



PROFESSIONAL SERVICES AGREEMENT

City of Kirkland Biennial Budget Book, GASB 87, GASB 96, and ACFR Software

This agreement is between the City of Kirkland, a Washington municipal corporation ("City"), and IGM Technology Corp, a Ontario corporation, whose address is 318-77 McMurrich St., Toronto, ON CA M5R 3V3 ("Consultant").

Whereas, the City has previously entered into an agreement with the Consultant on April 28, 2022, for the City's Biennial Budget Book and GASB software implementation; and

Whereas, the Consultant was selected for that implementation software and services contact through a competitive request for proposals, Job #08-22-FA; and

Whereas, the parties' prior agreement did not have specific provisions regarding ongoing software services and it terminated on December 31, 2022; and

Whereas, the City now desires to enter into a new contract with the Consultant to continue ongoing services with the Consultant and has obtained approval to enter into this sole source contract continuing prior services and adding related additional services.

Now therefore, in consideration of the mutual benefits and conditions set forth below, the parties agree and contract as follows:

I. SERVICES BY CONSULTANT

- A. The Consultant agrees to perform the services for the City's Financial Software project as such services are further described in the following attachments to this Agreement:
1. Attachment A – Consultant's SaaS Services Agreement
 2. Attachment B – Consultant's Terms and Conditions
 3. Attachment C – Consultant's Statement of Work
 4. Attachment D – Consultant's Service Level Terms
 5. Attachment E – Consultant's Support Terms

Unless specifically noted in this Agreement, the terms of this Professional Services Agreement supersede any conflicting provisions contained within these attachments.

- B. All services and duties shall be conducted and performed diligently, completely and in accordance with professional standards of conduct and performance.

II. COMPENSATION

- A. The total compensation to be paid to Consultant for these services shall not exceed **\$243,605**, as detailed in **Attachment A**.

- B. Payment to Consultant by the City in accordance with the payment ceiling specified above shall be the total compensation for all services performed under this Agreement and supporting documents hereto as well as all subcontractors' fees and expenses, supervision, labor, supplies, materials, equipment or the use thereof, reimbursable expenses, and other necessary incidentals.
- C. The Consultant shall be paid on the basis of invoices submitted. Invoicing will be on the basis of percentage complete or on the basis of time, whichever is applicable in accordance with the terms of this Agreement.
- D. The City shall have the right to withhold payment to Consultant for any services not completed in a satisfactory manner until such time as Consultant modifies such services to the satisfaction of the City.
- E. Unless otherwise specified in this Agreement, any payment shall be considered timely if a warrant is mailed or is available within 30 days of the date of actual receipt by the City of an invoice conforming in all respects to the terms of this Agreement.

III. GENERAL ADMINISTRATION AND MANAGEMENT

The Financial Planning Manager for the City of Kirkland shall review and approve the Consultant's invoices to the City under this Agreement, shall have primary responsibility for overseeing and approving services to be performed by the Consultant, and shall coordinate all communications with the Consultant from the City.

IV. COMPLETION DATE AND/OR DURATION OF AGREEMENT

For the Consultant's performance of the services specified in Section I, the estimated completion date is May 9, 2029.

For services specified in Section I, this Agreement expires May 9, 2029.

Consultant will diligently proceed with the services contracted for, but Consultant shall not be held responsible for delays occasioned by factors beyond its control which could not reasonably have been foreseen at the time of the execution of this Agreement. If such a delay arises, Consultant shall forthwith notify the City.

V. TERMINATION OF AGREEMENT

The City or the Consultant may terminate or suspend this Agreement at any time, with or without cause, by giving ten (10) days' notice to the other in writing. In the event of termination, all finished or unfinished reports, or other material prepared by the Consultant pursuant to this Agreement, shall be provided to the City. In the event the City terminates prior to completion without cause, Consultant may complete such analyses and records as may be necessary to place its files in order. Consultant shall be entitled to receive just and equitable compensation for any satisfactory services completed on the project prior to the date of termination, not to exceed the payment ceiling set forth above.

VI. OWNERSHIP OF WORK PRODUCT

- A. Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled or produced as a result of this Agreement, whether or not completed, shall be vested in the City. Any reuse of these materials by the City for projects or purposes other than those which fall within the scope of this Agreement or the project to which it relates, without written concurrence by the Consultant will be at the sole risk of the City.
- B. Methodology, software, logic, and systems developed under this Agreement are the property of the Consultant. The City has the right to use the software platform that is provided by the consultant during the Agreement term. Materials developed under this Agreement are the property of the Consultant and the City. Such materials may be used as either the Consultant or the City sees fit, including the right to revise or publish the same without limitation, except that no materials revealing proprietary information about Consultant's software, including software, queries, screenshots of the software, and user guides, can be published by the City on public websites under any circumstances. This limitation on publication does not apply to data or final published documents created by the City while using the Consultant's software platform, which are materials owned by the City. Nothing herein prohibits the City from disclosing records as required by the Washington State Public Records Act, chapter 42.56 RCW. If a public records request is made for Consultant's proprietary information, the City will use reasonable efforts to notify Consultant prior to any release. The City is solely responsible for and retains all right, title, and interest in and to any and all data or content made available by the City for use with or in, or uploaded to, the Consultant's software.
- C. The Consultant at such times and in such forms as the City may require, shall furnish to the City such statements, records, reports, data, and information as the City may request pertaining to matters covered by this Agreement. All of the reports, information, data, and other related materials, prepared or assembled by the Consultant under this Agreement and any information relating to personal, medical, and financial data will be treated as confidential only as allowed by Washington State laws regarding disclosure of public information, including chapter 42.56 RCW.

The Consultant will at any time during normal business hours and as often as the City may deem necessary, make available for examination all of its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the City or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The City shall receive a copy of all audit reports made by the agency or firm as to the Consultant's activities. The City may, at its discretion, conduct an audit, at its expense, using its own or outside auditors, of the Consultant's activities which relate, directly or indirectly, to the Agreement.

Consultant will provide all original operation and maintenance manuals, along with all warranties, from the manufacturer for any equipment or items installed or supplied to the City as part of this contracted project.

The Consultant shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed pursuant to this Agreement. The Consultant shall also maintain such

other records as may be deemed necessary by the City to ensure proper accounting of all funds contributed by the City to the performance of this Agreement.

The foregoing records shall be maintained for a period of six (6) years after termination of this Agreement unless permission to destroy them is granted by the Office of the Archivist in accordance with RCW Chapter 40.14 and by the City.

VII. SUCCESSORS AND ASSIGNS

The Consultant shall not assign, transfer, convey, pledge, or otherwise dispose of this Agreement or any part of this Agreement without prior written consent of the City.

VIII. NONDISCRIMINATION

Consultant shall, in employment made possible or resulting from this Agreement, ensure that there shall be no unlawful discrimination against any employee or applicant for employment in violation of RCW 49.60.180, as currently written or hereafter amended, or other applicable law prohibiting discrimination, unless based upon a bona fide occupational qualification as provided in RCW 49.60.180 or as otherwise permitted by other applicable law. Further, no person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement in violation of RCW 49.60.215 or other applicable law prohibiting discrimination.

IX. HOLD HARMLESS/INDEMNIFICATION

- A. To the greatest extent allowed by law the Consultant shall defend, indemnify, and hold harmless the City and its officers, officials, employees, and volunteers ("Indemnified Parties") harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with performance of this Agreement, except for injuries and damages caused by the sole negligence of the Indemnified Parties.
- B. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.
- C. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Title 51 RCW, Washington's industrial insurance law, solely for the purpose of this indemnification. This waiver has been mutually negotiated by the parties.
- D. The provisions of this section shall survive the expiration or termination of this Agreement.

X. LIABILITY INSURANCE COVERAGE

The Consultant shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property that may arise from or in connection with the performance of the work hereunder by the Consultant and/or its agents, representatives, or employees. A failure to obtain and maintain such insurance or to file required certificates and endorsements shall be a material breach of this Agreement.

Consultant's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance or to otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. ~~Automobile Liability~~ insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be as least as broad as Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. ~~If necessary, the policy shall be endorsed to provide contractual liability coverage.~~
2. Commercial General Liability insurance shall be as least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.
5. Network Security (Cyber) and Privacy Insurance shall include, but not be limited to, coverage, including defense, for the following losses or services:

Liability arising from theft, dissemination, and/or use of City confidential and personally identifiable information, including but not limited to, any information about an individual maintained by or on behalf of the City, including (i) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (ii) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information regardless of how or where the information is stored or transmitted.

Network security liability arising from (i) the unauthorized access to, use of, or tampering with computer systems, including hacker attacks; or (ii) the inability of an authorized Third Party to gain access to supplier systems and/or the City's Data, including denial of service, unless caused by a mechanical or electrical failure; (iii) introduction of any unauthorized

software computer code or virus causing damage to the City or any other Third Party Data.

Lawfully insurable fines and penalties resulting or allegedly resulting from a Data breach.

Event management services and first-party loss expenses for a Data breach response including crisis management services, credit monitoring for individuals, public relations, legal service advice, notification of affected parties, independent information security forensics firm, and costs to re-secure, re-create and restore Data or systems.

For purposes of this insurance subsection, the terms Third Party and Data are defined in Section XI.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. ~~Automobile Liability~~ insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
4. Network Security (Cyber) and Privacy Insurance shall be written with limits no less than \$1,000,000 per claim, \$2,000,000 policy aggregate for network security and privacy coverage, \$100,000 per claim for regulatory action (fines and penalties), and \$100,000 per claim for event management services

C. Other Insurance Provisions

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

1. The Consultant's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant shall provide the City and all Additional Insureds for the services with written notice of any policy cancellation, within two business days of their receipt of such notice.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the services.

F. Failure to Maintain Insurance

Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of agreement, upon which the City may, after giving five business days' notice to the Consultant to correct the breach, immediately terminate the agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

G. City Full Availability of Consultant Limits

If the Consultant maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.

XI. SAFEGUARDING OF PERSONAL INFORMATION

A. Definitions. The following definitions shall have the assigned meaning for this section.

1. "Data" means all information, whether in oral or written (including electronic) form, created by or in any way originating with the City and/or End Users, and all information that is the output of any computer processing, or other electronic manipulation, of any information that was created by or in any way originating with the City and/or End Users, in the course of using and configuring the Services provided under this Agreement, and includes the City's Data, End User's Data, and Personal Information.
2. "Data Compromise" means any actual or reasonably suspected unauthorized access to or acquisition of computerized Data that compromises the security, confidentiality, or integrity of the Data, or the ability of City to access the Data.
3. "End User" means the individuals (including, but not limited to employees, authorized agents, students and volunteers of City; Third Party consultants, auditors and other independent contractors performing services for City; any governmental, accrediting or regulatory bodies lawfully requesting or requiring access to any Services; customers of City provided services; and any external users collaborating with City) authorized by City to access and use the Services provided by Consultant under this Agreement.
4. "Third Party" means persons, corporations, and entities other than Consultant, or any of their employees, contractors, or agents.

- B. The Consultant shall not use or disclose Personal Information, as defined in RCW 19.255.010, in any manner that would constitute a violation of federal law or applicable provisions of Washington State law. Consultant agrees to comply with all federal and state laws and regulations, as currently enacted or revised, regarding Data security and electronic Data interchange of Personal Information.
- C. The Consultant shall ensure its directors, officers, employees, subcontractors, or agents use Personal Information solely for the purposes of accomplishing the services set forth in the Agreement and for no other purposes.
- D. The Consultant shall protect Personal Information collected, used, or acquired in connection with the Agreement, against unauthorized use, disclosure, modification, or loss.
- E. The Consultant and its sub-consultants and agents agree not to release, divulge, publish, transfer, sell, or otherwise make Personal Information known to unauthorized persons without the express, prior written consent of the City or as otherwise authorized by law.
- F. The Consultant agrees to implement physical, electronic, and managerial policies, procedures, and safeguards to prevent unauthorized access, use, or disclosure of Personal Information.
- G. The Consultant shall make Personal Information available to amend as directed by the City and incorporate any amendments into all the copies maintained by the Consultant or its subcontractors and agents. Consultant shall certify its destruction after ninety (90) calendar days and the Consultant shall retain no copies. If Consultant and City mutually determine that return or destruction is not feasible, the Consultant shall not use the Personal Information in a manner other than those permitted or authorized by state and federal laws.
- H. The Consultant shall notify the City in writing immediately upon becoming aware of any unauthorized access, use, or disclosure of Personal Information. Consultant shall take necessary steps to mitigate any harmful effects of such use or disclosure. Consultant is financially responsible for notification of any unauthorized access, use, or disclosure. The details of the notification must be approved by the City. Any breach of this clause may result in immediate termination of the Agreement by the City and the demand for return of all Personal Information.
- I. Consultant agrees that within 12 months prior to the Effective Date of this Agreement, at least once per year thereafter, and immediately after any actual or reasonably suspected Data Compromise, Consultant will, at its own expense, conduct or have conducted the following:
- A PCI, SOC 2 or other mutually agreed upon audit of Consultant's security policies, procedures, and controls;
 - A vulnerability scan, performed by a Third Party scanner, of Consultant's systems and facilities that are used in any way to deliver services under this Agreement; and,
 - A formal penetration test of Consultant's systems and facilities that are used in any way to deliver services under this Agreement, with such test

performed by qualified personnel consistent with an established process.

The same will be evidenced by providing the City a copy of the successful audit letter and a scope of audit document (outlining what is included in the audit), or equivalent as determined acceptable to the City. The audit report should not include "private" information, defined as proprietary environment/infrastructure detail not specific to systems that process or transmit Data.

XII. COMPLIANCE WITH LAWS/BUSINESS LICENSE

The Consultant shall comply with all applicable State, Federal, and City laws, ordinances, regulations, and codes. Consultant must obtain a City of Kirkland business license or otherwise comply with Chapter 7.02 of the Kirkland Municipal Code.

XIII. FUTURE SUPPORT

The City makes no commitment and assumes no obligations for the support of Consultant activities except as set forth in this Agreement.

XIV. INDEPENDENT CONTRACTOR

Consultant is and shall be at all times during the term of this Agreement an independent contractor and not an employee of the City. Consultant agrees that he or she is solely responsible for the payment of taxes applicable to the services performed under this Agreement and agrees to comply with all federal, state, and local laws regarding the reporting of taxes, maintenance of insurance and records, and all other requirements and obligations imposed on him or her as a result of his or her status as an independent contractor. Consultant is responsible for providing the office space and clerical support necessary for the performance of services under this Agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance of unemployment compensation programs or otherwise assuming the duties of an employer with respect to the Consultant or any employee of Consultant.

XV. EXTENT OF AGREEMENT/MODIFICATION

This Agreement, together with all attachments and addenda, represents the final and completely integrated Agreement between the parties regarding its subject matter and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument properly signed by both parties.

XVI. ADDITIONAL WORK

The City may desire to have the Consultant perform work or render services in connection with the project other than provided for by the express intent of this Agreement. Any such work or services shall be considered as additional work, supplemental to this Agreement. This Agreement may be amended only by written instrument properly signed by both parties.

XVII. NON-ENDORSEMENT

As a result of the selection of a consultant to supply services to the City, the Consultant agrees to make no reference to the City in any literature, promotional material, brochures, sales presentation or the like without the express written consent of the City.

XVIII. NON-COLLUSION

By signature below, the Consultant acknowledges that the person, firm, association, co-partnership or corporation herein named, has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in the preparation or submission of a proposal to the City for consideration in the award of a contract on the specifications contained in this Agreement.

XIX. WAIVER

Waiver by the City of any breach of any term or condition of this Agreement shall not be construed as a waiver of any other breach.

XX. ASSIGNMENT AND SUBCONTRACT

The Consultant shall not assign or subcontract any portion of the services contemplated by this Agreement without the prior written consent of the City.

XXI. DEBARMENT

Recipient certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds.

XXII. SEVERABILITY

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken. Unless such stricken provision goes to the essence of the consideration bargained for by a party, all remaining provisions shall continue to be valid and binding upon the parties, and the parties agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

XXIII. GOVERNING LAW AND VENUE

This Agreement shall be interpreted in accordance with the laws of the State of Washington. The Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

XXIV. DISPUTE RESOLUTION

All claims, counterclaims, disputes, and other matters in question between City and Consultant arising out of or relating to this Agreement shall be referred to the City Manager or a designee for determination, together with all pertinent facts, documents, data, contentions, and other information. The City Manager or designee shall consult with Consultant's representative and make a determination within thirty (30) calendar days of such referral. No civil action on any claim, counterclaim, or dispute may be commenced until thirty (30) days following such determination.

XXV. EFFECTIVE DATE

This Agreement shall be deemed effective on the last date signed below.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates written below:

CONSULTANT:

CITY OF KIRKLAND:

Signature: *Barry Ginsburg*
Barry Ginsburg (Apr 8, 2024 23:37 GMT+3)

Signature: *James Lopez*
James Lopez (Apr 8, 2024 15:00 PDT)

Printed Name: Barry Ginsburg

Printed Name: James Lopez

Title: COO

Title: Deputy City Manager

Date: Apr 8, 2024

Date: Apr 8, 2024

Attachment A - SaaS Services Agreement



Customer:	The City of Kirkland, WA	Contact:	George Dugdale
Address:	123 5 th Ave Kirkland, Washington 98033	Title:	Financial Planning Manager
E-Mail:	gdugdale@kirklandwa.gov	Phone:	425-587-3131

Services:

Access to Gravity (the “Service(s)”) for one year starting the commencement date of the contract. Access to the services is subject to auto renewal as provided below.

Annual Service Fees – Year 1:

The Customer has the right to identify up to [20] Named Users to have Access to Gravity. The Service Capacity includes:

Item #	Service	Number of users	Fee (USD)
20	Gravity Budget Book automation	20	\$18,900
	Lease Management		\$6,300
22	Gravity ACFR automation ● Annual Comprehensive Financial Report		\$8,000
470	Gravity - SBITA Management, GASB 96		\$6,000
Total Service Fees – 12 months		20	\$39,200
Item #	Service	Number of users	Fee (USD)

Service Fees for the first year are payable net 30 days after the Effective Date of this agreement

Renewals

If the Customer chooses to renew its subscription to Gravity for additional years with the same Service Capacity, then the Service Fees for the following years will be:

Year	Annual Services Fee (USD)
Year 2	\$41,160
Year 3	\$43,218
Year 4	\$45,379
Year 5	\$47,648

Service Fees in subsequent years will be governed by the terms and conditions of this SaaS Service Agreement. In subsequent years, Service Fees are payable net 30 days after the renewal date.

Implementation Services:

Company will use commercially reasonable efforts to provide Customer the services described in the Statement of Work (“SOW”) attached as Exhibit A hereto (“Implementation Services”), and Customer shall pay Company the Implementation Fee in accordance with the terms herein.

Implementation Fee:

(one-time fee):

Service	Fee (USD)
Gravity ACFR automation	\$18,000
• Annual Comprehensive Financial Report	
Gravity Premium Support for three months	\$9,000
• Budget Book	
• Lease Management	
Total Implementation Fees – 12 months	\$27,000

Implementation fees are payable net 30 days after the Effective Date of this agreement.

Company will use commercially reasonable efforts to provide Customer the services described in the Statement of Work (“SOW”) attached as Exhibit C hereto (“Implementation Services”), and Customer shall pay Company the Implementation Fee in accordance with the terms herein. This Agreement includes and incorporates the attached Terms and Conditions and contains, among other things, warranty disclaimers, liability limitations and use limitations. There shall be no force or effect to any different terms of any related purchase order or similar form even if signed by the parties after the date hereof.

ATTACHMENT B - TERMS AND CONDITIONS

1. SAAS SERVICES AND SUPPORT

- 1.1 Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Services in accordance with the Service Level Terms attached hereto as Exhibit B.
- 1.2 Subject to the terms hereof, Company will provide Customer with reasonable technical support services in accordance with the Support Terms attached hereto as Exhibit C.

2. RESTRICTIONS AND RESPONSIBILITIES

- 2.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services ("Software"); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.
- 2.2 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with all applicable laws and regulations. Customer hereby agrees to indemnify and hold harmless Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer's use of Services.
- 2.3 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Customer shall also be responsible for maintaining the security of the Equipment and the administrative and user passwords.

3. CONFIDENTIALITY; PROPRIETARY RIGHTS

- 3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of Customer includes non-public data provided by Customer to Company to enable the provision of the Services ("Customer Data"). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law including the Washington State Public Records Act, chapter 42.56 RCW.
- 3.2 Customer shall own all right, title and interest in and to the Customer Data. Company shall own

and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing.

3.3 No rights or licenses are granted except as expressly set forth herein.

4. PAYMENT OF FEES

4.1 Customer will pay Company the then applicable fees described in the Order Form for the Services and Implementation Services in accordance with the terms therein (the "Fees"). If Customer's use of the Services exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Company reserves the right to increase the Service Fees to not exceed 5% to reflect inflation and ongoing enhancements applied to the software platform to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then-current renewal term. If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department.

4.2 Company will bill through an invoice. Full payment for invoices issued in any given month must be received by Company within thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Services other than taxes based on Company's net income.

5. TERM AND TERMINATION

5.1 Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the SaaS Services Agreement, and can be auto renewed for additional periods of the same duration as the Initial Service Term (collectively, the "Term") for five years, unless either party requests termination at least thirty (30) days prior to the end of the then-current term.

5.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided. Customer is being invoiced on an annual basis in advance of services being provided; therefore, if the Agreement is terminated, Company shall return to Customer a prorated amount of the annual fee, based on the number of months remaining in the then paid year. Upon any termination, Company will make all Customer Data available to Customer for electronic retrieval for a period of thirty (30) days, but thereafter Company may, but is not obligated to, delete stored Customer Data. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

6. WARRANTY AND DISCLAIMER

6.1 Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Implementation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance,

either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

7. LIMITATION OF LIABILITY

7.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON OR ALLEGATIONS OF INTELLECTUAL PROPERTY INFRINGEMENT, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. MISCELLANEOUS

8.1 If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sub-licensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of Washington without regard to its conflict of law provisions. Customer agrees to reasonably cooperate with Company to serve as a reference account upon request.

Attachment C

Statement of Work

The Company will provide the following services and comprehensive training:

- Gravity - Implementation Services for ACFR automation
 - Comprehensive On-Line Training
 - IGM Consulting Services in setting up and using Gravity to produce the next ACFR.
- Gravity – Premium Support Services for three months
 - Unlimited online training upon demand
 - Support staff will complete the tickets sent in as well as provide an explanation of how the task is completed
 - Unlimited online meetings for assistance on additional tasks or questions
 - Applicable for Gravity Budget Book module & Gravity Lease Management

Attachment D

Service Level Terms

The Services shall be available 99.9%, measured monthly, excluding holidays and weekends and scheduled maintenance. If Customer requests maintenance during these hours, any uptime or downtime calculation will exclude periods affected by such maintenance. Further, any downtime resulting from outages of third-party connections or utilities or other reasons beyond Company's control will also be excluded from any such calculation. Customer's sole and exclusive remedy, and Company's entire liability, in connection with Service availability shall be that for each period of downtime lasting longer than one hour, Company will credit Customer 5% of Service fees; provided that no more than one such credit will accrue per day. Downtime shall begin to accrue as soon as Customer (with notice to Company) recognizes that downtime is taking place, and continues until the availability of the Services is restored. In order to receive downtime credit, Customer must notify Company in writing within 24 hours from the time of downtime, and failure to provide such notice will forfeit the right to receive downtime credit. Such credits may not be redeemed for cash. Company will apply any credits accumulated in the prior annual period, towards the Service Fees in the next annual period.

Attachment E

Support Terms

IGM will provide Technical Support to customer via both telephone and electronic mail Monday – Friday between 6am – 8pm Eastern Time (“Support Hours”).

Customer may initiate a helpdesk ticket during Support Hours by calling IGM’s customer support line or any time by emailing support@igm.technology

Company will use commercially reasonable efforts to respond to all Helpdesk tickets within one (1) business day.

Emergency customer support is available outside of Support hours and can be initiated by calling IGM’s customer support line or emailing support@igm.technology








Please review and complete City of Kirkland and IGM Technology Corp Financial Software Agreement 2024-2029 Con 32400106


Final Audit Report

2024-04-08

Created:	2024-04-08
By:	Melissa Bartoletti (MBartoletti@kirklandwa.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAFW6o3VwQaYHKIWQh_GPjfbLhnPIY1m_A

"Please review and complete City of Kirkland and IGM Technology Corp Financial Software Agreement 2024-2029 Con 32400106" History


-  Document created by Melissa Bartoletti (MBartoletti@kirklandwa.gov)
2024-04-08 - 5:51:02 PM GMT- IP address: 76.191.73.2
-  Document emailed to Leta Santangelo (LSantangelo@kirklandwa.gov) for delegation
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Approval Date: 2024-04-08 - 6:23:04 PM GMT - Time Source: server- IP address: 76.191.73.2
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2024-04-08 - 6:23:05 PM GMT
-  Email viewed by bginsburg@igm.technology
2024-04-08 - 6:23:07 PM GMT- IP address: 74.125.151.199

 Signer bginsburg@igm.technology entered name at signing as Barry Ginsburg


2024-04-08 - 8:07:02 PM GMT- IP address: 87.69.54.36

 Document e-signed by Barry Ginsburg (bginsburg@igm.technology)


Signature Date: 2024-04-08 - 8:07:04 PM GMT - Time Source: server- IP address: 87.69.54.36

 Document emailed to Julie Underwood (junderwood@kirklandwa.gov) for signature

2024-04-08 - 8:07:06 PM GMT

 Melissa Bartoletti (MBartoletti@kirklandwa.gov) added alternate signer James Lopez (jlopez@kirklandwa.gov). The original signer Julie Underwood (junderwood@kirklandwa.gov) can still sign.

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 Document emailed to James Lopez (jlopez@kirklandwa.gov) for signature


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 Document e-signed by James Lopez (jlopez@kirklandwa.gov)

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 Agreement completed.

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