

SYSTEM SUPPORT CONTRACT

This SYSTEM SUPPORT CONTRACT ("CONTRACT") is made and entered into as of this 19TH day of DECEMBER, 2023, by and between The City of Oklahoma City ("CITY") and the Oklahoma City Water Utilities Trust ("OCWUT"), together referred to as the "CONTRACTING ENTITY", each organized pursuant to the laws of the State of Oklahoma, and NEXGEN Asset Management, a limited liability corporation, having offices at 4010 Lennane Dr, Sacramento CA 95834-2948, hereinafter referred to as "SERVICE PROVIDER".

WITNESSETH:

WHEREAS, Oklahoma City owns and operates and OCWUT leases and finances its solid waste, water and wastewater systems, also including related computer facilities and systems; and

WHEREAS, the CONTRACTING ENTITY prepared a Request for Proposal ("RFP") detailing its service requirements, business process needs, and efficiencies to be gained from implementation and ongoing support of a SOLUTION; and

WHEREAS, the SERVICE PROVIDER provided written proposal(s) to the RFP to meet the ongoing service requirements, business process needs and efficiencies described by the CONTRACTING ENTITY; and

WHEREAS, the SERVICE PROVIDER represented itself as being qualified, experienced, and staffed with sufficient trained personnel, possessing the specialized methodologies and practices necessary to fulfill the ongoing professional and technical support services requirements described in the CONTRACTING ENTITY'S RFP documents and CONTRACTING ENTITY relied on those representations; and

WHEREAS, the SERVICE PROVIDER possesses the licensing agreements ("LICENSED SOFTWARE(S)") and software INTEGRATIONS to provide the SOLUTION(S); and

WHEREAS, SERVICE PROVIDER will make maintain all configurations, modifications and enhancements to the LICENSED SOFTWARE and developed INTEGRATIONS in accord with this CONTRACT; and

WHEREAS, SERVICE PROVIDER has agreed to timely perform SERVICES, maintain uptime, and deliver the SOLUTION required by this CONTRACT; and

WHEREAS, the CONTRACTING ENTITY desires to retain the SERVICE PROVIDER as an independent contractor, and SERVICE PROVIDER has agreed to fulfill the enumerated duties and responsibilities provided for in this CONTRACT; and

WHEREAS, the PARTIES have negotiated and developed this CONTRACT.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the PARTIES hereto, the PARTIES hereby agree as follows:

1. Definitions

a) The term "ADDITIONAL SERVICES" means those services requested to implement new Enterprise Asset Management ("NEXGEN") software functionality and/or install CONTRACTING ENTITY issued enhancement via the CHANGE CONTROL PROCESS.

b) The term "BASE SUPPORT" refers to the services provided by the SERVICE PROVIDER to meet any requirements from "Attachment A - Support Scope of Services".

c) The term "BUSINESS DAYS" means the days that the City of Oklahoma City conducts its business in the regular course, excluding weekends and designated Oklahoma City holidays.

d) The term "CHANGE MANAGEMENT" refers to the assessing, filtering, prioritizing, and managing requests for changes to IT systems; the scope of the change management may extend beyond IT to business processes.

e) The term "CHANGE REQUEST" means a written documented proposal to revise the manner in which contracted work will be performed due to a changed condition during the course of the work. THE SERVICES and/or SOLUTION defined in this CONTRACT may need to be revised or adapted to better satisfy CONTRACTING ENTITY's needs or more efficiently use the SYSTEM as mutually and prudently determined by the PARTIES during the course of completing the work. A CHANGE REQUEST process shall be performed in accordance with the

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SCOPE OF SERVICES and administered by the respective Project Managers of CONTRACTING ENTITY and SERVICE PROVIDER.

f) The term "CHANGE CONTROL PROCESS" means the procedures used to process documented proposed changes in the key activities and personnel for the SERVICE PROVIDER and CONTRACTING ENTITY related to estimation, approval and delivery of CHANGE REQUESTS (See System Provider Scope of Services for a description of the CHANGE CONTROL PROCESS) relying on the unit pricing in the RATE CARD included in "Attachment B - Schedule of Fees".

g) The term "CITY IT RESPONSIBILITIES" refers to the City of Oklahoma City's Information Technology Department's Data Center, Operating System, Network, Desktop, 1st Line Service Desk, Security and Authorizations, Vendor Support, Partner Applications, Service Handover, and Service Management responsibilities as more fully described in the Scope of Services.

h) The term "CONTRACT" refers to this System Support Contract and its associated attachments and exhibits.

i) The term "COSTS" means the financial measure for dollars expended for use of resources and SERVICES.

j) The term "DELIVERABLE" refers to a tangible or verifiable outcome, result, or item that will be produced by SERVICE PROVIDER or CONTRACTING ENTITY or by SERVICE PROVIDER and CONTRACTING ENTITY for the benefit of CONTRACTING ENTITY as part of this CONTRACT; such DELIVERABLES are further designated, described and accountability assigned in the CONTRACT.

k) The term "DOCUMENTATION" means any and all operators and users manuals, training materials, guides, commentary, listings and other materials for use in conjunction with the SOLUTION, which are to be developed and/or supplied by or with SERVICE PROVIDER or CONTRACTING ENTITY or by or with SERVICE PROVIDER and CONTRACTING ENTITY.

l) The term "ESCALATION" refers to the timing of escalations to higher responsible personnel of the respective PARTIES to facilitate proper and efficient resolution of issues.

m) The term "FORCE MAJEURE" means circumstances which are outside of the PARTY'S reasonable control to prevent, including but not limited to war, acts of terrorism, strike, lock-out, industrial dispute, fire, explosion, natural disaster, flood, work stoppages or work shortages (save in relation to work stoppages or work shortages of either PARTY), transportation strikes or slowdowns, hurricane, tornado, power outages, fuel shortages, acts of government, omissions of Internet traffic carriers, illness, pandemics, epidemics, and death.

n) The term "INCIDENT MANAGEMENT" means the management of interruptions to SERVICE (actual or potential).

o) The term "INTEGRATION MANAGEMENT" involves the monitoring and reprocessing of integration transactions and data loads. SERVICE PROVIDER SERVICES may extend to integration reconciliation, management or mapping tables and proactive monitoring of middleware queue depths.

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- p) The term "INVOICING" means charges will be invoiced quarterly-in-advance. CHANGE REQUEST charges shall be billed based on the approved method contained in the CHANGE REQUEST.
- q) The term "KEY USERS" means CONTRACTING ENTITY provided personnel to assist SERVICE PROVIDER as provided for in the CONTRACT.
- r) The term "KNOWLEDGE MANAGEMENT" refers to the detailed resource management in the context of the skills required to provide services set against the levels of skills available to deliver them.
- s) The term "LEVEL 1 (Defect)" designates a component of the SYSTEM is unusable or inoperable. This defect is a loss of the capability to perform a function. A work around does not exist, production processing cannot be performed. In addition, testing cannot be performed until the problem has been corrected.
- t) The term "LEVEL 2 (Defect)" designates a component of the SYSTEM has significant limitation or does not conform to the documented capabilities of the SYSTEM. A significant limitation stops the user from performing the normal use of the SYSTEM although a work around exists which allows the user to temporarily perform the intended function.
- u) The term "LEVEL 3 (Defect)" means all other defects in the SYSTEM not identified as a Level 1 or Level 2 defect for which SERVICE PROVIDER shall resolve timely based upon a mutually agreed schedule.
- v) The term "MAINTENANCE OF THE KNOWLEDGE BASE" refers to the requirement that CONTRACTING ENTITY's SOLUTION must be documented.
- w) The term "MAJOR ENHANCEMENTS/PROJECTS" means work/projects managed and charged outside of "Attachment A - Support Scope of Work."
- x) The term "MILESTONE" refers to completion of a specified DELIVERABLE or series of DELIVERABLES as defined in SERVICES or CHANGE REQUEST.
- y) The term "OKLAHOMA CITY ESTIMATED STAFFING LEVELS" are those identified CONTRACTING ENTITY and OKC-IT staffing commitments required to meet the SCOPE OF SERVICES support level agreement to service the SYSTEM for Applications Development, Applications Support, Infrastructure and Business Process Integration. It does not include resource requirements to address organizational information and reporting functions.
- z) The term "OUT OF HOURS" or "EMERGENCY RESPONSE" are all times outside of the BUSINESS DAY problems which will be progressed to one of four severity levels as defined in "Attachment A - Support Scope of Services".
- aa) The term "PARTY" means SERVICE PROVIDER or CONTRACTING ENTITY, and the term "PARTIES" means SERVICE PROVIDER and CONTRACTING ENTITY.
- bb) The term "PROBLEM MANAGEMENT" refers to the investigation and identification of unknown underlying root causes of system incidents.
- cc) The term "PRODUCTION SYSTEM SUPPORT" means SERVICE PROVIDER's requirement for a full productive support environment reflecting exact productive configuration,

updated regularly with subsets of live data and also includes a “staging” or test environment to validate changes and developments before they are transported to production.

dd) The term “RATE CARD” means an approved unit pricing for provision of increments of ADDITIONAL SERVICES for use to document total fees in a CHANGE REQUEST reviewed through the CHANGE CONTROL PROCESS outside the estimated resource levels if approved in writing by CONTRACTING ENTITY and delivered by SYSTEM PROVIDER.

ee) The term “RELEASE MANAGEMENT” means planning the roll out and release of changes in a controlled manner.

ff) The term “REVIEW PROCESS” refers to the actual effort against planned effort to be reviewed on a monthly basis, or more often if the PARTIES determine it appropriate, in meetings between the SERVICE PROVIDER Project Manager and the CONTRACTING ENTITY Project Manager; this process will take into account the following: Actual effort, Estimated effort, System events (development and other changes), Business Events, and External Events.

gg) The term “SECURITY & AUTHORIZATIONS” refers to SERVICE including the provision of user access, creation/modification of roles, security governance and audit to provide compliance with Segregation of Duties and other legislative standards.

hh) The term “SERVICE AREAS” refers to the four key areas of support defined as:

- i. “BUSINESS PROCESS INTEGRATION” means how OKC-Utilities, OKC-IT and SERVICE PROVIDER work together (integrate) to deliver business control, ongoing improvement, and increased operational efficiencies of the SYSTEM and SERVICES;
- ii. “APPLICATION DEVELOPMENT” means all ongoing development and configuration, customization, integration, modification, and enhancements of the SYSTEM, not included in the SUPPORT, normally focused on implementing new or enhanced functionality within the SOLUTION; and
- iii. “APPLICATION SUPPORT” means the day-to-day management of the software application including ongoing support of the NEXGEN Software and associated business processes, acting within the Incident and Problem Management processes, but also have key responsibilities in monitoring the ongoing health of the SYSTEM, and the application of Product Patches (OSS notes) and Support Packs.

ii) The term “SERVICES” refers to any and all professional and technical labor work efforts provided or to be provided by SERVICE PROVIDER as designated and described in this CONTRACT.

jj) The term “SERVICE DELIVERY MANAGEMENT” means CONTRACTING ENTITY access and ability to gauge and review SERVICE PROVIDER’s Service Delivery Performance through:

- i. CONTRACTING ENTITY Self Service Access to SERVICE PROVIDER SYSTEM;
- ii. Weekly Operational Review Meetings;
- iii. Monthly Service Review Meetings; and
- iv. Quarterly Review of Services.

kk) The term "SERVICE DESK" means a point of contact for NEXGEN Users to access the NEXGEN support service and other IT Services. Although users may contact the SERVICE DESK via Super Users, the SERVICE DESK is responsible for formally logging and monitoring incidents raised by users.

ll) The term "SERVICE ESCALATION" refers to the process in the event the SERVICE PROVIDER and CONTRACTING ENTITY fail to resolve an issue, CONTRACTING ENTITY may escalate the issue as follows:

- i. First Escalation Point: Director of Technology or Account Manager;
- ii. Second Escalation Point: Support Manager;
- iii. Third Escalation Point: Chief Executive Officer.

mm) The term "SERVICE FUNCTIONS" means industry best practice when operating and supporting the SYSTEM.

nn) The term "SERVICE HANDOVER" refers to a process tasked with facilitating handover to the business (stability of release) and service (supportability of the release) on pre-agreed checklists and plans of new developments released to the business (on any scale) for formal production acceptance.

oo) The term "SERVICE LEVEL AGREEMENT (SLA) MANAGEMENT" means terms for the measurement of response time by priority level and incident priority designation.

pp) The term "SERVICE LEVEL MANAGEMENT" means the ongoing identification, monitoring and review of the levels of IT services.

qq) The term "SERVICE LEVEL OBJECTIVES" means SERVICE PROVIDER SERVICE LEVELS to be reported monthly as part of the Service Delivery Report.

rr) The term "SERVICE MANAGEMENT" refers to a function ensuring all agreed SERVICE processes are in place.

ss) The term "SERVICE MANAGEMENT CHANGE(S)" means approved CHANGE REQUEST(S) which materially affect the SERVICES provided under this CONTRACT will be incorporated into a CHANGE REQUEST to this CONTRACT.

tt) The term "SERVICE MODEL" means blueprint model providing an organizational blueprint for the SERVICE PROVIDER'S support structure.

uu) The term "SERVICE PROCESSES" means the work processes based on industry best practices from the Information Technology Infrastructure Library (ITIL), which is the industry standard set of concepts, techniques, and important practices for managing information

technology, infrastructure, development and operations; each process has a unique reference, and is linked to the service function responsibility.

vv) The term "SERVICE PROVIDER" includes NEXGEN, its employees, representatives, agents, consultants, officers and contractors.

ww) The term "SERVICE PROVIDER DELIVERABLE" refers to a SYSTEM or SOLUTION as being the responsibility of and to be produced by SERVICE PROVIDER.

xx) The term "SOLUTION" "SOLUTIONS" means the SYSTEM delivered by the SYSTEM PROVIDER and accepted by the CONTRACTING ENTITY for use as provided for in this CONTRACT.

yy) The term "SUPPORT GOVERNANCE MODEL" means the documented roles and responsibilities of each PARTY, compliant with the CONTRACT requirements, used to guide the PARTIES actions in facilitating effective coordination, decision making and fulfillment of the SERVICES and delivery of the SOLUTION.

zz) The term "SUPPORT ROLES" is the table designed to identify clear responsibilities for each of the tasks associated with the support to be provided as part of "Attachment A - Support Scope of Services" or as ADDITIONAL SERVICES that can be requested from SERVICE PROVIDER as a CHANGE REQUEST.

aaa) The term "SYSTEM" refers to the NEXGEN system including the base unconfigured SERVICE, any other computer programs and products supplied by the SERVICE PROVIDER, together with all customizations, integrations, configurations, enhancements and modifications made to all such SERVICE, WORK PRODUCTS, DELIVERABLES, and the DOCUMENTATION and training provided therewith to produce the SOLUTION. The term SYSTEM excludes the COMPUTER EQUIPMENT.

bbb) The term "SYSTEM UPGRADES" means CONTRACTING ENTITY will conform to the recommended upgrade strategy regarding the hardware, operating system or other related softwares which is not supported or maintained by SERVICE PROVIDER, but which critically affects the upgrade of the supported SYSTEM. A summary of how SYSTEM upgrades will be managed is included in the SCOPE OF SERVICES.

ccc) The term "TIER 1 SERVICES" refers to all elements are present to ensure the health and integrity of the SOLUTION and implies redundancy and fully duplicated production environments.

ddd) The term "TIER 1 STANDARD" refers to the SERVICE LEVEL OBJECTIVES established for application support to maintain the SOLUTION as described in "Attachment A - Support Scope of Services".

eee) The term "TRANSITION MANAGEMENT" means the coordinated transfer of changes and releases into a controlled SERVICE support environment.

fff) The term "UTILITIES RESPONSIBILITIES" refers to Business Process Owners, Super Users, User Community, Data Management, Communications, Training, Business Process Support, 2ND Line Applications Support, Testing.

ggg) The term "VENDOR SUPPORT" means an aggregation point within SERVICE PROVIDER's service organization and support contracts provided by software and hardware vendors.

hhh) The term "WORK PRODUCT" means any item (tangible or intangible) which is created or produced as a result of any integration, modification, enhancement, customization or configuration services by SERVICE PROVIDER. For the sake of clarity, the term "WORK PRODUCT" does not include any items that are considered to be derivative works of intellectual property owned by SERVICE PROVIDER, including but not limited to configuration of existing code.

2. Representations

(a) The System Provider Contract and this CONTRACT. Accordingly, references to the System Provider Contract in this CONTRACT shall not be read to expand or alter in any way the PARTIES' rights or obligations under this CONTRACT. Conversely, such references shall not be read to expand or alter in any way the PARTIES' rights or obligations under the System Provider Contract. Where there is a conflict between the System Provider Contract and this CONTRACT, this CONTRACT shall govern.

(b) The PARTIES have incorporated descriptions and details from the RFP, the RFP Proposal, and other oral and written communications and representations of the PARTIES into this CONTRACT to provide the SOLUTION required by the CONTRACT to CONTRACTING ENTITY.

3. Prioritization

In the event of any inconsistency between or among this CONTRACT and the attachments, it is agreed that such inconsistency shall be resolved in the following descending order of precedence:

- a) This CONTRACT;
- b) Attachment A - Support Scope of Services;
- c) Attachment B - Schedule of Fees;
- d) Attachment C - SERVICE PROVIDER's Project Team.
- e) Attachment D - Software License Agreement.

4. Retention of SERVICE PROVIDER; Scope of Services

(a) Subject to the terms and conditions of this CONTRACT, CONTRACTING ENTITY retains SERVICE PROVIDER to perform the SERVICES hereunder, and to provide the

SOLUTION, and DOCUMENTATION required by this CONTRACT and as detailed by this CONTRACT.

(1) This CONTRACT and the attachments, govern the manner SERVICES and the SOLUTION shall be provided by the SERVICE PROVIDER to CONTRACTING ENTITY. The completed insurance certificates shall be provided by the SERVICE PROVIDER prior to provision of any SERVICES identified in this CONTRACT. Failure to timely provide insurance certificate does not extend time or deadlines. The completed insurance certificates, when submitted by the SERVICE PROVIDER shall be incorporated into this CONTRACT by reference and replace the unexecuted, uncompleted forms initially provided by CONTRACTING ENTITY for use by SERVICE PROVIDER to comply with that requirement.

(2) SERVICE PROVIDER will provide the SERVICE PROVIDER RESPONSIBILITIES in connection with the SERVICE AREAS, including value creation and innovation, application architecture, development and configuration, build management, testing, service handover, service management, application support, batch management, interface management, basis and database support, as more specifically set forth in the SCOPE OF SERVICES.

(3) SERVICE PROVIDER will provide BASE SUPPORT as outlined in this CONTRACT and such support is included in costs set forth in this CONTRACT. Requests for BASE SUPPORT may be requested by the CONTRACTING ENTITY General Manager or the Oklahoma City IT Director and their designees. Requests for BASE SUPPORT will be raised by City of Oklahoma City using SERVICE PROVIDER's Resolve Service Request (SR) ticketing process.

(4) SERVICE PROVIDER will provide ADDITIONAL SERVICES as set forth in the SCOPE OF SERVICES. Such ADDITIONAL SERVICES are not included in the BASE SUPPORT fixed price and will be provisioned by SERVICE PROVIDER only after receipt of written approval by the CONTRACTING ENTITY General Manager, the Oklahoma City IT Director or their designee. CONTRACTING ENTITY shall make requests for quotations for ADDITIONAL SERVICES via SERVICE PROVIDER's

Resolve Change Request (CR) ticketing process, as more fully set forth in the "Attachment A - Support Scope of Services".

(5) CONTRACTING ENTITY and/or the Oklahoma City IT have primary ownership for the SERVICE AREAS and SERVICE FUNCTIONS identified in "Attachment A - Support Scope of Services".

(6) Regardless of primary ownership for a SERVICE FUNCTION, all PARTIES agree to provide assistance as necessary to expeditiously resolve any SERVICE issues, it being understood and agreed that neither PARTY shall be responsible for delays caused by the other PARTY's failure to satisfy its obligations.

(7) The designated Project Managers of the PARTIES are hereby empowered to perform all the functions identified for them in this CONTRACT including but not limited to processing and approving CHANGE REQUESTS during the course of the CONTRACT. The OCWUT General Manager or designee and the Oklahoma City IT Director or designee are each authorized to approve CHANGE REQUESTS utilizing the RATE CARD fees herein this CONTRACT for ADDITIONAL SERVICES, provided the Oklahoma City IT Director and designee must obtain approval of the OCWUT General Manager prior to issuance of a purchase order to be paid, in whole or in part, by the OCWUT.

(b) SERVICE PROVIDER and CONTRACTING ENTITY are each solely and severally responsible for performing their several duties and responsibilities so that they are each able to satisfy their individual responsibilities contemplated by this CONTRACT. SERVICE PROVIDER and CONTRACTING ENTITY are jointly responsible for satisfying joint responsibilities and each agrees to dedicate and have available the necessary staff, staff time, and resources to promptly, timely, and efficiently accomplish such joint responsibilities, including but not limited to necessary training and instructions as defined in "Attachment A - Support Scope of Services".

(c) SERVICE PROVIDER shall comply with all applicable federal, state and local laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto, pertaining in any manner to the performance or services provided under this CONTRACT.

SERVICE PROVIDER shall obtain all patents, licenses (except for the Software previously purchased by CONTRACTING ENTITY) and any other permission required for CONTRACTING ENTITY to use the SYSTEM.

5. Compensation

(a) CONTRACTING ENTITY shall pay SERVICE PROVIDER the compensation in accordance with this CONTRACT and "Attachment B - Schedule of Fees" for SERVICES completed and approved as specified, in accordance with the "Attachment A - Support Scope of Services".

(b) CONTRACTING ENTITY and SERVICE PROVIDER acknowledge that the compensation to be paid SERVICE PROVIDER pursuant to this CONTRACT has been established at an amount reasonable for both the availability of SERVICE PROVIDER off site at the request of CONTRACTING ENTITY and the SERVICES and other work to be performed by SERVICE PROVIDER hereunder. Where agreed in advance by the respective PARTIES' Project Managers, in writing, or by "Attachment A - Support Scope of Services", SERVICE PROVIDER'S resources may perform support SERVICES onsite.

(c) Expenses in the provision of SYSTEM SUPPORT, as further described in "Attachment A - Support Scope of Services", are included in the compensation set forth above. Additionally, SERVICE PROVIDER'S travel, meals, and lodging costs to Oklahoma City to perform onsite SERVICES shall be reimbursable by the CONTRACTING ENTITY to the degree prior agreed in writing between the PARTIES.

(d) Any charges associated with ADDITIONAL SERVICES or CHANGE REQUEST shall be billed in the approved method contained in the CHANGE REQUEST. The consulting fees for any ADDITIONAL SERVICES are set forth in "RATE CARD".

6. Dedication of Key Staff and Priority Customer Status

(a) For the complete period of the CONTRACT, SERVICE PROVIDER agrees to provide the necessary staffing listed in Attachment "C" - SERVICE PROVIDER's Project Team to meet DELIVERABLES set forth in the CONTRACT. CONTRACTING ENTITY agrees to provide the OKLAHOMA CITY ESTIMATED STAFFING LEVELS defined in "Attachment A - Support

Scope of Services". Each PARTY will use reasonable efforts to assign and sustain continuity of personnel assigned to this CONTRACT.

(b) Service Management

(1) The management of SERVICES required by this CONTRACT is set forth in detail in "Attachment A - Support Scope of Services". Upon execution of this CONTRACT, the PARTIES will meet and SERVICE PROVIDER will produce a Governance Model, in compliance with the CONTRACT to ensure that the PARTIES' work will be focused on providing the SERVICES and maintaining a supported environment.

(2) SERVICE PROVIDER will provide support as set forth in "Attachment A - Support Scope of Services", and SERVICE PROVIDER agrees, as a minimum, to meet the SERVICE LEVEL OBJECTIVES set forth in the CONTRACT.

7. Independent SERVICE PROVIDER Status

- a) The PARTIES hereby acknowledge and covenant that:
 - i) SERVICE PROVIDER is an independent contractor and will act as an independent contractor and not as an employee of Oklahoma City and/or CONTRACTING ENTITY in performing the duties hereunder; and
 - ii) The PARTIES do not intend, and will not hold out that there exists, any corporation, joint venture, partnership, undertaking for a profit or other form of business venture or any employment relationship among the PARTIES other than that of an independent contractor relationship.
- b) All payments to SERVICE PROVIDER pursuant to this CONTRACT shall be due and payable in the State of Oklahoma, even if services of SERVICE PROVIDER are performed outside the State of Oklahoma.
- c) As SERVICE PROVIDER is an independent contractor, CONTRACTING ENTITY will not withhold any social security tax, Medicare tax, federal unemployment tax, federal income tax, or state income tax from any compensation paid to SERVICE PROVIDER. All such taxes, if due, are the responsibilities of SERVICE PROVIDER and will not be charged to Oklahoma City or CONTRACTING ENTITY.
- d) As an independent contractor, SERVICE PROVIDER agrees it is not entitled to and hereby waives any claims to any welfare or retirement benefits available to qualified

employees of Oklahoma City or CONTRACTING ENTITY. SERVICE PROVIDER acknowledges that as an independent contractor it is not eligible to participate in any welfare or retirement benefit programs provided by Oklahoma City and CONTRACTING ENTITY for its employees.

8. ***Termination and Stop Work***

a) SERVICE PROVIDER agrees to commence work upon execution of this CONTRACT upon the agreed schedule and in accordance with the SCOPE OF SERVICES and shall continue such work and services as stated herein, unless suspended or terminated by either PARTY as provided for herein, until the SOLUTION is completed, tested, and accepted by CONTRACTING ENTITY. This CONTRACT may be terminated, for convenience, for cause, or due to Force Majeure, upon written notice, as provided below:

i) Termination for *Convenience*. This CONTRACT may be terminated for *convenience* upon ninety (90) days prior notification of such termination by CONTRACTING ENTITY to the SERVICE PROVIDER. Upon receipt of a notice of termination for convenience from the CONTRACTING ENTITY, SERVICE PROVIDER must (1) immediately discontinue all services and activities (unless the notice directs otherwise), and (2), upon payment for services fully performed and accepted, SERVICE PROVIDER shall deliver to CONTRACTING ENTITY documents, data, drawings, specifications, reports, calculations, field notes, tracings, plans, models, computer files, estimates, summaries and other information and materials accumulated or created in performing this CONTRACT, whether same are complete or incomplete, unless the notice directs otherwise, and CONTRACTING ENTITY shall have no further liability under this CONTRACT to SERVICE PROVIDER and SERVICE PROVIDER shall have no further obligations to the CONTRACTING ENTITY AS IT RELATES TO ITS PAYMENT OBLIGATIONS UNDER THIS CONTRACT. If CONTRACTING ENTITY issues a notice of termination for *convenience*, the Parties will review all actions of the SERVICE PROVIDER that could be due compensation for SERVICES and DELIVERABLES at the time of notice. It would be CONTRACTING ENTITY's intent to compensate the SERVICE PROVIDER for reasonable, completed, and accepted WORK, DELIVERABLES, and SERVICES

rendered and reasonable expenses incurred with sufficient supporting documentation, during and up to the expiration of the notice period, or as directed by the notice, in accordance with the terms, limits and conditions of this CONTRACT and as further limited by the fixed price amounts set out in this CONTRACT. Upon termination for *convenience* the Performance Bond shall be released.

- ii) Termination for Cause. This CONTRACT may be terminated for *cause* by the CONTRACTING ENTITY upon thirty (30) days prior notice of such termination to the SERVICE PROVIDER, including, but not limited to, a breach of the material terms and conditions of this CONTRACT and/or the warranties contained herein, if the SERVICE PROVIDER has not remedied any material breach or non-conformance within thirty (30) days of notice to do so or other such longer period of time mutually agreed in writing by the PARTIES (with no obligation to either PARTY to agree to such longer period). If this CONTRACT is terminated for *cause*, CONTRACTING ENTITY shall pay for all work and SERVICES performed by SERVICE PROVIDER in accordance with this CONTRACT and approved by CONTRACTING ENTITY up to and including the date of expiration of the termination notice and SERVICE PROVIDER shall not be entitled to payment for any future services or expenses and CONTRACTING ENTITY shall notify SERVICE PROVIDER within ten (10) BUSINESS DAYS of its intention to withhold any payments due to SERVICE PROVIDER for prior services, costs, expenses, or damages incurred by CONTRACTING ENTITY by reason of SERVICE PROVIDER's breach for *cause*. Upon receipt of a for *cause* notice from CONTRACTING ENTITY, SERVICE PROVIDER shall immediately discontinue all work and services affected, except those services and work to attempt to remedy the breach (unless the PARTIES agree in writing otherwise); and
- iii) Force Majeure. Upon an event of *Force Majeure*, either PARTY may, upon immediate and timely written notice suspend their work and services to the other PARTY if (1) notice is given describing the *Force Majeure* event, (2) the notice describes the impact on the PARTY, (3) the notice identifies a proposal to work around the event (assuming the same is available in the circumstances), (4) an

estimate of the time until resumption of pre-event staffing, resources, process, methodology, and schedule, and (5) a proposal to allocate the cost to remedy the *Force Majeure*. Both SERVICE PROVIDER and CONTRACTING ENTITY agree to use all reasonable efforts to minimize the impact of a *Force Majeure* event on itself, the other PARTY, the SYSTEM, and this CONTRACT. In the event the *Force Majeure* makes it impossible or commercially impracticable for a PARTY to continue with its performance under this CONTRACT, the PARTIES agree to negotiate in good faith to amend this CONTRACT to address the impossibility or commercial impracticability.

b) Regardless of the manner of termination for convenience or for cause, SERVICE PROVIDER shall, subject to full payment of all undisputed fees as provided in this CONTRACT, timely deliver to CONTRACTING ENTITY all documents, data, drawings, specifications, reports, calculations, field notes, tracings, plans, models, computer files, estimates, summaries and other information and materials and any and all SERVICE PROVIDER DELIVERABLES accumulated in or during performance of this CONTRACT, or provision of the SOLUTION, whether complete or incomplete, unless CONTRACTING ENTITY directs otherwise. If the termination is for convenience, then CONTRACTING ENTITY agrees to pay any outstanding fees due the SERVICE PROVIDER relating thereto.

c) Should an event of Force Majeure occur, after notice to the other PARTY, neither PARTY shall be liable in damages or have the right to terminate this CONTRACT for delay caused by or default directly caused by a *Force Majeure* event. The rights and remedies of the PARTIES provided in this paragraph are in addition to any other rights and remedies provided by law or under this CONTRACT. Termination herein shall not terminate or suspend any of the required provisions of Indemnity Paragraph or Insurance Paragraph of this CONTRACT.

d) Rights and Remedies. The rights and remedies of CONTRACTING ENTITY provided in this section are in addition to any other rights and remedies provided by law or under the CONTRACT. Further, any other rights and remedies set out in this CONTRACT do not supersede the rights and remedies set out in this section. Termination or Force Majeure herein shall not terminate or suspend any indemnification, insurance, or confidentiality required for to be provided by SERVICE PROVIDER under this CONTRACT.

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9. *Warranties*

- a) SERVICE PROVIDER warrants that all SERVICES performed, and WORK PRODUCTS, DELIVERABLES and DOCUMENTATION provided under this CONTRACT (as the same constitute SERVICE PROVIDER DELIVERABLES) shall be performed and completed consistent with generally prevailing and accepted industry and professional standards. SERVICE PROVIDER shall maintain during this CONTRACT such generally prevailing and accepted industry and professional standards of care, skill, diligence and competency for such SERVICE PROVIDER DELIVERABLES. SERVICE PROVIDER agrees to require all its employees, officers, agents, representatives, contractors, and subcontractors by the terms of this CONTRACT, to provide SERVICE PROVIDER DELIVERABLES at the same generally prevailing and accepted professional and industry standards of care, skill, diligence and competence required of SERVICE PROVIDER.
- b) SERVICE PROVIDER warrants that the SERVICE PROVIDER DELIVERABLES will be completed within the time periods set forth in the SCOPE OF SERVICES and SCOPE OF SERVICES WORK PRODUCTS and shall be developed in accordance with good commercial practice and free from material defects in design and workmanship and shall conform to the specifications contained in this CONTRACT. CONTRACTING ENTITY recognizes that the completion of certain WORK PRODUCTS and DELIVERABLES require CONTRACTING ENTITY's assistance and direction and are conditioned on timely performance and completion of the certain activities required to be performed by CONTRACTING ENTITY.
- c) SERVICE PROVIDER represents that it is aware of CONTRACTING ENTITY's approved business requirements for the SOLUTION as set forth in this CONTRACT and represents that the SOLUTION shall satisfy and meet such requirements as the same are documented, validated, and clarified in the DELIVERABLES to be produced and signed off by the PARTIES in all material respects.
- d) Until final Systems Acceptance, the SOLUTION shall:
 - i) Be free from any known material defects and remain fully functional under normal use and remain in good working order; and
 - ii) Function properly and in conformity with the warranties herein and in accordance with CONTRACTING ENTITY'S requirements as set forth in this CONTRACT; and

- e) SERVICE PROVIDER warrants that each of its employees, representatives, officers, agents, contractors, and subcontractors assigned to perform SERVICE PROVIDER obligations hereunder, shall have the proper skill, training and background so as to be able to perform in a competent and professional manner in accordance with the warranties, and requirements set forth herein and that SERVICE PROVIDER DELIVERABLES shall be performed and developed in accordance with generally prevailing and accepted industry and professional standards of care, skill, diligence and competency.
- f) Through the Final Systems Acceptance period, SERVICE PROVIDER represents and warrants that the SERVICE PROVIDER WORK PRODUCTS provided hereunder will accurately reflect the operation of the SOLUTION.
- g) Each and every WORK PRODUCT, DELIVERABLE, and DOCUMENTATION hereunder shall be provided in a manner consistent with good commercial practice, free from material defects in design and workmanship, shall conform to the specifications and requirements for the same as set forth in this CONTRACT or as otherwise agreed to in writing by CONTRACTING ENTITY and SERVICE PROVIDER, shall meet the functional performance and reliability requirements of CONTRACTING ENTITY set forth in this CONTRACT, and shall comply with the standards established by CONTRACTING ENTITY.
- h) SERVICE PROVIDER shall be responsible for the performance and reliability of the SOLUTION through Final Systems Acceptance. SERVICE PROVIDER warrants the SOLUTION shall be fully and properly operational through Final Systems Acceptance. In the event of any non-conformance by SERVICE PROVIDER of the above warranties, CONTRACTING ENTITY shall notify SERVICE PROVIDER immediately, whereupon the SERVICE PROVIDER will take reasonable steps necessary to resolve any error, deficiency, or other concerns accordingly for a period of thirty (30) days after Final Systems Acceptance.
- i) In addition to other remedies available hereunder or at law to CONTRACTING ENTITY, a remedy for any breach of warranty shall be the re-performance of the service within a reasonable time and at no additional cost to CONTRACTING ENTITY. If SERVICE PROVIDER cannot re-perform the service accordingly, CONTRACTING ENTITY shall

be entitled to file a claim to recover any fees paid to SERVICE PROVIDER for the deficient service by way of a formal claim for the same against SERVICE PROVIDER; provided CONTRACTING ENTITY will not be obligated to pay or compensate for any pending claim for SOLUTION, WORK, DELIVERABLE or SERVICES which are in breach of warranty.,

- j) Excusing Causes. SERVICE PROVIDER shall not be liable for any failure to perform (or any delay in performing) any of its obligations under either this CONTRACT or any SCOPE OF SERVICES if the failure or delay results from any of the following (each, an "Excusing Cause") (i) a failure or delay by the CONTRACTING ENTITY, its affiliates and/or its other contractors in performing any of their obligations having an impact on the critical path for the provision of SERVICES; (ii) a failure or delay by the CONTRACTING ENTITY, its affiliates and/or its other contractors in providing SERVICE PROVIDER with the agreed assistance, inputs or facilities set out in or reasonably required as part of the critical path in connection with a SCOPE OF SERVICES; and (iii) SERVICE PROVIDER acting in accordance with an express written instruction provided by the CONTRACTING ENTITY. The PARTIES will each make all reasonable endeavors to continue to provide the SERVICES to mitigate the impact of Excusing Cause and the CONTRACTING ENTITY shall compensate SERVICE PROVIDER for any additional direct costs and out of pocket expenses incurred by the SERVICE PROVIDER as a result thereof and the PARTIES also agree to extend the critical path of SERVICE PROVIDER delivery timelines were directly affected accordingly.
- k) CONTRACTING ENTITY warrants to SERVICE PROVIDER that any materials it provides to SERVICE PROVIDER and the use of SERVICE PROVIDER of those materials for the provision of the Services will not infringe upon any third-party intellectual property rights and that CONTRACTING ENTITY has obtained the rights to give SERVICE PROVIDER necessary access to such materials for provision of the Services agreed upon in the applicable Scope of Work or PO.
- l) NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, ANY SOFTWARE OR MATERIALS SUPPLIED, PROCURED OR PURCHASED THROUGH SERVICE PROVIDER PURSUANT HERETO FOR THE BENEFIT OF

CONTRACTING ENTITY ARE MADE AVAILABLE TO THE CONTRACTING ENTITY ON AN "AS IS" BASIS AND CONTRACTING ENTITY ACKNOWLEDGES THAT EXCEPT AS SPECIFIED IN THIS CONTRACT, ESTABLISHED BY LAW, OR ANY SCOPE OF SERVICES OR SCOPE OF SERVICES SCHEDULE, TO THE EXTENT PERMITTED BY OKLAHOMA LAW, NEITHER PARTY MAKES ANY OTHER REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVICES, SOFTWARE, MATERIALS OR THIS CONTRACT, AND EACH PARTY EXPLICITLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR ANY IMPLIED WARRANTY OR CONDITION OTHERWISE ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, INCLUDING ANY SOFTWARE OR MATERIALS THAT SERVICE PROVIDER PROCURES FOR OR THAT IS PURCHASED FOR THE BENEFIT OF CONTRACTING ENTITY ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

10. *Indemnification and Limitation of Liability*

This section, Indemnification and Limitation of Liability, shall survive the expiration of this CONTRACT. It is understood that these indemnities and hold harmless provisions are not limited or defined by the insurance required under the insurance provision of this CONTRACT.

- a) SERVICE PROVIDER agrees to defend and/or indemnify The City of Oklahoma City and CONTRACTING ENTITY and hold The City of Oklahoma City and CONTRACTING ENTITY harmless for direct losses, claims, damages, liabilities, expenses (including all reasonable legal fees and expenses), judgments, fines or settlements in connection with any third-party claim or action for any negligence of SERVICE PROVIDER as relates to this CONTRACT, subject to subparagraphs (d) and (f) below. Said reimbursement shall be made to The City of Oklahoma City and CONTRACTING ENTITY within thirty (30) days (or such other time period as the parties may agree in the circumstances).

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- b) SERVICE PROVIDER'S may satisfy SERVICE PROVIDER'S financial responsibilities under this Indemnification and Limitation of Liability paragraph through SERVICE PROVIDER'S insurers, as may be applicable.,.
- c) CONTRACTING ENTITY agrees that it is liable, to the extent provided in the Oklahoma Governmental Tort Claims Act, for any losses, claims, damages, liabilities, expenses (including all reasonable legal fees and expenses), judgments, fines or settlements by any third party in connection with any matter referred to in this CONTRACT, if it shall be finally determined, judicially or otherwise, that such losses, claims, damages or liabilities resulted from the negligence of The City of Oklahoma City and CONTRACTING ENTITY. Said reimbursement shall be made within thirty (30) days of an appropriate finding of facts (or such other time period as the parties may agree), whether by mutual agreement or by a court of law.
- d) The total liability under this CONTRACT by SERVICE PROVIDER's to CONTRACTING ENTITY and/or The City of Oklahoma City and the total liability under this CONTRACT by the CONTRACTING ENTITY and/or The City of Oklahoma City to SERVICE PROVIDER, whether in contract or in negligence, shall not exceed \$1,500,000, except as provided by subparagraphs (e) and (f) below.
- e) Neither PARTY shall be liable for any consequential, indirect, special, punitive, exemplary or incidental damages or any lost profits, revenue, data or data use, whether foreseeable or unforeseeable, arising out of the negligence or acts or omissions of that PARTY, except as provided by subparagraph (f) below. The indirect damage waiver is not just for negligence but for any liability under the contract, subject to certain exceptions.
- f) Provided, notwithstanding the above subparagraphs, each PARTY under this CONTRACT will be liable for any direct, consequential, indirect, special, punitive, exemplary or incidental damages or any lost profits, revenue, data or data use, whether foreseeable or unforeseeable, arising out of its:
- (i) fraud,
 - (ii) willful injury to person or property, or
 - (iii) violation of Oklahoma law (except those violations of Data Privacy or Security Laws by SERVICE PROVIDER which shall still be subject to the Damages Cap as

contained in Section 8(d)), whether willful or negligent, without limitation of liability, to the extent allowed by applicable law.

11. Confidentiality

The PARTIES acknowledge that the SERVICE PROVIDER in the course of providing services to CONTRACTING ENTITY, each PARTY may provide the other with access to valuable information of a confidential and proprietary nature, including, but not limited to, information relating to customers, customer accounts and payment histories, customer social security numbers, customer identification, banking information, security systems, and other confidential data and technology, which are considered confidential and shall belong to the disclosing PARTY. The recipient of such information agrees that during the time period this CONTRACT is in effect, and for a period up to twelve (12) months following, neither PARTY may, without the written consent of the disclosing PARTY, disclose to any person, other than any of its employees or a person to whom disclosure is reasonably necessary or appropriate in connection with this CONTRACT, any of the aforementioned confidential or proprietary information obtained by the recipient. SERVICE PROVIDER acknowledges that CONTRACTING ENTITY is a public agency subject to requests for information and posts its business documents on a public website for access and viewing by the citizens it serves and therefore this CONTRACT, the SCOPE OF SERVICES, Exhibits and other reports, documents, etc. produced during the course of this CONTRACT may be subject to posting and access to the public in the normal course of conducting CONTRACTING ENTITY'S business functions. SERVICE PROVIDER agrees that as a condition of receipt of the final payment under this CONTRACT, SERVICE PROVIDER and from the members of the SERVICE PROVIDER's Project Team will provide Scopes affirming that all copies of the confidential and proprietary information provided by the CONTRACTING ENTITY have been deleted or destroyed.

12. Miscellaneous

- a) **Validity.** The invalidity or unenforceability of any provision of this CONTRACT shall not affect the validity or enforceability of any other provisions of this CONTRACT, which shall remain in full force and effect.
- b) **No Waiver.** The failure or neglect of any PARTY hereto to insist, in any one or more instances, upon the strict performance of any of the terms or conditions of this

CONTRACT, or waiver by any PARTY of strict performance of any of the terms or conditions of this CONTRACT, shall not be construed as a waiver or relinquishment in the future of such term or condition, but such term or condition shall continue in full force and effect.

- c) **No Assignment without Consent.** The PARTIES hereby agree that as this is an agreement for the provision of specialized professional services, therefore SERVICE PROVIDER may not assign this CONTRACT, in whole or in part, without the prior written consent of CONTRACTING ENTITY, which upon a clear showing that the proposed assignee has the expertise, experience, and capability to timely perform this CONTRACT and provide the SOLUTION, consent will not be unreasonably withheld.
- d) **Venue and Applicable Law.** CONTRACTING ENTITY and SERVICE PROVIDER hereby agree that any dispute which may arise between or among them arising out of or in connection with this CONTRACT shall be adjudicated before a court located in Oklahoma City, Oklahoma, and the PARTIES hereby submit to the exclusive personal jurisdiction of the courts of the State of Oklahoma located in Oklahoma City, Oklahoma and of the United States District Court for the Western District of Oklahoma, located in Oklahoma City, Oklahoma, with respect to any action or legal proceeding commenced by any PARTY, and they irrevocably waive any objection they now or hereafter may have respecting the venue of any such action or proceeding brought in such a court or respecting the fact that such court is an inconvenient forum, relating to or arising out of this CONTRACT, and consent to the service of process in any such action or legal proceeding by means of registered or certified mail, return receipt requested, in care of the address set forth in the notice

- provision of this paragraph. This CONTRACT shall be construed and enforced in accordance with the laws of the State of Oklahoma.
- e) **Descriptive Headings.** The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this CONTRACT.
 - f) **Counterparts.** This CONTRACT may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.
 - g) **Amendments.** This CONTRACT may not be modified, amended, altered or supplemented except upon the execution and delivery of a written agreement executed by all of the PARTIES hereto.
 - h) **Entire Contract.** This CONTRACT constitutes the entire agreement between the PARTIES with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the PARTIES with respect to the subject matter hereof.
 - i) **Project Plan.** Both CONTRACTING ENTITY and SERVICE PROVIDER expressly agree that the schedule and time for performance of their respective obligations and tasks (as more particularly contained in this CONTRACT) shall be made a part of this CONTRACT and shall be acted upon accordingly unless a mutually agreed written CHANGE REQUEST is executed or the Project Team completes work in a shorter time. Any failure on the part of either PARTY to timely object to the time of performance shall not waive their right to object at a later time. SERVICE PROVIDER agrees to timely provide SOLUTION and timely complete each MILESTONE and the CONTRACT according to the agreed schedule.
 - j) **No Extra Work.** No claims for extra work of any kind or nature or character shall be recognized or paid by or be binding upon CONTRACTING ENTITY unless such SERVICES are first approved in writing by CONTRACTING ENTITY. Provided however, CONTRACTING ENTITY may contract separately in writing for such ADDITIONAL SERVICES at the agreed RATE CARD pricing in this CONTRACT as it may in its discretion deem necessary by both PARTIES executing a CHANGE REQUEST.
 - k) **Upgrades and Substitutions.** During the performance of the CONTRACT, if any software named in this CONTRACT is upgraded in the software provider's product line

by software performing the same functions, but using improved technology, then the newer product must be substituted upon the direction and approval of CONTRACTING ENTITY'S Executive Sponsor, or designee, and implemented by SERVICE PROVIDER for no increase in costs or fees.

- 1) **Notices.** Any notice, request, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if hand delivered or if sent by email transmission, upon confirmation of receipt, or if sent by registered or certified mail, or upon the sooner of the expiration of three (3) calendar days after deposit in United States Post Office facilities properly addressed with first class postage prepaid or acknowledgment of receipt. All notices and payments to a PARTY will be sent to the addresses set forth below or to such other address or person as such PARTY may designate by notice to each other PARTY hereunder:

To SERVICE PROVIDER:

NEXGEN Asset Management
Attention: Vincent Yee
4010 Lennane Drive
Sacramento CA 95834
Telephone: (916) 779-7300

To CONTRACTING ENTITY:

Oklahoma City Water Utilities Trust
Attention: Chris Browning, General Manager
420 W. Main Street, Ste. 500
Oklahoma City, Oklahoma 73102
Telephone (405) 297-2422
E-mail: chris.browning@okc.gov

and

OCWUT-Support@okc.gov

AND

The City of Oklahoma City
Attention: Schad Meldrum, IT Director
100 N. Walker Avenue, 6th Floor
Oklahoma City, Oklahoma 73102
Telephone: (405) 297-2816
E-mail: schad.meldrum@okc.gov

13. Nondiscrimination

In connection with the performance of SERVICES under this CONTRACT, SERVICE PROVIDER agrees as follows:

a) SERVICE PROVIDER shall not discriminate against any employee or applicant for employment because of age, race, creed, color, sex, national origin, ancestry or disability as defined by the Americans with Disabilities Act of 1990. SERVICE PROVIDER shall take action to ensure that employees or applicants for employment are treated without regard to their age, race, creed, color, national origin, sex, ancestry or disability as defined by the Americans with Disabilities Act of 1990. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination or cancellation, rates of pay or other forms of compensation and selection for training, including apprenticeship. SERVICE PROVIDER shall agree to post, in conspicuous places, available to employees and applicants for employment, notices provided by the City Clerk of the City of Oklahoma City setting forth provisions of § 25-41 of the Oklahoma City Municipal Code, 2020.

b) In the event of SERVICE PROVIDER's noncompliance with this nondiscrimination clause, this CONTRACT may be suspended, or terminated by CONTRACTING ENTITY. CONTRACTING ENTITY may declare SERVICE PROVIDER ineligible for further contracts or agreements until compliance, and/or satisfactory proof of intent to comply shall be made by SERVICE PROVIDER.

c) SERVICE PROVIDER agrees to include this nondiscrimination clause in any subcontracts connected with the performance of this CONTRACT.

14. Anti-collusion

SERVICE PROVIDER warrants that it has not employed or retained any company or person other than a bona fide employee working solely for SERVICE PROVIDER to solicit or secure this CONTRACT. SERVICE PROVIDER further warrants that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for SERVICE PROVIDER, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this CONTRACT.

15. CONTRACTING ENTITY Responsibilities

a) CONTRACTING ENTITY shall only provide such space, equipment and personnel to assist SERVICE PROVIDER as expressly set forth in the CONTRACT (or as may be agreed otherwise by the PARTIES from time to time by CHANGE REQUEST for the purposes of this CONTRACT).

b) All financial obligations under this CONTRACT shall be solely the obligations of CONTRACTING ENTITY.

c) CONTRACTING ENTITY shall only provide such support and services as specifically and expressly set forth in this CONTRACT, or as may be agreed to be supplied by CONTRACTING ENTITY pursuant to any CHANGE REQUEST PROCESS contained herein, or as otherwise agreed by the PARTIES in writing from time to time by CHANGE REQUEST for the purposes of the CONTRACT.

16. Insurance

a) SERVICE PROVIDER or its applicable affiliate providing services shall provide CONTRACTING ENTITY with written evidence from its brokers of insurance (whether by way of an ACORD certificate or other means as the PARTIES shall agree reasonably) and shall maintain such insurance throughout the term of this CONTRACT as required herein:

i) **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:** in amounts as prescribed by the laws of the State of Oklahoma.

ii) **GENERAL LIABILITY INSURANCE:** to protect both PARTIES from claims for property damage and bodily injury including death, or other loss which may arise directly or indirectly from the activities and operations of the SERVICE PROVIDER under the CONTRACT, whether such activities and operations be by the SERVICE PROVIDER, its subcontractor, or by anyone employed by or acting for the benefit of the SERVICE PROVIDER in conjunction with this CONTRACT. The general liability policy must have, at a minimum, the following coverage amounts:

(a) **Property Damage Liability** - Limits shall be carried in the amount of not less than twenty-five thousand dollars (\$25,000) to any one person for any single claim for damage to or destruction of property arising out of a single act, accident, or occurrence.

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(b) **All Other Liability** - In the amount not less than one hundred seventy-five thousand dollars (\$175,000) for claims including accidental death, personal injury, and all other claims to any one person out of a single act, accident, or occurrence.

(c) **General Aggregate Limit**- In an amount not less than one million dollars (\$1,000,000) for any number of claims arising out of a single act, occurrence or accident.

iii) **AUTOMOBILE LIABILITY INSURANCE** – The SERVICE PROVIDER shall maintain automobile insurance coverage in, at a minimum, the amounts required by Oklahoma law as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles and equipment when said vehicles or equipment is utilized to meet the requirements of this CONTRACT.

The insurance policies required herein shall be issued by a company authorized to do business in the State of Oklahoma and acceptable to CONTRACTING ENTITY. Upon request, the CONTRACTING ENTITY shall be furnished with a Certificate of Insurance evidencing all of the above-referenced requirements. All policies shall be in the form of an “occurrence” insurance coverage or policy. If any insurance is written in a “claims made” form, the CONTRACTING ENTITY shall also provide tail coverage that extends a minimum of two years from the expiration of the CONTRACT.

The CONTRACTING ENTITY shall be listed as a Certificate Holder. This CONTRACT requires that CONTRACTING ENTITY, including CONTRACTING ENTITY and The City of Oklahoma City, be named as additional insured on the SERVICE PROVIDER’s insurance policies, except Worker’s Compensation and Employer’s Liability Insurance, to the full limits of the policies and consistent with the same coverages available to the named insured. Any blanket additional insured endorsement which limits coverages to any CONTRACTING ENTITY or The City of Oklahoma City is not compliant with this CONTRACT and shall be considered a breach. CONTRACTING ENTITY must be provided with a Certificate of Insurance or Endorsement evidencing CONTRACTING ENTITY and The City of Oklahoma City’s additional insured status. The policy description

shall state the following: "Additional insured(s) on the listed policies are those required in the contract."

b) Should SERVICE PROVIDER fail to obtain the insurance required by this CONTRACT, SERVICE PROVIDER agrees to accept the following risks and responsibilities:

i) SERVICE PROVIDER shall be responsible for providing CONTRACTING ENTITY actual notice of any change, reduction, suspension, lapse or cancellation of any insurance provided under this CONTRACT, and shall use all reasonable endeavors to do so within at least thirty (30) days prior to such change, reduction, suspension, lapse or cancellation; and

ii) Should any insurance required by this CONTRACT be changed, reduced, suspended or cancelled, or otherwise lapse for any reason during the term of this CONTRACT, then SERVICE PROVIDER shall be liable and responsible for any claim by Oklahoma City or CONTRACTING ENTITY on their own behalf or on behalf of another, for

(a) any loss or damages; and

(b) any cost or expense, including attorney fees, court costs and administrative expenses, and

(c) any other loss, damage, cost or expense which would have been covered or assumed by the insurer had the changed, reduced, suspended, terminated, or lapsed policy been in effect without limitation as to the policy amount.

Provided however, SERVICE PROVIDER's liability for any material changes, reduction, suspension, or cancellation of professional liability insurance under this subparagraph (ii2) shall be limited to one million dollars (\$1,000,000.00).

iii) Should SERVICE PROVIDER subsequently provide the required insurance on the CONTRACTING ENTITY form that provides the required coverage during any lapse, suspension, termination, or other period or cause of insufficiency of coverage, then The City of Oklahoma City and CONTRACTING ENTITY shall not look to SERVICE PROVIDER for coverage under the provisions of subsection (b)(ii2) above.

iv) Failure to provide or reinstate such insurance shall be an event of default subject to termination or suspension of this CONTRACT for cause.

- v) CONTRACTING ENTITY OCWUT reserves the right to withhold payment of any funds otherwise due Contractor SERVICE PROVIDER to pay any claim or potential claim which it reasonably believes would otherwise be payable under the insurance policy *but only if there is a lapse or termination of any required insurance coverage, or if there is a change in coverage and such change results in a material reduction in the dollar value of coverage or materially changes the policy's scope of coverage.*

17. *Dispute Resolution Process*

Should the PARTIES not timely resolve any dispute through the SERVICE ESCALATION identified in this CONTRACT, either PARTY may request that each PARTY appoint an official representative to meet and attempt resolution of any dispute presented in writing to the other PARTY within five (5) Business Days of notice. Resolved disputes will be documented in writing and signed by the appointed official representatives of the PARTIES within two (2) Business Days of resolution. Either PARTY may pursue any other remedy available as provided for in this CONTRACT or by law if the PARTIES fail to satisfactorily resolve the dispute.

18. *Non- Solicitation.*

Neither PARTY shall, during the Term of this CONTRACT or any SCOPE OF SERVICES and for a period of twelve (12) months after the expiration or termination of the relevant SCOPE OF SERVICES, directly or indirectly, recruit or directly offer to employ any person who is an employee of the other PARTY involved with the provision or receipt of the SERVICES under such SCOPE OF SERVICES. Nothing in this clause shall prevent either PARTY from employing or offering to employ a person who has independently responded to a public advertisement that is not specifically targeted at employees of the other PARTY. The PARTIES agree and understand that each PARTY has incurred considerable expense in recruitment, training and retaining its employees.


19. *Term of CONTRACT*

The PARTIES agree that the term of this CONTRACT, and any renewals, are stated in the "Attachment A – Scope of Services".

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK.

IN WITNESS WHEREOF, the PARTIES hereto have executed this CONTRACT as of the day and year first written above.

TO BE COMPLETED BY THE PROPOSER:

 President 12/14/2023
Signature of Individual Title Date

Note: If the individual signing is not the owner or an officer of the business or corporation a letter of authorization is to be included. For instance, if a Salesman or Manager signs this form, a letter of authorization is to be attached. Corporate Seal will be accepted in lieu of an authorization letter if affixed to this document.

Vincent Yee

Printed Name of Individual

NEXGEN Asset Management 4010 Lennane Drive, Sacramento, CA 95834

Company Name and Address [Please Print]

Zip Code

T 916.564.8000 F 916.564.8030

Telephone Number and Fax Number if any

TO BE COMPLETED BY THE NOTARY:

State of * California)

County of * Maricopa)

[*State and County where notarized must be written in.]

SS.

Signed and sworn to before me this 04 day of 12, 2023
~~2020~~

by Vincent Yee
[Printed name of individual who signed above.]

My Commission number: 2356886

My Commission expires: 05/10/2025
[Date/Year]


Signature of Notary Public

SEE ATTACHED FOR
NOTARIAL WORDING
& SEAL

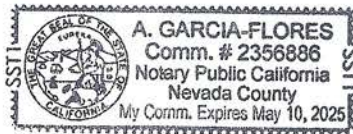
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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Nevada

Subscribed and sworn to (or affirmed) before me on this 04
day of 12, 2023, by Vincent Yee

proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



(Seal)

Signature [Signature]

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APPROVED by the Trustees and signed by the Chairman of the Oklahoma City Water Utilities Trust this 19TH day of DECEMBER, 2023.

ATTEST:

Amy K Simpson
SECRETARY



OKLAHOMA CITY WATER UTILITIES TRUST

Joe Cook
CHAIRMAN

CONCURRED by the Council and signed by the Mayor of The City of Oklahoma City this 2ND day of JANUARY, 2024.

ATTEST:

Amy K Simpson
CITY CLERK



THE CITY OF OKLAHOMA CITY

[Signature]
VICE-MAYOR

REVIEWED for form and legality.

Patricia Mann
ASSISTANT MUNICIPAL COUNSELOR

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