

## **WEBSITE DEVELOPMENT SERVICES AND SUPPORT CONTRACT**

This professional services contract, including all exhibits attached hereto and incorporated herein by reference ("Contract"), is entered into as of this \_\_\_\_ day of October 2015 (the "Effective Date"), by and between Revize, LLC ("Revize"), and City of Seguin (the "City"), (each a "Party" and, collectively, the "Parties").

**WHEREAS**, the City desires to engage Revize to provide website redesign and related support for the City's internet presence along with related applications and services and software development services, as described on Attachment B, Revize RFQ Response; and

**WHEREAS**, Revize desires to provide web design and related services to the City; and

**WHEREAS**, all specialized terms in this Contract shall have the meanings established in Attachment B; and

**WHEREAS**, the Parties hereby agree as follows:

### **1. TERM, SERVICES AND PAYMENT**

**1.1 TERM.** The term of this Contract shall be computed in two parts. Part one shall be in effect until delivery of the completed website for Go Live, a period of time that shall be no later than twelve (12) months from the Effective Date. Part two shall begin on the date of Go Live and shall consist of a period of five one year renewals for the Revize Annual Services.

**1.2 WEBSITE DEVELOPMENT SERVICES.** Pursuant to this Contract, Revize shall provide the Website Development Services as shown in Attachment C (Web Services Sales Agreement) necessary to develop a new City website. The timing for the provision of services by Revize is divided into nine stages as set forth in Attachment B. This timing may be modified by written agreement of the Parties.

**1.3 STANDARD TERMS AND CONDITIONS.** The City's Standard Term's and Conditions for High Tech Software, attached to this Contract as Attachment A.

**1.4 PAYMENT AND FEES.** The City agrees to pay Revize the sum of \$56,700.00 for the development and ultimate hosting of a new website. The City shall pay Revize \$14,175.00 before the beginning of the first phase of the contract. Upon the completion of the 4<sup>th</sup> (fourth) and 7<sup>th</sup> (seventh) phases of the contract Revize shall submit invoices each in the amount of \$14,175.00 which shall be paid by the City within 30 days of receipt of the invoice. Revize shall submit an invoice for the final payment of \$14,175.00 when the Website has reached "Go Live." At the time the Website reaches the "Go Live" stage Revize shall submit an invoice for the first annual fee in the amount of \$7,800.00. The initial design kick-off meeting date shall establish the date of annual renewal. Unless terminated as set forth in Section 2.3 below, Revize shall

submit an invoice each year (based on the kick-off meeting date) for a total of five years. The City shall pay each invoice within 30 (thirty) days of receipt.

## **2. OTHER TERMS AND CONDITIONS**

**2.1 COUNTERPARTS.** This Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same Contract.

**2.2 NOTICES.** Notices as required by this Contract shall be delivered in writing to the Parties and the following locations:

**City of Seguin:**

Douglas G. Faseler  
City Manager  
City of Seguin  
205 N River Street  
Seguin, Texas 78155

**REVIZE:**

Thomas Jean  
Account Manager  
1890 Crooks Road  
Troy, MI 48084

**2.3 TERMINATION.** This Contract may be terminated (i) by the City for any reason or no reason upon 30 days prior written notice and (ii) by Revize for any reason or no reason upon 90 days prior written notice (provided that, Revize may not terminate this Contract if a specific deliverable to the City, that is not an on-going service, unless and until such deliverable has been completed), delivered to the addresses identified in this Contract. If the City should terminate the Contract, all work in connection with the performance of this Contract shall be discontinued immediately, unless the City decides that certain work should not terminate and shall continue until finished under this Contract. Upon such termination, Revize shall submit an invoice and the City shall pay for all work actually performed under this Contract, less all payments that have been previously made. If Revize should terminate this Contract, all finished or unfinished work performed in connection with this Contract shall be delivered to the City. Upon such termination, Revize shall submit an invoice and the City shall pay for all work actually completed by Revize under this Contract, less all payments that have been previously made and, with respect to any specific project that is not an ongoing service in nature, less any additional payment the City may have to pay a third party to complete such project that is above the price agreed upon by the Parties.

**2.4 RIGHTS OF REVIEW AND AUDIT.** The City may review any and all of the services performed by Revize under this Contract. The reserves the right to audit all of Revize's billings

related to the performance of this Contract. Revize agrees to retain such records for a minimum of three (3) years following the completion of this Contract.

**2.5 SEVERABILITY.** In case any one or more of the provisions contained in this Contract shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or inability to enforce shall not affect any provision thereof, and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

**2.6 FORCE MAJEURE.** Neither the City nor Revize shall be required to perform any term, condition or covenant in this Contract so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, civil riots, floods and any other cause not reasonably within the control of the City or Revize.

**2.7 TAXES.** As a governmental entity the City is exempt from the payment of sales tax. Revize will not include, within any invoice, an amount for sales tax.

**2.8 ENTIRE CONTRACT.** The Parties agree that this Contract, including any exhibits hereto, constitute the entire Contract between the Parties in connection with the performance of the Web Development Services and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, including any prior written agreement entered into by Revize and the City. To the extent that any provision in this Contract conflicts with Attachment A, the City's Standard Terms and Conditions, Attachment A shall take precedence.

**2.9 INDEMNIFICATION. REVIZE WILL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY AND ITS EMPLOYEES, AGENTS, OFFICERS AND SERVANTS FROM ANY AND ALL LAWSUITS, CLAIMS, DEMANDS AND CAUSES OF ACTION OF ANY KIND ARISING FROM THE NEGLIGENT OR INTENTIONAL ACTS, ERRORS OR OMISSIONS OF REVIZE, ITS OFFICERS, EMPLOYEES OR AGENTS. THIS WILL INCLUDE, BUT NOT BE LIMITED TO, THE AMOUNTS OF JUDGMENTS, PENALTIES, INTEREST, COURT COSTS, REASONABLE LEGAL FEES, AND ALL OTHER EXPENSES INCURRED BY THE CITY ARISING IN FAVOR OF ANY PARTY, INCLUDING THE AMOUNTS OF ANY DAMAGES OR AWARDS RESULTING FROM CLAIMS, DEMANDS AND CAUSES OF ACTION FOR PERSONAL INJURIES, DEATH OR DAMAGES TO PROPERTY.**

**REVIZE AT ITS OWN EXPENSE WILL COMPLETELY AND ENTIRELY HOLD HARMLESS, INDEMNIFY AND DEFEND THE CITY FROM ANY CLAIM OR SUIT BROUGHT AGAINST THE CITY INVOLVING AN ALLEGED VIOLATION OF PATENTS OR COPYRIGHTS RESULTING FROM REVIZE'S OR THE CITY'S USE OF ANY SOFTWARE, DOCUMENTATION AND/OR DATA PROVIDED OR DEVELOPED BY REVIZE IN CONNECTION WITH THE SERVICES AND PRODUCTS DESCRIBED IN THIS CONTRACT. THE CITY WILL PROVIDE REVIZE WITH A WRITTEN NOTICE OF ANY SUCH CLAIM OR SUIT. THE CITY WILL ASSIST REVIZE, IN REASONABLE WAYS, IN THE PREPARATION OF INFORMATION HELPFUL TO REVIZE IN DEFENDING THE CITY AGAINST SUCH**

**A CLAIM OR SUIT. THE CITY RETAINS THE RIGHT TO OFFSET AGAINST ANY AMOUNTS OWED REVIZE ANY SUCH MONIES EXPENDED BY THE CITY IN DEFENDING ITSELF AGAINST SUCH CLAIMS. SHOULD A COURT ORDER BE ISSUED RESTRICTING THE CITY'S USE OF ANY PRODUCT AT THE CITY'S SOLE OPTION, REVIZE WILL, AT ITS SOLE EXPENSE, (1) PURCHASE FOR THE CITY THE RIGHT TO CONTINUE USING THE CONTESTED PRODUCT(S), OR (2) PROVIDE SUBSTITUTE PRODUCTS TO THE CITY WHICH ARE, IN THE CITY'S SOLE OPINION, OF EQUAL OR GREATER QUALITY, OR (3) REFUND ALL MONIES PAID TO REVIZE BY THE CITY FOR THE PRODUCT(S) SUBJECT TO THE COURT ORDER. REVIZE WILL ALSO PAY TO THE CITY ALL LOSSES INCURRED BY THE CITY RELATED TO THE PRODUCT(S) AND FOR ALL REASONABLE EXPENSE RELATED TO THE INSTALLATION AND CONVERSION OF NEW PRODUCTS. THIS OBLIGATION BY REVIZE WILL NOT BE LIMITED BY REASON OF THE SPECIFICATION OF ANY PARTICULAR INSURANCE COVERAGE IN THIS CONTRACT.**

**2.10 CONFIDENTIAL INFORMATION AND NON-DISCLOSURE.** Revize understands that the City is a governmental entity subject to the Texas Public Information Act ("TPIA") and that absent any exception specifically outlined in the TPIA, or other law, all information provided to the City will be considered to be public information that may be disclosed upon proper request under the act. Notwithstanding the City's obligations under the TPIA, Revize and the City acknowledge that unless clearly marked as "Confidential" and subject to interpretation by the Texas Attorney General, this Contract and all written information generated under or pursuant to this Contract may be subject to release under this statute.

All information that is deemed to be "Confidential Information" will be clearly marked by Revize, on each page, or at least in a reasonably prominent place on each document, with the words: "Confidential" or "Proprietary" or other such words clearly indicating that Revize considers such information confidential. Except for a request made under the TPIA, the City shall maintain confidentiality and shall not disclose any information designated by Revize as confidential or proprietary. Revize agrees that with respect to any City information that is confidential under law Revize will use the same degree of care as is used with its own proprietary information, provided, however, that in no event shall Revize employ less than a reasonable degree of care to protect the secrecy of the Confidential Information.

Upon receipt of a request for disclosure under the TPIA, the City must disclose information, including confidential information, pursuant to procedures established by the TPIA; however upon such occasions the City shall give prompt notice to Revize and cooperate with Revize to seek confidential treatment of material that Revize has appropriately marked as confidential as required under the TPIA.

**2.11 NONDISCRIMINATION.** In performing the services required under this Contract, Revize will not discriminate against any person on the basis of race, color, religion, sex, national origin, age, disability or ancestry. Revize agrees not to engage in employment practices which have the purpose or effect of discriminating against employees or prospective employees because

of race, color, sex, religion, national origin, age, disability or ancestry. A breach of this covenant may be regarded as a default by Revize of the Contract.

**2.12 OWNERSHIP OF WORK.** Other than as expressly stated otherwise in a written directive, all right, title, and interest of every kind and nature whatsoever in and to computer programs, software, software enhancements, firmware, inventions, discoveries, improvements, developments, processes, formulae, methods, techniques, trade secrets, products, and research actually made, developed, or secured by Revize, or demonstrably anticipated to be made, developed, or secured by Revize PRIOR to this agreement, will remain the sole and exclusive property of Revize. Work produced for hire under this agreement will be the property of the City unless otherwise expressly stated otherwise.

**2.13 ATTORNEY FEES.** In any proceeding (including suit, arbitration and appeal) to enforce this Contract, the prevailing Party will be entitled to all reasonable attorney fees, costs, and expenses, in addition to any other amounts allowed by law.

SIGNED THIS \_\_\_\_ day of October, 2015.

**REVIZE, LLC**

**CITY OF SEGUIN:**

By: \_\_\_\_\_  
Thomas Jean, Account Manager

By: \_\_\_\_\_  
Douglas G. Faseler, City Manager

## Attachment A

### City of Seguin, Texas Terms and Conditions for High Technology Contracts

#### 1. Standards of Performance

- (a) If required under State or, local or Federal laws, the performance of all services by Revize under this Contract shall be by persons appropriately licensed or registered under those laws.
- (b) In performing all services under this Contract, Revize will use that degree of care and skill ordinarily exercised for similar projects by professional consulting firms who possess special expertise in the types of services involved under this Contract.
- (c) Any provisions in this Contract pertaining to the City's review, approval or acceptance of written materials prepared by Revize or its subconsultants in connection with this Contract will not diminish the Revize's responsibility for the materials.
- (d) Revize will perform all of its services in coordination with the City. Revize will advise the City of data and information Revize needs to perform its services, and Revize will meet with City representatives at mutually convenient times to assemble this data and information.
- (e) In performing all services under this Contract, Revize will comply with all local, state and federal laws and regulations.

#### 2. General Warranties

Revize expressly warrants and represents:

- (a) That all information provided in its proposal is true and correct.
- (b) That all computer software, hardware and related services provided by Revize to the City under this Contract are merchantable and fit for their intended purposes. Revize acknowledges that the intended purpose for the software is as stated and described in the City's request and Revize's proposal.
- (c) That all services performed by or for it under this Contract will be performed on a timely basis, and in a good, professional, and workmanlike manner by persons having specialized skill and knowledge as to the services being performed.
- (d) That the City will have quiet enjoyment of all computer software provided by Revize, and that no change in the organization, structure or ownership of Revize will in any way interfere or diminish the City's use, possession and enjoyment of the software.

(e) That any training to be provided by it as part of Revize's services under this Contract will be sufficient to enable the City's staff to fully use the computer software for the City's intended purposes.

### **3. Warranty for Correction of Defects in Software and Hardware**

(a) Revize warrants that all computer software provided by Revize under this Contract will meet each of the requirements and representations described in this Contract and any Work Order entered into pursuant to this Contract, including without limitation all representations of Revize included in Revize's proposal. If errors or deficiencies are discovered after the date of the formal acceptance of the software by the City, Revize warrants that it will correct the defects without charge to the City, for a period of one (1) year. This correction may take the form of software additions, modifications, or deletions, or the provision of substitute software which meets the system functions as specified in this Contract. All software additions, modifications, and substitution will integrate fully with other software and hardware packages in the system.

### **4. Revize as Independent Contractor**

It is expressly agreed that Revize is an independent contractor, and not an employee, agent, partner or joint venturer with the City. Revize will not pledge or attempt to pledge the credit of the City.

### **5. City's Responsibilities**

(a) The City will provide information to Revize regarding the City's requirements for Revize's services under this Contract. The City will furnish Revize with copies of official City policies and procedures, and other data and information in the City's possession needed by Revize, at the Revize's request.

(b) The City will designate Morgan Ash as the authorized representative to act on the City's behalf with respect to this Contract. The City will examine documents and information submitted by Revize, and promptly render responses to Revize on issues requiring a decision by the City.

### **6. Revize's Records**

(a) All expense records of Revize will be kept on a recognized accounting basis acceptable to the City and will be available to the City at mutually convenient times (applies only if Revize is to be reimbursed for any expenses).

(b) The City, its auditors and federal and state agencies that have monitoring or auditing responsibilities for this Contract will have access to any books, documents, papers and records of Revize which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, copying and transcriptions.

(c) Revize will furnish to the City at such time and in such form as the City may require, financial statements including audited financial statements, records, reports, data and information, as the City may request pertaining to the matters covered by this Contract.

## **7. Ownership of Data and Use of Documents**

(a) All documents prepared by Revize specially for the City in connection with this Contract will become the property of the City whether any project related to this Contract is executed or not.

(b) The City will maintain ownership and control of all data files generated by the City using any software provided by Revize.

(c) Revize will retain all of its records and supporting documentation relating to this Contract, and not delivered to the City, for a period of three (3) years, except that in the event Revize goes out of business during that period, it will turn over to the City all of its records relating to the Project for retention by the City.

## **8. Patents, Copyrights, Proprietary Rights, Insurance and Indemnity**

(a) Revize will hold harmless, indemnify and defend the City and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising from the negligent or intentional acts, errors or omissions of Revize, its officers, employees or agents. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, and all other expenses incurred by the City arising in favor of any party, including the amounts of any damages or awards resulting from claims, demands and causes of action for personal injuries, death or damages to property.

(b) Revize at its own expense will completely and entirely hold harmless, indemnify and defend the City from any claim or suit brought against the City involving an alleged violation of patents or copyrights resulting from Revize's or the City's use of any software, documentation and/or data provided or developed by Revize in connection with the services and products described in this Contract. The City will provide Revize with a written notice of any such claim or suit. The City will assist Revize, in reasonable ways, in the preparation of information helpful to Revize in defending the City against such a claim or suit. The City retains the right to offset against any amounts owed Revize any such monies expended by the City in defending itself against such claims. Should a court order be issued restricting the City's use of any product at the City's sole option, Revize will, at Revize's sole expense, (1) purchase for the City the right to continue using the contested product(s), or (2) provide substitute products to the City which are, in the City's sole opinion, of equal or greater quality, or (3) refund all monies paid to Revize by the City for the product(s) subject to the court order. Revize will also pay to the City all losses incurred by the City related to the product(s) and for all reasonable expense related to the installation and conversion of new products.

(b) Revize will procure and maintain insurance in full force and effect with insurance companies authorized to do business in the State of Texas, covering all operations under this Contract,

whether performed by Revize or its agents, subcontractors or employees. Before commencing the work Revize will furnish to the City a certificate or certificates in a form satisfactory to the City, showing that Revize has complied with this paragraph. All certificates will provide that the policy will not be canceled or materially altered until at least 30 days written notice has been given to the City, and will name the City as an additional insured on all coverage except workers' compensation and professional liability. The kinds and amounts of insurance required are as follows:

Workers' Compensation Insurance: In accordance with the provisions of the Workers' Compensation Act of the State of Texas.

Liability Insurance: (1) Commercial general liability insurance with a combined single limit of \$500,000 for each occurrence and \$500,000 in the aggregate, (2) Motor Vehicle liability insurance in an amount not less than \$250,000 for injuries to any one person, \$500,000 on account of any one accident and in an amount of not less than \$250,000 for property damage.

(c) The stated limits of insurance required by this Paragraph are **minimum only**--they do not limit Revize's indemnity obligation, and it will be Revize's responsibility to determine what limits are adequate. These limits may be met by basic policy limits or any combination of basic limits and umbrella limits. The City's acceptance of certificates of insurance that do not comply with these requirements in any respect does not release Revize from compliance with these requirements.

## **12. No Waiver of Immunity**

Nothing in this Contract is intended as a waiver by the City of any immunity from suit or liability to which it is entitled under Texas law.

## **13. Miscellaneous Provisions**

(a) This Contract is governed by the law of the State of Texas. This Contract is to be performed in Guadalupe County and exclusive venue for any dispute arising under this Contract is in Guadalupe County, Texas.

(b) As to all acts or failures to act by either party to this Contract, any applicable statute of limitations will commence to run and any alleged cause of action will be deemed to have accrued when the party commencing the cause of action knew or should have known of the existence of the subject act or failure to act.

(c) Revize agrees not to use funds received by it under the terms of this Contract for any partisan political activity or to further the election or defeat of any candidate for public office.

(d) Revize hereby affirms that Revize and Revize's firm have not made or agreed to make any valuable gift whether in the form of service, loan, thing, or promise to any person or any of his/her immediate family, having the duty to recommend, the right to vote upon, or any other

direct influence on the selection of consultants to provide professional services to the City within the two years preceding the execution of this Contract. A campaign contribution, as defined by the Texas Election Code or the City of Seguin Code of Ordinances will not be considered as a valuable gift for the purposes of this Contract.

(e) All references in this Contract to any particular gender are for convenience only and will be construed and interpreted to be of the appropriate gender. The term “will” is mandatory in this Contract.

(f) Should any provision in this Contract be found or deemed to be invalid, this Contract will be construed as not containing the provision, and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Contract are declared to be severable.

(g) All services provided pursuant to this Contract are for the exclusive use and benefit of the City and the Contract will not give rise to any rights in third parties.

(h) The City and Revize, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Contract and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Contract. The City and Revize may not assign, sublet or transfer any of its rights, or delegate or subcontract any of its duties under this Contract, in whole or in part, without the written consent of the other. Any work or services subcontracted under this Contract will be specified by separate written Contract and will be subject to each provision of this Contract.

(i) This Contract, including appendices, and referenced attachments or exhibits constitutes the entire and integrated Contract between the City and Revize and supersedes all prior negotiations, representations or agreements either written or oral. Except as to a change in the scope of services, the compensation for which does not exceed \$25,000, this Contract may be amended only by written instrument approved by the City’s governing body and signed by both the City and Revize.

(j) Any exhibits and/or attachments attached to this Contract are incorporated by reference into this Contract as though included verbatim herein.

(k) In the event of any conflict between these Terms and Conditions and the provisions of any exhibit or attachment to this Contract, these Terms and Conditions will govern and control.