

TECHNOLOGY SERVICE AGREEMENT REAL TIME DATA VISUALIZATION PLATFORM

This Technology Service Agreement (hereinafter "Agreement") is made and entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter "City"), and PEREGRINE TECHNOLOGIES, INC, (hereinafter "Consultant"). City and Consultant may be collectively referred to herein as the "parties."

RECITALS

- A.** City requested a proposal from Consultant to perform the services generally including: Deployment and support of a real time data visualization platform.
- B.** In response to the City's request, Consultant submitted a proposal, and, after negotiations, Consultant agreed to perform the services more particularly described on Exhibit "A," in return for the compensation described in this Agreement and Exhibit "B."
- C.** Definitions

"Documentation" means technical manuals, training manuals, user guides, and workbooks, as updated and amended from time to time, provided by Consultant to assist Customer with the use of Software.

"Initial Constructive Use" Initial constructive use the earliest point in time where all Software delivered under the terms of this agreement is installed on City systems and is sufficiently free of errors for the City to use it to conduct the ordinary business for which it is intended.

"Cloud-Hosted Service" means the solution is designed from the ground up for cloud and is a multi-tenant cloud environment. In addition, Consultant owns, provides and oversees infrastructure, software and administrative tasks and makes its service available to City over the Internet using a standard web browser. The Cloud- Hosted Service includes the software and Consultant's network capacity as well as the equipment used by Consultant to support operations including storage, hardware, servers and networking components. The infrastructure in the cloud-hosted environment is secured through multiple industry-standard physical, procedural and technical safeguards to segregate and protect City's data.

"Software" means all or any portion of the global version of the binary computer software programs and updates and enhancements thereto, (including corresponding source code, unless specifically excluded herein) and Documentation delivered by Consultant to Customer. Software includes the third-party software delivered by Consultant as specified in the Schedule, and modifications made to the Software. Software does not include source code to third party software. Unless specifically stated otherwise, all Software is delivered to Customer only if and when

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generally commercially available.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS IDENTIFIED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit “A,” attached hereto and incorporated herein by reference, in accordance with the terms and conditions contained in this Agreement.
2. **TIME FOR PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall commence performance and shall complete all required services no later than the dates set forth in Exhibit “A” (subject to any delays caused by the City or force majeure of events). Any services for which times for performance are not specified in this Agreement shall be commenced and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to and agreed to by the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.

3. CLOUD-HOSTED SERVICE.

3(A). Right to Use the Cloud-Hosted Service, Software and Documentation. In consideration of all obligations of City hereunder, including, without limitation, the payment by City of any applicable fees, Consultant hereby grants to City, during the term of this Agreement, a non-exclusive, non-transferable (except as otherwise provided for herein), right and license to access and use the Software and Hosted Service, and to make a reasonable number of copies of and use the Documentation in connection with such use of the Cloud-Hosted Service.

3(B). Use Restrictions. City shall not: (i) access and/or use the Software or Hosted Service in order to design, create or build a service or product that is competitive with the Software or Cloud-Hosted Service, or which uses ideas, features or functions that are similar to the Software or Cloud-Hosted Service; (ii) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Software or Cloud-Hosted Service, except as expressly permitted herein; modify or make derivative works based upon the Software or Cloud-Hosted Service or any part thereof, or directly or indirectly disassemble, decompile, or otherwise reverse engineer the Software or Cloud-Hosted Service or any portion thereof.

3(C). Proprietary Rights. The Software and Cloud-Hosted Service, including all intellectual property rights therein and thereto, and any modification thereof, are and shall remain the exclusive property of Consultant and its licensors. City shall not take any action that jeopardizes the proprietary rights of Consultant or its

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licensors or acquire any right in the Software or Cloud-Hosted Service except the limited rights expressly granted in this Agreement.

3(D). Internet and Telecommunication Connections. City shall be responsible for obtaining any and all Internet and/or telecommunication connections used by City to access the Cloud-Hosted Service. Consultant shall have no responsibility or liability for any interruption or delay in accessing or using the Cloud-Hosted Service arising out of such Internet or telecommunications connections.

3(E). Security of Cloud-Hosted Service.

- i. Consultant shall provide the Cloud-Hosted Service on redundant servers on a dedicated server infrastructure in an electronically restricted facility, including protecting the infrastructure from the external environment via firewall systems, at two secure locations in separate counties.
- ii. Consultant shall take commercially reasonable precautions to ensure that the Cloud-Hosting Service is secure. Consultant protects sensitive data such as passwords by using a minimum of 256-bit SSL encryption. As the Consultant hosting environment evolves with new technologies, Consultant will use reasonable commercial efforts to maintain an equivalent or better level of security of City Content.
- iii. Consultant will notify City of any known breach of its security related to areas, locations, or computer systems that results in or would be reasonably likely to result in unauthorized access to City Content in a timely manner following such breach and take any necessary remedial actions at its sole cost and expense.

3(F). City Content.

- i. City shall provide City Content for inclusion in the Software or the Cloud Hosted Service. City is responsible for the quality of the City Content provided. Consultant is responsible for the quality of the display or use of the City Content provided for inclusion in the City database.
- ii. Consultant acknowledges that all data created by City will remain the sole property of the City. Consultant agrees that it shall not at any time sell, assign, transfer, or otherwise make available to or allow use by Consultant, Consultant's agent, or a third party of City Content.
- iii. City shall exclusively own the City Content collected by Consultant in connection with the Hosted Service; provided, however, that City hereby grants to Consultant a non-exclusive limited right and license, without the right to grant or authorize sublicenses, during the term of this Agreement to use and reproduce City Content, solely for the purpose of facilitating the performance of Consultant's obligations under this Agreement, and the right to use data aggregated from the City Content (which data does not identify the city, or any individual or entity) during and after the term of the Agreement, and the right to use data aggregated from the City Content (which data does not identify the city, or any individual or entity) during and after the term of the Agreement, and the right to use data aggregated from the City Content (which data does not identify the city, or any individual or entity) during and after the term of

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- the Agreement.
- iv. Consultant acknowledges that City is entitled to copy, export, or otherwise duplicate any available City Content at any time
 - v. Consultant shall, at City’s request, make available City Content within five (5) business days. The database instance must be in a condition and format that allows easy transfer to a similar system.
 - vi. In the event this Agreement expires or is terminated, Consultant shall provide City with all City Content within thirty (30) calendar days of such termination or expiration. City Content shall be in dedicated data files suitable for import into commercially available database software (e.g., Microsoft Access or Microsoft SQL). The dedicated data files will be comprised of City Content contained in Consultant’s Hosted Service. The structure of the relational database will be specific to City Content and will not be representative of the proprietary Consultant’s database.

4. PAYMENT.

4(A). Billing. In order to request payment, Consultant shall submit invoices to the City identifying the services performed in the billing period, milestones achieved, and the charges therefor (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the Consultant’s billing rates (set forth on Exhibit "B," attached hereto and incorporated herein by reference) or as otherwise agreed by the parties. The City shall make monthly payments to Consultant for services which are performed in accordance with this Agreement, to the reasonable satisfaction of the City.

4(B). “Not to Exceed” Compensation. The compensation payable to Consultant for the services identified in Exhibit “A” shall not exceed \$448,500.00. Consultant shall not perform any services beyond the services identified in Exhibit “A” without prior written authorization from the City’s Authorized Representative. If the City’s Authorized Representative provides authorization for additional services, the total compensation to the Consultant under this Agreement shall not exceed \$747,500.00.

4(C). Consultant’s Failure to Perform. In the event that Consultant performs services which do not comply with the requirements of this Agreement, Consultant shall, upon receipt of written notice from the City, re-perform the services (without additional compensation to the Consultant). If Consultant’s failure to perform in accordance with this Agreement causes damages to the City, the City may bring an action against Consultant for the damages incurred.

5. AUTHORIZED REPRESENTATIVES.

5(A). Consultant’s Authorized Representative. Consultant understands that, in entering into this Agreement, the City has relied upon Consultant’s ability to perform in accordance with its representations regarding the qualifications of the

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Consultant (including the qualifications of its Authorized Representative, its personnel, and its subconsultants, if any) identified in Exhibit “C,” attached hereto and incorporated herein by reference. Therefore, Consultant shall not replace its Authorized Representative, or any of the personnel or subconsultants identified in Exhibit “C,” without the prior written consent of the City, unless such individual ceases to be employed by Consultant. All services under this Agreement shall be performed by, or under the direct supervision of, Consultant’s Authorized Representative, as identified in Exhibit “C.”

5(B). City’s Authorized Representative. For the performance of services under this Agreement, the Consultant shall take direction from the City’s Authorized Representative: Johanna Canaday, unless otherwise designated in writing by the City’s Authorized Representative or the City Manager.

6. INFORMATION AND DOCUMENTATION.

6(A). Information from City. City has made an effort to provide Consultant with all information necessary for Consultant’s performance of services under this Agreement. If Consultant believes additional information is required, Consultant shall promptly notify the City, and the City will provide to Consultant all relevant non-privileged information in City’s possession.

6(B). Consultant’s Accounting Records. Consultant shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements, and in no event for less than four years. Consultant’s accounting records shall include, at a minimum, all documents which support Consultant’s costs and expenses related to this Agreement, including personnel, subconsultant invoices and payments, and reimbursable expenses. Consultant’s accounting records shall be made available to City within a reasonable time after City’s request, during normal business hours.

7. RELATIONSHIP BETWEEN THE PARTIES. Consultant is, and at all times shall remain, an independent contractor solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City’s agent, and shall have no authority to act on behalf of the City, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Consultant. Consultant is not an officer or employee of City, and Consultant shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement.

8. CONFLICTS OF INTEREST PROHIBITED. Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement.

9. NONDISCRIMINATION. Consultant shall comply with all applicable federal, state, and local laws regarding nondiscriminatory employment practices, whether or not

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said laws are expressly stated in this Agreement. Consultant shall not discriminate against any employee or applicant because of race, color, religious creed, national origin, physical disability, mental disability, medical condition, marital status, sexual orientation, or gender.

10. COMPLIANCE WITH LAW AND STANDARD OF CARE. Consultant shall comply with all applicable legal requirements including all federal, state, and local laws (including ordinances and resolutions), whether or not said laws are expressly stated in this Agreement. Consultant shall perform services under this Agreement using a standard of care equal to, or greater than, the degree of skill and diligence ordinarily used by reputable professionals, with a level of experience and training similar to Consultant, performing under circumstances similar to those required by this Agreement.

11. BUSINESS TAX. The Consultant shall apply for and pay the business tax and registration tax for a business license, in accordance with Fremont Municipal Code Title 5, Chapter 5.05.

12. INSURANCE. Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant (including its agents, representatives, sub-consultants, and employees) in connection with the performance of services under this Agreement of the types and in the coverage amounts set forth in Exhibit D entitled “Insurance Requirements”. This Agreement identifies the minimum insurance levels with which Consultant shall comply; however, the minimum insurance levels shall not relieve Consultant of any other performance responsibilities under this Agreement (including the indemnity requirements), and Consultant may carry, at its own expense, any additional insurance it deems necessary or prudent. Concurrently with the execution of this Agreement by the Consultant, and prior to the commencement of any services, the Consultant shall furnish written proof of insurance (certificates and endorsements), in a form acceptable to the City. Consultant shall provide substitute written proof of insurance no later than 30 days prior to the expiration date of any insurance policy required by this Agreement.

13. SECURITY PROCEDURES.

Service Provider shall follow the special requirements listed below for the access to and use of the Fremont Police Department Facility and systems, located at 2000 Stevenson Boulevard, Fremont CA 94538 (“FPDF”).

1. Use of Property

- a. Vendor shall confine work operations at the FPDF to the areas of service coordinated with the City of Fremont authorized representative. Delivery may be accessed from the eastern vehicle gate (gate #3) of the FPDF.
- b. Service Provider shall not use facilities or equipment in the FPDF (i.e. non-public restrooms, telephones, computers, kitchen facilities, etc.)

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2. Smoking is prohibited inside the gates of the FPDF

Vendor’s Employees

- a. Prior to accessing or beginning work at the FPDF, Service Provider will be required to submit a list of employees working at the FPDF.
- b. All Service Provider employees entering the FPDF to conduct work pursuant to this Agreement are required to complete a background screening process administered by the Police personnel. The background process shall include submission to LiveScan fingerprinting for the purpose of conducting a criminal background check and a personal history statement. Results are generally received within 72 hours but may take longer if further investigation is required. Additional required information may include proof of identification and follow-up questioning.
- c. The Fremont Police Department will review all background checks and retains the authority to approve or disapprove potential employees from entering the FPDF. Examples of exclusionary findings include felony convictions and various misdemeanor convictions which may present a security risk. The Fremont Police Department will also retain the right to suspend or revoke previously issued approvals throughout the term of this Agreement.
- d. The City will incur the costs of the screening process, to include the LiveScan check for up to 10 employees of the Service Provider.
- e. Service Provider’s employees shall enter the FPDF through the eastern gate (gate #3) only and park their vehicles at the rear curb inside the Police Facility for delivery of goods.
- f. No firearms, ammunition, opiates, non-prescription drugs, alcohol, controlled substances, or any other illicit contraband will be allowed on the FPDF. Any person determined to be under the influence of alcoholic beverages or any controlled substances or in possession of illicit contraband such as those listed above, shall be removed from the FPDF and future access revoked.
- g. Personal search is not normally required. However, the Fremont Police Facility reserves the right to search Service Provider’s employees that enter the FPDF.
- h. Lunch boxes, toolboxes and any other containers brought into the FPDF may be inspected on a regular basis, as determined by the Fremont Police Personnel.

14. CONFIDENTIAL INFORMATION.

14(A) The term “Confidential Information” shall mean any and all information which is disclosed by either party (“Owner”) to the other (“Recipient”) verbally, electronically, visually, or in a written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary. Confidential Information includes, but is

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not limited to, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, customer lists, employee information, financial information, confidential information concerning Owner's business, as Owner has conducted it or as it may conduct itself in the future, confidential information concerning any of Owner's past, current, or possible future products or manufacturing or operational methods, including information about Owner's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling or leasing, and any software (including third party software) provided by Owner. Owner's Confidential Information shall be treated as strictly confidential by Recipient and shall not be disclosed by Recipient except to those third parties with a need to know and that are operating under a confidentiality agreement with non-disclosure provisions no less restrictive than those set forth herein. This Agreement imposes no obligation upon the parties with respect to Confidential Information which either party can establish by legally sufficient evidence: (a) was in the possession of, or was rightfully known by the Recipient without an obligation to maintain its confidentiality prior to receipt from Owner; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation on confidentiality; (d) is independently developed by Recipient without the participation of individuals who have had access to the Confidential Information or (e) is required to be disclosed by court order or applicable law, provided prior notice is given to the Owner. The Recipient shall not obtain, by virtue of this Agreement, any rights title or interest in any Confidential Information of the Owner. Within fifteen (15) days after termination of this Agreement, each party shall certify in writing to Owner that all copies of Owner's Confidential Information in any form, including partial copies, have been destroyed or returned to Owner.

Consultant acknowledges that the CITY is a governmental agency and may be required to release certain information under requests made according to provisions of the Public Records Act.

14(B) Recipient shall protect the deliverables resulting from Services with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which Recipient utilizes for Recipient's Confidential Information.

14(C) The terms of this Section 12 shall survive termination of this Agreement.

15. REPORTING DAMAGES. If any damage (including death, personal injury or property damage) occurs in connection with the performance of this Agreement, Consultant shall immediately notify the City Risk Manager's office by telephone at

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510-284-4050, and Consultant shall promptly submit to the City's Risk Manager and the City's Authorized Representative, a written report (in a form acceptable to the City) with the following information: (a) name and address of the injured or deceased person(s), (b) name and address of witnesses, (c) name and address of Consultant's insurance company, and (d) a detailed description of the damage and whether any City property was involved.

16. INDEMNIFICATION.

16(A) Consultant shall indemnify, hold harmless, and defend the City (including its elected officials, officers, agents and employees) from and against any and all claims by third parties (including all related litigation, demands, damages, liabilities, costs, and expenses, and including court costs and attorney's fees) resulting or arising from its failure to perform, under this Agreement.

16(B) Copyright and Patent Indemnification. Claims which trigger Consultant's responsibility under Section 15 shall include any claims that the software resulting from the provision of Services pursuant to the attached Exhibit A Scope of Services infringe any patent, copyright, or accidental or intentional violation of a trade secret or other intellectual property of a third party not included in this Agreement. Consultant shall, in its reasonable judgment and at its option and expense: (i) obtain for the City the right to continue using the Software; or (ii) replace or modify the Software so that it becomes non-infringing while giving equivalent performance. Consultant shall not have any liability for a claim alleging that any Software infringes a patent or copyright if the alleged infringement was developed based on information furnished by the City or if the alleged infringement is the result of a modification made by the City.

17. LIMITED WARRANTY.

17(A) Consultant warrants that it has title to the Software and/or the authority to grant licenses to use the Software.

17(B) Consultant warrants that the Software will perform substantially in accordance with the Documentation during the term of this Agreement and that the Software media is free from material defects. Consultant does not warrant that the Software is error-free.

17(C) Consultant's sole obligation with respect to its limited warranty is limited to repair or replacement of the defective Software, provided Licensee notifies Consultant of the deficiency within the one-year period and provided Licensee has installed all Software updates provided pursuant to Consultant's Support Services.

Each Software application shall operate in accordance with the Documentation with respect to date calculations before, during, and after the Year 2000 in that it will correctly address and operate accurately: (1) the change of the century in a

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standard compliant manner, including both the Year 2000 and beyond; (2) the existence and absence of leap years; and (3) date related operations. Compliance means that the Software operates and correctly processes in a manner that: (i) calculations using dates execute utilizing a four digit year; (ii) the Software functionality, including but not limited to, entry, inquiry, maintenance and update (whether on-line, batch or otherwise) supports four digit year processing; (iii) successful transition to the Year 2000 using the correct system date occurs without human intervention; (iv) after the transition to the Year 2000, processing with a four digit year shall occur without human intervention; (v) all leap years shall be calculated correctly; and (vi) correct results shall be produced in forward and backward date calculation spanning century boundaries (there are no years stored as two digits).

17(D) Consultant warrants that to the best of its knowledge, information, and belief, the Software does not contain any known viruses, back-doors or time bombs, (or similar malicious code), or undocumented security codes that could prevent Licensee’s perpetual use of the Software.

17(E) CONSULTANT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE FOR ANY CONSEQUENTIAL or similar DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT.

18. TERM OF THE AGREEMENT. The term of this Agreement shall commence on the date last signed by the parties, below, and shall continue until completion of all services in accordance with the timing requirements set forth in Exhibit “A” and paragraph 2 of this Agreement. This Agreement may be terminated by the City without cause upon fifteen (15) days written notice to Consultant. If the City exercises its right to terminate this Agreement in accordance with this paragraph, the City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, through and including the date of termination, but not to exceed the payments according to the rates specified in Exhibit “B” or the maximum amount authorized under paragraph 4 of this Agreement. For clarity, in the event of such termination by the City Consultant will not be required to refund any fees previously paid by the City.

19. DEFAULT. If either party (“demanding party”) has a good faith belief that the other party (“defaulting party”) is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party, and demand the default to be cured within ten days of the notice. If: (a) the defaulting party fails to cure the default within ten days of the notice, or, (b) if more than ten days are reasonably required to cure the default and the defaulting party fails to give adequate written assurance of due performance within ten days of the notice, then (c) the demanding party may terminate this Agreement upon written notice to the defaulting party.

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20. NOTICES. All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, or (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party.

TO: City

Attn: Johanna Canaday
Fremont Police Department
2000 Stevenson Blvd.
Fremont, CA 94538
jcanaday@fremont.gov

To: Consultant

Attn: Nicholas Noone
Peregrine, Inc.
130 Bush St. 8th Floor
San Francisco, CA 94104
nick@peregrine.io

21. HEADINGS. The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

22. SEVERABILITY. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

23. GOVERNING LAW, JURISDICTION, AND VENUE. The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.

24. ASSIGNMENT AND DELEGATION. This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.

25. MODIFICATIONS. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

26. WAIVERS. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

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27. CONFLICTS. If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Agreement shall control.

28. ENTIRE AGREEMENT. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the services described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

28. COMPETITIVE PROCUREMENT SELECTION PROCESS. The competitive procurement selection process by which City of Fremont contracts with Consultant may be acknowledged and used by other California government entities to replace their respective competitive procurement selection process for RFP purposes such that other government entities may contract with Consultant for the same or substantially similar product(s) or service(s) without undergoing a separate competitive procurement selection process. Accordingly, the terms, and conditions of this contract executed between City of Fremont and Consultant may be used by other government entities to contract with Consultant for the same or substantially similar product(s) and service(s) under either the same or a separate contract; provided for clarity that the pricing applicable to other government entities may differ depending on the nature of Consultant's engagement with such government entity.

29. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

30. COUNTERPARTS. This Agreement may be signed in counterparts, each of which shall be deemed to be an original. The Parties agree that the digital signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Any digital signature shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based record keeping system to the fullest extent permitted by applicable law.

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IN WITNESS WHEREOF, the City and Consultant do hereby agree to the full performance of the terms set forth herein.

CITY OF FREMONT

DocuSigned by:
Karena Shackelford
6952F69E7672426...

By: **Karena Shackelford**
Title: Assistant City Manager
Date: 3/15/2021 | 12:57 PM PDT

APPROVED AS TO FORM:

DocuSigned by:
Bronwen Lacey
F900D31740534D6...

By: **Bronwen Lacey**
Title: Senior Deputy City Attorney
3/15/2021 | 12:10 PM PDT

CONSULTANT

Peregrine Technologies, Inc.

DocuSigned by:
Nicholas Noone
C23E48B6A32B476...

By: **Nicholas Noone**
Title: President & CEO
Date: 3/10/2021 | 2:10 PM PST

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EXHIBIT A

SCOPE OF SERVICES

This Scope of Services, Exhibit “A,” is hereby incorporated by reference into the Agreement, under Agreement Section 1.

Exhibit A is organized in five parts below:

1. Discussion of Overall Project Goals
2. Description of Software
3. Security
4. Implementation & Delivery Methodology
5. Support & SLAs

1. DISCUSSION OF OVERALL PROJECT GOALS. Peregrine is excited to partner with Fremont Police Department to deliver a real time data visualization platform to serve as a key component of the Real Time Information Center (RTIC). Our operating model is to work closely with our customers to implement the Peregrine platform, and we will work with Fremont Police Department to develop standard operating procedures to kick off Phase 1 and Phase 2 of the FPD project with ongoing partnership to deliver success over time.

The Peregrine platform is centered around integrating myriad data sources to provide a current and complete operational picture and maximize situational awareness. We understand the Intelligence-led Policing model and philosophy, and our objective is to help Fremont Police Department achieve their goals in reducing crime and making their city safer for the communities they serve.

2. DESCRIPTION OF SOFTWARE.

Peregrine is a web based CJIS compliant Platform-as-a-Service (PaaS) that provides a single point of access to view and analyze large-scale real-time data from various data sources. The software performs several critical functionalities, including data integration, search and information retrieval, advanced analytics, data management, reporting, collaboration, access control, and security.

Peregrine was developed to provide a common operations and intelligence picture to facilitate real-time operational decision-making, enhance investigatory capabilities, streamline criminal analysis, and generate intelligence products for Law Enforcement. The software creates an extremely efficient method for turning large amounts of raw data into useful decision-support and analysis products, quickly and with significant reduction in manual manpower processing needs. Peregrine will be made available to any and all law enforcement personnel within Fremont, through the Fremont Police

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Department.

Peregrine was designed for complete system interoperability and supports existing record management systems (RMS), computer aided dispatch systems (CAD), video management systems (VMS), body worn camera (BWC) systems, automated license plate reader (ALPR) data, real-time sensor data, case management systems, evidence management systems, arrest records, search warrant data, subpoenaed data, gang intelligence data, suspicious activity reports, and unstructured data such as document, imagery, and video repositories. Peregrine delivers:

- Technology to integrate and secure data of any type or scale
- Intuitive methods for people to search and access all data from one place
- Applications that empower entire agencies to answer complex questions
- A platform for teams to securely collaborate on operations, investigations, and projects

Peregrine Platform

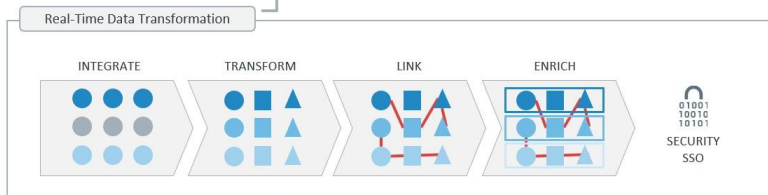
Understand

Explore, analyze, and operationalize data with powerful, natively interoperable apps



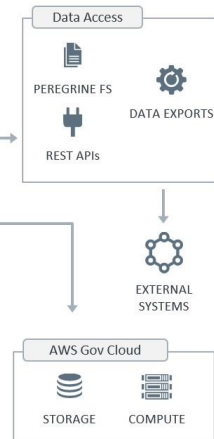
Unify & Enrich

Make data useful by transforming, categorizing, and delivering it for easy search and discovery



Collect

Unify real-time data from across the organization and store it in a central location



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| Data Integration | Search | Advanced Analytics | Secure Collaboration |
|---|--|--|---|
| <ul style="list-style-type: none"> Integrate and secure data of any type or scale Automatically tag unstructured data Automatically detect and create links across data silos Resolve duplicate data while maintaining sourcing and lineage of every record Automate manual data transformation, including processing of raw data from search warrants Enrich data with client specific logic | <ul style="list-style-type: none"> Perform global search across all data from one place Search both structured and unstructured data, including media Query sensitive external systems without storing data Perform advanced geospatial search and filtering Search for links using integrated network analysis functions Search partner agency data with granular permission controls | <ul style="list-style-type: none"> Analyze data on maps, link charts, timelines, lists, and graphs within one system Automate report creation and distribution Set custom alerts on keywords, events, or records View and analyze live streams of media data Configure interactive dashboards with drill-downs to explore source data | <ul style="list-style-type: none"> Leverage presentation tools to share analysis or narrate a criminal story Securely share files, alerts, reports, search queries, maps, link charts, or intelligence products across teams and with partner agencies Implement rule-based permission control models according to regulatory and agency needs |

Access Control & Security

- Full audit logging including when records were created or modified and the source from which they were derived
- Granular security and access restrictions associated with specific data types and data sources
- CJIS and FIPS 140-2 compliant cloud-based infrastructure

3. SECURITY.

3(A). CJIS Compliance. Peregrine maintains policies and procedures for securely storing, handling, and transmitting data. By default, Peregrine encrypts all data both in transit and at rest in accordance with CJIS standards. The Peregrine system adheres to FIPS 140-2 cryptographic standards along with all the underlying cryptographic modules as mandated by the AWS government cloud platform.

Encryption key management uses FIPS 140-2 security modules with 256-bit strength and follows password policies outlined in the CJIS security policy.

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The Peregrine system isolates boundaries using techniques such as security groups, policies, access controls, network firewalls, ACLs, intrusion systems, and IPSec within its virtual private cloud (VPC). Monitoring and controls are in place to ensure that any connections or data transmissions are through authorized mediums. Public and private networks are allocated to ensure that unauthorized access is restricted. The cloud infrastructure uses server-side encryption for both blob and block storage to provide an additional layer of protection.

3(B). Compliance Operations. Peregrine's infrastructure and operations are compliant with CJIS and follow industry best- practice attestations, alignments, and frameworks.

These standards include a robust logging framework, established at every level of the architecture. Peregrine coordinates comprehensive security reviews, as well as automatic alerting and triage frameworks for security events, application performance, and infrastructural integrity.

3(C). Secure software review procedures. A multi-tiered, rigorous software security approach provides an additional level of protection, including an internal and externally verified pre-release and post-release review framework.

Testing standards deployed by Peregrine meet industry frameworks such as Microsoft SLDC and are designed to remediate vulnerabilities and security risks.

Peregrine also employs state-of-the-art continuous deployment and patching capabilities, enabling security and support engineers to patch, remediate, and upgrade services with little to no downtime or systemwide effects.

3(D). Access management. Peregrine uses multiple mechanisms for maintaining access control including access control lists, resource restrictions, data encryption, and application level permissions. System access is restricted to authorized personnel using multifactor authentication.

Peregrine easily integrates with any existing single sign-on provider, providing users a familiar, secure sign-on experience, and administrators single-source control over access to multiple applications within your network. Peregrine is out-of-the-box compatible and easy to integrate with most identity providers, including ADFS, Okta, and PingFederate.

4. IMPLEMENTATION & DELIVERY METHODOLOGY. Peregrine is a web based CJIS compliant Platform-as-a-Service (PaaS) which is implemented with the customer

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through our client-facing project team. A cloud-based solution achieves superior flexibility, reliability, delivery, and security while also drastically lowering the costs to the end- user.

Peregrine operates on modern web browsers. The following versions are supported: Google Chrome Version 69 and above, Mozilla Firefox Version 62 and above, or Microsoft Edge Version 17 and above. Major releases occur throughout the year and typically follow a monthly cadence. Minor releases, patches, bug fixes, performance improvements, and security updates are continuously released on a weekly basis.

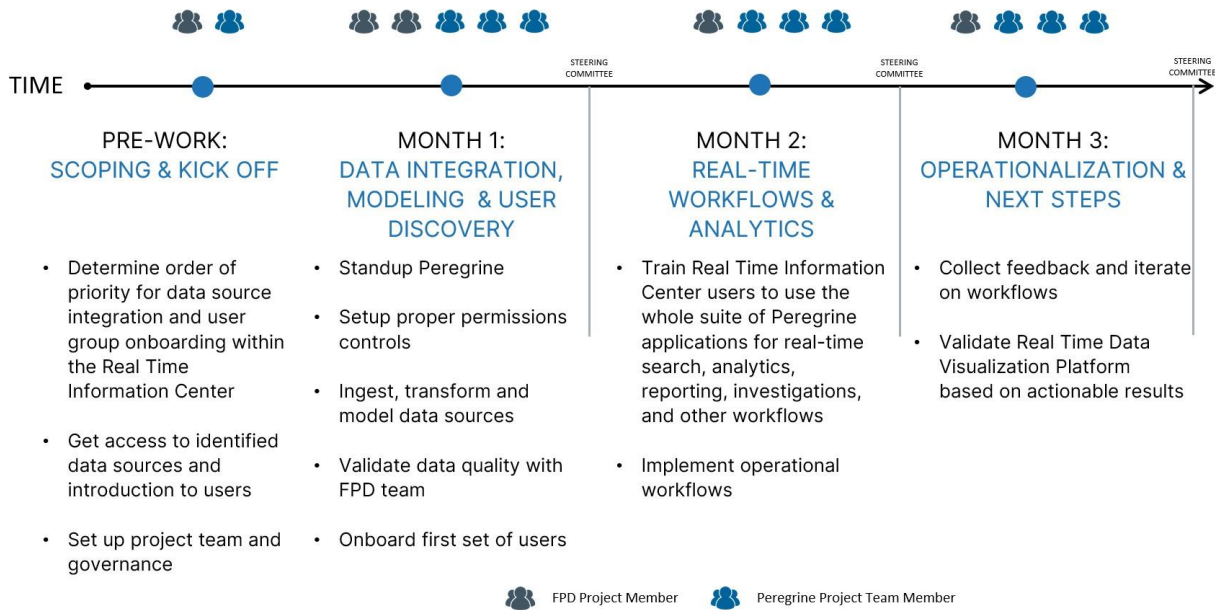
Each Peregrine implementation project consists of four steps to maximize success and impact for the customer. These steps and our engineering execution accelerate speed to value; they enable full implementation and use within 90 days.

4(A). Implementation Timeline & Logistics.

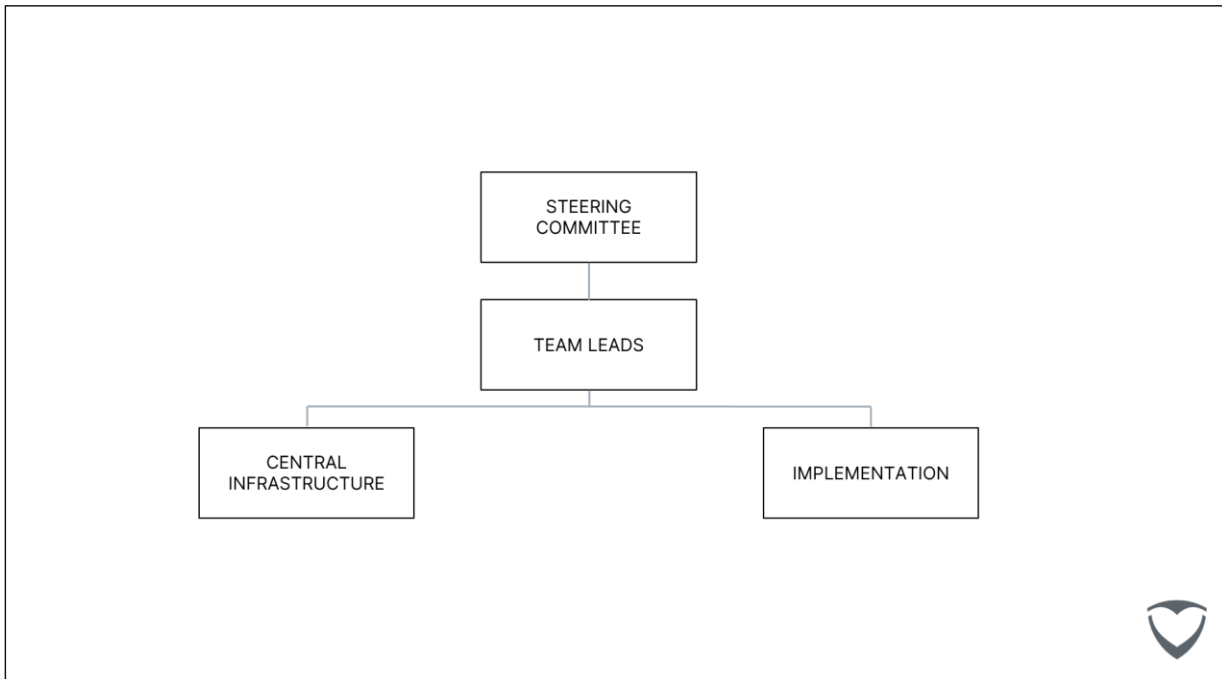
1. Pre-work – Scoping and Kick Off Work – *first two weeks*
 - a. Determine order of priority for data source integration and user group onboarding within the Real Time Information Center
 - b. Get access to identified data sources and introduction to users
 - c. Set up project team and governance
2. Month 1 – Data Integration, Data Modeling, and User Discovery
 - a. Standup Peregrine
 - b. Setup proper permissions controls
 - c. Ingest, transform, and model data sources
 - d. Validate data quality with FPD team
 - e. Onboard first set of users
 - f. 30-day steering committee meeting
3. Month 2 – Real-time Workflows and Analytics
 - a. Train Real Time Information Center users to use the whole suite of Peregrine applications for real-time search, analytics, reporting, investigations, and other workflows
 - b. Implement operational workflows
 - c. 60-day steering committee meeting
4. Month 3 – Operationalization and Next Steps
 - a. Continue collecting feedback and improve user workflows
 - b. Validate work based on actionable results
 - c. Identify next steps

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d. 90-day steering committee meeting (to recur quarterly after end Phase 1)



4(B). Project Management & Team Members. Phase 1 delivery will be organized using the following project management structure:



1. **Steering Committee.** A joint Fremont Police Department / Peregrine Steering Committee comprised of executive leadership will: ensure and guide

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delivery of the solution, unblock resources, if necessary, to ensure project success, and will act as a point of escalation for the Team Lead.

2. **Peregrine Team Lead.** The Peregrine Team Lead will provide day-to-day project management of the overall Fremont Police Department/Peregrine effort. The Team Lead will: manage the Peregrine Implementation and Infrastructure teams, communicate and manage relationship with the Steering Committee, and ensure development and delivery of a value-adding real time data visualization platform.
3. **Peregrine Implementation Team.** The Peregrine Implementation team will be comprised of deployment strategists and forward deployed engineers. The implementation team will be responsible for data integration, workflow deployment, and user adoption. Each team member will have data engineering skills and experience, along with deep workflow design and user adoption knowledge.

The implementation team will initially be onsite for a period of two weeks to meet with Fremont Police Department and conduct the scoping and kick off, along with the initial data integration and modeling. After the initial two weeks, the team will use a blend of onsite and remote meetings to complete the implementation and ongoing support of Fremont Police Department.

A full description of implementation components is described in the table below:

| IMPLEMENTATION DESCRIPTION |
|--|
| Enterprise Data Integrations |
| Tiburon records management system (RMS) |
| Tiburon computer aided dispatch (CAD) system |
| Milestone video management system (VMS) |
| WatchGuard cameras (body worn and vehicle) |
| Configuration with various network camera models |
| CRIMS (Alameda County criminal justice info) (when available) |
| PIPS/Neology automated license plate reader (ALPR) via NCRIC LPR data warehouse (when available) |
| NCRIC CAD/RMS/JMS data warehouse (when available) |
| Verizon Network Fleet – VIPS vehicle GPS / Automated vehicle locator (AVL) |
| Document storage database (optional) |
| City of Fremont ArcGIS layers |
| Fremont Police Department user credentials database |

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| |
|---|
| Search warrant data import & processing: |
| Call data records for 4 major wireless communications service providers |
| Mobile phone GPS records |
| Physical phone extraction records |
| Generic tabular data import & processing |
| Additional warrant data imports subject to mutual written agreement of parties |
| Vigilant partner agency and commercial license plate reader database (optional and fee may apply) |
| API subscription to CLEAR (optional and fee may apply) |
| API subscription to TLO (optional and fee may apply) |
| Additional data integrations subject to mutual written agreement of parties |
| Platform |
| Unlimited users |
| Unlimited generic file storage (all file types accepted) |
| Unlimited exports and downloads of data |
| Unlimited search and saved searched queries |
| Investigations application layer – link, map and tabular analyses on integrated data |
| Reporting and Dashboarding application layer – massive scale data analysis and visualization on integrated real-time data |
| Unlimited alert configurations |
| Entity resolution |
| Upon data integration |
| Ad-hoc in the platform |
| Permission controls, including location-based, user groups, and cell-level ACLs |
| Within-agency permission controls |
| External organization permission controls |
| Unlimited sharing between users within organization |
| Unlimited sharing with external organizations |
| Unlimited interagency searches (with executed MOUs) |
| Automatic record deletion detection & expungement |
| Full Audit Capability |
| User Training & Support |
| Peregrine Academy platform introductory user training for new users |
| Peregrine Academy platform advanced user training for new users |
| Peregrine Academy mobile capability user training for new users |
| User-specific workflow design and support |
| 24-hour troubleshooting |
| Software maintenance, support, and updates |
| Recurring Steering Committee meetings |

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5. SUPPORT & SLAs. Ongoing support is available, both during and after Phase 1, 24 hours a day, 7 days a week, 365 days a year and is included in the cost of the software license. Additionally, self-help user guides are available in the Peregrine Knowledge Base, designed to answer frequently asked questions and provide walk through guides of common workflows.

5(A). System availability. During any calendar month, the Peregrine system shall be available to users no less than 99.9% of the time on a 24x7 basis, excluding scheduled maintenance of the system, provided that Peregrine is not responsible for any downtime of the applications or software caused by third party data services (e.g. RMS databases). Peregrine shall provide prompt notification as soon as it becomes aware of any actual or potential unscheduled downtime of the system, as well as periodic updates during the unscheduled downtime regarding Peregrine’s progress in remedying the unavailability and the estimated time at which the system shall be available.

5(B). Issue Response and Resolution.

| Severity Level | Level of Effort | Initial Response | Work Around | Targeted Time to Permanent Fix | Status Updates |
|----------------|---|---|------------------|--------------------------------|--|
| 1 | Continuous best efforts, 24/7 | Immediate, but in no event to exceed 30 minutes | 8 hours | 3 calendar days | Every 2 hours prior to work around and every calendar day until permanent correction |
| 2 | Commercially reasonable efforts, 24/7 | 1 hour | 24 hours | 5 calendar days | Every 6 hours prior to work around and every calendar day until permanent correction |
| 3 | Commercially reasonable efforts, during normal business hours | 1 business day | 10 business days | 20 business days | Every 2 business days prior to work around and every calendar day until permanent correction |

- “Severity level 1 error” means any system error that, for fifty percent (50%) or more of FPD’s users, renders the system or any material portion of the system inoperative, or materially impairs use of the system in a production environment.

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- “Severity level 2 error” means any system error that, for fifty percent (50%) or more of FPD’s users, substantially impairs use of one or more features or functions of the system.
- “Severity level 3 error” means any system error that, for fifty percent (50%) or more of FPD’s users, has a minimal impact on the performance or operation of the system.

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EXHIBIT B

COMPENSATION

This compensation schedule, Exhibit “B,” is hereby incorporated by reference into the Agreement, under Agreement Section 4. For all services identified in Exhibit “A”, Scope of Services, the City agrees to pay and Consultant agrees to accept as total compensation the following:

Consultant proposes a fixed software license fee of \$149,500 per year. The initial implementation fee will be waived with a multi-year commitment. This license includes all ongoing support, data integration maintenance, workflow development, and user training to support the scope of this work. Peregrine will not charge for travel or other miscellaneous expenses. The total for years one through three shall not exceed \$448,500.00, due to Peregrine in three annual payments of \$149,500.00 with an option to extend two additional years for a five-year contract not-to-exceed \$747,500.00. Year six and beyond shall not exceed a 5% annual increase.

The contract shall run for a period of three years with payments for the next year due annually upon the contract anniversary with an option to extend two additional years. The initial payment shall be due next 30 days from receipt of invoice.

| City of Fremont Real Time Data Visualization Platform Pricing Estimates | |
|---|---|
| Pricing Estimates, Hosted / Software-as-a- Service | |
| 1. Software Licensing – Other than or in addition to annual subscription. | Not applicable |
| 2. Third-Party Licensing (if applicable) – Discuss pricing for any recommended third- party solutions. | Third Party API or data fees may apply* |
| 3.Implementation – Training, user adoption, travel expenses, initial installation, scoped data conversion, scoped integration, etc. | \$40,000 <i>waived**</i> |
| 4. Annual Subscription, 5 Years – Includes operating and maintenance, support, data conversion, data integrations to meet project objectives | |
| Year One | \$149,500.00 |
| Year Two | \$149,500.00 |
| Year Three | \$149,500.00 |
| <i>Year Four - optional</i> | <i>\$149,500.00</i> |
| <i>Year Five - optional</i> | <i>\$149,500.00</i> |
| 5. Total Year One | \$189,500 ** \$149,500 |
| 6. Total Three Years | \$448,500.00 |
| 7. Total Five Years | \$747,500.00 |

*Third Party API or data fees may include: Vigilant partner agency and/or commercial Data, Clear, TLO, etc.

**Waived with multi-year agreement

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EXHIBIT C

QUALIFICATIONS

These Consultant Qualifications, Exhibit “C,” are incorporated by reference into the Agreement, under Agreement Section 5.

Peregrine was founded in 2017 to help law enforcement professionals by connecting real time information from their existing data sources to bring insights together into one real time data visualization platform. Our team initially embedded with the San Pablo Police Department for nearly a year to deeply understand the existing environment and build solutions to close the gaps between data sources. Since that time, Peregrine has contracted with several agencies, raised a Series A funding round, and grown to eleven team members, yet, we still deploy with the same curiosity, empathy, and drive as our initial work with San Pablo. Peregrine is head quartered in San Francisco, CA, but our work happens at police departments with our customers. Our team has decades of experience working with law enforcement agencies including police departments, sheriff offices, district attorneys, and regional intelligence centers. We have built and deployed software solutions that have driven meaningful impact in each of these areas and beyond. Peregrine has a strong financial position and no outstanding litigation or threats of litigation.

Our work includes deployments with San Pablo (CA) Police Department, Pittsburg (CA) Police Department, and Albuquerque (NM) Police Department. In addition to supporting real time information centers, we work with investigators, analysts, administrative personnel, and command staff. The work with Albuquerque Police Department (APD) is specifically focused on their real time crime center and crime analyst’s unit. The department has ~840 sworn officers and has objectives to reduce crime, specially shootings and auto burglary, by identifying crime trends, deploying effective resources, and making informed decisions based on data-driven analysis, intelligence, and technology tools. The APD real time crime center monitors and facilitates increased situational awareness and real time operational decision making by accessing calls for service in CAD (Tiburon), existing information from the RMS (Tiburon), video surveillance (Milestone / Genetec/ others), LPR (Vigilant), and more.

Each Peregrine deployment consists of four steps to maximize success and impact for the customer. Please see the “Scope of Service” for further details, but the implementation includes:

- 1) Pre-work – Scoping and Kick off Work,
- 2) Month 1 – Data Integration, Data Modeling, and User Discovery,
- 3) Month 2 – Real-time Workflows and Analytics, and
- 4) Month 3 – Operationalization and Next Steps.

This process helps align Peregrine and our customers and drive towards full implementation and use within 90 days. This team will initially be onsite for a period of two weeks to meet with Fremont Police Department and conduct the scoping and kick off, along with the initial data integration and modeling.

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EXHIBIT D

**INSURANCE REQUIREMENTS
Professional**

Consultant's performance of the services under this agreement shall not commence until Consultant shall have obtained all insurance required under this Exhibit and such insurance shall have been reviewed and approved by the Risk Manager. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

Consultant shall procure and maintain for the duration of the contract all necessary insurance against claims now and in the future for alleged injuries to persons or damages to property which may arise from or in connection with the performance of the services by the Consultant, the Consultant's agents, representatives, employees and subcontractors. Required professional liability insurance shall be maintained at the level specified herein for the duration of this agreement and any extension thereof and for twelve additional months following the agreement termination or expiration.

INSURANCE COVERAGE AND LIMITS RESTRICTIONS

1. It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.
2. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Fremont before the City of Fremont's own insurance or self-insurance shall be called upon to protect it as a named insured.

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage:
 - a. Blanket contractual liability
 - b. Broad form property coverage
 - c. Personal injury
2. Insurance Services Office form covering Automobile Liability, code 1 (any auto).

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3. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance.
4. Professional Liability insurance
5. Cyber Liability insurance:
 - a. Third Party Liability coverage:
 - i. Privacy liability covering loss in the event of Consultant's failure to protect City's data.
 - ii. Network security liability in the event of any failure of network security including unauthorized access or unauthorized use of the City's data.
 - iii. Internet media liability covering infringement of copyright or trademark, invasion of privacy, libel, slander, plagiarism or negligence.
 - b. First Party Liability coverage:
 - i. Cyber extortion monies and associated expenses arising out of a criminal threat to release City's data.
 - ii. Digital asset loss for costs incurred to replace, restore or recollect data that has been corrupted or destroyed as a result of a network security failure.
 - iii. Business interruption to cover loss of income and extra expense arising out of an interruption of network service due to an attack on Consultant's network.
 - iv. Notification and crisis management covering expenses in the event of a data breach including a third party computer forensics team, notifying users whose personal information was breached, credit monitoring, and third party identity restoration services.
6. Such other insurance coverages and limits as may be required by the City of Fremont.

B. MINIMUM LIMITS OF INSURANCE

Consultant shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage and a \$2,000,000 aggregate. If Commercial General Liability insurance or other form with a general aggregate liability is used, either the general aggregate limit shall apply separately to this agreement or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: Bodily Injury by Accident - \$1,000,000 each accident.

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Bodily Injury by Disease - \$1,000,000 policy limit.

Bodily Injury by Disease - \$1,000,000 each employee.

4. Professional Liability insurance: \$2,000,000
5. Cyber Liability insurance: \$2,000,000
6. Such other insurance coverages and limits as may be required by the City of Fremont.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

1. Any deductibles or self-insured retentions must be declared to and approved by the City of Fremont. At the option of the City of Fremont, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City of Fremont, its officers, officials, employees, and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.
2. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City of Fremont.
3. The City of Fremont reserves the right to obtain a full certified copy of any insurance policy and endorsement. Failure to exercise this right shall not constitute a waiver of right to exercise later.

D. ADDITIONAL INSURED REQUIREMENTS:

1. The required general liability and automobile policies are to contain, or be endorsed to contain the following provisions:
 - a. The City of Fremont, its officers, officials, employees, agents and volunteers are to be covered as additional insureds as respects alleged: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City of Fremont, its officers, officials, employees, agents or volunteers.
 - b. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Fremont, its officers, officials, employees, agents or volunteers.
 - c. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought except, with respect to the limits of the insurer's liability.
 - d. Consultant shall furnish properly executed Certificates of Insurance from insurance companies acceptable to the City of Fremont and signed copies of the specified endorsements for each policy prior to commencement of work under this agreement. Such documentation shall clearly evidence all coverages required above including specific

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evidence of separate endorsements naming the City of Fremont and shall provide that such insurance shall not be materially changed, terminated or allowed to expire except after 30 days prior written notice by certified mail, return receipt requested, has been filed with the City Clerk.

Such insurance shall be maintained from the time work first commences until completion of the work under this agreement. Consultant shall replace such certificates for policies expiring prior to completion of work under this agreement.

E. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

F. COMPLETED OPERATIONS

Consultant shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event the Consultant fails to obtain or maintain completed operations coverage as required by this agreement, the City of Fremont at its sole discretion may purchase the coverage required and the cost will be paid by the Consultant.

G. CROSS-LIABILITY

The Liability policy shall include a cross-liability or severability of interest endorsement.

H. FAILURE TO MAINTAIN INSURANCE COVERAGE

If Consultant, for any reason, fails to maintain insurance coverage, which is required pursuant to this agreement, the same shall be deemed a material breach of contract. The City of Fremont, at its sole option, may terminate this agreement and obtain damages from the Consultant resulting from said breach. Alternatively, the City of Fremont may purchase such required insurance coverage, and without further notice to Consultant, the City of Fremont may deduct from sums due to Consultant any premium costs advanced by the City of Fremont for such insurance.

I. PRIMARY AND NON-CONTRIBUTORY

For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City of Fremont, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City of Fremont, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

The additional insured coverage under the Consultant's policy shall be "primary and non-contributory" and will not seek contribution from the City of Fremont's insurance or self-insurance and shall be at least as broad as CG

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J. SUBCONTRACTORS

Consultant shall require all subconsultants to maintain the same levels of insurance and provide the same indemnity that the Consultant is required to provide under this Agreement. A subconsultant is anyone who is under contract with the Consultant or any of its subconsultants to perform work contemplated by this Agreement. The Consultant shall require all subconsultants to provide evidence of valid insurance and the required endorsements prior to the commencement of any work.

K. SUBROGATION WAIVER

Consultant agrees to waive subrogation rights against City of Fremont regardless of the applicability of any insurance proceeds, and to require all Consultants, subcontractors or others involved in any way with the services to do likewise.

L. VERIFICATION OF COVERAGE

Consultant shall furnish the City of Fremont with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City of Fremont before the services commence.