EXHIBIT "A"

CITY OF ROUND ROCK
"SOFTWARE AS A SERVICE" &
PROFESSIONAL SERVICES AGREEMENT
WITH PERFECTMIND TECHNOLOGY INC.

This "Software as a Service" agreement (hereinafter referred to as the "Agreement") is made on the 14 day of the month of October, 2015 (hereinafter referred to as the "Effective Date") by and between PerfectMIND Technology Inc., a British Columbia corporation with offices located at 110-980 West First Street, North Vancouver, British Columbia V7P 3N4 (hereinafter referred to as "PerfectMIND" or "Services Provider") and the City of Round Rock, Texas, a home-rule municipality with offices located at 221 East Main Street, Round Rock, Texas 78664 (hereinafter referred to as the "Client" or the "City").

WHEREAS, Client desires to license certain parks and recreation program management software (hereinafter referred to as the "System"); and

WHEREAS, PerfectMIND is in the business of providing the type of software Client intends to obtain; and

WHEREAS, PerfectMIND wishes to license to Client, and Client wishes to use and license from PerfectMIND, the Platform (as defined herein) on the terms and conditions set out in this Agreement; and

WHEREAS, Client, by signature on this Agreement, is awarding PerfectMIND the contract for furnishing, delivering, installing, and implementing the specified System;

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth herein, which consideration is declared good and sufficient by both parties, PerfectMIND and Client agree that PerfectMind shall provide certain products and services, and Client shall pay the prices agreed therefor, in accordance with the requirements and conditions set forth in this Agreement.

This Agreement consists of the following sections and exhibits, each of which is attached hereto and incorporated by reference as though recited herein verbatim:

SECTION A: DEFINITIONS AND INTERPRETATION
SECTION B: LICENSE
SECTION C: PROFESSIONAL SERVICES
SECTION D: FEES AND PAYMENTS
SECTION E: USE OF THE PLATFORM
SECTION F: CONTENT, INTELLECTUAL PROPERTY AND PRIVACY
SECTION G: TERM AND TERMINATION
SECTION H: CONFIDENTIALITY
SECTION I: WARRANTIES, DISCLAIMERS, INDEMNITIES AND LIABILITY
SECTION J: GENERAL

Exhibits:
    Exhibit1 – Scope of Work
    Exhibit 2 – Platform Features and Functionalities

SECTION A: DEFINITIONS AND INTERPRETATION

1.1   **Definitions.** In this Agreement, unless the context otherwise requires, capitalized terms will have the meaning assigned to them herein, including the following:

(a)   "**Account**" has the meaning set out in Section E;

(b)   "**Account-holder**" means an individual designated by Client to whom an Account is issued;

(c)   "**Applicable Laws**" means all applicable laws and regulations, including all applicable local, provincial, state, national and foreign laws, treaties and regulations as well as orders of courts of laws, regulations, by-laws or ordinances of applicable governmental agencies;

(d)   "**Claims**" means liabilities, actions, proceedings, claims, causes of action, demands, debts, losses, damages, charges and costs, including reasonable legal costs, any amount paid to settle any action or to satisfy a judgment and expenses of any kind and character whatsoever incurred in connection therewith;

(e)   "**Confidential Information**" has the meaning set out in Section H;

(f)   "**Content**" means all materials and content, including designs, editorials, text, graphics, audiovisual materials, multimedia elements, photographs, videos, music, sound recordings, reports, documents, software, information, formulae, patterns, data and any other work, and "**Client Content**" is Content entered, uploaded or inputted into the Platform by or on behalf of Client;

(g)   "**Client Data**" means information, materials, or data, including Client Content, entered, uploaded or inputted into the Platform by or on behalf of Client;

(h)   "**Enhancement**" means enhancements, developments, modifications, updates, additions and improvements made to the Platform, other than New Features and Functions;

(i)   "**Force Majeure**" means circumstances beyond a party's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labour problems, or Internet service provider failures or delays, or hosting service provider failures or delays;

(j)   "**Intellectual Property Rights**" means any and all (i) proprietary rights provided under patent law, copyright law, trade-mark law, design patent or industrial design law, semi-conductor chip or mask work law, or any other applicable statutory

provision or otherwise arising at law or in equity, including, without limitation, trade secret law, that may provide a right in works, software, source code, object code, marks, ideas, formulae, algorithms, concepts, methodologies, techniques, inventions, or know-how, or the expression or use thereof, (ii) applications, registrations, licenses, sublicenses, agreements, or any other evidence of a right in any of the foregoing, and (iii) past, present, and future causes of action, rights of recovery, and claims for damage, accounting for profits, royalties, or other relief relating, referring, or pertaining to any of the foregoing;

(k)   **"New Features and Functions"** means any update, revision, new version, new module or upgrade of the Platform made available by PerfectMIND from time to time (i) that adds new functions or features to the Platform and (ii) and for which PerfectMIND charges a fee to its Clients in order to obtain same;

(l)   **"PerfectMIND Privacy Policy"** means PerfectMIND's privacy policy made available at http://www.perfectmind.com/academy/privacy as amended from time to time;

(m)   **"PerfectMIND Technology"** means (i) any concepts, inventions, systems, processes, techniques, methodologies, know-how, data, tools, templates, technology (including software in executable code and source code), documentation or any other information, data or materials, and any expressions of the foregoing, developed by, owned by, or licensed to, PerfectMIND; and (ii) the Work Product;

(n)   **"Permitted Purpose"** means providing services to the City of Round Rock, Texas, as set forth herein, including client relationship management, facility bookings, membership sales, point of sale transaction processing and scheduling;

(o)   **"Platform"** means the software and supporting hardware platform known as "PerfectMIND" that is owned and operated by PerfectMIND, and that will be made available to Client as a service under this Agreement via a designated website or websites as may be designated by PerfectMIND, from time to time, together with the related documentation, Content (other than Client Content and Client Data) and end user materials delivered therewith;

(p)   **"Professional Services"** has the meaning set out in Section C;

(q)   **"Term"** has the meaning set out in Section G; and

(r)   **"Work Product"** means all improvements, enhancements and derivatives thereto developed by PerfectMIND for the purposes of providing the Professional Services under this Agreement or otherwise and any and all other work products developed by PerfectMIND for the purposes of providing the Professional Services under this Agreement.

1.2   Interpretation. In this Agreement, unless expressly stated otherwise or the context otherwise requires, (a) headings and captions are for convenience only and will not be deemed to explain, limit or modify the provisions hereof, (b) the word **"including"**, when following a

general statement or term, is not to be construed as limiting the general statement or term (whether or not used in connection with phrases such as "without limitation" or "but not limited to") and the word "**or**", when connecting two or more matters, will not imply an exclusive relationship between the matters, (c) a reference to a "**person**" or "**entity**" means an individual, corporation, body corporate, firm, limited liability company, partnership, syndicate, joint venture, society, association, trust or unincorporated organization or governmental authority or trustee, executor, administrator or other legal representative, including any successor to that person, (d) a word importing the masculine gender includes the feminine and neuter, a word in the singular includes the plural, a word importing a corporate entity includes an individual, and vice versa, (e) words, phrases and acronyms not otherwise defined herein that have a meaning commonly understood and accepted by persons familiar with the Internet and computing services professionals will be interpreted and understood to have that meaning herein, and (f) in the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Exhibits hereto, the terms of the Exhibits hereto will prevail to the extent necessary to resolve such conflict or inconsistency.

SECTION B: LICENSE

2.1 License. PerfectMIND grants to Client a non-exclusive, non-transferable, right and limited license, only during the Term, to access and use the Platform for the Permitted Purposes only. All rights not expressly granted to Client are reserved by PerfectMIND and, if applicable, its licensors.

2.2 Complete Software; Enhancements. Client agrees that its entry into this Agreement is not contingent on the delivery of any future functionality or features by PerfectMIND. PerfectMIND may, from time to time and its sole discretion, update the Platform (including the underlying server software or hardware) or otherwise offer Enhancements, which Enhancements will form part of the Platform being licensed and provided hereunder without further payment by Client. PerfectMIND will use commercially reasonable efforts to (a) ensure that such Enhancements are compatible with and will not adversely affect or reduce the functionality, performance, availability and accessibility of the Platform, and (b) to the extent that such Enhancements do so adversely affect the Platform and Client notifies PerfectMIND of same, restore or reinstate the Platform or parts of it causing the adverse effects to its or their status prior to the Enhancement, as soon as may be reasonable and practicable in the circumstances. Notwithstanding any Enhancements or other changes to the Platform, PerfectMIND will maintain the functionality of the Platform so it is always materially equal to better than the functionality of the Platform as of the date that Client first commences using the Platform.

2.3 New Features and Functions. PerfectMIND may, from time to time and its sole discretion, develop and offer New Features and Functions that will not form part of the Platform licensed hereunder and may be provided and licensed separately to Client for an additional fee. For clarity, in no event will PerfectMIND be obligated to provide any New Features and Functions free of charge, nor will Client be obligated to purchase any New Features and Functions. PerfectMIND will use commercially reasonable efforts to (a) ensure that New Features and Functions are compatible with and will not adversely affect or reduce the functionality, performance, availability and accessibility of the Platform, and (b) to the extent

that such New Features and Functions do so adversely affect the Platform and Client notifies PerfectMIND of same, restore or reinstate the Platform or parts of it causing the adverse effects to its or their status prior to the New Features and Functions, as soon as may be reasonable and practicable in the circumstances. Notwithstanding any New Features and Functions or other changes to the Platform, PerfectMIND will maintain the functionality of the Platform so it is always materially equal to better than the functionality of the Platform as of the date that Client first commences using the Platform.

SECTION C: PROFESSIONAL SERVICES

3.1 Professional Services. PerfectMind agrees to provide the Professional and Implementation Services as set forth in PerfectMind's Scope of Services attached as Exhibit "1" and incorporated herein as a part of the Agreement.

3.2 Supplemental Agreement. Professional Services and other terms of this Agreement may be modified by written Supplemental Agreement hereto, duly authorized by City Council or by the City Manager, if the Client determines that there has been a significant change in (1) the scope, complexity, or character of the services to be performed; or (2) the duration of the work. Any such Supplemental Agreement must be executed by both parties within the period specified as the term of this Agreement. Consultant shall not perform any work or incur any additional costs prior to execution, by both parties, of each Supplemental Agreement.

3.3 Client's Responsibilities. The work functions and tasks relating to the Professional Services for which Client or a third party shall be responsible are described in the Agreement and Exhibits "1" and "2." Client agrees to perform and cause the third party to perform such work functions or tasks in a timely fashion. Client agrees to provide or make available and cause any third party identified by the Client as being responsible for any function or task in any way related to the Professional Services to provide or make available all information reasonably requested by PerfectMIND to perform the Professional Services. PerfectMIND will not be liable for loss or damage arising from reliance on any such information.

3.4 Project Teams. Each party will be solely responsible for staffing its project team for the performance of the Professional Services by PerfectMIND and relating work functions and tasks by Client as described in the Proposal. Each member of a project team will possess skills and knowledge appropriate to the work functions to be performed by that team member. Either party may, by way of replacement or addition, make changes to the personnel assigned to its project team, provided that each replacement team member shall possess skills and knowledge at least equivalent to the project-related skills and knowledge of the team member being replaced. Each party shall appoint a project manager in respect of its project team. The project managers shall be available for weekly meetings to review the progress of the Professional Services.

3.5 Use of Client's Facilities. For Professional Services to be performed at the Client's premises, Client will provide all work space, facilities and support that are reasonably requested by PerfectMIND to perform such Professional Services, including without limitation, secretarial support, telephone, and computer facilities.

3.6 **No Liability for Others' Failure to Perform.** Client agrees and acknowledges that PerfectMIND's performance of the Professional Services will be conditional upon, and subject to, Client's performance of its obligations hereunder and the performance by any third party identified by the Client of its functions and task to the extent that such functions and task relate to the Professional Services, and that PerfectMIND will not be liable or responsible, in any manner or to any extent, for any failure of PerfectMIND to perform all, or any part of, the Professional Services to the extent that any such failure is caused by a failure of Client to perform its obligations or the third party to perform its functions and tasks.

3.7 **Third Party Hardware/Software.** Client will be solely responsible for the evaluation, selection, installation, implementation, compatibility, use and performance of and results obtained from any hardware, systems software, utility software, security software, telecommunication equipment or software, and applications software used in connection with the Professional Services, unless (and only to the extent) otherwise expressly agreed in this Agreement. Except as expressly provided in this Agreement, Client and/or the third party vendors of the software packages selected for use by Client will be responsible for the installation, acceptance and performance of the selected software packages.

3.8 **Third Party Products.** Where the Professional Services to be provided by PerfectMIND involve the acquisition by Client of products of third parties, PerfectMIND will not be responsible for delays in the delivery of such products by third parties or for such product's faulty quality, defective performance, or failure to perform in accordance with published specifications or accepted standards. PerfectMIND will transfer to Client any transferable warranties provided to PerfectMIND by third parties. PerfectMIND makes no independent representations or warranties with respect to products provided by third parties. Any third party warranties are the exclusive remedies of Client with respect to such products.

3.9 **Use of Subcontractors.** Client acknowledges that PerfectMIND may engage agents and subcontractors to perform any of the Professional Services described in the Proposal; *provided, however*, that any such agent or subcontractor shall be subject to the reasonable approval of Client. PerfectMIND shall be responsible for the fulfilment of its obligations hereunder, notwithstanding the performance of any of its obligations by its agents and subcontractors.

3.10 **No Recruitment.** Client agrees that during the term of this Agreement, and for a period of one (1) year thereafter, it will not, without the prior written consent of PerfectMIND, hire, retain or engage, or make an offer in respect of same to, any employee, independent contractor or consultant of PerfectMIND. PerfectMIND agrees that during the term of this Agreement, and for a period of one (1) year thereafter, it will not, without the prior written consent of Client, hire, retain or engage, or make an offer in respect of same to, any employee, independent contractor or consultant of Client.

SECTION D: FEES AND PAYMENTS

4.1 **Fees.**

(a)   Platform Use Fees: Client will pay all Platform Use Fees and charges in connection with the use of the Platform in accordance with Exhibit "1" in the amount of

Forty-Two Thousand Five Hundred Seventy-Two Dollars and No/100 ($42,572.00) each year for the Term of this Agreement.

(b)   Website Design Fees: Client will pay a one-time Website Design Fee in accordance with Exhibit "1" in the amount of **Twenty-Five Thousand Dollars and no/100 ($25,000.00).**

4.2   Platform Use Billing. The fees payable by Client for use of the Platform in each twelve (12) month period is payable in advance at the beginning of such period. PerfectMIND will invoice Client for such fees at the beginning of each 12 month period, and Client will pay each invoice within thirty (30) days after the date of the invoice; provided that the entire fee for the first twelve-month period in the Term is payable and due upon execution of this Agreement in accordance with Exhibit "1."   All amounts due by Client hereunder will be paid, unless otherwise expressly set out herein, without any deduction, adjustment or set-off whatsoever.

4.3   Taxes. Fees for use of the Platform do not include any taxes, and Client agrees to pay all applicable sales, use, value-added and other taxes or similar nature based on or due as a result of any amounts paid to PerfectMIND under this Agreement.

4.4   Late Payments. In accordance with Chapter 2251, V.T.C.A., Texas Government Code, any payment to be made by Client to PerfectMIND will be made within thirty (30) days of the date Client gives final approval to PerfectMIND for goods under this Agreement, performance of the services under this Agreement. PerfectMIND may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b).   This Prompt Payment Policy does not apply to payments made by Client in the event:

(a)   There is a bona fide dispute between Client and PerfectMIND, a contractor, or supplier about the goods delivered or the service performed that cause the payment to be late; or

(b)   The invoices are not mailed to Client in accordance with the stages and payments set forth in Exhibit "1" incorporated herein.

4.5   Professional Services Fees. The Client agrees to pay a one-time Implementation Cost in the amount of **Seventy Thousand One Hundred Dollars and no/100 ($70,100.00)** as set forth in Exhibit "1."

4.6   Professional Fee Invoices.

(a)   **Invoices:** To receive payment, PerfectMIND shall prepare and submit invoices to Client for services rendered pursuant to the schedule set forth in Exhibit "1." Each invoice for professional services shall detail the service performed. All payments to PerfectMIND shall be made immediately after final approval of the services by the Client.

Should additional backup material be requested by Client to support the amount invoiced, PerfectMIND shall comply promptly. If the backup material is not responsive to the Client's request or the Client needs further material to confirm the payment amount(s) in the invoice, PerfectMIND agrees to make all relevant records and books relating to the invoice available to Client for inspecting and auditing.

If Client has any dispute with work performed, then then Client shall notify PerfectMIND prior to final acceptance of the work. Once final acceptance of the work has been given by Client, Client may not request that work be re-performed or request the Client provide appropriate credit, unless the amount invoiced to Client is not consistent with the terms of this Agreement or the attached Exhibits.

(b) **Payment of Invoices:** Client reserves the right to correct any calculation/numerical error that may be discovered in any invoice that may have been paid to PerfectMIND and to adjust same to meet the requirements of this Agreement. Following receipt of an invoice, Client shall endeavor to pay PerfectMIND promptly, but no later than the time period required under the Texas Prompt Payment Act described in Section 4.4 herein. Under no circumstances shall Client be entitled to receive interest on payments which are late because of a good faith dispute between PerfectMIND and Client or because of amounts which Client has a right to withhold under this Agreement or state law. Client shall be responsible for any sales, gross receipts or similar taxes applicable to the services as set forth in Section 4.7 herein, but not for taxes based upon PerfectMind's net income.

4.7   Taxes and Duties Relating to Professional Fees. All amounts payable in respect of the Professional Services rendered by PerfectMIND to Client under this Agreement will be exclusive of all shipping charges, insurance charges, customs duties, sales taxes, value-added taxes, and any other like charges or taxes. Client will be responsible for paying all such charges and taxes in connection with the provision of the Professional Services under this Agreement.

4.8   Currency. All prices in this Agreement are in United States dollars.

SECTION E: USE OF PLATFORM

5.1   PerfectMIND Responsibilities. PerfectMIND will provide the Platform in accordance with the services set out in Exhibits "1" and "2." PerfectMIND will provide to Client, at no additional charge, the support for the Platform described in Exhibits "1" and "2." PerfectMIND will comply with all Applicable Laws in the performance of this Agreement. PerfectMIND has used its best commercially reasonable efforts through quality assurance procedures to ensure that there are no Computer Viruses or undocumented features in the Platform, and the Platform does not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent use of the Platform. Notwithstanding any rights granted under this Agreement or at law, PerfectMIND hereby waives under any and all circumstances any right it may have or may hereafter have to exercise Electronic Self-Help. PerfectMIND agrees that Client may pursue all remedies provided under law in the event of a breach or threatened breach of this Section, including injunctive or other equitable relief. The term "**Computer Virus**" means any malicious code, program, or other internal component (e.g., computer virus, computer worm, computer time bomb, or similar component), which could damage, destroy, alter or disrupt any computer

program, firmware, or hardware or which could, in any manner, reveal, damage, destroy, alter or disrupt any data or other information accessed through or processed by such software in any manner. The term "**Electronic Self-Help**" means any use of electronic means to exercise PerfectMIND's license termination rights, if allowable pursuant to this Agreement, upon breach or cancellation, termination or expiration of this Agreement. PerfectMIND warrants that the Platform does not and shall not contain any lock, counter, CPU reference, virus, worm or other device capable of halting operations or erasing or altering data or programs. PerfectMIND further warrants that neither PerfectMIND, nor it agents, employees or subcontractors shall insert any such device after execution of this Agreement. For the avoidance of doubt, termination of Client's access to the Platform in accordance with this Agreement will not be considered Electronic Self Help. During the term of this Agreement, PerfectMIND shall carry errors and omissions insurance coverage in the amount of $3,000,000 or more, and such other insurance relating to the Platform and its business operations as is reasonable and customary in this industry.

5.2   Training. PerfectMIND will provide training to Client's staff during the implementation period as provided in Exhibit "1." This training shall be in form of remote/online training. Client's staff will also have access to all on-line training materials made available by PerfectMIND to its clients including live and pre-recorded webinars.

5.3   Client Responsibilities. Client will (a) be responsible for Account-holders' compliance with all of the terms and conditions of this Agreement; (b) be solely responsible for the accuracy, quality, integrity and legality of Client Data, including Client Content, (c) to the extent not encompassed by PerfectMIND's responsibilities with respect to the Platform, be responsible for (i) the means by which Client Data is acquired and used, including compliance with all personal information privacy laws and regulations and (ii) ensuring that no third party Intellectual Property Rights are infringed; (d) use commercially reasonable efforts to prevent unauthorized access to or use of the Platform, and notify PerfectMIND promptly of any such unauthorized access or use; and (e) use the Platform only for Permitted Uses and in accordance with the documentation therefor and all Applicable Laws.

5.4   Prohibited Conduct. Client will not:

(a)   make the Platform available to anyone, or permit anyone to access the Platform, other than Account-holders;

(b)   license, sublicense, sell, resell, publish, republish, transfer, assign, distribute, rent, lease or time-share the rights granted to Client under this Agreement, or copy or otherwise commercially exploit the Platform or its components in any way except in accordance with the rights granted hereunder;

(c)   use the Platform in any manner or for any purpose (i) that violates this Agreement, (ii) that contravenes, facilitates the violation of, or violates any Applicable Laws; (iii) that extracts, gathers, collects, or stores personal information about individuals except in compliance with all applicable personal information privacy laws or that involves data mining, robots or similar data gathering or extraction methods on individual's personal information without their express consent, or (iv) that interferes with or disrupts the

integrity or performance of the Platform, PerfectMIND's systems or networks or third-party data of Content contained therein;

(d)   attempt to gain unauthorized access to the Platform or its related systems or networks;

(e)   post, upload, reproduce, distribute or otherwise transmit on the Platform (i) pyramid schemes, (ii) any material that contains a virus, cancelbot, Trojan horse, worm or other harmful, disruptive or surreptitious component, (iii) defamatory, infringing, indecent or unlawful software, materials or information, or (iv) inappropriate, profane, or obscene software, materials or information without suitable or lawfully-required access controls;

(f)   alter, modify, reverse engineer, decompile, or disassemble, translate, extract data structures from or otherwise attempt to extract the source code from the Platform or any part thereof;

(g)   create derivate works based on the Platform or works containing a substantial part of the Platform;

(h)   copy, frame or mirror any part or content of the Platform;

(i)   disable or circumvent any access control or related process or procedure established with respect to the Platform;

(j)   remove any copyright or other proprietary or Intellectual Property Rights notices or labels on or in the Platform or any part, copy or report generated therefrom or thereof;

(k)   use the Platform to scan or probe another computer system, obstruct or bypass computer identification procedures or engage in unauthorized computer or network trespass without the express permission of the owners of such computer systems;

(l)   access the Platform in order to (i) build a competitive product or service, or (ii) copy any ideas, features, functions or graphics of the Platform;

(m)   forge headers or otherwise manipulate any protocols or identifiers used in any system or protocol in such a manner to disguise the origin of any Content transmitted using the Platform;

(n)   impersonate or falsely represent an association with any person, including a PerfectMIND representative, without the prior express, written permission of such person; or

(n)   permit any of the foregoing to be done by any person, including   Client's employees, contractors, agents, or representatives, including Account-holders.

5.5 Commercial Electronic Messages. All email messages that Client sends using the Platform will comply with all applicable anti-spam laws and regulations, including those relating to commercial electronic messages. When using the Platform, Client will represent itself and/or its organization accurately and will not impersonate any other person, whether actual or fictitious. Client specifically agrees that (to the extent that the Platform permits it, and it is within Client's control to do so) for all messages that Client sends using the Platform (i) the "from" line of the message will accurately and in a non-deceptive manner identify Client's organization; (ii) the "subject" line of the message will not contain any deceptive or misleading content regarding the overall subject matter of the message, and (iii) the message will include the contact information of the Account-holder who sends the message or another individual within Client's organization who may be readily contacted by the recipient, and such contact information will remain valid for at least sixty (60) days after the message is sent. Client will ensure that every message sent using the Platform will contain an "unsubscribe" link that allows recipient to remove himself/herself/itself from Client contact list and specify an electronic address on the World Wide Web that can be accessed by the recipient of the message for the purpose of unsubscribing. Client will promptly, and in any event no later than ten (10) days after the receipt of the request, give effect to any unsubscription requests it receives. Client may not charge a fee, require the recipient to provide any personally identifying information beyond an email address, or make the recipient take any step other than sending a reply email or visiting a single page on an Internet website as a condition for giving effect to an unsubscribe request. Client acknowledges that Client will be responsible for maintaining and giving effect to the list of unsubscribe requests following termination of this Agreement.

5.6 Account Use. PerfectMIND will issue Accounts, or permit Client to issue Accounts, to individuals selected by Client as Account-holders. Only Account-holders may access or use the Platform and each Account-holder's access to the Platform requires valid login credentials, including at least user identification and secure passwords (each an "**Account**"). The rights of an Account-holder may not be used by more than one individual, unless the Account of the Account-holder is reassigned in its entirety to another Account-holder, in which case the prior holder of the Account shall no longer have any right to access or use the Platform. Client acknowledges and agrees that Client:

(a) is fully responsible for Accounts assigned by or at the request of Client and the acts and omissions of each Account-holder, including the creation of Account credentials by any person, the maintenance, confidentiality and security of all passwords related to Accounts, and any and all activities that occur under Accounts (including persons who gain access to such Accounts, whether with or without permission);

(b) will notify PerfectMIND as soon as practicable after obtaining or receiving any knowledge of (i) any unauthorized use of an Account or any password related to an Account, or (ii) any other breach of security with respect to an Account, provided that such notification will not negate Client's liability for any unauthorized use of an Account or password until such time as PerfectMIND can be reasonably expected to take corrective measures; and

(c) will provide true, current, accurate and complete information as prompted by the Account-creation process or as otherwise requested by PerfectMIND from time to time

and to promptly update such information when any changes occur so as to keep such information held by PerfectMIND true, current, complete and accurate.

5.7   **Usage Limitations.** The following provisions apply with respect to the Platform:

(a)   **General Practices and Limits.**   Client acknowledges and agrees that PerfectMIND may establish from time to time general practices and limits concerning the use of the Platform, including: the maximum size of any Client Data, including Client Content, that may be stored on PerfectMIND servers (the "**Storage Limit**"); the maximum amount, speed and type of Client Data, including Client Content, that may be sent from or received using the Platform (the "**Usage Limit**"). Such general practices and limits may be posted on PerfectMIND's website or otherwise made available through the Platform. Client agrees that Client's usage may not exceed such limits, and that it is Client's responsibility to monitor Account usage of the Platform.   PerfectMIND covenants that the Storage Limit and the Usage Limit set for Client will not be less than the following:

Minimum Storage Limit

- Storage: 80GB ($160 per month for every additional 80GB blocks of storage)

Usage Limit

- Users: 500 users ($25 per month for each additional user)
- Email: **200,000** emails per month ($200 per month for additional 50,000 emails)

(b)   **Internet-based Software.**   The Platform depends on the Internet, including networks, cabling, equipment and facilities that are not in PerfectMIND's control; accordingly (i) any representation made by PerfectMIND regarding access performance, speeds, reliability, availability, use or consistency of the Platform, to the extent that they are dependent on the underlying Internet services, are on a "commercially reasonable efforts" basis, (ii) PerfectMIND cannot guarantee any minimum level regarding actual user performance, speed, reliability, availability, use or consistency based on factors depending on the Internet, and (iii) content, data, messages, information or materials sent over the Internet may not be completely private, and anonymity is not guaranteed.

SECTION F: CONTENT, INTELLECTUAL PROPERTY AND PRIVACY

6.1   Reservation of Rights. All right, title and interest, including all Intellectual Property Rights, in and to the Platform and PerfectMIND Technology is and will at all times be fully vested in PerfectMIND or its licensors, as the case may be.

6.2   Third-Party Content. Content accessed or available through the Platform may be owned by third-parties other than PerfectMIND or Client (collectively, "**Third Party Content**") and may be protected by applicable Intellectual Property Rights. During use of the Platform,

Client may enter into correspondence with, purchase goods, hardware or services from, or participate in promotions of advertisers or sponsors showing their goods or services through the Platform. Any such activities, and any terms, conditions, warranties or representations associated with such activities are solely between the applicable third party and Client. PerfectMIND and its licensors shall have no liability, obligation or responsibility to Client for any such correspondence, purchases or promotions. Client acknowledges and agrees that Client shall be solely responsible for obtaining necessary licenses, consent and permits from third-party providers with respect to any Third Party Content or ancillary software, hardware, or services that Client may use in connection with its use of the Platform.

6.3   Feedback. From time to time during the term of this Agreement, Client and Account-holders may provide PerfectMIND with comments, suggestions, ideas and impressions of the Platform ("**Feedback**"). Client acknowledges and agrees that, by disclosing such Feedback to PerfectMIND, the provider thereof will be deemed to have granted to PerfectMIND a royalty-free, worldwide, transferable, sub-licensable, non-exclusive, irrevocable and perpetual license to use, modify, adapt, improve or incorporate such Feedback into the Platform. Client acknowledges and agrees that the right to use the Platform is good and sufficient consideration for any contributions, through the Feedback or otherwise, to the design, improvement, or functionality of the Platform and the transfer to PerfectMIND thereof.

6.4   Client Data. PerfectMIND does not claim ownership of, and assumes no liability or responsibility with respect to, any Client Data, including Client Content. As between PerfectMIND and Client, all right, title and interest (including Intellectual Property Rights) in and to Client Data will at all times be fully vested in Client, except that, by posting, uploading, inputting, providing, submitting, entering or otherwise transmitting Client Data to PerfectMIND or any third party using the Platform, Client agrees as follows:

(a)   Client will have thereby granted PerfectMIND a royalty-free, non-exclusive, worldwide, fully paid-up limited license to use, copy, distribute, transmit, display, edit, delete, publish and translate such Client Data to the extent reasonably required by PerfectMIND in connection with the functionality of the Platform and the performance of this Agreement as well as to ensure adherence to or enforce the terms of this Agreement;

(b)   Client, and not PerfectMIND, will have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and Intellectual Property Rights of all Client Data, and PerfectMIND will not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Client Data; and

(c)   Client will have thereby confirmed, represented and warranted to PerfectMIND that Client has all rights, titles and interests (including all Intellectual Property Rights as well as the power and authority necessary), to grant the license to such Client Data set above in subsection 6.4(a).

6.5   Privacy. PerfectMIND acknowledges and agrees that Client Data may contain sensitive information, and, in connection therewith, (a) PerfectMIND will comply with all Applicable Laws relating to personal information privacy, including British Columbia *Personal Information*

Privacy Act and will adhere to the PerfectMIND Privacy Policy, which forms an integral part hereof and is incorporated herein by reference; (b) PerfectMIND will use industry-standard management practices, technologies and security to protect the integrity, safety and security of Client Data in both physical and electronic form; (c) Client acknowledges and agrees that its use of the Platform will utilize, in whole or in part, the public Internet and third party networks to transmit communications, which transmissions may be intercepted by other parties or stored, cached, routed, transmitted or received in jurisdictions outside of the jurisdiction of Client, (d) PerfectMIND will not use Client Data for any purpose other than to provide the functionality of the Platform to Client and its users, to ensure adherence to or enforce the terms of this Agreement, or (only in aggregate form) for site metrics; (e) PerfectMIND reserves the right to modify the PerfectMIND Privacy Policy and its security policies in its reasonable discretion from time to time, subject to any Applicable Laws.

6.6   Use of the Other Party's Name. Each party may use the other party's name in its news releases, marketing and promotional materials and the like provided that such will comply with any standards set by the other party from time to time. Each party will cease to use the other party's name upon any expiration or termination of this Agreement.

SECTION G: TERM AND TERMINATION

7.1   Term. This Agreement shall be effective on the date this Agreement has been signed by each party hereto, and shall remain in full force and effect unless and until it expires by operation of the term indicated herein, or is terminated or extended as provided herein. The term of this Agreement shall be for five (5) years commencing on the effective date hereof (the **"Term"**). After the initial term, the Agreement shall automatically renew for two (2) successive terms of twelve (12) months each, unless a party provides written notice to the other party of the first party's intention not to renew, at least thirty (30) days before the expiration of the then-current term.

7.2   Renewal Terms. The fees payable by Client during any such renewal term will be the same as that during the prior term unless PerfectMIND has given Client written notice of a pricing change at least ninety (90) days' before the end of such prior term, in which case the pricing change will be effective upon renewal and thereafter.

7.3   Termination. Either party may terminate this Agreement for cause, immediately upon written notice to the other party, if:

> (a)   the other party is in default of any of its material obligations under this Agreement and such default is not remedied within thirty (30) days of the date of receipt of written notice thereof, provided that cure period with respect to default in payment obligations is ten (10) days; or

> (b)   the other party ceases to conduct business in the normal course; the other party becomes insolvent or bankrupt; the other party makes any assignment for the benefit of creditors; proceedings are instituted by or against the other party seeking relief, reorganisation or rearrangement under any laws relating to insolvency; a receiver,

liquidator or trustee is appointed in respect of any property or assets of the other party; or an order is made for the liquidation, dissolution or winding up of the other party;

In the event of a claim or dispute arising under this Agreement that is not described in (a) or (b) above, the parties must attempt to resolve the dispute or claim using the following procedure prior to terminating the Agreement: The party contemplating termination shall make a written request for a telephone conference to be held between a representative of each party within five (5) calendar days of the request. The purpose of this telephone conference and any subsequent telephone conferences shall be to negotiate in good faith the matter(s) constituting the dispute. If within ten (10) calendar days of the initial telephone conference, the parties have not reached a mutually satisfactory resolution, then the parties shall attempt to resolve the dispute or claim with the assistance of a mutually selected mediator. If the parties cannot agree on a mediator, Client and PerfectMIND shall each select a mediator and the two (2) mediators shall agree upon a third mediator. A mediator shall be chosen within fifteen (15) days or within such time frame as agreed upon by both parties. Any mediation proceeding shall occur in Round Rock, Texas. Any costs and fees, other than attorney fees, associated with the mediation shall be shared equally by the parties. Failing resolution through mediation, either party may terminate the Agreement by written notice to the other party. The parties may agree to waive the above procedure and terminate the Agreement by mutual agreement of the parties. The parties may also terminate this Agreement by mutual agreement to terminate evidence in writing by the parties.

7.4   Payment on Termination. If this Agreement is terminated by Client due to PerfectMIND's default, then PerfectMIND shall refund to Client an amount equal to the fees actually paid by Client for the year during which the termination occurs prorated based on the post-termination portion of the year. Otherwise, any termination of the Agreement will not result in a refund of any paid fees by the Client. Upon the termination of this Agreement that is not due to PerfectcMIND's default, without prejudice to any other rights PerfectMIND may have, Client will (a) remit all fees owed for the Professional Services and Work Products accepted by Client prior to the date of such termination; (b) remit all fees payable for work-in-progress, on a time and materials basis, at the rates and times set forth herein and in the attached Exhibit "1"; and (c) remit all such other costs of PerfectMIND, demonstrated to the reasonable satisfaction of the Client, directly related to the permanent or temporary winding down of the Professional Services, work and deliveries which are being terminated.

7.5   Return of Client Data. Upon request by Client made within thirty (30) days after the effective date of expiration of the initial term or any renewal period of this Agreement, or upon termination by the City for cause, PerfectMIND will make available to Client for download a file of the relevant Client Data in a commercially-reasonable standard (such as comma separated value (.csv) or extendible markup language (.xml)) format along with attachments in their native format as stored by PerfectMIND. After such thirty (30)-day period, PerfectMIND will have no obligation to maintain or provide any such Client Data and will thereafter, unless legally prohibited, delete all such Client Data in PerfectMIND systems or otherwise in PerfectMIND's possession or under PerfectMIND's control. Within fifteen (15) days of any termination f of this Agreement for any other reason than described above, Client may request return of Client Data, in which case Client will pay to PerfectMIND any fees outstanding prior to the termination of this Agreement plus any reasonable fee that PerfectMIND requests, based on the time required to

accommodate Client's request regarding return of Client Data, and upon receipt of such payments, PerfectMIND will make available Client Data to Client for download as set out above. If Client does not make a request within the fifteen (15) day time limit or fails to make payments within ten (10) days after receiving PerfectMIND's fee request, Client's right to access or use Client Data will immediately cease, and PerfectMIND will have no obligation to maintain or provide any Client Data and will thereafter, unless legally prohibited, delete all such Client Data in PerfectMIND systems or otherwise in PerfectMIND's possession or under PerfectMIND's control.

7.6   Survival.   Without limiting the applicability of other terms and conditions of this Agreement, the terms of this Agreement that, by their nature, are intended to survive any purported or actual termination or expiration of this Agreement will so survive.

SECTION H: CONFIDENTIALITY

8.1   Confidential Information.   Neither party will, without the prior written approval of the other party, disclose or use for any purpose other than exercise of its rights or performance of its obligations under this Agreement any information, documents, know-how, trade secrets of the other party, including the terms of this Agreement and such other information that is not in the public domain including, in respect of the Client Data and, in respect of the Platform (collectively, "**Confidential Information**") that may come to its knowledge or possession by reason of exchange of information under this Agreement or entering into this Agreement.

8.2   Obligation to Protect.   Each party will protect the other's Confidential Information using the same standard of care that it would use to protect its own, similar information, but in any case no less than a reasonable standard of care for information of similar sensitivity.

8.3   Title.   All right, title and interest (including all Intellectual Property Rights) in and to each party's Confidential Information will be and remain vested in such party.

8.4   Permitted Disclosures.   Each party will not disclose Confidential Information of the other party to any person except to the first party's employees, agents and sub-contractors on a strictly "need-to-know" basis, and provided that such persons have are subject to confidentiality obligations equivalent to the obligations imposed hereunder. Notwithstanding such disclosures, each party will be fully responsible for any breaches of confidentiality caused by such persons to whom the Confidential Information is disclosed as if such breach were committed by such party.

8.5   Exceptions.   Neither party will have an obligation with respect to Confidential Information where such party can establish, through documentary evidence, that such information (a) was previously known to it free of any obligation to keep it confidential, (b) is or becomes publicly available other than by unauthorized disclosure, (c) is legally disclosed by third parties without restrictions of confidentiality, or (d) has been independently developed by it without reference to the other party's Confidential Information.

8.6   Governmental Disclosures.   The parties recognize and understand that the Client is subject to the Texas Public Information Act and its duties run in accordance therewith.

SECTION I: WARRANTIES, DISCLAIMERS, INDEMNITIES AND LIABILITY

9.1   PerfectMIND Warranties. PerfectMIND represents and warrants to Client that (a) the Platform will perform materially in accordance with the documentation therefor under normal use and circumstances; (b) the Professional Services will be performed in a diligent and workmanlike manner consistent with standards generally observed in the industry for similar services, and the Work Product will materially conform to the Statement of Work upon acceptance, and PerfectMIND will use all commercially reasonable efforts to remedy any material non-conformance of the Work Product to the Statement of Work in an expeditious manner; and (c) the functionality of the Platform will not be materially decreased during the Term, subject to the other provisions of this Agreement. For clarity, PerfectMIND will not be responsible for and the warranties provided by PerfectMIND in this Section 0 do not apply to situations where improper or inadequate installation or maintenance of software or hardware that Client uses to access or utilize, or otherwise in connection with, the Platform or Client Data, or failure to properly configure the Platform for use in connection with such hardware or software is the cause of a failure or malfunction. PerfectMIND warrants that it has the financial capacity to perform and continue to perform its obligations under this Agreement; that PerfectMIND has no constructive or actual knowledge of a potential legal proceeding being brought against PerfectMIND that could materially adversely affect its performance of this Agreement and that entering into this Agreement is not prohibited by any contract, or order by any court of competent jurisdiction. PerfectMIND warrants that a product of similar scope and complexity as the Platform required by this Agreement, including all component products and services, has been installed and is operating in a production environment in a non-related third party's facility without significant problems due to said product or PerfectMIND.

9.2   Mutual Warranty. Each party represents and warrants that it has the legal power and authority to enter into this Agreement and to fully abide by the terms and conditions hereof.

9.3   NO OTHER WARRANTIES. THE PLATFORM AND THE WORK PRODUCT ARE PROVIDED ON AN "AS-IS" AND "AS-AVAILABLE" BASIS AND PERFECTMIND DOES NOT GUARANTEE THAT THE PLATFORM WILL FUNCTION ERROR-FREE OR UNINTERRUPTED. CLIENT ACKNOWLEDGES THAT PERFECTMIND DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE PROVIDED UNDER THIS AGREEMENT MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT TO THE USE OF SUCH COMMUNICATIONS FACILITITES. PERFECTMIND IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. THERE ARE NO RESPRESENTATIONS, CONDITIONS, OR WARRANTIES OTHER THAN THOSE EXPRESSLY PROVIDED IN THIS AGREEMENT. THE CONDITIONS, REPRESENTANTIONS, AND WARRANTIES EXPRESSLY SET OUT HEREIN ARE IN LIEU OF, AND PERFECTMIND EXPRESSLY DISCLAIMS, ALL CONDITIONS, WARRANTIES AND REPRESENTATIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING IMPLIED CONDITIONS, WARRANTIES OR REPRESENTATIONS IN RESPECT OF QUALITY, CONDUCT, PERFORMANCE, RELIABILITY, AVAILABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING BY USAGE OF TRADE, BY COURSE OF DEALING, BY COURSE OF

PERFORMANCE, AT LAW, IN EQUITY, BY STATUTE OR OTHERWISE HOWSOEVER, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9.4   Indemnification by PerfectMIND for Infringment of Intellectual Property Rights. PerfectMIND will indemnify and hold harmless Client, and its officers, employees and agents (collectively, in this Section 0, the "**Indemnified Persons**"), from and against any and all Claims brought or made against, or incurred by, the Indemnified Persons, or any one of them, arising out of a claim by a third party that the Platform or the Work Product infringes the Intellectual Property Rights of a third party enforceable in Canada or the United States.

9.5   Exception to PerfectMIND Indemnity. Notwithstanding Section 0, PerfectMIND will not be required to defend or indemnify any Indemnified Person if, and to the extent that, the Claim would not have arisen but for (a) any Indemnified Person's combination of the Platform or Work products with software, services or products not supplied by PerfectMIND, (b) any breach by an Indemnified Person of any provision of this Agreement, or (c) any refusal by the Indemnified Person to use a non-infringing version of the Platform or the Work Product offered by PerfectMIND under Section 0.

9.6   Indemnification by Client for Infringement of Intellectual Property Rights. Client will indemnify and hold harmless PerfectMIND and its officers, employees and agents (collectively, in this Section 0, the "**Indemnified Persons**"), from and against any and all Claims brought or made against, or incurred by, the Indemnified Persons, or any one of them, arising out of a claim by a third party that Client Data, or Client use of Client Data (a) infringes the Intellectual Property Rights of a third party, or (b) is inappropriate, profane, defamatory, infringing, obscene or indecent or otherwise breaches any Applicable Law.

9.7   Additional Infringement Obligations. If PerfectMIND receives any knowledge of any Claim in respect of Section 0 or any circumstances in which a Claim in respect of such provision is threatened or reasonably anticipated, it will, as soon as reasonably practicable, (a) procure, at its expense, the right for Client to use the Platform or the Work Product, as the case may be, or such infringing part thereof; (b) replace, at its expense, the Platform or the Work Product, as the case may be, or such infringing part thereof, with material of comparable functionality that does not breach this Agreement; (c) if the removal of such infringing part of the Platform or the Work Product, as the case may be, would not be a breach of this Agreement, remove such infringing part of the Platform; or (d) terminate this Agreement and refund to Client a *pro rata* portion of the Platform use fees prepaid by Client for the period during which the Agreement is terminated.

9.8   Indemnification and Limitations of Liability.

(a)   PerfectMIND shall indemnify and hold harmless Client and its agents, officials and employees from and against any and all direct claims, losses, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs) for personal injury or physical property damage arising from PerfectMIND's negligence or willful misconduct.

(b)   To the extent allowable by law, Client shall indemnify and hold harmless and its agents, officials and employees from and against any and all direct claims, losses, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs)

for personal injury or property damage arising from Client's negligence or willful misconduct.

(c) In no event shall Client be liable for special, indirect, incidental, consequential or exemplary damages. In no event shall PerfectMIND be liable for special, indirect, incidental, consequential or exemplary damages, including without limitation any damages resulting from loss of use, loss of data, interruption of business activities or failure to realize savings arising out of or in connection with the use of the Platform. In no event shall PerfectMIND be liable for damages in excess of amounts paid by Client for the Platform Use Fees identified herein and the attached Exhibit "1," and paid by Client. This limitation applies to all causes of action in the aggregate, including without limitation breach of warranty, negligence, strict liability and misrepresentation and other torts. The fees herein reflect and are set in reliance upon this allocation of risk and the exclusion of such damages as set forth in this Agreement. The foregoing limitation of liability is not applicable to Third Party Products.

9.9 Dispute Resolution. The parties hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute. In the event of a claim or dispute arising under this Agreement, the parties agree to mutually develop and pursue a dispute resolution process and will use reasonable efforts to efficiently address and resolve the claim or dispute through such dispute resolution process. Failing resolution, the parties may pursue remedies available to them pursuant to this Agreement or at law or in equity.

SECTION J: GENERAL

10.1 Marketing. PerfectMIND may use Client's name, with an accurate reference to Client's use of the Platform, in PerfectMIND's marketing materials or on PerfectMIND's website, with a link to Client's website.

10.2 Notice. All notices and other communications in connection with this Agreemetn shall be in writing and shall be considered given as follows:

(a) When delivered personally to a recipient's address as stated herein; or

(b) Three (3) days after being deposited in the mail, with postage prepaid to the recipient's address as stated in the Agreement; or

(b) By facsimile if confirmed on the same day;

to the following:

If to PerfectMIND:

Farid Dordar-CEO or Ali Sanei-COO
PerfectMIND Technology Inc.
110- 980 West 1st Street
North Vancouver, BC, V7P 3N4

If to Client:

City Manager, City of Round Rock
221 East Main Street
Round Rock, Texas 78664

And to:

City Attorney
Stephan L. Sheets
309 East Main Street
Round Rock, TX 78664

Any notice given by personal delivery (including courier) will be conclusively deemed to have been given on the day of actual delivery thereof and, if given by facsimile, on the day of transmittal thereof if given during the normal business hours of the recipient on a business day, and on the business day during which such normal business hours next occur if not given during such hours.

10.3   Assignments. This Agreement may not be assigned by either party without the prior written approval of the other party, such approval not to be unreasonably withheld or delayed, but may be assigned by PerfectMIND to (i) a parent or subsidiary; (ii) an acquirer of assets; or (iii) a successor by merger, on written notice to Client. Any purported assignment in violation of this section shall be void.

10.4   Applicable Law; Enforcement and Venue. This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of Texas.

10.5   Force Majeure. Notwithstanding any other provisions hereof to the contrary, no failure, delay or default in performance of any obligation hereunder shall constitute an event of default or breach of this Agreement, only to the extent that such failure to perform, delay or default arises out of causes beyond control and without the fault or negligence of the party otherwise chargeable with failure, delay or default; including but not limited to acts of God, acts of public enemy, civil war, insurrection, riots, fires, floods, explosion, theft, earthquakes, natural disasters

10.6   Waivers. No delay or omission by either party in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by either party of any of the covenants

to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach or of any other covenant. No waiver of discharge shall be valid unless in writing and signed by an authorized representative of the party against whom such waiver or discharge is sought to be enforced.

10.7   No Presumption. No presumption shall operate in favor of or against any party hereto as a result of any responsibility that any party may have had for drafting this Agreement.

10.8   Enurement. This Agreement will enure to the benefit of and be binding upon the parties and their successors, trustees, permitted assigns and receivers.

10.9   Compliance with Laws, Charter and Ordinances. PerfectMIND, its employees and agents, shall use best efforts to comply with all applicable federal state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

10.10 Injunctive Relief. Each party acknowledges and agrees that a breach by it of the provisions of this Agreement relating to Confidential Information, Intellectual Property Rights, or restrictive obligations may result in immediate and irreparable harm to the other party for which compensation would be an inadequate remedy. Accordingly, each party acknowledges and agrees that the other party may seek, as a matter of right and without the necessity of establishing the inadequacy of monetary damages, injunctive or other equitable relief to prevent or remedy such conduct from a court of appropriate jurisdiction.

10.11 Entire Agreement. This Agreement together with the Exhibits constitutes the entire Agreement between the parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing. In connection therewith, no terms or conditions stated in any Client purchase order or other order documentation will be incorporated into or form any part of this Agreement, and all such terms or conditions will be null and void, notwithstanding any provision therein.

10.12 Amendments. This Agreement may not be amended except by written instrument signed by an authorized representative of both parties.

10.13 Severability. If any term or provision of this Agreement will be found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same will not affect the other terms or provisions hereof or the whole of this Agreement, but such terms or provisions will be deemed modified to the extent necessary in the court's opinion to render such terms or provisions enforceable, and the rights and obligations of the parties will be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

10.14 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

10.15 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

10.16 Software Source Code Escrow. Concurrent with the execution of this Agreement, PerfectMIND will deposit a source code version of the software component of the Platform other than any third party software (the "Software") with all necessary passwords, software keys, and related technical documentation (collectively, the "Source Code") with a third party escrow holder reasonably acceptable to Client (the "Escrow Holder"). PerfectMIND will update the Source Code with all Enhancements and new releases and with any bug fixes or workarounds provided to Client. The annual escrow fees will be borne entirely by Client. The escrow agreement for the Source Code deposit will name Client as beneficiary, and will provide for the release of the Source Code to Client if PerfectMIND becomes insolvent; if any proceedings are commenced or taken for the dissolution, liquidation or winding up of PerfectMIND; or if a trustee, receiver or other person with similar powers is appointed in respect of PerfectMIND in respect of all or a substantially all of its property or assets; or if PerfectMIND ceases to carry on all or substantially all of its business; or if any proceedings involving PerfectMIND involving its bankruptcy or insolvency are taken under any legislation dealing with insolvency are taken under any legislation dealing with creditor's rights; or PerfectMIND makes any assignment or proposal in bankruptcy or any other assignment or proposal for the benefit of creditors ("Release Conditions"). PerfectMIND will have a forty-five (45) day cure period to rectify any of the foregoing Release Conditions after the receipt of a written notice from Client. Upon the release of the Source Code to Client, Client will only use the Source Code in accordance with this Agreement and will only use the Source Code internally for the purpose of providing maintenance, and support for, or to add functionality to the Software. PerfectMIND covenants that the Source Code, and all Enhancements, new releases, updates, bug fixes and workarounds deposited into escrow will include all documentation and materials necessary for a competent programmer to compile, verify, maintain, and support the Source Code. Subject to the information and materials described in this Section being released to Client pursuant to the terms of this Agreement and any escrow agreement between PerfecMIND, Client, and Escrow Holder, PerfectMIND hereby grants to Client a royalty-free license that permits disclosure to a third party support-vendor of a complete and accurate copy of then-current Source Code for the purposes set forth in this Agreement.

10.17 Pricing. PerfectMIND warrants and agrees that the Platform use fees pursuant to this Agreement are comparable to or better than the Platform use fees being offered to any commercial or government Client of PerfectMIND with a substantially similar profile as Client, including number and size of facilities operated, revenue of the facilities, volume of the transactions processed, number and types of users of the Platform (e.g. front desk, administration, fulltime/part-time instructor users), number and types of members, usage of features and functionalities within the Platform, and whether the Client is part of a group of Clients who negotiated and entered into substantially similar agreements with PerfectMIND together as group.

10.18 Interlocal Cooperative Contracting/Purchasing. Authority for local governments to contract with one another to perform certain governmental function and services, including but not limited to purchasing functions as granted under Government Code, Title 7, Chapter 791, Interlocal Cooperation Contracts, Subchapter B and Subchapter C, and Local Government Code, Title 8, Chapter 271, Subchapter F, Section 271.101 and Section 271.102. Other governmental

entities within the State of Texas may be extended the opportunity to purchase off of the City's bid, with the consent of the services provider and the City. Such agreement shall be conclusively inferred from the services provider from lack of exception to this clause. However, all parties hereby expressly agree that the City is not an agent of, partner to, or representative of those outside agencies or entities and that the City is not obligated or liable for any action or debts that may arise out of such independently negotiated "piggyback" procurements.

10.19 Counterparts. This Agreement may be signed in as many counterparts as may be necessary, each of which so signed will be deemed to be an original and each copy sent by electronic facsimile transmissions will be deemed to be an original, and such counterparts together will constitute one and the same instrument and notwithstanding the date or dates of execution will be deemed to bear the date as first above written.

[Signatures are on the following page.]

IN WITNESS WHEREOF the parties have executed this Agreement with effect as of the date first above written.

PERFECTMIND TECHNOLOGY INC.   **CITY OF ROUND ROCK, TEXAS**

BY: _Vahid Shabani_   BY: _____

Name: _Vahid Shabani_   Name: <u>Alan McGraw</u>

Title: _Vice President, Marketing &_   Title: <u>Mayor</u>
       Business Development

                                         Attest:

                                         _____
                                         Sara White, Clerk

                                         For City, Approved as to Form:

                                         _____
                                         Stephan L. Sheets, City Attorney

EXHIBIT 1 - SCOPE OF WORK

Scope/Project Management and Planning

PerfectMIND will responsible for planning and managing the project, using best practices generally recognized as good project management methodology, and designating a Project Manager for the project, who will be responsible for:

- Adherence to the project scope and schedule
- Management of work activities including system design and installation, system configuration, data conversion, testing and quality assurance, administrator and end-user training, and go-live support
- Coordination of resources, work sessions, and training
- Communications
- Managing project issues and issue tracking
- Status reports
- Available for status calls to provide updates
- Working with the designated Client project manager
- Deliverable acceptance and sign-off

With the frequency and other details of such reports to be agreed upon during the discovery phase. In addition to the Project Manager, PerfectMIND will assign appropriate staff to complete the deliverables described in this Statement of Work, including at minimum: system installation, software configuration, data conversion, testing, administration and end-user training and go-live support.

Timeline

Client is planning to implement the solution by June ____, 2016 with the following estimated timeline. PerfectMIND is expected to recommend an overall implementation plan and timeline based on their experience with implementations of similar scope and complexity.

November 2015	Contract Signature
November 2015 – December 2015	Project kick off
January 2016 – February 2016	Project Initiation
February 2016 – April 2016	Software Configuration and Reports
February 2016 – April 2016	Website- Acceptance Testing
March 2016 – April 2016	User Acceptance Testing
April 2016 – May 2016	Training and Documentation
June, 2016	Go-live

Technical Requirements

PerfectMIND will provide a SaaS solution, the only requirement for operating and using the proposed solution will be broadband internet connection and access to the internet via a web

browser with all standard browsers being supported (recommended browsers will be communicated to Client during the implementation phase).

Client Testing

PerfectMIND will develop a test plan for Client that covers system and functional, testing. After all of the components of the system have been completed, Client will conduct system and functional testing. Client will report any defects to PerfectMIND immediately for correction. If any defects are found, PerfectMIND will provide a plan to achieve acceptance or to make corrections or replacements.

Training

PerfectMIND will provide full training to system administrators and trainers (number of system administrator and trainers to be determined at the discretion of Client). PerfectMIND will develop a training plan for Client to fully prepare the system administrators to support the system. The training plan will include:

- In-depth understanding of the system functionalities, including:
    - Security Settings
    - Workflow Development
    - Report Development
    - Software Configuration
- A review of best practices in the configuration and use of the system.
- Training sessions on different modules of the system, including:
    - Contact/Account Management
    - Store/Point of Sale Training
    - Membership Management
    - Attendance Tracking
    - Billing Management
    - Activity/Program Registration
    - Facility Rental
    - Appointments and Private Lesson scheduling
    - Marketing
    - Staff Management
    - Accounting
    - Document Template creation and configuration
- Troubleshooting

PerfectMIND will provide technical assistance to Client's IT staff on the operation of the system. PerfectMIND will investigate and troubleshoot any technical issues with the system that Client's IT staff report to PerfectMIND.

Post-live Support

PerfectMIND will provide full application support during the week of go-live. PerfectMIND's project team will be available to provide go-live and post go-live support. The resource(s) will be accessible by phone and email to the system administrators.

Future Services

The ability to provide the services/products in this section may be required in the future. Client may request to add similar services or products in the future, including but not limited to:

- New features or;
- Features that were identified as Custom
- Additional Reports

and such similar services and products will be provided by PerfectMIND upon PerfectMIND and Client negotiating and entering into Statements of Work providing for same.

Deliverables and Service Acceptance

Client designee will formalize the acceptance of the service via written acceptance of the following acceptance forms:

Acceptance Form A- Project Kickoff (Milestone 1)

Purpose
The purpose of the Project Kickoff Acceptance Form is to confirm that the project kickoff has occurred and the following deliverables are completed.

Deliverables
- Contract signature and execution
- Planning of the project kickoff/discovery session
- Resourcing and scheduling for the discovery phase
- Preliminary review of the requirements by the project team prior to the first meeting
- Creation of live production environment, which includes at a minimum:
    - Setup of Client's production environment on the cloud
    - System setups including backups and retentions
    - Database security setup
    - Setup of the monitoring tools and systems on Client's database
    - Basic configuration of the database with Parks and Rec Modules

The work was completed on _____ and accepted by Client.
Accepted by:

(City of Round Rock): _____ Date: _____

Title: _____

(PerfectMIND):_____ Date: _____

Title: _____

Acceptance Form B - Project Initiation (Milestone 2)

Purpose
The purpose of the Project Initiation Acceptance Form is to confirm that the project initiation is complete.

Deliverables
- Discovery phase, which will inform the detailed work breakdown structure and includes:
    - Existing database system discovery
    - Business process review and gap analysis
    - Activity registration overview
    - Facility configuration overview
    - Membership management overview
    - Store and point of sale overview
    - Marketing overview
    - Accounting configuration

    The Discovery phase may involve multiple meetings and communications to clarify and assist PerfectMIND in understanding the above areas further.

- Project work breakdown structure includes:
    - Tasks and durations
    - Scheduling
    - Resourcing and assignments
    - Dependencies
- Initiation of tasks listed under "Scope/Project Management and Planning" above, which includes:
    - Communications requirement
    - Project reporting requirements including the frequency and details of the status reports
    - Issue list/tracker requirements

The work was completed on _____ and accepted by Client.

Accepted by:

(City of Round Rock): _____ Date: _____

Title: _____

(PerfectMIND):_____ Date: _____

Title: _____

Acceptance Form C – Software Configuration and Reports (Milestone 3)

Purpose
The purpose of the Software Configuration and Reports Acceptance Form is to confirm that the software and reports configuration is complete.

Deliverables
- Application configuration and setup
- Security and roles configuration
- Setup workflows and business rules
- Configuration and creations of the reports

The work was completed on _____ and accepted by Client.

Accepted by:

(City of Round Rock): _____ Date: _____

Title: _____

(PerfectMIND):_____ Date: _____

Title: _____

Acceptance Form D – Website Acceptance Testing (Milestone 4)

Purpose
The purpose of the Website Acceptance Testing Form is to confirm that the website testing is complete and the website is functional.

Deliverables
The website is provided to Client. Client will conduct a complete test on the Website.

The work was completed on _____ and accepted by Client.

Accepted by:

(City of Round Rock): _____ Date: _____

Title: _____

(PerfectMIND):_____ Date: _____

Title: _____

Acceptance Form E – User Acceptance Testing (Milestone 5)

Purpose
The purpose of the User Acceptance Testing Form is to confirm that the system testing is complete and the system is functional.

Deliverables
The test plan including test scripts, schedule, roles and responsibilities, and definitions of passed/failed test is provided to Client and Client is coached through the testing phase. Client will conduct a complete test on the system to ensure the following is tested and passed:
- System functions
- Work flows and business rules
- Reports

The work was completed on _____ and accepted by Client.

Accepted by:

(City of Round Rock): _____ Date: _____

Title: _____

(PerfectMIND):_____ Date: _____

Title: _____

Acceptance Form F - Training (Milestone 6)

Purpose
The purpose of the Training Acceptance Form is to confirm that the training is complete.

Deliverables
The training plan is complete and specifies the training schedule and curriculum for the recipients of system administrator training and end-user training.

Client will confirm the following:
- System administrators have been trained on all aspects of system configuration, individual and role-based security profiles, enterprise silo security settings and configurations, document template creation, and report queries and changes.
- System administrators are able to complete new configuration items with minimal assistance from PerfectMIND.
- End users have been trained on all aspects of the system and can complete tasks within the system.
- Training materials and online learning center access have been delivered.

The work was completed on _____ and accepted by Client.

Accepted by:

(City of Round Rock): _____ Date: _____

Title: _____

(PerfectMIND):_____ Date: _____

Title: _____

Acceptance Form G - Go-Live (Milestone 7)

Purpose
The purpose of the Final Acceptance Form is to confirm that the system is operational.

Deliverables
The final data conversion has been completed and the system is pushed to the Production environment.

The work was completed on _____ and accepted by Client.

Accepted by:

(City of Round Rock): _____ Date: _____

Title: _____

(PerfectMIND): _____ Date: _____

Title: _____

PRICING

Schedule Target Dates	Milestones & Deliverable	Amount	Payment Date

November 2015	**Upon signing of the agreement**
	
	• Contract Signature and Execution
	• Payments due:
	    — 1st year licensing fee ($42,572)
	    — 50% of the Website Designs ($12,500)
	
	$55,072
			Upon signing of the Agreement

November 2015 – December 2015	**Project Kick off (Milestone 1)** • Planning of the project kick off/discovery session • Resourcing and Scheduling for the discovery phase • Preliminary review of the requirements by the project team prior to the first meeting • Creation of the live production environment $15,000		Upon completion of Acceptance Form A
January 2015 – February 2015	**Project Initiation (Milestone 2)** • Discovery phase • Project work breakdown structure • Initiation of tasks listed under "Scope/Project Management and Planning" $10,000		Upon completion of Acceptance Form B
February 2016 – April 2016	**Software Configuration and Reports (Milestone 3)** • Application configuration and setup • Security and roles configuration • Setup workflows and business rules Configuration and creations of the reports $15,000		Upon completion of Acceptance Form C

February 2016 – April 2016	**Website Acceptance Testing (Milestone 4)** • Delivery of the website	$12,500	Upon completion of Acceptance Form D
March 2016 – April 2016	**User Acceptance Testing (Milestone 5)** • System functions • Work flows and business rules • Reports	$15,000	Upon completion of Acceptance Form E
April 2016 – May 2016	**Training (Milestone 6)** • System administrators have been trained on all aspects of system configuration, individual and role-based security profiles, enterprise silo security settings and configurations, document template creation, and report queries and changes. • System administrators are able to complete new configuration items with minimal assistance from PerfectMIND. • End users have been trained on all aspects of the system and can complete tasks within the system. • Training materials and online learning center access have been delivered	$10,000	Upon completion of Acceptance Form F
June 2016	**Go-live (Milestone 7)** **The system is pushed to the Production environment.**	$5,100	Upon completion of Acceptance Form G
Total (including the subscription fee for the 1st year)		**$137,672**	

Annual Subscription Fee	Payment Due Date	Total
11/15/2015 - 11/14/2016	11/15/2015	$42,572
11/15/2016 - 11/14/2017	11/15/2016	$42,572
11/15/2017 - 11/14/2018	11/15/2017	$42,572
11/15/2018 - 11/14/2019	11/15/2018	$42,572
11/15/2019 - 11/14/2020	11/15/2019	$42,572

Optional Services	Unit Price	Comments
Importation of Data	$150/hr	Upon termination of the contract the Contractor shall supply the County with a basic export of the complete data in a format suitable for importation. Anything beyond will be charged at $150/hr
Professional Services	$150/hr	Services outside the agreed to scope of work that requires additional resourcing to accommodate client's requests are to be billed at $150.00 per hour as agreed upon in writing by both parties.
Integration to third party software	$250/hr	Processing Integration with the County's preferred payment processor.
Training	$150/hr	Any future additional training requested outside the scope of work.
Development	$250/hr	Services outside the agreed to scope of work that requires additional development (programming) work are to be billed at $250.00 per hour as agreed upon in writing by both parties.

The above fees do not include any travel, living or any other out-of-pocket expenses incurred by PerfectMIND in providing Professional Services. Client will reimburse PerfectMIND for all reasonable travel, living and other out-of-pocket expenses incurred by PerfectMIND's employees and permitted subcontractors in providing the Professional Services. All such expenses for which PerfectMIND seeks reimbursement will be supported by documentation in a form reasonably acceptable to Client.

Exhibit 2
Platform Features and Functionalities

PerfectMIND's Platform will include the following features and functionalities:

- **Built-In Reporting Engine**
  A built-in reporting engine to help the customer to create reports.
- **Integrated Workflow Engine**
  Generate workflows to streamline your team's processes and communications
- **Business App Store**
  PerfectMind is adaptable through our community-driven App Store.
- **Open API**
  Having access to an adaptable integration with external apps allows fluid interconnectivity and collaboration across platforms
- **Data Security, Auditing and Permissions**
  The ability to control app-level access, user auditing, user time limits, specific IP access, as well as group- and role-based data permissions.
- **Multi-Site Management & Reporting**
  To allow client to manage multiple sites from one account.
- **24/7 Customer Service**
  PerfectMind provides 24x7 operation support using live agents/chat/email.

Recreation Management Features:

- **Facility booking and Scheduling**
  PerfectMind booking takes care of conflict and contract management, recurring bookings, equipment and rental inventory, capacity management and more. Your staff and your members can schedule events online or on-site. PerfectMind lets you manage facility dependencies, availability, and multiple rates. Customers can book using desktop, tablet or mobile devices on all popular web browsers.
- **Membership Management**
  This allows you to manage families, multiple memberships, and related contacts.
- **Document Management**
  You can create, save, print, upload and manage your documents for your organization in the cloud. Sign waivers, contracts, and other documents electronically with a digital signature and store them safely in the cloud.
- **Staff Management**
  You can view all your staff schedules in one master calendar. PerfectMind provides your staff with the ability to make their own schedule and to adjust availability for vacations and time off. Manage staff wages, commissions, hours, availability and much more. Restrict access permissions for users and groups to improve security.
- **Activity Registration**
  Online or on-site registration for all types of bookings including courses, private lessons, drop-in and flexible registrations to accommodate your needs. Intelligent conflict management gives you the flexibility to readily make changes to events.

- **POS and Inventory Management**
  To sell products, service or event online or on-site using cutting-edge features within inventory and sales management. Track purchase orders and inventory.
- **Attendance Tracking and Check-in**
  Allow customers to scan or check themselves in at the front desk using a kiosk, or manually check-in with a staff member. Improve retention with live class statistics, and much more. Guest check-ins allow for quick processing to non-members or during busy periods.
- **Calendar**
  Flexible, multi-functional calendar with drag-and-drop functionality to make changes and updates to events, activities and facility booking. You can also view multiple facilities, locations and courses.
- **Marketing**
  A built-in, fully-functional email solution replaces the need for any additional email applications so you can streamline your marketing for programs, campaigns, and personalized operation emails. Increase signups and enrollments using loyalty and referral programs. You can also have access to simple and customizable landing pages and lead-capture forms.
- **Task Management**
  To schedule automated and recurring tasks with alerts to stay up-to-date, organized and focused. Set reminders based on predefined or custom triggers
- **Reports**
  PerfectMIND's built-in reporting engine enables you to create, customize and run reports. Create and schedule custom financial, attendance, utilization, and marketing reports all from the same interface. View real-time analytics and historical data in tabular or graphical format. All reports can be exported for use in a third-party application.
- **Account management**
  To keep track of your clients and contacts including organizations and families