City Of Burbank Confidential Information**

The City of San Fernando agrees that the City of Burbank's methodologies, tools, concepts, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements, proprietary data and software programs, and any other information identified as proprietary or confidential by the City of Burbank, which may be disclosed to the City of San Fernando, are confidential and proprietary information ("the City of Burbank Confidential Information"). With respect to the City of Burbank Confidential Information, the City of San Fernando shall keep such information confidential by using the same degree of care and discretion that it uses with similar information of its own which the City of San Fernando regards as confidential. However, The City of San Fernando shall not be required to keep confidential any information which: (i) is or becomes publicly available; (ii) is already in The City of San Fernando's possession; (iii) is independently developed by the City of San Fernando outside the scope of this Agreement and without any reliance on the City of Burbank Confidential Information; (iv) is rightfully obtained from third parties; or (v) is required by law or court order to be disclosed.

## **5.3 Use of Confidential Information**

The City of Burbank and the City of San Fernando shall use each other's confidential information only for the purposes of this Agreement. Except as provided in Sections 5.1 and 5.2, the Parties will only disclose such confidential information to any third party, to each other's employees, to the City of Burbank's permitted subcontractors, or to the City of San Fernando's permitted consultants when necessary to carry out their respective obligations set forth in this Agreement. Disclosure of confidential information by a Party pursuant to this Section 5.3 shall not require the other Party's prior written consent.

## **6.0 INTELLECTUAL PROPERTY RIGHTS**

### **6.1 The City of San Fernando Content**

All data created or transmitted by the City of San Fernando and stored on the City of Burbank's servers as part of the Services ("The City of San Fernando Data") shall at all times be owned by the City of San Fernando. The City of Burbank shall not own or have any interest or rights in the City of San Fernando Data. Except as instructed by the City of San Fernando, directly or indirectly, through instructions provided to the servers through the City of San Fernando's use of the City of Burbank's software, the City of Burbank shall treat the City of San Fernando Data

as the City of San Fernando Confidential Information. The City of Burbank will upon (i) request of the City of San Fernando at any time, and (ii) the cessation of all Termination/Expiration Assistance, promptly return to the City of San Fernando, in the format and on the media in use as of the date of the request, all or any requested portion of the City of San Fernando Data. Archival tapes containing any City of San Fernando Data will be used by the City of Burbank solely for back-up purposes. This Agreement does not include conversion of data for porting to other applications.

## **6.2 Proprietary Rights of The City Of Burbank**

All materials, including but not limited to any computer software (in object code and source code form), data or information developed or provided by the City of Burbank or its suppliers under this Agreement, and any know-how, methodologies, equipment, or processes used by the City of Burbank to provide the Services to the City of San Fernando, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto (collectively "the City of Burbank Materials") shall remain the sole and exclusive property of the City of Burbank or its suppliers. The City of San Fernando acknowledges and agrees that the City of Burbank is hosting Web-based applications and the City of Burbank shall have the right to provide services to third parties which are the same or similar to the Services and to use any the City of Burbank Materials providing such services.

## **6.3 License Grant**

The City of Burbank grants the City of San Fernando a non-exclusive license throughout the Term to perform, display, transmit, participate in the transfer of the City of San Fernando Data and otherwise use the City of Burbank Materials for the purposes of performing this Agreement. The City of San Fernando shall have no residual rights to the City of Burbank Materials beyond the term of this Agreement. The City of San Fernando grants the City of Burbank the right to maintain administrative access to the City of San Fernando Data during the Term for purposes of performing this Agreement.

## **7.0 INSURANCE; RISK OF LOSS**

### **7.1 Required Insurance Coverage**

Throughout the Term, the City of Burbank shall, at his own expense, carry and maintain insurance acceptable to the City Manager or City Attorney of the City of San Fernando, against claims for injuries to persons or damages to property which may arise from or in connection with any grossly negligent performance of the work hereunder by the City of Burbank, its agents, representatives or employees. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. The City of Burbank shall provide at least the kinds and minimum amounts of insurance listed below.

1. **Workers' Compensation Insurance:** As required by law.
2. **Commercial General Liability Insurance:** with a combined single limit for bodily injury and property damage in the amount of \$1,000,000 per occurrence and \$2,000,000 general aggregate.

The City of Burbank will furnish proof of coverage, in the form of a standard certificate of insurance, to the City of San Fernando's Procurement Officer within ten (10) days of contract execution. Each insurance policy required by this Agreement shall be endorsed and state the coverage shall not be suspended, voided, cancelled by the insurer or either Party to this Agreement, reduced in coverage or in limits except after 30 days' prior written notice by Certified mail, return receipt requested, has been given to the City of San Fernando. If any material policy changes occur during the life of contract, the City of Burbank shall provide updated proof of coverage, in the form of standard certificates of insurance, to the City of San Fernando in a timely manner. The City of San Fernando, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities the City of Burbank performs; premises owned, occupied or used by the City of Burbank ; or automobiles owned, leased, hired or borrowed by the City of Burbank. The coverage shall contain no special limitations on the scope of protection afforded to the City of San Fernando, and its respective elected and appointed officers, officials, or employees. The City of Burbank's insurance coverage shall be primary insurance with respect to the City of San Fernando, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self insurance maintained by the City of San Fernando, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, the City of Burbank's insurance.

## **7.2 Risk of Loss**

As of the effective date, each Party will be responsible for risk of loss of, and damage to, any equipment, software media or other materials in its possession or under its control.

## **8.0 CHARGES**

### **8.1 Charges**

Subject to the other provisions of this Agreement, the City of San Fernando will pay to the City of Burbank the amounts set forth in Exhibit B – Applicable Charges, attached hereto and made a part hereof. Services performed in connection with an authorized Supplemental Services Agreement (Schedule 1) may be performed either on a time and material (T&M) or fixed fee basis as specified in the SSA. The charges applicable during each renewal term will be mutually agreed to by the Parties and incorporated to this Agreement as an SSA.

### **8.2 Taxes**

- (a) The City of Burbank will pay any sales, use, excise, value-added, services, consumption, and other taxes and duties imposed on any goods and services acquired, used or consumed by the City of Burbank in connection with the Services.
- (b) The City of San Fernando will pay when due any sales, use, excise, value-added, services, consumption, or other tax imposed by any taxing jurisdiction as of the effective date on the provision of the Services or any component thereof, as the rate of such tax may change from time to time during the applicable Term. If applicable, such taxes will be in addition to the Applicable Charges listed in Exhibit B.

- (c) If any taxing jurisdiction imposes after the effective date a new sales, use, excise, value-added, services, consumption, or other tax on the provision of the Services or any component thereof, the Parties will cooperate in attempting to reduce the amount of such tax to the maximum extent feasible. The City of San Fernando will be liable for any such new tax, which is imposed on the Charges for the provision of the Services, or any component thereof.

## **9.0 INVOICES AND PAYMENT**

### **9.1 Invoices and Payment**

The City of Burbank will issue to the City of San Fernando, on an annual basis, one (1) invoice for all amounts due with respect to services rendered and products delivered. Payment terms for materials and services will be as specified in Exhibit B. Each invoice will separately state all applicable charges, reimbursable expenses and taxes payable. Invoices delivered pursuant to this Section 9.1 will be due and payable within thirty (30) days after invoice issuance, unless other payment terms are mutually agreed to. All periodic charges for any partial month under this Agreement and any applicable authorized SSA shall, be prorated.

City of San Fernando  
117 Macneil Street  
San Fernando, CA 91340

### **9.2 Late Payment**

Any sum or credit due either Party under this Agreement that is not paid or granted on the date due will thereafter bear interest until paid or applied, as the case may be, at an annual rate of interest of 9% provided no interest will accrue during any billing dispute between the Parties.

## **10.0 WARRANTIES**

### **10.1 City of Burbank Warranties**

The City of Burbank warrants that all Services will be provided in a good and workmanlike manner. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 10.1, THE CITY OF BURBANK DOES NOT MAKE AND DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR ARISING BY LAW OR OTHERWISE, REGARDING THE SERVICES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE.

### **10.2 Disclaimed Warranties**

The City of Burbank exercises no control over, and accepts no responsibility for, the content of the information passing through the City of Burbank host computers, servers, network hubs and points of presence, or the Internet. As a convenience for The City of San Fernando, the City of Burbank shall perform regular daily backup of all City of San Fernando Data. The City of Burbank shall use its best efforts to recover any lost or corrupted data resulting from the City of Burbank's gross negligence. Should the City of Burbank be unable to

recover such lost or corrupted data, the City of Burbank's responsibility and liability for the loss of the City of San Fernando Data shall be limited to restoring the data to the last required daily back up. At times, there are situations in which the City of Burbank and the City of San Fernando's connections to telecommunication networks (or portions thereof) may be impaired or disrupted due to no fault of their own, and the City of Burbank cannot guarantee that such disruption will not occur. Therefore, the City of Burbank and its suppliers shall not be liable for any temporary delay, outages or interruptions of the Services. Prolonged impairment or disruption of internet connectivity shall be treated as a Force Majeure event as set forth in Section 12.3 below.

### **10.3 The City of San Fernando Warranties**

The City of San Fernando warrants, represent and covenants to the City of Burbank that: (a) The City of San Fernando will use the Services only for lawful purposes and in accordance with this Agreement; (b) all City of San Fernando content and third party software, including the City of San Fernando Data, does not and will not infringe or violate any right of any third party (including any intellectual property rights) or violate any applicable law, regulation or ordinance.

### **11.0 INDEMNIFICATION**

The City of Burbank will protect, defend, indemnify, and save whole and harmless the City of San Fernando and all of its officers, agents, and employees from and against:

- (a) Any third party claim brought against the City of San Fernando relating to the death or bodily injury, or the damage, loss or destruction of real or tangible personal property, to the extent caused by the grossly negligent or tortious acts or omissions of the City of Burbank, its employees, contractors or agents in connection with the performance of the Services;
- (b) Any third party claim brought against the City of San Fernando relating to the willful, fraudulent or grossly negligent misconduct of the City of Burbank, its employees, contractors or agents in connection with the performance of the Services;
- (c) Any third party claim brought against the City of San Fernando relating to an actual infringement of any United State's patent, copyright, or any actual trade secret disclosure, by the City of Burbank, its employees, contractors or agents in connection with the performance of the Services.

The City of Burbank will have a right of contribution from the City of San Fernando with respect to any claim to the extent the City of San Fernando is responsible for contributing to the alleged injury.

### **12.0 LIMITATION OF LIABILITY**

#### **12.1 Limit on Types of Damages Recoverable**

NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, REGARDLESS OF THE FORM OF

ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **12.2 Limit on Amount of Direct Damages Recoverable**

EACH PARTY'S TOTAL CUMULATIVE, AGGREGATE LIABILITY TO THE OTHER FOR ANY AND ALL ACTIONS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED AN AMOUNT EQUAL TO THE U.S. DOLLAR EQUIVALENT OF THE TOTAL AMOUNT OF SERVICES PURCHASED BY THE CITY OF SAN FERNANDO PURSUANT TO THIS AGREEMENT DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE EITHER PARTY IS NOTIFIED BY THE OTHER OF ANY CLAIM. THIS LIMITATION WILL NOT APPLY TO ANY FEES OR CHARGES PAYABLE BY THE CITY OF SAN FERNANDO UNDER THE AGREEMENT.

## **12.3 Force Majeure**

- (a) Neither Party will be liable for any failure or delay in the performance of its obligations under this Agreement, if any, to the extent such failure is caused, directly or indirectly, without fault by such Party, by: fire, flood, earthquake, elements of nature or acts of God; labor disruptions or strikes; acts of war, terrorism, riots, civil disorders, rebellions or revolutions; quarantines, embargoes and other similar governmental action; scheduled and emergency maintenance, the City of San Fernando's acts of omissions (other than failure to appropriate funds or delay in making payments when due), failure to access telecommunication circuits to the City of Burbank backbone; or any other cause beyond the reasonable control of such Party. Events meeting the criteria set forth above are referred to collectively as "Force Majeure Events."
- (b) Upon the occurrence of a Force Majeure Event, the non-performing Party will be excused from any further performance or observance of the affected obligation(s) for as long as such circumstances prevail and such Party continues to attempt to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so delayed in its performance will immediately notify the other by telephone or by the most timely means otherwise available (to be confirmed in writing within five (5) Business Days of the inception of such delay) and describe in reasonable detail the circumstances causing such delay and the anticipated timeline for a resolution of the delay.

## **12.4 Actions of Other Party or Third Parties**

Neither Party shall be liable for any failure or delay in performance under this Agreement (other than for failure to appropriate funding or delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by causes beyond that Party's reasonable control and occurring without its fault or negligence, including, without limitation, failures caused by the other Party or by third party suppliers, subcontractors, and carriers. The Party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon.

## **13.0 TERMINATION**

### **13.1 Termination for Cause**

- (a) The City of San Fernando will have the option, but not the obligation, to terminate this Agreement for Cause for any material breach of the Agreement by the City of Burbank that is not cured by the City of Burbank within thirty (30) days of the date on which the City of Burbank receives the City of San Fernando's written notice of such breach, or if a cure can not reasonably be fully completed within 30 days, a later date, provided the City of Burbank has provided a plan acceptable to the City of San Fernando for such cure. The City of San Fernando will exercise its termination option by delivering to the City of Burbank written notice of such termination identifying the scope of the termination and the termination date.
- (b) The City of Burbank will have the option, but not the obligation, to terminate this Agreement if the City of San Fernando fails to pay when due undisputed amounts owed to the City of Burbank, and the City of San Fernando fails to cure such failure within thirty (30) days after receipt from the City of Burbank of written notice from the City of Burbank.

### **13.2 Termination for Convenience**

The City of San Fernando shall have the right to terminate the Agreement for its convenience by providing the City of Burbank with no less than ninety (90) days prior written notice. The City of Burbank shall have the right to terminate the Agreement for its convenience by providing the City of San Fernando with no less than ninety (90) days prior written notice.

In the event of a termination by the City of San Fernando under this provision, the City of Burbank shall be entitled to compensation for all services performed.

### **13.3 Effect of Termination**

Termination of this Agreement for any reason under this Section 13.0 will not affect (i) any liabilities or obligations of either Party arising before such termination or out of the events causing such termination, or (ii) any damages or other remedies to which a Party may be entitled under this Agreement, at law or in equity, arising from any breaches of such liabilities or obligations.

## **14.0 APPLICABLE LAW, JURISDICTION, VENUE, AND REMEDIES**

### **14.1 Applicable Law**

All questions concerning the validity, interpretation and performance of this Agreement will be governed by and decided in accordance with the laws of the State of California. The parties agree to submit all claims, disputes or other matters in question between the parties arising out of or relating to this Agreement or breach thereof to mediation prior to the institution of any litigation.

### **14.2 Jurisdiction and Venue**

The Parties hereby submit and consent to the exclusive jurisdiction of any state or federal court located in State of California and irrevocably agree that all actions or proceedings relating to this Agreement, will be litigated in such courts, and each of the Parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of any such action or proceeding in such court.

### **14.3 Equitable Remedies**

The Parties agree that in the event of any breach or threatened breach of any provision of this Agreement concerning (i) Confidential Information, or (ii) other matters for which equitable rights may be granted, money damages would be an inadequate remedy. Accordingly, such provisions may be enforced by the preliminary or permanent, mandatory or prohibitory injunction or other order of a court of competent jurisdiction.

## **15.0 MISCELLANEOUS**

### **15.1 The City of San Fernando Provided Resources and Technical Working Environment**

The City of San Fernando shall provide the City of Burbank resources with reasonable access to the City of San Fernando facilities, as well as secure storage areas for materials, equipment and tools. Other specific resource needs may be identified following contract award and will be commensurate with the level of effort required under the Statement of Work.

### **15.2 Binding Nature and Assignment**

Neither Party may assign, voluntarily or by operation of law, any of its rights or obligations under this Agreement without the prior written consent of the other Party; provided, that either may assign its rights and obligations under this Agreement to an affiliate, or to an entity which acquires all or substantially all of the assets or voting stock of that Party if such Affiliate or entity can demonstrate to the reasonable satisfaction of the other Party that it has the ability to fulfill the obligations of the assigning Party under this Agreement (and in the case of assignment by the City of San Fernando, such third party agrees to pay any charges imposed by third parties relating to such assignments). No assignment by a Party will relieve such Party of its rights and obligations under this Agreement. Subject to the foregoing, this Agreement will be binding on the Parties and their respective successors and assigns.

### **15.3 Amendment and Waiver**

No supplement, modification, amendment or waiver of this Agreement will be binding unless executed in writing by the Party against whom enforcement of such supplement, modification, amendment or waiver is sought. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar) nor will such waiver constitute a continuing waiver unless otherwise expressly provided.

### **15.4 Further Assurances; Consents and Approvals**

Each Party will provide such further documents or instruments required by the other Party as may be reasonably necessary or desirable to give effect to this Agreement and to carry out its provisions. Whenever this Agreement requires or contemplates any action, consent or

approval, such Party will act reasonably and in good faith and (unless the Agreement expressly allows exercise of a Party's sole discretion) will not unreasonably withhold or delay such action, consent or approval.

### **15.5 Severability**

Any provision in this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of such provision in any other jurisdiction.

### **15.6 Entire Agreement**

This Agreement, including the Exhibits thereto, constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the Parties pertaining to the subject matter hereof.

### **15.7 Notices**

Any notice, demand or other communication required or permitted to be given under this Agreement will be in writing and will be deemed delivered to a Party (i) when delivered by hand or courier, (ii) when sent by confirmed facsimile with a copy sent by another means specified in this Section 15.7, or (iii) six (6) days after the date of mailing if mailed by United States certified mail, return receipt requested, postage prepaid, in each case to the address of such Party set forth below (or at such other address as the Party may from time to time specify by notice delivered in the foregoing manner):

If to The City of San Fernando, to:

City of San Fernando  
117 Macneil Street  
San Fernando, CA 91340

Attn: Federico Ramirez

If to the City of Burbank, to:

City of Burbank  
275 East Olive Avenue  
Burbank, CA 91502

Attn: Jennifer Wyatt

### **15.8 Survival**

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement, will survive expiration or termination of this Agreement.

### **15.9 Independent Contractors & Use of Subcontractors**

The City of Burbank will perform its obligations under this Agreement as an independent contractor of the City of San Fernando. Nothing in this Agreement will be deemed to constitute the City of Burbank and The City of San Fernando as partners, joint venturers, or principals or agents. The City of Burbank has no authority to represent the City of San Fernando as to any matters, except as expressly authorized in this Agreement or in an authorized Supplemental

Service Agreement. The City of Burbank has the right to use, if appropriate, qualified third party vendors.

#### **15.10 Counterparts**

This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which taken together will constitute one and the same instrument.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

#### **City of San Fernando**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

#### **City of Burbank**

By: \_\_\_\_\_

Name: Jennifer Wyatt

Title: Information Technology Director

Date: \_\_\_\_\_

## **Exhibit A**

### **Statement of Work**

This Statement of Work describes the application hosting services that the City of Burbank will provide to the City of San Fernando in connection with this Agreement. Should additional services be required beyond or not defined in the scope of this Agreement, the City of San Fernando and the City of Burbank may enter into a Supplemental Services Agreement as further described in Section 4.0 of the Agreement, subject to required the City of San Fernando approvals.

#### **1.0 Introduction**

The City of Burbank will provide the City of San Fernando with hosting services to the Edgesoft enterprise land management system (eLMS) for the City of San Fernando.

#### **2.0 Services to be Provided**

The City of Burbank shall provide the following services as outlined below:

##### **2.1 Infrastructure:**

The City of Burbank will setup, maintain and support a hosted infrastructure for the City of San Fernando eLMS application. The hosted infrastructure includes:

- Twelve installations of the eLMS application per year, generally six test and six production (ELMS application provided by the City of San Fernando)
- Domain name
- SSL Certificate
- Database Server
- At least 100GB of data storage space (includes eLMS application and operating system)
- Microsoft Windows Server 2008
- JDK 1.5 (5.0)
- Apache Tomcat (latest version tested and compatible and will change as needed)
- SAP Crystal Reports Runtime (Ripplestone)
- SMTP (Outbound)
- Antivirus software
- Backup software
- Network/System Monitoring Software
- 3Mbps bandwidth
- Firewall setup and configuration
- Test environment

The aforementioned infrastructure is provided to the City of San Fernando on a shared services basis, and the City of Burbank will retain exclusive ownership rights thereto.

##### **2.2 Network Availability**

eLMS will be available to the City of San Fernando through the internet using a unique URL. The City of Burbank's goal is to make the application available to the City of San Fernando free of network outages 99.9% of the time except during scheduled downtime or emergency maintenance periods. To match the City of Burbank provided 3 Mbps and to achieve optimal

performance, the City of San Fernando should have equal network connection speed dedicated to the eLMS application.

### **2.3 Reporting schedule**

The City of Burbank will setup a reporting environment for the eLMS application that will provide the City of San Fernando with the ability to receive reports online.

### **2.4 Data Storage:**

Data storage will be managed by the City of Burbank with no remote access by the client.

### **2.5 Backup:**

Daily incremental and weekly full backup of the City of San Fernando data will be performed and sent to a secure location weekly.

### **2.6 Security:**

The City of Burbank understands the sensitive nature of the data received and stored on behalf of the City of San Fernando. The City of Burbank has identified areas that must be secured to protect the confidentiality and integrity of the data.

Physical Security – The hosted environment will reside in a secure data center to prevent access from unauthorized individuals.

Logical – the City of Burbank will take all commercially reasonable efforts to secure the City of San Fernando data. Data that is accessed through the web will be encrypted through a secure socket layer (SSL) and secure shell (SSH). The City of San Fernando data may reside in its own segment.

Detection – the City of Burbank will monitor its systems and its procedures for security breaches, violations and suspicious (questionable activity). This includes suspicious external activity (including, without limitation, unauthorized probes, scans or break-in attempts) and suspicious internal activity (including, without limitation, unauthorized system administrator access, unauthorized changes to its system or network, system or network misuse or program information theft or handling).

### **2.7 Support**

The City of Burbank will provide support to the City of San Fernando Monday-Friday between 7 am and 5 pm excluding holidays. Application issues will be escalated to the Level 2 Edgesoft support team. To request support, the City of San Fernando can contact the City of Burbank as follows:

**Email:** [ELMSupport@ci.burbank.ca.us](mailto:ELMSupport@ci.burbank.ca.us)

**Phone:** 818.238.5130

The City of Burbank will provide escalation procedures for emergent issues outside of the support hours identified in section 2.7, Support.

The City of Burbank will work with Edgesoft to develop an eLMS support procedure for the City which will be provided within 30 days of contract start date. The City of Burbank will make all reasonable efforts to resolve the City of San Fernando issues in a timely manner.

## **2.8 Report Services**

The City of Burbank will provide 2 hours per month or 24 hours per annual term, of an Information Systems Analyst to perform report generation and configuration. Report generation is the process of creating a new report from scratch which includes: gathering report requirements; building and connecting the report to the database; testing the report; working with end users to make sure report meets specifications; and placing the report into production.

The City of San Fernando shall submit the report request to the City of Burbank Account Manager outlining the basic requirements. The Account Manager will provide an estimate of hours with a not exceed amount at which time the City of San Fernando can approve or deny the estimate.

If additional hours over and above the allotted 24 are required to complete any report requests, they will be charged in accordance with *Exhibit B, 2.0 Other City of Burbank Services*. Any hours remaining at the end of the annual term will be lost and not carried over into the new term.

## **2.9 Maintenance of hosted environment**

The City of San Fernando will be notified of any scheduled maintenance 5 days in advance. The City of Burbank will make all commercially reasonable efforts to perform maintenance during non business hours.

**Exhibit B**  
**Applicable Charges**

**1.0 Based Monthly Fee**

The City of San Fernando shall pay the City of Burbank a base monthly fee (billed annually) as outlined below for twelve (12 months) from \_\_\_\_\_, to \_\_\_\_\_. Services will be invoiced in advance for the following twelve (12) month cycle, and payment is due on a net 30 day basis.

**Payment Schedule:**

	Monthly Fee	# of Months	Annual Total
Year 1	\$1,060	12	\$12,720
Year 2	\$1,081	12	\$12,972
Year 3	\$1,113	12	\$13,356

**2.0 Other City Of Burbank Services**

Services provided to the City of San Fernando by the City of Burbank, that are beyond the scope of this Agreement, or are in addition to or supplemental to the scope of this Agreement, will be provided at the then current the City of Burbank labor rate during the Term. The City of Burbank Account Manager (Kevin Woodruff, kwoodruff@ci.burbank.ca.us; 818.238.5089) will always obtain prior approval from the City of San Fernando on the nature of the services, personnel assigned and estimated time and expenses to be incurred. All such services will be performed in accordance with a fully executed Supplemental Service Agreement (Schedule 1).

**Pricing Assumptions:**

- Except as otherwise set forth herein, travel, lodging, meals and incidental expenses for the City of Burbank staff that are directly related to performing the specific deliverables of this Agreement will be the responsibility of the City of Burbank.
- Any other expenses that fall outside the deliverables of this Agreement will be the responsibility of the City of San Fernando. The City of Burbank Account Manager will establish an approval process by the City of San Fernando prior to incurring the expense.
- The City of Burbank will notify the City of San Fernando of any changes in price at least 60 days prior any given renewal period.

**SCHEDULE 1**  
**SUPPLEMENTAL SERVICE AGREEMENT NO. \_\_\_\_**  
**[SAMPLE]**

**Name of Client:** The City of San Fernando

**Agreement:** Agreement for Application Hosting and Technology Support Services  
(the "Agreement")

**Definitions:** Each term defined in the Agreement will have the meaning ascribed to it in the Agreement whenever the term is used in this SSA No. \_\_\_\_.

**Provision of Supplemental Services:** The City of San Fernando requests that the City of Burbank supplement the Services it is providing under the terms of the Agreement by performing the supplemental services described below:

*[Supplemental Services to be specified in this Section]*

**Term:** The City of Burbank will provide the supplemental services under this SSA No. \_\_\_\_ for a period of \_\_\_\_ months/years, beginning on \_\_\_\_, and ending on \_\_\_\_.

**Fee:** The City of San Fernando will pay the City of Burbank the following additional fee(s):

*[Specify Fee in this Section]*

**Payment Schedule:** Payments will be made in accordance with the following payment schedule.

*[Specify Payment Schedule in this Section]*

**Integration Provision:** Except as expressly modified by this SSA No. \_\_\_\_, the Agreement remains in full force and effect. As of the Amendment Date of this SSA, the Agreement, as further amended by this SSA No. \_\_\_\_, constitutes the entire understanding of the Parties as regards the subject matter hereof and cannot be modified except by written agreement of the Parties.

IN WITNESS WHEREOF, the Parties have mutually affixed their hand and seal and have executed this Supplemental Service Agreement as of the day and year signed below; establishing agreement on all terms and conditions herein.

*[Signature Line]*  
Date

*[Signature Line]*  
Date