

AGREEMENT FOR ORACLE CLOUD IMPLEMENTATION

THIS AGREEMENT (“Agreement”) is made and entered into by and between Weber County, a political subdivision of the State of Utah (“County”), and Graviton Consulting Services, an independent contractor (“Contractor”), (collectively, “the parties”) pursuant to the following terms and conditions.

W I T N E S S E T H:

1. SCOPE OF SERVICES

Contractor agrees to provide to County, under the terms and conditions of this Agreement, the mutually agreed upon consulting services (the “Services”) and deliverables (“Work Products”) which will be described on one or more statements of work which will become part of this Agreement (the “Statement of Work”, or “SOW”). The initial SOW is attached hereto as Exhibit A.

2. CHANGES TO THE SOW OR THIS AGREEMENT

At any time prior to completion of Services or a Work Product under a SOW, either party may request that a change (including without limitation, a modification, addition or reduction) be made to such SOW or this Agreement. Any such changes shall be by written amendment detailing the changes involved and any related changes to the schedule and charges (a “Change Order”). Contractor shall not proceed with any work beyond the scope of work set forth in an SOW until a written change to a SOW is executed by an Authorized Representative of each party. The County shall not be liable for any fees without an approved Change Order.

3. TERM

The term of this Agreement shall commence when fully executed and terminate thirty (30) days after completion of all Services. However, any provision of this Agreement that, either expressly or by its nature, contemplates performance or observance subsequent to termination or expiration of the Agreement will survive termination or expiration and continue in full force and effect as long as it applies.

4. COMPENSATION

Contractor shall be compensated in an amount not to exceed that listed within each SOW, unless a different amount is approved by both parties.

For Services and Work Product provided on a time and materials basis as stipulated in the Statement(s) of Work, County shall pay Contractor in accordance with the hourly rates set forth in the applicable SOW, exclusive of sales, use and similar taxes, or as may be later agreed upon by the parties. For Services and Work Products provided on a fixed price basis, the Contract shall submit an invoice for any approved milestone or deliverable payment after County’s

acceptance of such milestone or deliverable. All fixed price payments will be identified in each applicable SOW, and unless otherwise stated include all expenses.

All undisputed invoices shall be due and payable within thirty (30) days from the date of receipt of the invoice. The County must notify Contractor of any concern or dispute with respect to an invoice within thirty (30) days from the date of receipt of the invoice or the invoice shall be presumed accepted.

5. ACCEPTANCE

Acceptance criteria for Services and Work Products shall be set forth in each SOW, or in such other document that the parties mutually agree upon in writing. The County must inspect the Services and Work Products upon Contractor's delivery of such Services or Work Products to confirm conformance with acceptance criteria. Unless otherwise stated in a SOW, if Contractor has not received written notice from County within five (5) business days, or an alternate period agreed to between the parties, following Contractor's notification to County of completion of the Services or delivery of the Work Products, the applicable Services or Work Products will be deemed accepted by County. If the SOW does not contain acceptance criteria, the applicable Services or Work Products will be deemed accepted by County on the date of delivery unless Contractor receives written notice from County specifying the reason for non-acceptance within five (5) business days after Contractor's completion of the Services or delivery of the Work Products.

6. INSURANCE

Contractor shall obtain and maintain, at Contractor's own expense during the term of this Agreement, insurance as set forth below. The insurance shall be obtained from insurance carriers authorized to do business in the State of Utah. If any of the required coverage is provided on a claims-made basis, then Contractor shall maintain the policy for no less than four years after termination of this Agreement.

1. MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

(1) Contractor shall maintain Commercial General Liability insurance with contractual liability coverage to cover Contractor's obligations under the Indemnification section of this Agreement, with minimum combined single limits of \$1,000,000 for each occurrence and \$2,000,000 aggregate. The policy shall protect Contractor and the County from claims for damages for property damage and claims for personal injury, including accidental death, that may arise from Contractor's operations under this Agreement, including products and completed operations. The policy shall be primary and noncontributory to any other policy or coverage available to the County, whether such coverage be primary, contributing, or excess.

(2) Contractor shall maintain Commercial Automobile Liability insurance that provides coverage for owned, hired, and non-owned automobiles, in the minimum amount of \$1,000,000 per person, \$2,000,000 per accident, and, for property damage, \$500,000 per occurrence, or a combined single limit of \$3,000,000.

(3) Contractor shall maintain workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than \$1,000,000 for each accident.

(4) If not included in the Commercial General Liability policy, Contractor shall maintain crime insurance including coverage for employee dishonesty and theft, and also cyber liability coverage. The policy must insure all officers and employees of Contractor who will be providing services under this Agreement, and it must be sufficient to cover Contractor's obligations under the Indemnification section of this Agreement.

2. OTHER INSURANCE PROVISIONS

The insurance policies are to contain, or be endorsed to contain, the following provisions:

(1) Notice of Cancellation: Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

(2) Waiver of Subrogation: Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

(3) Verification of Coverage: Contractor shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

7. **HOLD HARMLESS/INDEMNIFICATION**

Contractor shall hold harmless and indemnify County and its officers, employees, agents, and volunteers, from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of County.

8. **INDEPENDENT CONTRACTOR**

It is the expressed intention of the parties that Contractor is an independent contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement.

9. STATE AND FEDERAL TAXES

As Contractor is not County's employee, Contractor is responsible for paying all required state and federal taxes. In particular:

- a. County will not withhold FICA (Social Security) from Contractor's payments;
- b. County will not make state or federal unemployment insurance contributions on behalf of Contractor;
- c. County will not withhold state or federal income tax from payment to Contractor;
- d. County will not make disability insurance contributions on behalf of Contractor;
- e. County will not obtain workers' compensation insurance on behalf of Contractor.

10. ASSIGNMENT

It is understood and agreed that this Agreement contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Agreement will be permitted only with the express written consent of the County.

11. NOTICE

Any and all notices, reports or other communications to be given to County or Contractor shall be given to the persons representing the respective parties at the following addresses:

CONTRACTOR:

Graviton Consulting
Attn: Vineet Srivastava
Phone: 916-337-6551
Email: vineet@gravitonconsulting.com

COUNTY:

*Weber County
Attn: Sarah Swan
2380 Washington Blvd, Suite 340
Ogden, Utah 84401
Phone: 801-399-8650
Email: sswan@co.weber.ut.us*

12. COMPLIANCE

Contractor shall comply with all federal, state and local laws, codes, ordinances and regulations applicable to Contractor's performance under this Agreement. Specifically, Contractor shall not engage in unlawful employment discrimination, including, but not limited to, unlawful discrimination based upon a person's race, religion, color, national origin, ancestry, physical

handicap, medical condition, marital status, gender, citizenship or sexual orientation, to the extent prohibited by state or federal law.

13. ENTIRE AGREEMENT AND MODIFICATION

This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and supersedes all prior agreements and representations with respect to the subject matter hereof. This Agreement may only be modified by a written amendment hereto, executed by both parties; however, matters concerning the scope of services which do not affect the agreed price may be modified by mutual written consent of the Contractor and the County. If there are exhibits attached hereto, and a conflict exists between the terms of this Agreement and any exhibit, the terms of this Agreement shall control.

14. ENFORCEABILITY AND SEVERABILITY

The invalidity of any term of this Agreement will not and shall not be deemed to affect the validity of any other provision, and the remainder of the Agreement will remain in full force and effect, unless the invalidation of the term materially alters this Agreement. If the invalidation of the term materially alters the Agreement, then the parties shall negotiate in good faith to modify the Agreement to match, as closely as possible, the original intent of the parties.

15. TERMINATION AND RIGHTS UPON TERMINATION

- A. This Agreement may be terminated upon mutual written consent of the parties, or as a remedy available at law or in equity.
- B. The County may terminate this Agreement for convenience upon thirty (30) calendar days' written notice to Contractor.
- C. Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at its option, may terminate this Agreement by giving written notification to Contractor. The termination date shall be the effective date of the notice. For the purposes of this subsection, default or material breach of this Agreement shall include, but not be limited to, any of the following: failure to perform required services in a timely manner, willful destruction of County property, dishonesty, or theft.
- D. Upon termination of this Agreement for any reason, including expiration, Contractor shall place no further orders nor enter into subcontracts for materials or services unless it is necessary in accordance with agreed upon wind-down procedures. Contractor shall, upon receipt of a termination notice, unless otherwise directed by the County, (i) take such action as may be necessary for the protection and preservation of the County's materials and property; and (ii) act in good faith to mitigate costs to County.
- E. In the event of termination of this Agreement, County shall pay for completed Work Products delivered as well as for Services performed by Consultant through the date of termination, including completed milestones/deliverables

and partially completed milestones/deliverables. For partially completed milestones/deliverables, Contractor and County shall mutually agree on the proportion of work completed and payment amounts should equal the same proportion of the milestone/deliverable payment amount.

16. FORCE MAJEURE

In the event either party is delayed or prevented from performing this Agreement due to any cause beyond its reasonable control, including but not limited to, natural disaster, strike, civil unrest, embargo, court order or acts of God, such delay shall be excused during the continuance of such delay, and the period of performance shall be extended to such extent as may be reasonable to perform after the cause of delay has been removed. In the event any such delay continues for a period of more than ninety (90) days, either party may terminate any SOW under which performance is delayed upon written notice to the other party. In the event of any such termination, County shall pay Contractor for work performed through the effective date of termination, as required in this Agreement.

17. NO WAIVER

The failure to exercise any right to enforce any remedy contained in this Agreement shall not operate as, or be construed to be, a waiver or relinquishment of the exercise of such right or remedy, or of any other right or remedy herein contained.

18. DISPUTES

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

It is agreed by the parties that unless otherwise expressly waived by them, any action arising out of this Agreement shall be filed and remain in a court of competent jurisdiction in Weber County, State of Utah.

During the pendency of a dispute between the parties, Contractor shall not interrupt or suspend or terminate the provision of Services to County or perform any action that prevents, impedes, or reduces in any way the provision of Services or County's ability to conduct its activities, unless (1) authority to do so is granted by County or conferred by a court of competent jurisdiction, or (2) the nature of the dispute makes provision of the Services infeasible. This paragraph will apply even if any problem or other dispute arises between the parties, and regardless of whether or not any dispute requires the use of the dispute resolution procedures described above.

19. MANDATORY AND PERMISSIVE

“Shall” is mandatory. “May” is permissive.

20. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

21. CONTROLLING LAW

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of Utah.

22. AUTHORITY

Each party and each party’s signatory warrant and represent that each has full authority and capacity to enter into this Agreement in accordance with all requirements of law. The parties also warrant that any signed amendment or modification to the agreement shall comply with all requirements of law, including capacity and authority to amend or modify the Agreement.

23. NEGOTIATED AGREEMENT

This Agreement has been arrived at through negotiation between the parties. Each party represents and warrants that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other party. Each party also warrants and represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such party willingly forgoes any such consultation.

24. NO RELIANCE ON REPRESENTATIONS

Each party warrants and represents that it is not relying and has not relied upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this Agreement, have been independently verified. Each party further understands that it is responsible for verifying the representations of law or fact provided by the other party.

25. WARRANTY

Consultant warrants that (a) the services it provides hereunder will be performed in a professional and workmanlike manner in accordance with industry standards; (b) it will perform the Services in a manner that complies with all applicable laws and regulations; (c) that it and its personnel have obtained and will maintain any necessary certifications, clearances, and authorizations necessary to provide consulting services related to configuration of the Oracle software or other third party products furnished by Contractor listed in the SOW; and (d) that it will staff the project with an appropriate number of skilled and experienced consultants.

26. DATA SECURITY - CONFIDENTIALITY

- A. Acknowledgment of access to information characterized as covered data: Both parties acknowledge that this Agreement may allow either party access to the other party's confidential information or information provided by the other party including, but not limited to, personal information, records, data, or financial information ("Covered Data") notwithstanding the manner in which or from whom it is received, which is subject to state laws that restrict the use and disclosure of the received information. Both parties shall maintain the privacy of, and shall not release, Covered Data without full compliance with all applicable state and federal laws, the provisions of this Agreement and prior written consent of the other party. Both parties agree that they will include all of the terms and conditions contained in this clause in all subcontractor or agency contracts providing services under this Agreement. Where a federal, state or local law, ordinance, rule or regulation is required to be made applicable to this Agreement, it shall be deemed to be incorporated herein without amendment to this Agreement.
- B. Prohibition on unauthorized use or disclosure of Covered Data: Both parties agree to hold Covered Data received from or created on behalf of the other party in strictest confidence. Neither party shall use or disclose Covered Data except as permitted or required by this Agreement or as otherwise authorized in writing by the other party. If required by law or by a court of competent jurisdiction or an administrative body to disclose Covered Data, either party will notify the other party in writing prior to any disclosure in order to give the other party an opportunity to oppose any such disclosure.
- C. Safeguard standard: Both parties agree that they will protect the Covered Data according to commercially acceptable standards and no less rigorously than they protect their own confidential information, but in no case less than reasonable care. Both parties shall develop, implement, maintain and use appropriate administrative, technical and physical security measures which may include but not be limited to encryption techniques, to preserve the confidentiality, integrity and availability of all such Covered Data.
- D. Return or destruction of Covered Data: Unless otherwise required, upon termination, cancellation, expiration or other conclusion of this Agreement, both parties shall return the Covered Data to the other party unless the other party requests that such data be destroyed. This provision shall also apply to all Covered Data that is in the possession of subcontractors or agents of either party. Both parties shall complete such return or destruction not less than thirty (30) calendar days after the conclusion or termination of this Agreement. Within this thirty (30) day period, both parties shall certify in writing to the other party that the return or destruction has been completed.
- E. No third-party rights: Nothing in this Agreement is intended to make any person or entity who is not signatory to the Agreement a third-party beneficiary of any right created by this Agreement or by operation of law.

27. INTELLECTUAL PROPERTY RIGHTS/LICENSE

Unless Contractor and the County agree otherwise in writing, the Work Products developed for County by Contractor pursuant to this Agreement and any SOW shall be considered “works made for hire” as defined in the Copyright Act, 17 U.S.C. §101, and shall belong to County. The foregoing provisions do not apply to any third party works or products provided by Contractor to County or to Contractor Know-How (as defined below).

- A. **Contractor Know-How and License.** County acknowledges that Contractor’s business depends substantially on the accumulation of expertise, methodologies and general materials that Contractor utilizes and develops during engagements for clients. Accordingly, County agrees that Contractor shall retain all right, title and interest in and to all “Contractor Know-How,” which includes all discoveries, concepts, and ideas, software, scripts and utilities whether installed on end-user equipment, County equipment or Contractor equipment, business processes, proposals, methodologies, delivery strategies, approaches and practices, solutions, programs, training materials, templates, documentation, all whether or not they can be registered under patent, copyright or similar statutes, trademarks, trade secrets, as well as modifications and improvements thereof, which Contractor, its agents or employees, whether alone or jointly with others, conceives, makes, develops, acquires or obtains knowledge of at any time before, after or during the term of this Agreement without breach of Contractor's duty of confidentiality to County. To the extent Contractor Know-How is included in or reflected in any Work Product delivered hereunder, County shall (i) have a limited perpetual, personal, irrevocable, nonexclusive, worldwide, and royalty free license to use, execute, reproduce, and modify the Contractor Know-How, but only for Client’s internal use in conjunction with the Work Products and (ii) be allowed to share the Work Products with other governmental entities or third party vendors with a need to access information contained within the Work Products as part of their scope of work with the County.

28. SUBCONTRACTORS

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

29. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) the terms and conditions set forth in this Agreement; 2) the Statement of Work.

IN WITNESS WHEREOF, the parties have executed this Agreement, which becomes effective as of the date it becomes fully executed by both parties.

BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY

By: _____
James H. "Jim" Harvey, Chair

Date: _____

ATTEST:

Ricky Hatch, CPA
Weber County Clerk/Auditor

GRAVITON CONSULTING SERVICES

Signature: *Vinset*

Print name: VINSET SRIVASTAVA

Date: 6/3/2021

Exhibit A
STATEMENT OF WORK