CONTRACT BETWEEN
THE CITY OF LOS ANGELES
AND
EZLINKS GOLF LLC
FOR ACQUISITION OF GOLF MANAGEMENT SYSTEM
SOFTWARE LICENSE, HARDWARE AND SUPPORT
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AND
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FOR ACQUISITION OF GOLF MANAGEMENT SYSTEM
SOFTWARE LICENSE, HARDWARE AND SUPPORT

This Contract (the “Contract”) is entered into this ___ day of ____________, 20___ (the “Effective Date”), by and between the City of Los Angeles, (hereinafter referred to as “CITY”) a municipal corporation, acting by and through its Board of Referred Powers (hereinafter referred to as “BOARD”), and EZLinks Golf LLC, a Delaware limited liability company with offices at 401 S. La Salle Street, Suite 302, Chicago, 60605 (hereinafter referred to as “EZLinks” or “CONTRACTOR”). CITY and CONTRACTOR may be referred to hereinafter as “Party” and collectively as the “Parties”.

WHEREAS, on February 22, 2017, the BOARD approved the release of a Request for Proposal (RFP) to select a contractor to provide a golf management and reservation system for the CITY’S Department of Recreation and Parks (“RAP”); and

WHEREAS, pursuant to Charter Section 371(e)(2), that the professional, scientific, expert, technical or other special services to be performed by CONTRACTOR, are of a temporary and occasional character for which competitive bidding is not practicable or advantageous; and

WHEREAS, pursuant to Charter Section 371(e)(10), that the services to be provided by CONTRACTOR, are for the performance of professional, scientific, expert or technical services and the use of competitive bidding would be undesirable, impractical or impossible or is otherwise excused by common law; and

WHEREAS, RAP desires to secure the technical, expert and professional services of a qualified contractor on an occasional and as-needed basis in order to enhance the golf experience of the public; and

WHEREAS, pursuant to Charter Section 1022 Determination Policy, a Charter Section 1022 Determination is not required when Contractor requires use of its staff or specially trained and certified persons to install, maintain or service equipment or other product in order to maintain warranties, patent rights or due to other rational basis; or the labor component cannot reasonably be separated from the other contract elements; and

WHEREAS, CONTRACTOR is experienced in providing the services of the type required, is willing to perform such service, and can provide such services to CITY; and
WHEREAS, it is in CITY’s best interest to secure these services from CONTRACTOR; and

WHEREAS, CITY and RAP has the need for a golf management system software on an occasional and as-needed basis; and

WHEREAS, BOARD has determined that CONTRACTOR is capable of providing such services in accordance with the terms and conditions of this CONTRACT;

NOW THEREFORE, the CITY and CONTRACTOR hereby agrees as follows:

SECTION 1 - PARTIES TO THE CONTRACT, REPRESENTATIVES AND NOTIFICATION

1.1 Parties

The parties to this Contract are:

CITY - The City of Los Angeles, a municipal corporation, acting by and through its BOARD OF REFERRED POWERS on behalf of the Department of Recreation and Parks, has its principal office at 221 N. Figueroa Street, Suite 300, Los Angeles, California 90012.

CONTRACTOR – EZLinks Golf LLC (EZLinks) a Delaware limited liability company with offices at 401 S. La Salle Street, Suite 302, Chicago, 60605.

1.2 Representatives

The representatives of the parties who are authorized to administer this Contract and to whom formal notices, demands and communications will be given are as follows:

CITY’s representative will be:

    Michael A. Shull, General Manager
    City of Los Angeles, Department of Recreation and Parks
    P.O. Box 86328
    Los Angeles, CA 90086-0328

With copies to:

    Noel Williams, Chief Financial Officer
    City of Los Angeles, Department of Recreation and Parks
    Finance Division
    P.O. Box 86328
    Los Angeles, CA 90086-0328
1.3 Notices

Formal notices, demands and communications to be given hereunder by either party will be made in writing and may be effected by personal delivery or certified mail, return receipt requested, and will be deemed communicated as of the date of receipt.

If the person designated to receive the notices, demands or communications or if the address of such person is changed, written notice of such change shall be given, in accordance with this Section, within five (5) working days of the change.

CITY shall address all notices to the CONTRACTOR’s representative listed above. CONTRACTOR shall address all notices to:

Laura Bauernfeind, Golf Manager
City of Los Angeles, Department of Recreation and Parks
SECTION 2 - DEFINITIONS

A. “Course(s)” means those golf clubs and/or individual courses that are owned, operated, and/or otherwise affiliated with CITY or RAP, as listed in the SOW, for which the Services will be used.

B. “Customer(s)” means actual and prospective golfers and/or other guests of the Course(s) and Course-related facilities.

C. “RAP” means the CITY’s Department of Recreation and Parks, which manages the Courses. For purposes of this Agreement, all acts or omissions of RAP shall be considered acts or omissions of CITY, and vice versa. CITY is solely responsible and liable to CONTRACTOR under this Agreement, and CONTRACTOR will not be required to look to RAP or to any entity other than CITY for any purpose in connection with this Agreement.

D. “Services” means the products and/or services listed by name in the SOW, which CITY has agreed to purchase and which CONTRACTOR has agreed to provide to CITY in this Contract. Without limitation, “Services” includes the provision of the software (“Software”), hardware and equipment (“Hardware”), and support services set forth herein.

E. “Statement of Work” or “SOW” means the Statement of Work attached hereto and incorporated herein as Schedule A.

Other terms defined in the text of this Contract shall have the meaning assigned to them in the text.

SECTION 3 - TERM OF CONTRACT

The term of this Contract shall be for a period of five (5) years from the date of execution (the “Term”), subject however to earlier termination by CITY or CONTRACTOR as provided herein. The CITY shall have one five-year renewal option, which CITY may exercise in its sole discretion, provided that the General Manager of RAP gives CONTRACTOR written notice of the CITY’s exercise of such renewal option.
Should CITY exercise this renewal option, the additional five (5) year period shall be included in the definition of “Term” as used herein.

Neither CITY, nor any CITY board member, officer, or employee thereof shall be liable in any manner to CONTRACTOR for the CITY’s decision not to exercise the renewal option or for CITY’s proper termination of this Contract in accordance with its terms.

SECTION 4 - SCOPE OF SERVICES

4.1 Services to Be Provided by CONTRACTOR

CONTRACTOR will provide or license (as applicable) to CITY, for use by RAP, the Services as set forth in the SOW. Unless expressly stated in the SOW, the SOW will be governed by this Contract and in the event of a conflict between this Contract and a SOW, the terms of this Contract will take precedence. RAP or CONTRACTOR may request changes that would increase, decrease or otherwise modify the scope of Services detailed in the SOW; however, no such changes will be effective until such changes and the method of compensation for such changes are documented in a written amendment to this Contract signed by both parties.

CONTRACTOR will provide installation and training services on site at each Course and at RAP offices to train as many personnel as RAP deems necessary in the complete and proper use and operation of the Software. CONTRACTOR will provide RAP with five (5) installation and training days which will be conducted by CONTRACTOR trainers live and in person, in the City of Los Angeles, California.

4.2 Service Conditions

Services provided by CONTRACTOR to CITY are detailed in the applicable SOW and, except as expressly detailed therein, are subject to the following terms:

A. General

i. CONTRACTOR shall have no liability to CITY for loss or damage to Hardware provided to CITY or RAP by CONTRACTOR after they have been delivered to CITY’s or RAP’s premises, installed by CONTRACTOR personnel, and accepted by CITY or RAP personnel. If any Hardware is lost or damaged during shipment or delivery, CONTRACTOR shall replace it at no additional charge to CITY.

ii. From time-to-time, CONTRACTOR shall replace Hardware or provide needed replacement parts necessary to keep the Hardware in good working order. RAP will cooperate and allow the installation of replacement Hardware or parts when CONTRACTOR notifies RAP of same. CONTRACTOR will make best efforts to repair or replace Hardware or replacement parts within forty-eight (48) hours of receipt of a written request from RAP.
iii. Subject to CITY’s compliance with this Contract, CONTRACTOR grants to CITY and RAP a revocable, non-exclusive, non-sublicensable, limited license during the Term to access and execute Software provided to it by CONTRACTOR.

iv. CITY may only use the Services in connection with RAP’s business operations at the Courses, in accordance with the terms and conditions of this Contract, and not for the benefit of any third party or for any other purpose.

v. Neither CITY nor RAP will copy, modify, alter, adapt, translate, create derivative works from, reverse engineer, disassemble, decompile or decode the Software in any way for any reason, or engage in or authorize any action that is inconsistent with the terms and conditions of this Contract or that violates any law.

vi. If CITY or RAP provides its own hardware (including peripheral equipment) for use with the Software, such hardware must meet or exceed CONTRACTOR’s current technical specifications (provided that the most current specifications must be provided by CONTRACTOR) for purposes of compatibility with the CONTRACTOR offerings. CITY’s or RAP’s hardware (including peripheral equipment) shall be reviewed and subsequently approved by a CONTRACTOR technical representative prior to delivery or use by RAP of any Software. CONTRACTOR agrees to work with RAP to ensure that the hardware (including peripheral equipment) operates properly with the Software.

vii. CITY acknowledges that CONTRACTOR may use subcontractors, subject to prior written approval by RAP, to provide the Services.

viii. CITY acknowledges that the timing of all Services, provision and installation of Software and Hardware, and delivery of work product is subject to cooperation from CITY and RAP. CITY and RAP will provide assistance to CONTRACTOR as shall be mutually agreed upon by the parties, access to any information including documents, staff, and other resources reasonably needed by CONTRACTOR to perform the obligations under this Contract.

ix. Ownership of all right, title, and interest in and to the Services (Software, Hardware) shall vest only in CONTRACTOR and will always remain with CONTRACTOR including, without limitation, any enhancements or upgrades to the Software, any CONTRACTOR manuals, and all copyrights, trademarks, patents, trade secrets and any other intellectual property and proprietary rights in and to the foregoing, even after it is delivered to RAP. For clarity, all software that CONTRACTOR develops hereunder for RAP in the course of providing the Services that is not integrated into CONTRACTOR’s commercial off-the-shelf software product(s) (COTS) is governed by sub-paragraph (x) immediately below.

x. All Services provided by CONTRACTOR resulting in software development, modifications, enhancements, interfaces, drawings, documentation, design, on
any and all media in whole or in part, and all copies thereof, whether created before, during, or after the term of the Contract (collectively, the “Work Product”) are the property of RAP and for its exclusive use and re-use at any time without further compensation and without any restrictions with the exception that CONTRACTOR shall have exclusive ownership of Work Product that are software modifications, enhancements, and interfaces that are integrated into CONTRACTOR’S commercial off-the-shelf software product (COTS). As used herein, “Work Product” also includes all works based upon, derived from or incorporating the same.

xi. Any and all data generated from the use of the CONTRACTOR’s COTS are the property of RAP and for its exclusive use without further compensation and without any restrictions whatsoever.

xii. RAP explicitly prohibits CONTRACTOR from using RAP’s customer data other than for activities required to deliver the COTS SaaS (software as a service) such as store, backup, restore, archive, etc. Under no circumstances is CONTRACTOR allowed to use RAP’s customer data for their own use.

B. Hardware and Software Configuration and Security

CITY agrees that neither CITY nor RAP nor any Course will alter the configuration of the Hardware or Software, without the prior written permission of CONTRACTOR. In the event of such permitted alterations, CONTRACTOR will, if requested by RAP, provide repair and technical support services concerning such issues at its then standard consulting rates. CITY also agrees to reimburse CONTRACTOR for all reasonable costs and expenses associated with such repair and technical support, subject to prior written approval of such costs by RAP. CITY will be responsible for maintaining security on all CITY or RAP networks used with the Services at all times. CONTRACTOR assumes no responsibility for viruses, malware, or other issues that arise due to activity on CITY’s or RAP’s network, and accepts no liability for the consequences of said activity, regardless of the ownership of the hardware residing on the network.

C. Connectivity

CITY and RAP will be solely responsible for the procurement, payment and maintenance of all telephone and internet connectivity used in connection with the Services, and for all networking functions within CITY’s and RAP’s facilities, including without limitation, at the Course facilities. CITY agrees that such connectivity will meet or exceed bandwidth requirements as may be provided by CONTRACTOR from time to time. In no event will CITY or RAP obtain internet backhaul connection access for use or provision of the Services through a satellite or Wi-Fi provider. However, Wi-Fi access is permitted for tablets assuming the standard wireless encryption and security protocols (password, network segmentation) have been deployed by CITY or RAP.
D. **Up Time**

CONTRACTOR will make best efforts to make the ETN and Reservation Center available ninety-nine and nine-tenths percent (99.9%) of the time except for downtime due to maintenance or events outside of CONTRACTOR’s control. CONTRACTOR will provide RAP forty-eight (48) hours’ notice of maintenance that requires downtime.

4.3 **Security, Data Ownership and Privacy**

A. **PA-DSS and PCI-DSS Compliance**

EZLinks represents and agrees that the ETN (as defined in Schedule 1) is, and shall continue to remain, Payment Application Date Security Standard (PA-DSS) certified. The EPOS (as defined in Schedule 1) is certified “out of scope” of the PA-DSS guidelines for POS systems, and CITY agrees to the same (i.e., the EPOS does not store, process, or transmit sensitive cardholder data, although it does provide an interface with several PA-DSS compliant credit card payment engines and devices, specifically Elavon Merchant Services and First Data Merchant Services). CITY agrees that CITY and RAP are wholly and solely responsible for complying with the Payment Card Industry Data Security Standard, as amended (PCI), including without limitation, establishing and maintaining PCI compliance with respect to RAP’s card facilities, software, systems, processing and storage environment, and network.

B. **Customer Data**

i. RAP Customer Data – CONTRACTOR acknowledges that, as between the parties, RAP owns all Customer information collected from Customers through RAP specific channels (e.g., at Courses, on RAP’s website, via a RAP-specific app or RAP’s reservation center), (including, without limitation, any personally identifiable information or credit card information for a Customer) (the “RAP Customer Data”). RAP reserves all of its rights to RAP Customer Data.

ii. CONTRACTOR’s Use of RAP Customer Data – CITY and RAP agree that CONTRACTOR may access and use RAP Customer Data to provide the Services to RAP and only for the performance of this Contract; provided, however, that CITY and RAP agrees that RAP Customer Data (excluding the personally identifiable information referenced in (i) above), may be used in the aggregate by CONTRACTOR to identify trends or cultivate business intelligence data for research purposes only. Such research shall be shared with RAP. CONTRACTOR is specifically prohibited from using RAP Customer Data to market products or services.

iii. Third Party Interfaces – CITY acknowledges that CONTRACTOR Customer data collected through INT (as defined in Schedule 1) selected by RAP may be used and owned by multiple parties, including RAP, CONTRACTOR and the third-party using the INT. As detailed above, RAP may select in a SOW the INT’s
through which RAP’s tee time reservations can be made available (if any). Notwithstanding any provision of the Contract, when collecting data CONTRACTOR and any third party shall be responsible for obtaining any Customer authorization or consent for use of personally identifiable information.

iv. CONTRACTOR Customer Data – CITY and RAP acknowledge that, as between the parties, CONTRACTOR will own all Customer data (including, without limitation, personal information) collected via CONTRACTOR consumer platforms, including but not limited to TeeOff.com, TeeOff.com affiliate partners (such as AARP), GolfSwitch integration partners and future CONTRACTOR/TeeOff.com partners and affiliates (the “CONTRACTOR Customer Data”). CONTRACTOR will submit to RAP the CONTRACTOR Customer Data from tee times reserved by Customers at Courses via a CONTRACTOR platform as necessary for RAP to provide the ordered golfing services to such Customers, and RAP will not sell or share CONTRACTOR Customer Data with third parties (other than third parties providing the relevant golfing services at Courses on RAP’s behalf). RAP is specifically prohibited from using CONTRACTOR Customer Data to market the products or services of a CONTRACTOR competitor.

v. Restrictions on Use of Customer data – Each party acknowledges that neither party makes any representation that any Customer information or data is collected in a manner that secures consent for either party to use the information or data for any particular marketing tactic (e.g., text messaging, robocalls, etc.) and that it is each party’s sole responsibility to ensure it has the requisite consent from individuals prior to engaging in any with Customers. Each party agrees to comply with all applicable laws, rules and regulations, including, without limitations, the CAN-SPAM Act of 2003, the Telephone Consumer Protection Act of 1991, and various state laws and regulations concerning telemarketing, electronic communications and other forms of communications.

C. Privacy

Each party agrees that it will be solely responsible for posting or otherwise making available a legally compliant terms of use and privacy policy in connection with transactions with Customers and the collection of RAP Customer Data and its compliance with them.

4.4 Confidentiality

The following provisions govern the exchange, use and disclosure of the parties’ proprietary and confidential information:

A. The term “Confidential Information” refers to all materials and information which have or will come into the possession or knowledge of the other party (in that instance, the Receiving Party) that the other party (in that instance, the
Disclosing Party) has designated as confidential or proprietary, or which the Receiving Party should reasonably believe to be confidential or proprietary, and automatically includes, without limitation, i) information relating to the business and marketing plans and financial status of the Disclosing Party, ii) any non-public new product or strategic relationship plans of the Disclosing Party and any of the Disclosing Party's trade secrets, iii) all know-how and other information pertaining to skills and technology that are proprietary to the Disclosing Party, and iv) the terms of this Contract and the SOW. “Confidential Information” means all information provided by RAP pursuant to this Contract and in the case of CONTRACTOR, information excluded from the mandatory disclosure provisions.

B. The party receiving Confidential Information (the “Receiving Party”) from the other party (the “Disclosing Party”) will hold all Confidential Information in the strictest confidence and may only disclose Confidential Information to its employees and contractors on a need-to-know bases who are subject to obligations of confidentiality substantially similar to those obligations set forth in this Contract. The Receiving Party agrees to protect Confidential Information with the same degree of confidentiality and care with which it treats its own confidential information of a similar nature, but in no event less than with reasonable care.

C. The Receiving Party agrees that because of the unique nature of the Disclosing Party’s Confidential Information, disclosure of such confidential information in violation of the provisions of this Contract would cause irreparable harm to the Disclosing Party. Accordingly, the Receiving Party agrees that in the event of any violation or threatened violation of this section by the Receiving Party, the Disclosing Party may obtain, in addition to any other legal remedies that may be available under law or in equity, and without being required to post bond, such equitable relief as maybe necessary to protect the Disclosing Party against any such violation or threatened violation.

D. Nothing contained in this Contract will in any way restrict or impair the Receiving Party’s right to use, disclose or otherwise deal in information which: a) at the time of disclosure is in the public domain, as evidenced by written publication; b) after disclosure to the recipient becomes part of the public domain by written publication through no fault of the recipient; c) the recipient can demonstrate was in its possession prior to the time of disclosure to the recipient and was not acquired directly or indirectly from the disclosers party or any person, firm or corporation acting on its behalf; d) the recipient can show was acquired by the recipient independently, after disclosure hereunder, from a third party without breach of agreement or violation of law; or e) the recipient must disclose as may be required by order of a court of competent jurisdiction, provided, however, that prior to any such disclosure, the recipient notifies the disclosing party of the recipient’s intent to disclose such information so that the disclosing party may seek a protective order or injunctive relief to prevent such disclosure.
E. CONTRACTOR acknowledges that all non-public material and information supplied by RAP which has or will come into the possession or knowledge of CONTRACTOR in connection with CONTRACTOR's performance is to be considered RAP's confidential and proprietary information, disclosure of which information to or use by third parties will be damaging or which disclosure may be prohibited by law. CONTRACTOR agrees to hold such material and information in strictest confidence, not to make use of it other than for performance as defined in this Contract, to release it only to CONTRACTOR employees needing to know such information, and not to release or disclose it to any other party or otherwise violate applicable law with respect to any disclosure of information. RAP's damages arising from CONTRACTOR's violation of this provision are difficult to ascertain and for which there is not a sufficient remedy at law.

4.5 Marks and Intellectual Property

A. Except as expressly provided in this Contract, neither party will have any rights in the other party’s name, logo, service marks, trademarks, trade names, taglines or any other proprietary designation (“Marks”).

B. As a matter of policy, the City does not endorse the products or services of a contractor.

C. News releases concerning this Contract or the Services will not be made by CONTRACTOR without the prior written approval of the CITY.

D. RAP will provide CONTRACTOR information about the Courses (including but not limited to course photos, course descriptions, course logos) as the parties may mutually agree to from time-to-time, and CITY and RAP authorize CONTRACTOR to publish such information on any platform (including, without limitation, online) operated by CONTRACTOR or, subject to mutual agreement by the parties, a third party. RAP agrees that it will supplement or otherwise amend such information from time-to-time so that such information remains current.

4.6 Warranty

CONTRACTOR warrants that during the term of the Contract, the Hardware and Software will be free from material defects in material and workmanship and that the Hardware and Software performs substantially in accordance with the identifiable set of functional specifications. Any errors or non-conformances shall be corrected by CONTRACTOR at no charge to RAP.
4.7 Disclaimer

Except for the warranties provided in the Contract, CONTRACTOR disclaims all other warranties and conditions with respect to the Hardware, Software and Services either express implied or statutory, including, but not limited to the implied warranties and/or conditions of merchantability, satisfactory quality, fitness for a particular purpose or accuracy. CONTRACTOR does not warrant that the operation of the Hardware or Software will be uninterrupted or error free or that any service will continue to be made available. Installation of the Hardware and Software may affect the usability of third party software, applications or third party services.

4.8 Insurance

CONTRACTOR shall comply with the insurance requirements for this Contract as set forth in Section 6 of this Contract.

4.9 Limitation of Liability

In no event will CONTRACTOR be liable to the City for any incidental, special, indirect, punitive, exemplary or consequential damages, costs, expenses, or losses (including, without limitation, lost profits and opportunity costs). Except for Contractor's obligation under PSC-20 and PSC-21 in Appendix A, Standard Provisions for City Contracts (Rev. 3/09) to indemnify the RAP for third party injury, personal liability, third party damage or third party intellectual property infringement pursuant to this Agreement, the aggregate liability of the Contractor for Professional Liability (errors and omissions) claims in any way arising out of or relating to the services performed under the agreement shall be limited to and not to exceed Five Million Dollars ($5,000,000.00).

To the extent that any claims arise from a Contractor's Data Privacy obligations or third party indemnification obligations related to a data breach, then in no event will the liable party's aggregate liability hereunder exceed Fifteen Million Dollars ($15,000,000.00).

The above limitations shall not limit Contractor's liability for personal injury or death or for damage to real property or tangible personal property caused by the negligence or willful misconduct of Contractor or its employees; liability for infringement of other party's intellectual property rights, or liability for payment of interest added by a court of law or an arbitration panel to a judgment entered in any action or proceeding under this agreement.

The above limitations will not limit RAP's payment obligations under this Agreement.

THE FOREGOING DISCLAIMERS AND LIMITATIONS WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW.
4.10 Patent and Copyright Indemnification

CONTRACTOR covenants and represents that the software and all related materials supplied to RAP hereunder do not infringe or otherwise constitute wrongful use of any copyright, patent, registered industrial design, trade mark, trade secret or any other right of any third party. CONTRACTOR shall indemnify, defend and hold harmless RAP from any suit or proceeding brought against RAP by reason of any such infringement or any wrongful use. CONTRACTOR shall in no event consent to any injunction, accounting or other equitable remedy which results in any expense to RAP or its inability to operate the Software in accordance with the relevant specifications without RAP’s prior consent, such consent not to be unreasonably withheld.

4.11 Audit

During the Term and for a period of four (4) years thereafter, CONTRACTOR will retain all records pertaining to the performance of its obligations under this Contract and will permit RAP to inspect such records upon reasonable advance notice at any time, but in no event more frequently than once in each calendar year, for the period such records are retained pursuant to this section.

4.12 Taxes

All taxes that may be imposed on CONTRACTOR that may arise from CONTRACTOR’s participation in the transaction contemplated by this Contract shall be the sole responsibility of CONTRACTOR. RAP shall not be responsible for any taxes which accrue to CONTRACTOR or otherwise as a result of the income to CONTRACTOR realized from the products or services sold or provided under this Contract.

4.13 Performance of Work

CONTRACTOR agrees to perform faithfully, industriously, and to the best of CONTRACTOR’s ability, experience, and talents, in accordance with generally accepted standards of professional skill and care among recognized industry experts engaged in similar services, all of the duties described by the express and implicit terms of this Contract, to the reasonable satisfaction of RAP. CONTRACTOR shall perform all of its duties hereunder according to RAP’s requirements and procedures. RAP shall be the sole judge of whether CONTRACTOR’s duties are performed satisfactorily.

4.14 Relationship of the Parties

The relationship between CONTRACTOR and RAP is that of an independent contractor. CONTRACTOR shall supply all personnel, equipment, materials, and supplies at its own expense, except as specifically set forth herein. CONTRACTOR shall not be deemed to be, nor shall it represent itself as, employees, partners, or joint venturers of RAP. CONTRACTOR is not entitled to workers' compensation benefits or
other employee benefits from RAP and is obligated to directly pay federal and state income tax on money earned under this Contract.

4.15 Termination of Contract

Standard Provisions Termination: CONTRACTOR or CITY may terminate this CONTRACT at any time, by providing thirty (30) days written notice, subject to the conditions set forth in Appendix A – Standard Provisions for City Contracts (Rev. 3/09). CITY or CONTRACTOR shall give notice of such termination by sending a registered letter, with return receipt request to the representatives listed in SECTION 1 of this Contract.

In the event this CONTRACT is terminated by RAP, RAP shall compensate CONTRACTOR for those portions of work satisfactorily completed prior to the effective date of such termination, less payment or payments, previously made by RAP for said services, but shall not be liable for cost of services performed or expenses incurred subsequent to such termination.

“No Cause” Termination by CITY: Should CITY desire to terminate the Contract other than as provided in Section 4.17 prior to the conclusion of the initial five-year Term, CITY must give notice to CONTRACTOR and CITY would be required to pay a one-time early termination fee equal to the net-depreciated value of the Hardware, Installation and Training, Mobile App and Website Design fees provided by CONTRACTOR. The maximum early termination fee is One Hundred Sixteen Thousand, One Hundred and Sixty-Five Dollars and Ninety-four Cents ($116,165.94) and will depreciate monthly during the Term by One Thousand Nine Hundred Thirty Six Dollars and Ten Cents ($1,936.10). For clarity, the Parties agree that this one-time early termination fee is not a penalty, but is rather a mutually agreed, reasonable estimate of the damages to CONTRACTOR from such early termination.

CONTRACTOR Termination for Default by CITY or RAP: CONTRACTOR may terminate this Contract if CITY or RAP is in default of the Contract as defined in Section 4.16 upon thirty (30) days prior written notice to CITY or as otherwise expressly provided herein.

CITY or RAP Termination for Default by CONTRACTOR: CITY or RAP may terminate this Contract if CONTRACTOR is in default of the Contract as defined in Section in Section 4.17 upon thirty (30) days prior written notice to CONTRACTOR or as otherwise expressly provided herein.

Return of Property and Materials Upon Expiration or Termination: Upon any termination or expiration of this Contract, for any reason except default by CONTRACTOR, each party shall return to the other party all papers, materials and properties of the other party held for purposes of executing the Contract; and RAP will return, at RAP’s sole expense, all Hardware to CONTRACTOR in good working order, reasonable wear and tear excepted and with the exception of repair and replacement.
previously requested by RAP but still unperformed by CONTRACTOR, or repair and maintenance required to keep the Hardware in good working order but still unperformed by CONTRACTOR.

If RAP terminates this Contract for any reason other than CONTRACTOR’s default of this contract, CONTRACTOR may discontinue any license granted to RAP under this contract. RAP will:

A. Immediately cease using the Software and any other CONTRACTOR materials;

B. Return, purge or destroy (as directed by CONTRACTOR) all Software and other CONTRACTOR materials and certify to CONTRACTOR in writing that all such copies have been surrendered or destroyed in accordance with the foregoing.

C. Pay to CONTRACTOR any fees due and owing under the Contract as of the effective date of termination for which funds have been appropriated;

D. Cooperate with CONTRACTOR for the retrieval of any Hardware at RAP’s premises;

E. Any obligations and duties that, by their nature, extend beyond expiration or termination of this Contract will survive the expiration or termination of this Contract, including without limitation, payment of fees and charges permitted under this Contract, indemnification and confidentiality obligations; and

F. Upon the natural expiration or non-renewal of this Contract or any SOW, CONTRACTOR will provide to RAP shipping instructions which RAP will follow to return any Hardware. CONTRACTOR will pay for all return shipping in this instance.

4.16 Default by CITY or RAP

The nonpayment or nonperformance of any material obligation under this Contract by CITY or RAP shall not be deemed a default unless CITY or RAP fails to cure the default within forty-five (45) business days after written notice to CITY or RAP of such nonpayment or nonperformance, or, if the default cannot be cured within forty-five (45) days, CITY or RAP commences to cure the default within the forty-five (45) day period and completes the cure of the default within a reasonable time (the "Cure Period"). If CITY or RAP fails to cure such default within the Cure Period, or, prior to complete payment under the terms of this Contract, ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act, then CONTRACTOR may discontinue any and all licenses for the Software or terminate this Contract. Any nonpayment or nonperformance by RAP which is the result of a dispute between the parties to this Contract shall not be considered a default by RAP.
4.17 Default by CONTRACTOR

The nonperformance of any obligation of CONTRACTOR shall not be deemed a default unless CONTRACTOR fails to cure the default within forty-five (45) days after written notice to CONTRACTOR of such nonperformance. If CONTRACTOR fails to cure such default, ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of the rights of creditors, then RAP at its sole option may do any one or more of the following: (i) terminate this Contract; (ii) suspend any payments due under the Contract; and/or (iii) pursue any remedy available to it at law or in equity in addition to any specific rights or remedies set forth in this Contract; (iv) continue to use the Software for as long as RAP deems necessary (in RAP’s reasonable discretion) for the sole purpose of operating RAP’s business needs. Each of the aforesaid rights and remedies are cumulative and RAP’s election of one shall not be deemed to be exclusive of the election of any other of the rights and remedies herein described.

4.18 Compliance with All Laws

This Contract, including all schedules attached hereto and/or incorporated by reference herein, shall be governed in accordance with all applicable laws of the United States of America, the State of California, and the City of Los Angeles. This Contract shall be governed by, enforced and interpreted under the law of the State of California and the City of Los Angeles and shall be subject to:

Any and all applicable laws, ordinances, statutes, rules, regulations or orders, including the Los Angeles Municipal Code (LAMC), Los Angeles Administrative Code (LAAC), the Charter of the City of Los Angeles, and of any governmental authority, federal, state or municipal, lawfully exercising authority over the CONTRACTOR’s operations.

Included within the scope of the laws, referred to in this paragraph but in no way to operate as a limitation, are all forms of Federal, State, and City laws, regulations policies and ordinances (see below). Any breach by CONTRACTOR of the laws, regulations, policies and ordinances shall constitute a breach of this Contract.

A. Los Angeles Business Tax Registration Certificate:

CONTRACTOR, during the term of this Contract, must hold a current Los Angeles Business Tax Registration Certificate (BTRC) as required by the Los Angeles City’s Business Tax Ordinance (Article 1, Chapter 2, Section 21.00 et seq., of the LAMC) and shall not allow any such certificate be revoked or suspended. Contractors are required to complete and submit the BTRC application residing at the Office of Finance’s web site at http://finance.lacity.org/.
B. **Affirmative Action Plan:**

Los Angeles Administrative Code (LAAC), Division 10, Chapter 1, Section 10.8 establishes a Nondiscrimination / Affirmative Action Program requirement for all vendors doing business with the City of Los Angeles. CONTRACTOR and this Contract shall be subject to the applicable provisions of LAAC Section 10.8.2., Nondiscrimination Clause.

Questions pertaining to this requirement should be directed to the Office of Contract Compliance at (213) 847-1922. Additional information regarding the requirements of the City’s Non-Discrimination Clause, Equal Employment Practices and Affirmative Action Program is located at the Bureau of Contract Administration’s web site at [http://bca.lacity.org](http://bca.lacity.org). CONTRACTOR, as a bidder/proposer for this Contract, agrees as follows:

i. Non-construction services to or for the City for which the consideration is One Thousand Dollars ($1,000.00) or more shall comply with the provisions of Los Angeles Administrative Code Sections 10.8.3., Equal Employment Practices Provisions. All Bidders/Proposers shall complete and upload the Non-Discrimination/Equal Employment Practices Certification (two (2) pages) available on the City of Los Angeles’ Business Assistance Virtual Network (BAVN) residing at [www.labavn.org](http://www.labavn.org) at the time it registers on BAVN but no later than the time when an individual Bid/Proposal is submitted. However, Bidders/Proposers with Certifications previously uploaded to BAVN and verified by the Office of Contract Compliance (OCC) do not need to re-submit.

ii. Non-construction services to or for the City for which the consideration is One Hundred Thousand Dollars ($100,000.00) or more shall comply with the provisions of Los Angeles Administrative Code Sections 10.8.4., Affirmative Action Program Provisions. All Bidders/Proposers shall complete and upload the City of Los Angeles Affirmative Action Plan (four [4] pages) available on the City of Los Angeles’ Business Assistance Virtual Network (BAVN) residing at [www.labavn.org](http://www.labavn.org) at the time it registers on BAVN but no later than the time when an individual Bid/Proposal is submitted.

iii. Bidders/Proposers opting to submit their own Affirmative Action Plan may do so by uploading their Affirmative Action Plan onto the City’s BAVN. Bidders/Proposers with current OCC approval for their Affirmative Action Plan do not need to re-submit unless the approval is thirty (30) days or less from expiration.

Furthermore, subject subcontractors shall be required to submit the Non-Discrimination/Equal Employment Practices Certification and Affirmative Action Plan to the successful Bidder/Proposer prior to commencing work on the contract. The subcontractors’ Non-Discrimination/Equal Employment Practices Certification(s) and Affirmative Action Plan(s) shall be retained by the successful

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Bidder/Proposer and shall be made available to the Office of Contract Compliance upon request.

Both the Non-Discrimination/Equal Employment Practices Affidavit and the City of Los Angeles Affirmative Action Plan Affidavit shall be effective for a period of twelve months from the date it is first uploaded onto the City’s BAVN.

C. **Americans with Disabilities Act:**

CONTRACTOR shall comply with the Americans with Disabilities Act 42 U.S.C. Section 12101 et seq., and with the provisions of the Certification Regarding Compliance with the Americans with Disabilities Act, see Exhibit A which is attached to the Contract and incorporated herein by this reference.

D. **Child Support Ordinance:**

This Contract is subject to Section 10.10, Article 1, Chapter 1, Division 10 of the LAAC, Child Support Assignment Orders Ordinance. CONTRACTOR is required to complete a Certificate of Compliance with Child Support Obligations, see Exhibit B which is attached to the Contract and incorporated herein by this reference. Pursuant to this ordinance, CONTRACTOR shall (1) fully comply with all State and Federal employment reporting requirements applicable to Child Support Assignment Orders; (2) certify that the principal owner(s) of CONTRACTOR are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (3) fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with California Family Code Section 5230 et seq.; and (4) maintain such compliance throughout the term of this Contract.

E. **Living Wage Ordinance/Service Contract Worker Retention Ordinance:**

The CONTRACTOR must comply with City Ordinance 172336 (Living Wage Ordinance) unless exempted in accordance with said ordinance. The Living Wage Ordinance requires in part that nothing less than a prescribed minimum level of compensation (a “living wage”) be paid to employees of service contractors of the CITY and its financial assistance recipients and to employees of such recipients. Under Section 10.37.2 of the Ordinance, CONTRACTOR shall pay service employees who spend any of their time in CITY contracts a wage of no less that the hourly rates set under the authority of the Living Wage Ordinance (LWO). Such rates shall be adjusted annually to correspond with adjustments, if any, to retirement benefits paid to members of the Los Angeles City Employees’ Retirement System. CONTRACTOR is required to complete Living Wage Ordinance Forms LW-5, LW-6, and LW-18, see Exhibits C1, C2, & C3 which are attached to the Contract and incorporated herein by this reference.

CONTRACTOR must also comply with the Service Contract Worker Retention Ordinance (SCWRO), adopted through Ordinance 171004. This Ordinance requires CONTRACTOR to retain all employees from the previous contractor for a period of
ninety (90) days, and must continue to retain those satisfactory performing employees. Additional information may be found at http://bcs.lacity.org.

F. **Contractor Responsibility Ordinance:**

This Contract is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 et seq., of Article 14, Chapter 1 of Division 10 of the LAAC, unless exempt pursuant to the provisions of the Ordinance. CONTRACTOR shall refer to “Contractor Responsibility Ordinance”, for further information regarding the requirements of the ordinance. CONTRACTOR shall complete and return the Responsibility Questionnaire and Pledge of Compliance with Contractor Responsibility Ordinance, see Exhibits D1 & D2, attached hereto and incorporated herein by this reference.

G. **Equal Benefits Ordinance:**

Section 10.8.2.1 (c) of the LAAC (Equal Benefits Ordinance) requires that every contract with or on behalf of the City of Los Angeles for which the consideration is in excess of the Five Thousand Dollars ($5,000.00) must incorporate the Equal Benefits Provisions.

The selected bidder/proposer shall complete and upload the Equal Benefits Ordinance Affidavit (2 pages) available on the City of Los Angeles’ BAVN residing at www.labavn.org at the time it registers on BAVN, but no later than the submittal due date by the Awarding Authority, and prior to award of a City contract valued at Five Thousand Dollars ($5,000.00). The Equal Benefits Ordinance Affidavit shall be effective for a period of twelve months from the date it is first uploaded onto the City’s BAVN. Bidders/Proposers do not need to submit supporting documentation with their bids or proposals. However, the City may request supporting documentation to verify that the benefits are provided equally as specified on the Equal Benefits Ordinance Affidavit.

H. **Slavery Disclosure Ordinance:**

Unless otherwise exempt in accordance with the provisions of this Ordinance, the Contract is subject to the Slavery Disclosure Ordinance, Section 10.41 of the LAAC, as may be amended from time to time. CONTRACTOR shall complete and upload, the Slavery Disclosure Ordinance Affidavit (one (1) page) available on the City of Los Angeles’ BAVN residing at www.labavn.org prior to award of a contract. CONTRACTOR certifies that it has complied with the applicable provisions of this Ordinance. Failure to fully and accurately complete the affidavit may result in termination of the Contract.

Contractors seeking additional information regarding the requirements of the Slavery Disclosure Ordinance may visit the Bureau of Contract Administration’s web site at http://bca.lacity.org.
I. **First Source Hiring Ordinance:**

Unless otherwise exempt in accordance with the provisions of this Ordinance, this CONTRACT is subject to the applicable provision of the First Source Hiring Ordinance (FSHO), Section 10.44 et. Seq. of the LAAC, as amended from time to time.

The Office of Contract Compliance implemented a new compliance process for the First Source Hiring Ordinance (FSHO) by utilizing the City of Los Angeles’ BAVN at www.labavn.org. CONTRACTOR will be required to register in order to access the affidavit. The affidavit can be found by clicking on the "Profile" tab. Scroll to the "Download Templates" section and download the required affidavit. The affidavit is to be completed and signed prior to being uploaded to the "Company Documents" section. Once uploaded, the affidavit is valid for one (1) year or twelve (12) months from the date they are uploaded.

The uploaded affidavit will be verified by the Bureau of Contract Administration (BCA) only if CONTRACTOR is the successful Proposer/Bidder selected for contract award. Upon BCA verification, the Awarding Authority shall award the contract.

As required by the affidavit, if CONTRACTOR has any job opportunities, it must submit the FSHO-1 form to the awarding department before the contract is executed.

CONTRACTOR also agrees to comply with the Standard Provisions for City Contracts (Rev. 3/09) attached hereto and incorporated herein by reference as Appendix A.

4.19 **Services to Be Provided By CITY**

RAP personnel will work cooperatively with the CONTRACTOR to ensure timely review of all Services provided by CONTRACTOR under this Contract.

RAP will promptly act, review, and make decisions as necessary to permit the orderly progress of CONTRACTOR’s work under this Contract.

**SECTION 5 – INDEMNIFICATION**

Except for the active negligence or willful misconduct of CITY or RAP, CONTRACTOR undertakes and agrees to defend, indemnify and hold harmless CITY and any and all of CITY’s Officers, Agents, and Employees from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney’s fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including CONTRACTOR’s employees and agents, or damages or destruction of any property of wither party hereto or of third parties, arising in any manner by reason of, or incident to, the negligence, willful misconduct, or violation of applicable law in the performance of this Contract on the part of CONTRACTOR, its officers, agents, employees, or sub-contractor of any tier.
SECTION 6 – INSURANCE

A. General Conditions:

CONTRACTOR shall obtain and keep in force an insurance policy which covers all operations conducted pursuant to this Contract. Such Insurance policy must also insure the CITY and comply with the Office of the City Administrative Officer’s Insurance Requirements, see Exhibit E for Form Gem. 146 (Rev. 9/06) Required Insurance and Minimum Limits and Exhibit F for Form Gen. 133 (Rev. 05/12) Instructions and Information on Complying with City Insurance Requirements. RAP, based upon advice of the City’s Risk Managers, may increase or decrease the amounts on insurance coverage required herein by giving thirty (30) days’ written notice to CONTRACTOR.

The preferred form of evidence of insurance is an insurance industry ACORD Certificate submitted electronically via Track4LA™ at http://track4la.lacity.org, the City’s online insurance compliance system. For additional information on City of Los Angeles evidence of insurance submission requirements, please refer to the instructions for City Insurance Requirements.

Without limiting CONTRACTOR’s indemnification of CITY, CONTRACTOR shall provide and maintain at its own expense during the entire term of the Contract insurance having the limits customarily carried and actually arranged by CONTRACTOR but not less than the amounts and types listed in the Contract covering its operations hereunder subject to the following conditions:

i. Additional Insured:
   CITY, its Boards, Officers, Agents and Employees shall be included as additional insureds in all liability insurance policies except: Worker’s Compensation/Employer’s Liability, Professional Errors and Omissions and second-party Legal Liability coverages (such as Fire Legal). CITY shall be named Loss Payee as Its Interest May Appear in all required property, fidelity and surety coverages.

ii. Insurance Requirements:
   All insurance required hereunder shall conform to CITY requirements established by Charter, ordinance or policy and shall be filed with the Office of the City Attorney for its review in accordance with Los Angeles City Administrative Code Sections 11.47 through 11.56.

iii. Primary Insurance:
   Such insurance shall be primary with respect to any insurance maintained by CITY and shall not call on CITY’s insurance program for contributions.

iv. Admitted Carrier/Licensed California Broker:
   Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in California.
v. 30-Day Notice:
With respect to the interest of CITY, such insurance shall not be canceled, materially reduced in coverage or limits or non-renewed except after thirty (30) days written notice by receipted delivery (e.g. certified mail-return receipt, courier) has been given to the Office of the Administrative Officer.

vi. Prior Approval:
Evidence of Insurance shall be submitted to and approved by the Office of the City Administrative Officer prior to commencement of any work or tenancy under this Contract.

vii. Severability of Interest:
Except with respect to the insurance company’s limits of liability, each liability insurance policy shall apply separately to each insured against whom claim or suit is brought. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.

viii. Acceptable Evidence:

CONTRACTOR shall submit acceptable evidence and approval of Insurance in accordance with the “Instructions and Information on Complying with City Insurance Requirements” (Exhibit F).

ix. Renewal:
Once the insurance has been approved by CITY, evidence of renewal of an expiring policy may be submitted in accordance with the “Instructions and Information on Complying with City Insurance Requirements.”

x. Aggregate Limits/Blanket Coverage:
If any of the required insurance coverages contain aggregate limits, or apply to other operations or tenancy of CONTRACTOR outside this Contract, CONTRACTOR shall give CITY prompt, written notice of any incident occurrence, claim, settlement or judgment against such insurance which is CONTRACTOR’s best judgment will diminish the protection such insurance affords CITY. CITY may, at its option, specify a minimum acceptable aggregate for each line of coverage required.

B. Self-Insurance and Self-Insured Retentions:

Self-insurance programs and self-insured retentions insurance policies are subject to separate approval by CITY upon review of evidence of CONTRACTOR’s financial capacity to respond. Additionally, such programs or retentions must provide CITY with at least the same protections from liability and defense of suits as would be afforded by first-dollar insurance.
C. **Modification of Coverage:**

CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, CITY agrees to negotiate additional compensation proportional to the increased benefit to CITY.

D. **Availability/Failure to Procure Insurance:**

The required coverages and limits are subject to availability on the open market at reasonable cost as determined by CITY. Nonavailability of nonaffordability must be documented by a letter from CONTRACTOR’s insurance broker or agent indicating a good faith insurance and showing as minimum the names of the insurance carriers and the declinations or quotations received from each. Within the foregoing constraints, CONTRACTOR’s failure to procure or maintain required insurance or a self-insurance program shall constitute a material breach of contract under which CITY may immediately terminate or suspend this Contract or, at its discretion procure or renew such insurance to protect CITY’s interests and pay any and all premiums in connection therewith, and all monies so paid from CONTRACTOR.

E. **Underlying Insurance:**

CONTRACTOR shall be responsible for requiring such indemnification and insurance as it deems appropriate from consultants, agents and subcontractors, if any, to protect CONTRACTOR’s and CITY’s interests, and for ensuring that such persons comply with such provisions at all such times as they may apply during the performance of the work pursuant to this Contract.

A Waiver of Subrogation in favor of CITY will be required when work is performed on CITY premises under hazardous conditions.

F. **Workers’ Compensation:**

CONTRACTOR hereby certifies that it is aware of the provision of Section 3700 et seq., of the California Labor Code which require every employer to be insured against liability for Workers’ Compensation or to undertake self-insurance in accordance with the provision of that Code, and that it will comply with such provisions at all such times as they may apply during the performance of the Contract.

Any breach of this condition for insurance requirements shall be a material breach of this Contract.
SECTION 7 – COMPENSATION AND INVOICING

7.1 Compensation

RAP will pay CONTRACTOR for the Services provided or licensed through an Inventory Exchange payment option, as detailed in the SOW.

A. Inventory Exchange – RAP will allocate a designated amount of its Tee Time (defined below) Inventory (TTI) to CONTRACTOR as detailed in the applicable SOW. CONTRACTOR will retain revenue received as a result of selling any portion of the TTI. The following are terms specific to Inventory Exchange payment option fees and charges that are hereby agreed to by RAP:

i. Tee Time – A single “Tee Time” will be comprised of scheduled play for up to four (4) players, available during the normal hours of operations and consisting of eighteen (18) holes at all eighteen (18) hole courses and nine (9) holes at the nine (9) hole courses; provided that CONTRACTOR may, in its discretion, sell each tee time as configurations of singles; twosomes; threesomes; or foursomes.

ii. Allocation – CONTRACTOR will select and block designated TTI from the EZLinks Tee Sheet Network (ETN). CONTRACTOR can book TTI up to seven (7) days in advance. Times selected will follow restrictions outlined in the SOW. CONTRACTOR will never advertise tee times for less than fifty percent (50%) of the regular rate with cart.

iii. Availability – RAP shall make TTI available on the ETN at a minimum of fourteen (14) days in advance of the date of play. TTI unsold as of two (2) hours prior to the time of play, will automatically be released to RAP. If inventory exchange tee times are not available due to RAP initiated actions such as scheduled outing, event, over-seeding, course maintenance, CONTRACTOR will work with RAP to designate a replacement inventory exchange tee time that may be at another time on the same date or on an earlier or later like day as mutually agreed by the parties. CONTRACTOR agrees to post no more than one replacement inventory exchange tee time on any given date. When a replacement inventory exchange time is necessary, CONTRACTOR agrees to replace the TTI on “like” days – Monday through Friday to be replaced on a similar day between Monday and Friday, with Saturday through Sunday replacement times being replaced on Saturdays through Sundays.

iv. Customer Service – Neither CITY nor RAP will deny service to Customers or apply any surcharge or other extra charges to any Customer on the basis that the Customer reserved a Tee Time provided to CONTRACTOR.

v. Scheduling – In the event of circumstances that require RAP to postpone scheduled play, RAP agrees that it will provide adequate value to the Customer
in a manner appropriate with the circumstances as deemed appropriate by RAP. RAP will not cancel, move or edit a Tee Time reserved by a Customer through the ETN, except for events of force majeure.

B. Commission – There will be no Commission with Inventory Exchange option being selected.

C. Revenue Share – In Year 1, CONTRACTOR shall remit to RAP fifty percent (50%) of the revenue once Inventory Exchange Revenues exceed Five Hundred Seventy-Three Thousand Seven Hundred Thirty-Five Dollars ($573,735.00) plus, in accordance with CONTRACTOR’s proposal as accepted by the City and incorporated into this Contract, $2.50 per round booked through the Reservation Center; for Year 2 and each Year thereafter, CONTRACTOR shall remit to RAP fifty percent (50%) of the revenue once Inventory Exchange Revenues exceed Three Hundred Thirty-Two Thousand, Six Hundred Fifty-Five Dollars ($332,655.00) plus, in accordance with CONTRACTOR’s proposal as accepted by the City and incorporated into this Contract, $2.50 per round booked through the Reservation Center.

The total amount for this Contract is based on an Inventory Exchange payment option, as described in this Section and outlined in the SOW. The professional services that RAP is requesting shall be on an occasional and as-needed basis.

7.2 Invoicing

CONTRACTOR shall submit invoices to RAP for all services or work performed. Once services or work has been completed to the satisfaction of RAP, CONTRACTOR may submit and invoice for the agreed amount on CONTRACTOR’s original proposal. Invoices must include CONTRACTOR’s name, date, address, and contact phone number. Summary of work completed, address/location of work completed, and dollar amount originally proposed and agreed upon by RAP.

Invoices must be submitted to:

Laura Bauernfeind, Golf Manager
City of Los Angeles, Department of Recreation and Parks
Golf Division
Mail Stop 628-3
3900 Chevy Chase Drive
Los Angeles, CA 90039

Email: laura.bauernfeind@lacity.org

Telephone Number: (818) 246-1243
Fax Number: (818) 246-1929
The CONTRACTOR’s invoices for any additional services will be reviewed and approved for payment by RAP’s designated Project Manager, Gayane Manukyan or designee. Once signed off by the Project Manager, invoices will be processed by the RAP’s Accounting Section for payment. RAP may take up to thirty (30) days for payment if invoiced properly submitted, unless CONTRACTOR offers a discount for an early processed payment.

SECTION 9 – MISCELLANEOUS

A. Waiver and Modification

No term of this Contract shall be deemed waived or breach-excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

B. Assignment

Subject to the assignment provision in paragraph C below, CONTRACTOR shall not assign or transfer this Contract to any other person or entity without the written consent of RAP, which shall not be unreasonably withheld. RAP shall not assign or transfer this Contract to any other person or entity without the written consent of CONTRACTOR, which shall not be unreasonably withheld. Any assignment approved hereunder shall not relieve the assignor of any liability which has accrued under this Contract unless the assignee executes an Assumption Agreement reasonably satisfactory to the non-assigning party.

C. Miscellaneous

Unless otherwise expressly stated in a SOW, the SOW will be governed by this Contract and in the event of a conflict between this Contract and a SOW, the terms of this Contract shall govern. Neither party will be held responsible for any delay or failure in performance of any part of this Contract to the extent it is caused by circumstances beyond its control. All notices under this Contract must be in writing and will be sufficient if delivered personally or sent by overnight courier or by certified mail, postage prepaid, return receipt requested, to the addresses set forth at the beginning of this Contract or in a SOW. All rights and remedies provided in this Contract are cumulative and not exclusive of any other rights or remedies that may be available to the parties. The waiver by either party of any breach of this Contract will not be construed to be a waiver of any succeeding breach. Neither party may assign this Contract without the prior written consent of the other party unless, with advance written notice, to a controlled subsidiary of that party or a purchaser of all or substantially all of that party’s assets. The rights and obligations of this Contract shall bind and benefit any permitted successors or assigns of the parties. The performance by CONTRACTOR of its duties and obligations under this Contract will be that of an independent contractor, and nothing herein will create or imply an agency relationship between CONTRACTOR and
RAP. This Contract is governed in all respects by the laws of the State of California without regard to conflict of law provisions. Each party exclusively submits to the personal jurisdiction of the courts located within Los Angeles County, California. This Contract may be modified only by a written instrument executed by authorized representatives of the parties. Any provision of this Contract that is declared by a court to be invalid or unenforceable shall be ineffective only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof. Any such invalidity or unenforceability in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. This Contract constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements, proposals, negotiations, representations or communications relating to the subject matter.

SECTION 10 - INCORPORATION OF DOCUMENTS

This Contract, appendices and incorporated documents represent the entire integrated agreement of the parties and supersedes all prior written or oral representations, discussions, and agreements. This Contract may not be changed or modified in any manner except by formal, written amendment fully executed by both CITY and CONTRACTOR. The following documents are incorporated and made a part hereof by reference:

- Attachment A: City of Los Angeles, Department of Recreation and Parks, Request for Proposal CON-G17-003 dated May 15, 2017 for the purchase and deployment of a Golf Management and Reservation System,
- Attachment B: Proposal submitted by EZ Links in June 8, 2017 in response to Request for Proposal CON-G17-003
- Schedule A: Statement of Work
- Appendix A: Standard Provisions for City Contracts. (Rev. 3/09)
- Exhibit A: Certification Regarding Compliance with the Americans with Disabilities Act
- Exhibit B: Certification of Compliance with Child Support Obligations
- Exhibit C1: LW-5 – Subcontractor Declaration of Compliance Form
- Exhibit C2: LW-6 – Employee Information Form
- Exhibit C3: LW-18 – Subcontractor Information Form
- Exhibit D1: Responsibility Questionnaire
Exhibit D2  Pledge of Compliance with Contractor Responsibility Ordinance
Exhibit E  Required Insurance and Minimum Limits
Exhibit F  Instructions and Information on Complying with City Insurance Requirements

The order of precedence in resolving conflicting language, if any, in the documents shall be: (1) This Agreement; (2) Attachment A; (3) Appendix A; and (4) Schedule A.

Entire Contract. This Contract and the attached schedules appendices, and exhibits: constitute the entire Contract between CITY and CONTRACTOR. No amendment or modification shall be made to this Contract unless it is in writing and signed by both Parties.

SIGNATURE PAGE TO FOLLOW
IN WITNESS THEREOF, the parties hereto have executed this Contract to be executed by their duly authorized representatives on the dates indicated:

Executed this ________________ day of____________________, 20___

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its BOARD OF RECREATION AND PARK COMMISSIONERS

By ______________________________

PRESIDENT

By ______________________________

SECRETARY

Executed this ________________ day of____________________, 20___

EZLINKS GOLF LLC

By ______________________________

CEO

Approved as to Form:

Date: ______________________________

MICHAEL N. FEUER,
City Attorney

By ______________________________

DEPUTY CITY ATTORNEY
Attachment A

City of Los Angeles, Department of Recreation and Parks, Request for Proposal CON-G17-003 dated May 15, 2017 for the purchase and deployment of a Golf Management and Reservation System
Attachment B

Proposal submitted by EZ Links in June 8, 2017 in response to Request for Proposal CON-G17-003
Appendix A

Standard Provisions for City Contracts. (Rev 3/09)
Exhibit A

Certification Regarding Compliance with the Americans with Disabilities Act
Exhibit B

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LW-5 – Subcontractor Declaration of Compliance Form
Exhibit C2

LW-6 – Employee Information Form
Exhibit C3

LW-18 – Subcontractor Information Form
Exhibit D1

Responsibility Questionnaire
Exhibit D2

Pledge of Compliance with Contractor Responsibility Ordinance
Exhibit E

Required Insurance and Minimum Limits
Exhibit F

Instructions and Information on Complying with City Insurance Requirements