

A G R E E M E N T

THIS AGREEMENT dated the _____ day of _____, 2020, is by and between the **CITY OF STAMFORD** (hereinafter the “City”), a municipal corporation organized and existing pursuant to the laws of the State of Connecticut with a principal place of business located at 888 Washington Boulevard, Stamford, Connecticut, and acting herein by David R. Martin, its duly authorized Mayor, and **INTERNATIONAL CONSULTING ACQUISITION CORP. d/b/a ISG PUBLIC SECTOR** (hereinafter the “Consultant”), a foreign (DE) corporation with a principal place of business located at 2187 Atlantic Street, Stamford, Connecticut, and acting herein by Nathan Frey, its duly authorized Partner.

W I T N E S S E T H

WHEREAS, The City solicited Request for Proposals (RFP) No. 806 for Project Manager – ERP Systems Identification and Implementation;

WHEREAS, The Consultant submitted a proposal in response to said Request for Proposals; and

WHEREAS, The City has accepted the Consultant’s proposal for said work pursuant to the terms hereinafter set forth;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. INCORPORATION OF RECITALS. The above terms and conditions are contractual in nature and not merely recitals and are hereby incorporated into this Agreement;

2. CONTRACT DOCUMENTS AND SCOPE OF SERVICES. The Contract Documents consist of this Agreement and the following Exhibits that, combined, define the duties, functions, obligations, responsibilities, and tasks of the Scope of Services:

Exhibit A – The City’s RFP No. 806 Issued July 8, 2020;

Exhibit A-1 – Addendum No. 1, issued July 16, 2020, to the City’s RFP No. 806;

Exhibit B - The Consultant’s Proposal, dated July 23, 2020; and

Exhibit B-1 – Consultant's Additional Services and Rate Information;

all attached hereto and hereby made a part hereof as if fully set forth herein.

3. NO EXCLUSIVE RIGHT TO WORK. Nothing contained herein shall grant the Consultant an exclusive right to perform the work of this Agreement. The City may enter into similar agreements with other Consultants at its sole discretion on an as-needed basis;

4. COMPENSATION. The Consultant shall be compensated for the services set forth in Section 2, above, as follows:

CONTRACT YEAR	ANNUAL FEE
Year 1	Not to Exceed \$399,000.00
Year 2 (Optional)	Not to Exceed \$399,000.00
Year 3 (Optional)	Not to Exceed \$399,000.00

Annual Fee is inclusive of all travel costs and incidental expenses. Payments will be made in equal monthly installments for work performed. Payments for partial months shall be on a pro rata basis.

Additional value added services shall be billed at the rates set forth in the Consultant's Additional Services and Rate Information attached hereto as Exhibit B-1. Notwithstanding the foregoing, fees for additional services outside of those services contemplated in the Annual Fee shall not exceed Three Hundred Thousand (\$300,000.00) Dollars, in aggregate, for the entire Term of this Agreement, including any option years.

5. TERM. The Term of this Agreement shall commence when signed below by the City's Mayor and terminate one (1) year thereafter. The parties may, by mutual agreement, extend the Term of this Agreement for two (2), additional years provided that all other terms of this Agreement remain the same. No such extension shall be for greater than one (1) year and, under no circumstances, shall the entire Term of this Agreement, including any extension years, exceed three (3) years;

6. CONSULTANT'S REPRESENTATIVE AND KEY PERSONNEL. The following representatives of the Consultant are hereby authorized to act on behalf of the Consultant with respect to the work that is the subject of this Agreement and shall have full authority to accept instructions, make decisions, communicate for and act on behalf of the Consultant at all times.

Consultant Representative: Thomas Ortiz, Partner

Consultant Representative: Nathan Frey, Partner

In addition to the Consultant's Representatives, the following Key Personnel of the Consultant shall be assigned to, participate in and be available to the City for the work that is the subject of this Agreement.

Key Personnel: Chuck Williams, Project Manager

Neither the Consultant's Representatives nor the Key Personnel shall be replaced by the Consultant without fifteen (15) days prior written consent of the City. The City may, at its sole option, immediately terminate this Agreement by way of written notice to the Consultant if the Consultant fails to replace the Consultant's Representative or the Key Personnel to the satisfaction of the City.

7. REPRESENTATIONS. The Consultant represents that it is qualified in relation to the work to be performed under this Agreement and further represents that it has the requisite skill, expertise, and knowledge necessary to perform the scope of services required under the terms of this Agreement, including any supplementary work. The Consultant hereby acknowledges that the City has relied upon said representations in entering into this Agreement;

8. INDEMNIFICATION. The Consultant shall indemnify, hold harmless and, at the City's option, defend the City, its officers, agents and employees, from third party claims for loss, cost, damage, liability, and/or injury to or death of a person, including the agents and employees of the Consultant, or loss of or damage to property, resulting directly or indirectly from the Consultant's negligent performance pursuant to this Agreement, or by any negligent omission to perform some duty imposed by law or this Agreement upon the Consultant, its officers, agents and employees. The foregoing indemnity shall include reasonable attorneys' fees and costs of suit, if applicable, shall not be limited by reason of any insurance coverage required pursuant to this Agreement, and shall survive the termination of this Agreement.

Except as provided herein with respect to any indemnity provision for third party claims, breach of confidentiality, breach of security, bodily injury, damage to property, gross negligence, willful misconduct or as otherwise prohibited by applicable law or regulation, in no event will the Consultant be liable to the City for any incidental, indirect, special, consequential or punitive damages or lost profits or savings;

9. INSURANCE. The Consultant shall procure, at its sole expense, and maintain for the entire term of this Agreement, including any extensions, insurance coverages as set forth in the City of Stamford Insurance Requirements included in the City's Request for Proposals No. 806 attached hereto as Exhibit A;

10. LIMITATION OF LIABILITY. The Consultant's sole remedy for City delays shall be an extension of time to complete the work and the Consultant hereby waives any claims for consequential damages, including, but not limited to, principal office expense, loss of financing, reputation and/or lost profit;

11. ASSIGNMENT. The Consultant shall not assign or transfer any portion of the work set forth herein without the prior written approval of the City;

12. SUBCONSULTING. Aside from those subconsultants disclosed in the Consultant's Proposal, attached hereto as Exhibit B, the Consultant is prohibited from further subconsulting the work of this Agreement or any part of it unless the City first approves such subconsulting in writing and approves, in writing, of the specific subconsultant(s) the Consultant proposes to be used. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void. Should the City approve of a proposed subconsultant, the Consultant agrees to comply with the City's Code of Ordinances § 103.4;

13. REVIEW OF WORK. The Consultant shall permit the City, its agents and/or employees to review, at any time, all work performed pursuant to the terms of this Agreement at any stage of the work;

14. BOOKS AND RECORDS. The Consultant shall maintain or cause to be maintained all records, books, or other documents relative to charges, costs, expenses, fees, alleged breaches of this Agreement, settlement of claims, or any other matter pertaining to the Consultant's demand for compensation by the City for a period of not less than three (3) years from the date of the final payment for work performed under this Agreement;

15. CONTRACT EXTRAS. Pursuant to the City's Code of Ordinances, Section 23-18.4 C., it is specifically understood and agreed by the Consultant that all contract extras regarding this Agreement shall be governed by the City's Charter and/or Code of Ordinances. The City shall not be liable for payment of any additional costs, except as otherwise expressly set forth in this Agreement, unless the provisions of the City's Charter and/or Code of Ordinances are fully complied with. The City's Charter and Code of Ordinances can be found at www.municode.com;

16. COMPLIANCE WITH CITY CODE PROVISIONS. The Consultant hereby agrees to fully comply, to the extent applicable, with the requirements of the City's Code of Ordinances, Sections 103-1 through 103-10, regarding consultants in general. Failure to so comply shall constitute a material breach of the terms of this Agreement, for which the City may unilaterally terminate this Agreement by way of written notice to the Consultant. The provisions of the City Code can be found at www.municode.com;

17. TERMINATION.

- A. **TERMINATION FOR CAUSE, SANCTIONS AND PENALTIES.** If, through any cause, the Consultant shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if the Consultant shall violate any laws or any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement for cause by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished reports, documents, data, studies, photographs, or other material prepared by the Consultant pursuant to its performance under this Agreement shall, at the option of the City, become the City's property. The Consultant shall be entitled to receive just and equitable compensation for any

satisfactory services completed up to the effective date of termination. The Consultant shall not be responsible for any claims resulting from the City's use of the documents on another project or changes made to the documents without the Consultant's express written permission;

The term "cause" includes, without limitation the following:

- 1) If the Consultant furnished any statement, representation, warranty or certification in connection with this Agreement, which is materially false, deceptive, incorrect, or incomplete;
- 2) If the Consultant fails to perform to the City's satisfaction any material requirement of this Agreement or is in violation of any specific provision thereof or any State or Federal law or requirement; or
- 3) If the City reasonably determines that satisfactory performance of this Agreement is substantially endangered or can reasonably anticipate such an occurrence or default.

Should the City terminate this Agreement for cause, the Consultant shall not be relieved of liability to the City for any damages sustained by the City by virtue of any breach of this Agreement by the Consultant and the City may withhold any payment to the Consultant for the purposes of setoff until such time as the exact amount of damages due the City from the Consultant is determined. Further, if applicable, the City shall have the right to:

- 1) Complete the work of this Agreement, or any part thereof, either by itself or by other consultants, at the expense of the Consultant;
- 2) Purchase the products or services that are the subject of this Agreement elsewhere and hold the Consultant responsible for any increase in cost;
- 3) Pursue any equitable remedy, including, but not limited to, specific performance or injunction; and/or
- 4) Disqualify the Consultant from bidding on, submitting proposals for, or being awarded any City contract for a period not to exceed two (2) years from the date of such termination;

B. TERMINATION FOR CONVENIENCE. The City may terminate this Agreement at any time the City determines that the purposes of the distribution of monies under the Agreement would no longer be served by the services provided. The City shall effect such termination by giving written notice of termination to the Consultant and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials as described Subsection A shall, at the

option of the City, become property of the City. If the Agreement is terminated by the City as provided herein, the Consultant shall be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed to the effective date of termination bear to the total services of the Consultant pursuant to the terms of the Agreement, less payments of compensation previously made, and subject to the City's right of set off for any damages pursuant to the terms of the Agreement;

18. DISPUTE RESOLUTION.

- A. EXECUTIVE MEETING. The parties shall endeavor to resolve all claims, disputes, or other matters in controversy arising out of or related to this Agreement (“Claims”) through a meeting of the chief executives of each party, or their respective designees (“Executive Meeting”).

A request for an Executive Meeting shall be made by a party in writing and delivered to the other party. The request may be made concurrently with the filing of a non-binding mediation as set forth herein. The Executive Meeting shall be a condition precedent to mediation unless 30 days have passed after the Executive Meeting has been requested with no meeting having been held.

The Executive Meeting shall be held in the place where the Project is located, unless another location is mutually agreed upon.

- B. MEDIATION. Any Claim subject to, but not resolved by, an Executive Meeting shall be subject to mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its applicable rules and procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation.

The request may be made concurrently with the filing of arbitration but, in such event, mediation shall proceed in advance of arbitration, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

The parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

- C. ARBITRATION. Any Claim subject to, but not resolved by, mediation shall, in the sole discretion of the City, be subject to arbitration which, unless the parties

mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its applicable rules and procedures in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law.

Any judgment will be entered or court action will be brought in a court of competent jurisdiction within the State of Connecticut.

D. **PERFORMANCE DURING DISPUTE.** Unless otherwise directed by the City, the Consultant shall continue performance under this Agreement while matters in dispute are being resolved.

E. **CLAIMS FOR DAMAGES.** Should either party to this Agreement suffer injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

19. COMPLIANCE WITH LAWS. The Consultant shall be responsible for compliance with all applicable federal, state and local laws, rules, regulations, codes, orders, ordinances, charters, statutes, policies and procedures.

20. CONFIDENTIALITY. During and after the term of this Agreement, the Consultant, including, without limitation, its employees, agents, servants and representatives, shall not directly or indirectly disclose or make available to any person, firm, corporation, association or other entity of any reason or purpose whatsoever, or use or cause to be used in any manner adverse to the interest of the City, any medical, financial, administrative or other confidential business or patient information, including both open and closed patient records, except as require by law.

21. SETOFF OF PROPERTY TAXES OWED TO THE CITY. Pursuant to the City of Stamford Code of Ordinances Section 23-18.4.1 and Section 12-146b of the Connecticut General Statutes, as amended, the Consultant hereby acknowledges that the City shall have the right to set-off or withhold any payment, or portion thereof, due to the Consultant pursuant to this Agreement if any taxes levied by the City against any property,

both real and personal, owned by the Consultant are delinquent and have been so delinquent for a period of not less than one year. Any amount withheld from the Consultant pursuant to this section shall be applied to the Consultant's delinquent taxes, provided, however, that no such amount withheld shall exceed the amount of tax, plus penalty, lien fees and interest, outstanding at the time of withholding;

22. GIFTS. During the term of this Agreement, including any extensions, the Consultant shall refrain from making gifts of money, goods, real or personal property or services to any appointed or elected official or employee of the City or the Stamford Board of Education or any appointed or elected official or employee of their Boards, Commissions, Departments, Agencies or Authorities. All references to the Consultant shall include its members, officers, directors, employees, and owners of more than 5% equity in the Consultant. Violation of this provision shall constitute a material breach of this Agreement, for which this Agreement may be summarily terminated; and

23. CODE OF ETHICS. The Consultant shall comply with the Stamford Municipal Code of Ethics as codified in Chapter 19 of the City of Stamford Code of Ordinances and shall be considered an "employee", as defined in that Chapter, strictly for the purpose of compliance thereto. The Consultant is prohibited from using its status as a consultant to the City to derive any interest(s) or benefit(s) from other individuals or organizations.

24. MORALS CLAUSE. Neither the Consultant, the Consultant's Representatives nor the Consultant's key personnel shall commit any act or do anything which might reasonably be considered: (i) to be immoral, deceptive, scandalous or obscene; or (ii) to injure, tarnish, damage or otherwise negatively affect the community and/or the reputation and goodwill associated with the City. If the Consultant, the Consultant's Representative or the Consultant's key personnel is accused of any act involving moral or ethical issues, dishonestly, theft or misappropriation, under any law, or any act which casts an unfavorable light upon its association with the community and/or the City or the Consultant is accused of performing or committing any act which could adversely impact the Consultant's events, programs, services, or reputation, the City shall have the right to terminate this contract upon fifteen (15) days written notice specifying the reason, within which period the Consultant may cure such offense. The determination of whether and to what extent the offense is cured shall be made by the City at its sole discretion.

25. NON-APPROPRIATION. The Consultant acknowledges that the City is a municipal corporation, that the City's obligation to make payments under this Agreement is contingent upon the appropriation by the City's Board of Representatives of funds sufficient for such purposes for each budget year in which the Agreement is in effect, and that the City may terminate this Agreement by way of written notice to the Consultant if sufficient funds to prove for the payment(s) hereunder are not so appropriated;

26. GOVERNING LAWS. This Agreement shall be governed by the laws of the State of Connecticut and the parties hereby waive any choice of law provisions contained therein;

27. INTERPRETATION. The Consultant agrees that, in the event of any ambiguity between the terms of this Agreement and any of the incorporated Exhibits, the City, in its sole discretion, shall determine the terms and/or document(s) which shall prevail and take precedence, except for those terms relating to the scope of the work or pricing, to which such terms this section shall not apply; and

28. OWNERSHIP OF CONSULTANT'S MATERIALS. Nothing herein shall change the ownership of Consultant's pre-existing materials and revisions that may be made to such pre-existing materials by or on behalf of Consultant from time to time. The pre-existing materials shall remain the sole and exclusive property of Consultant and the City is granted a perpetual, irrevocable, worldwide, royalty free, non-exclusive, non-transferable right to use the pre-existing materials for its internal purposes.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written. Signed, sealed and delivered in the presence of:

CITY OF STAMFORD

Print:
Witness

By: _____
David R. Martin, Mayor

Date: _____

Print:
Witness

**INTERNATIONAL CONSULTING
ACQUISITION CORP. d/b/a ISG PUBLIC
SECTOR**

Kirk E. Teal
Print: Kirk E. Teal
Witness

By: Nathan L. Frey
Nathan Frey, Partner

Date: 08/30/2020

Randy Meek
Print: Randy Meek
Witness

Approved as to Form:
Chris Dellaselva
Chris Dellaselva
Asst. Corp. Counsel
Date: Aug 31, 2020

Approved as to Insurance:
David Villalva
David Villalva
Risk Manager
Date: AUGUST 31, 2020