

## **MASTER CONSULTING AGREEMENT**

This Agreement is entered into effective this 13th day of August, 2021 (the "Effective Date"), by and between Crowe LLP, having a place of business at 225 W Wacker Drive, Chicago, Illinois 60606 ("Crowe") and City of Aurora having a place of business at City of Aurora, 44 East Downer Place, Aurora, Illinois 60507 ("Client"). Client wishes to engage Crowe to perform services as set forth herein ("Services"), and Crowe wishes to perform such services pursuant to the terms in this Agreement. Accordingly, in exchange for consideration, the existence and sufficiency of which is acknowledged by both parties, the parties agree as set forth herein.

1. Description of Services and Responsibilities: Crowe is to provide the services and/or deliverables (collectively, "Services") set forth in each attached Schedule A. Client shall determine the scope of Services to be performed and shall be responsible for reviewing and approving the Services. Client at all times retains responsibility and authority for performing management functions, reviewing the Services, implementing the results of Services, and for ensuring that all necessary and proper action is taken in response to the Services rendered by Crowe in connection with this Agreement. Crowe shall not perform management functions, make any management or policy decisions, act or appear to act in any capacity as a Client employee or manager, or be involved in activities such as authorizing, executing, or consummating transactions or otherwise exercising authority on Client's behalf.

2. Fees and Terms of Payment: Crowe shall invoice Client at the completion of Services (for fixed duration Services) or monthly (for open ended time and material Services). Invoices are payable in accordance with the terms of the Illinois Local Government Prompt Payment Act (50 ILCS 505/1, *et. seq.*).

3. Definition of "Confidential Information:" "Confidential Information" is any information, written or oral, which relates to the disclosing party's business, products, processes, or services, including, but not limited to: information related to research, products under development, techniques, accounting, financial information, Client requirements, marketing, selling, and the documentation thereof. Confidential Information shall not include the following: (a) information already known to the receiving party prior to disclosure by the disclosing party; (b) information ascertainable or obtainable from public or published information; (c) information received from a third party not known by the receiving party to be employed by or affiliated with the disclosing party or under an obligation to the disclosing party to keep such information confidential; (d) information which is or becomes known to the public other than through a breach of this Agreement; and (e) public records as defined by the Illinois Freedom of Information Act 5 ILCS 140/1, *et. seq.*

4. Non-Disclosure of Confidential Information: The receiving party acknowledges that a disclosing party's Confidential Information shall remain the property of the disclosing party and the disclosing party shall have free and unlimited access at all times to all materials containing Confidential Information of the disclosing party and shall have the right to claim and take possession of such materials on demand. Except as required in the receiving party's obligations under this Agreement, the receiving party will not, during the term of this Agreement or thereafter, directly or indirectly use, divulge, disseminate, disclose, lecture upon, or publish any Confidential Information of the disclosing party without having first obtained written permission from the disclosing party to do so or as may be required by law or court order. The receiving party will safeguard and maintain secret all Confidential Information of the disclosing party and all documents and things that include or embody Confidential Information of the disclosing party. To the extent permitted by the Illinois Local Records Act (50 ILCS 205/1, *et. seq.*), Except as may be necessary to support Crowe's work, upon termination of this Agreement, for whatever reason, or upon request by the disclosing party, the receiving party will deliver to the disclosing party all notes, drawings, memoranda, correspondence, documents, records, notebooks, and similar repositories of Confidential Information of the disclosing party, including all copies thereof, then in the receiving party's possession or under the receiving party's control, whether prepared by the receiving party or by employees or agents of the receiving party. In order for each party to comply with its obligations under this Agreement, each party shall be responsible for the activities of its officers, employees, agents, and the like who might reasonably be expected to perform or to assist in the performance of the Services.

5. Response to Legal Process: If Crowe is requested by a third party, subpoena or other legal process to produce documents or testimony pertaining to Client or the Professional Services, and Crowe is not named as a party

in the proceeding, Client shall reimburse Crowe for its professional time, plus out-of-pocket expenses incurred in responding to such request.

6. **LIMIT OF LIABILITY:** Except where it is judicially determined that Crowe performed its Services with recklessness or willful misconduct, Crowe's liability will not exceed fees paid by Client to Crowe for the portion of the work giving to liability. A claim for a return of fees paid is the exclusive remedy for any damages. This limit of liability will apply to the full extent allowed by law, regardless of the grounds or nature of any claim asserted, including, without limitation, to claims based on principles of contract, negligence or other tort, fiduciary duty, warranty, indemnity, statute or common law. This limit of liability will also apply after this Agreement.

7. **No Punitive or Consequential Damages:** Except for the obligations under Section 8, neither party shall be liable to the other party for: (a) any special, indirect, consequential, incidental, exemplary, or punitive damages; or (b) any lost profits, lost savings, or lost business opportunity. The limitations of liability contained in this Paragraph 7 are intended to apply to any alleged or actual claim, liability or damages, including without limitation claims, liabilities, or damages based in negligence or other tort, contract, warranty, fiduciary principles, statute or common law. This provision shall survive termination of this Agreement, in whole or in part.

8. **Third Party Indemnification:** Crowe shall indemnify and hold harmless the Client, its elected officials, officers, agents and employees against all costs, fees, expenses, damages and liabilities, including defense costs and legal fees, for any injury to any person, or any death at any time resulting from such injury, or any damage to property, which may arise or which may be alleged to have risen solely out of the recklessness or willful misconduct of Crowe and its personnel. Crowe shall indemnify and hold harmless the Client, its elected officials, officers, agents and employees against all costs, fees, expenses, damages and liabilities, including defense costs and legal fees, for all third party claims or causes of action against the Client arising solely out of Crowe's recklessness or willful misconduct. This indemnification shall apply to the fullest extent permitted by law. This indemnification shall also apply after termination of this agreement.

9. **Termination:** Either party may terminate this Agreement by giving the other party thirty (30) days written notice. Termination of this Agreement shall not relieve the parties from obligations that by their nature would survive termination of this Agreement, including without limitation, Sections 1, 4-8, 10, 12, 14, and 15, of this Agreement.

10. **Consent to Hire Provision:** Client and Crowe acknowledge the importance of retaining personnel, and both parties agree that during the period of this Agreement and for one year after its termination, neither party will solicit for employment or hire personnel of the other party without that party's written consent.

11. **Independent Contractor:** This Agreement does not appoint Crowe as Client's agent or legal representative for any purpose whatsoever. Crowe is and shall remain an independent contractor. Crowe is granted no right or authority under this Agreement to assume or create any obligation or responsibility for or on behalf of Client or to otherwise bind or to use Client's name.

12. **Entire Agreement, Non-Reliance, and Amendments:** This Agreement supersedes all prior negotiations, written and oral, conversations, correspondence, representations, warranties, agreements, proposals, and other communications regarding the subject matter hereof. This Agreement also supersedes all terms and conditions set forth in any purchase orders which may have been previously or may be issued by Client for the Services subsequent to the Effective Date of this Agreement. Each party agrees that in making its decision to enter this Agreement, it has not relied upon representations or other information not expressly contained herein. Written Modifications. This Agreement may not be changed or modified except through a written and properly executed instrument in writing entered into by duly authorized representatives of Client and Crowe.

13. **Severability:** Should any term of this Agreement be found invalid or unenforceable, then to the extent that such term is invalid or unenforceable, it shall not affect the validity or enforceability of any other term of this Agreement.

14. Force Majeure: Neither party shall be responsible for any failure to comply with, or for any delay in performance of the terms of this Agreement including, but not limited to delays in performance or completion of the Services, where such failure or delay is directly or indirectly caused by or resulting from events of force majeure beyond the reasonable control of such party.

15. Notices: Any notice provided for herein shall be sent via certified mail, return receipt requested, to the addresses first written above.

16. No Construction Against Drafter: Client and Crowe agree that neither Client nor Crowe nor their respective counsel shall be considered the drafter of this Agreement. Each party represents to the other that it has carefully read this Agreement, understands the binding effect, and is entering into this Agreement voluntarily.

17. Governing Law: Client agrees that this Agreement shall be governed, interpreted, and construed in accordance with the laws of the State of Illinois, without regard for choice of law principles. Any claim brought hereunder shall be brought in the Circuit Court of Kane County, Illinois.

18. Waiver: No provision of this Agreement shall be deemed waived, unless such waiver shall be in writing and signed by the party against which the waiver is sought to be enforced. The waiver shall not be construed to be a waiver of any succeeding breach of any such provision, a waiver of the provision itself, or a waiver of any other provisions of this Agreement. No delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have under Agreement will operate as a waiver of any breach or default.

19. CROWE GLOBAL NETWORK – Crowe LLP and its subsidiaries are independent members of Crowe Global, a Swiss organization. “Crowe” is the brand used by the Crowe Global network and its member firms, but it is not a worldwide partnership. Crowe Global and each of its members are separate and independent legal entities and do not obligate each other. Crowe LLP and its subsidiaries are not responsible or liable for any acts or omissions of Crowe Global or any other Crowe Global members, and Crowe LLP and its subsidiaries specifically disclaim any and all responsibility or liability for acts or omissions of Crowe Global or any other Crowe Global member. Crowe Global does not render any professional services and does not have an ownership or partnership interest in Crowe LLP or any other member. Crowe Global and its other members are not responsible or liable for any acts or omissions of Crowe LLP and its subsidiaries and specifically disclaim any and all responsibility or liability for acts or omissions of Crowe LLP and its subsidiaries. Visit [www.crowe.com/disclosure](http://www.crowe.com/disclosure) for more information about Crowe LLP, its subsidiaries, and Crowe Global.

20. CLIENT ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT IN ITS ENTIRETY, INCLUDING ALL PRINTED LANGUAGE, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

21. Insurance: Crowe will have the following insurance; commercial general liability, professional liability/errors and omissions with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregated coverage and will name the Client as an additional insured, as appropriate. Crowe shall provide the Client with proof of its business liability insurance policy by providing Client upon execution of this agreement with a certificate of insurance covering the period of Services. All such insurance required of Crowe herein shall require five (5) days advance written notice by Crowe to Client prior to any cancellation, modification, non-renewal or termination thereof, unless comparable coverage is promptly secured. The certificate of insurance should also provide proof of statutory workers compensation insurance coverage.

22. Nothing in this Agreement, Client policies, or any non-disclosure or confidentiality agreement between the parties, if any, will prohibit Crowe from utilizing third-party providers in the ordinary course of Crowe’s business operations, including without limitation, third-party providers such as Microsoft, Rackspace, Crowe subsidiaries (including Crowe Horwath IT Services LLP and Crowe Healthcare Risk Consulting LLC), information security

providers, and other ordinary-course providers. The limitations on Client’s remedies vis-à-vis Crowe in this Agreement will also apply to any subcontractors and any ordinary-course providers.

IN WITNESS HEREOF, CROWE AND CLIENT HAVE EXECUTED THIS AGREEMENT.

**CROWE LLP (“Crowe”)**

By: Robert S. Dobis

Title: Partner

Dated: \_\_\_\_\_

**CITY OF AURORA (“Client”)**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_