

**PROFESSIONAL SERVICES AGREEMENT BETWEEN  
MOUNTAINVIEW SOFTWARE  
AND THE CITY OF ANN ARBOR  
FOR CLAIMSZONE IMPLEMENTATION AND ONLINE CLAIMS MANAGEMENT  
SERVICES**

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 100 North Fifth Avenue, Ann Arbor, Michigan 48104 ("City"), and MountainView Software, a division of Gallagher Bassett Services, Inc. ("Contractor") a Delaware Corporation, with its address at 350 North 400 West, Kaysville, Utah 84037 agree as follows on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

The Contractor agrees to provide services to the City under the following terms and conditions:

**I. DEFINITIONS**

Administering Service Area/Unit means Financial and Administrative Services/Information Technology.

Contract Administrator means Information Technology Director, acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit.

Deliverables means all Plans, Specifications, Reports, Recommendations, and other materials developed for and delivered to City by Contractor under this Agreement

Project means ClaimZone Implementation and Online Claims Management Services.

**II. DURATION**

This Agreement shall become effective on \_\_\_\_\_, 2011, and shall remain in effect until satisfactory completion of the Services specified below unless terminated as provided for in this Agreement.

**III. SERVICES**

- A. The Contractor agrees to provide ClaimZone System Implementation and Online Claims Management Services ("Services") in connection with the Project as described in Exhibit A. The City retains the right to make changes to the quantities of service within the general scope of the Agreement at any time by a written order. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly and mutually agreed upon by the Parties. All such changes shall be in writing and executed under the conditions of the original Agreement.

- B. Quality of Services under this Agreement shall be of the level of quality performed by persons regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. The Contractor shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.
- D. The Contractor may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

#### **IV. COMPENSATION OF CONTRACTOR**

- A. The Contractor shall be paid in the manner set forth in Exhibit B. Payment shall be made monthly, unless another payment term is specified in Exhibit B, following receipt of invoices submitted by the Contractor and approved by the Contract Administrator.
- B. The Contractor will be compensated for Services performed in addition to the Services described in Section III only when the scope of and compensation for those additional Services have received prior written approval of the Contract Administrator.
- C. The Contractor shall keep complete records of work performed (e.g. tasks performed/hours allocated) so that the City may verify invoices submitted by the Contractor. Such records shall be made available to the City upon request, after reasonable notice to Contractor, and submitted in summary form with each invoice.

#### **V. INSURANCE/INDEMNIFICATION**

- A. The Contractor shall procure and maintain during the life of this contract such insurance policies, including those set forth in Exhibit C, as will protect itself and the City from all claims for bodily injuries, death or property damage which may arise under this contract; whether the act(s) or omission(s) giving rise to the claim were made by the Contractor, any subcontractor or anyone employed by them directly or indirectly. In the case of all contracts involving on-site work, the Contractor shall provide to the City, before the commencement of any work under this contract, documentation satisfactory to the City demonstrating it has obtained the policies required by Exhibit C.

- B. Any insurance provider of Contractor shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.
- C. To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses, including reasonable attorney's fees, resulting or alleged to result from any negligent, grossly negligent, reckless and/or intentional wrongful or tortious acts or omissions by the Contractor or its subContractor(s), employees and agents occurring in the performance of or in breach of this Agreement. Notwithstanding the foregoing, the provisions of this Article V(C) shall not apply to the City, its officers, employees or agent's gross negligence, recklessness and/or intentional misconduct.

## **VI. COMPLIANCE REQUIREMENTS**

- A. Nondiscrimination. The Contractor agrees to comply with, and to require its subContractor(s) to comply with, the nondiscrimination provisions of MCL 37.2209. The Contractor further agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner that provides equal employment opportunity.
- B. Living Wage. If the Contractor is a "covered employer" as defined in Chapter 23 of the Ann Arbor City Code, the Contractor agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Contractor agrees to pay those employees providing Services to the City under this Agreement a "living wage," as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if requested by the City and to which reasonable notice was provided to Contractor, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

## **VII. WARRANTIES BY THE CONTRACTOR**

- A. The Contractor warrants that the quality of its Services under this Agreement shall conform to the level of quality performed by persons regularly rendering this type of service.
- B. The Contractor warrants that it has all the skills, experience, and professional licenses necessary to perform the Services specified in this Agreement.
- C. The Contractor warrants that it has available, or will engage, at its own expense, sufficiently trained employees to provide the Services specified in this Agreement.
- D. The Contractor warrants that it is not, and shall not become overdue or in default to the City for any contract, debt or any other obligation to the City, including real and personal property taxes.
- E. The Contractor warrants that its proposal for services was made in good faith, it arrived at the costs of its proposal independently, without consultation, communication or agreement, for the purpose of restricting completion as to any matter relating to such fees with any competitor for these Services; and no attempt has been made or shall be made by the Contractor to induce any other performance or firm to submit or not to submit a proposal for the purpose of restricting competition.

## **VIII. OBLIGATIONS OF THE CITY**

- A. The City agrees to give the Contractor access to the Project area and other City-owned properties as required to perform the necessary Services under this Agreement.
- B. The City shall immediately notify the Contractor, in writing, of any defects in the Services of which the Contract Administrator has actual notice.

## **IX. ASSIGNMENT**

- A. The Contractor shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the City, notwithstanding, such subcontract or assignment shall not be unreasonably withheld by the City. Notwithstanding any consent by the City to any assignment, Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City.

- B. The Contractor shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

## **X. TERMINATION OF AGREEMENT**

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of written notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice.
- B. The City may terminate this Agreement if it decides not to proceed with the Project by written notice pursuant to Article XII. If the Project is terminated for reasons other than the breach of the Agreement by the Contractor, the Contractor shall be compensated for work performed and authorized pursuant to this Agreement prior to the date of termination.
- C. Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, the City shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to the Contractor. The Contractor, however, shall be compensated for work performed and authorized pursuant to this Agreement prior to date of termination. The Contract Administrator shall give the Contractor written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.
- D. The remedies provided in this Agreement will be cumulative, and the assertion by a party of any right or remedy will not preclude the assertion by such party of any other rights or the seeking of any other remedies.

## **XI. REMEDIES**

- A. This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory and/or other legal right, privilege, power, obligation, duty or immunity of the Parties.
- B. Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No

waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.

- C. Whenever a party's consent is required, that consent shall not be unreasonably withheld or delayed.
- D. The following provision(s) shall survive the termination of this Agreement: Article V.

## **XII. NOTICE**

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other.

Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the CONTRACTOR, it shall be addressed and sent to:

MountainView Software  
350 North 400 West  
Kaysville, Utah 84037  
Attn: Russell Lindberg  
Email: Russell@MVSC.com

With copy to:

Attn: General Counsel  
Gallagher Bassett Services, Inc.  
2 Pierce Place, Itasca, IL 60143  
Email: walt\_bay@ajg.com

If Notice is sent to the CITY, it shall be addressed and sent to:

City of Ann Arbor  
301 E. Huron St.  
P.O. Box 8647

Ann Arbor, Michigan 48104-8647  
Attn: IT Director  
Email: DRainey@a2gov.org

### **XIII. CHOICE OF LAW AND FORUM**

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction, excepting the principles of conflicts of law. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

### **XIV. OWNERSHIP OF DOCUMENTS**

Upon completion or termination of this Agreement, all documents (i.e., Deliverables) prepared by or obtained by the Contractor as provided under the terms of this Agreement shall be delivered to and become the property of the City. Original basic survey notes, sketches, charts, drawings, partially completed drawings, computations, quantities and other data shall remain in the possession of the Contractor as instruments of service unless specifically incorporated in a deliverable, but shall be made available, upon request, to the City without restriction or limitation on their use. The City acknowledges that the documents are prepared only for the Project. Prior to completion of the contracted Services the City shall have a recognized proprietary interest in the work product of the Contractor.

Unless otherwise stated in this Agreement, any intellectual property owned by Contractor prior to the effective date of this Agreement (i.e., Preexisting Information) shall remain the exclusive property of Contractor even if such Preexisting Information is embedded or otherwise incorporated in materials or products first produced as a result of this Agreement or used to develop Deliverables. The City's right under this provision shall not apply to any Preexisting Information or any component thereof regardless of form or media.

### **XV. CONFLICTS OF INTEREST OR REPRESENTATION**

Contractor certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. Contractor further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this Agreement.

Contractor agrees to advise the City if Contractor has been or is retained to handle any matter in which its representation is adverse to the City. The City's prospective consent to the Contractor's representation of a client in matters adverse to the City, as identified above, will not

apply in any instance where, as the result of Contractor's representation, the Contractor has obtained sensitive, proprietary or otherwise confidential information of a non-public nature that, if known to another client of the Contractor, could be used in any such other matter by the other client to the material disadvantage of the City. Each matter will be reviewed on a case by case basis.

## **XVI. SEVERABILITY OF PROVISIONS**

Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties and circumstances.

## **XVII. EXTENT OF AGREEMENT**

This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the City and the Contractor with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. This Agreement may be altered, amended or modified only by written amendment signed by the Contractor and the City.

## **XVIII. MISCELANIOUS**

**Non-Solicitation of Employees.** Contractor and City agree that during the term of this Agreement including any extensions or renewals hereof, and for two (2) years after the termination of this Agreement, neither Party will recruit, solicit or entice away, any individual who as of the date of this agreement is, or anytime prior to the expiration of the two-year period was, employed by the other Party or has contracted to render services to the other Party. The Parties agree that these restrictions are necessary to protect the legitimate business interest of each Party and to prevent unauthorized dissemination of confidential or trade secret information. Each Party agrees that damages alone may be difficult to ascertain or may not adequately compensate the other for a violation of this paragraph and that injunctive relief is essential for the protection of the other Party.

The Parties expressly intend that no employment, partnership, or joint ventureship is created by this Agreement.

Each Party represents and warrants that the individual executing this Agreement on its behalf is duly authorized to so execute this Agreement, and this Agreement, when executed and delivered by such Party, shall constitute the valid and binding agreement of such party, enforceable in accordance with its terms.

**FOR CONTRACTOR  
MOUNTAIN VIEW SOFTWARE**

By \_\_\_\_\_

Its: \_\_\_\_\_

**FOR THE CITY OF ANN ARBOR**

By \_\_\_\_\_  
John Hieftje, Mayor

By \_\_\_\_\_  
Jacqueline Beaudry, City Clerk

**Approved as to substance**

By \_\_\_\_\_  
Roger W. Fraser, City Administrator

By \_\_\_\_\_  
Tom Crawford, Financial and Administrative  
Services Administrator and CFO

**Approved as to form and content**

\_\_\_\_\_  
Stephen K. Postema, City Attorney

**EXHIBIT A**  
**SCOPE OF SERVICES**

**General**

The contract documents are complementary and what is called for by any one shall be binding. The intention of the documents is to include all labor and materials, equipment and licensing necessary for the proper execution of the work. Materials or work described in words which so applied have a well-known technical or trade meaning have the meaning of those recognized standards.

In case of a conflict among the contract documents listed below in any requirement(s), the requirement(s) of the document listed first shall prevail over any conflicting requirement(s) of a document listed later.

- (1) Contract; (2) Exhibits, (3) Proposal.

**Specifications**

1. Description of Services; Licensed Use.

MountainView Software will provide two applications (ClaimZone Manager, ClaimZone Reporter) as an ASP (Application Service Provider). Client will access these applications via the Internet using MS Internet Explorer 7+.

- (a) License to use ClaimZone.** Subject to the terms and conditions of this Agreement, effective upon the Effective Date, Contractor grants City a limited and non-transferable license to use the software identified above (the "Licensed Software") to allow the maximum number of authorized users under this Agreement ("Authorized Users") to concurrently access the Licensed Software. Concurrent use of the Licensed Software by a number of individual users greater than the maximum number of Authorized Users is specifically excluded from the scope of the license granted herein and constitutes unauthorized use of the Licensed Software. This license is limited by two factors: 1) Number of concurrent user licenses purchased, and 2) the on-going payment of Annual Fees. This license is non-transferable unless specifically granted in writing by Contractor. Additional user licenses may be acquired and added to this Agreement at the prices listed in Exhibit B for a period of three years. No additional contracts or agreements are required. User licenses may be acquired in any increment. In the event user licenses are acquired during Support Term (see below), any associated Annual Fees will be pro-rated to the end of the current Support Term.

**(b) System Requirements.** The Licensed Software requires Microsoft Internet Explorer version 7.0 or higher. Other browser software will not be supported by Contractor.

**(c) Hardware Service Levels.** Contractor's Application Service Provider Hosting Environment (ASP) will ensure the following:

- Contractor servers will be functioning and available at least 99% of the time, excluding standard holidays and system maintenance time which has been pre-approved by City.
- Contractor agrees to proper web and application server sizing, fail-over, and redundancy to ensure application performance and availability.

**(d) Technical Support and Software Updates.** Contractor will provide to City the support services set forth in this Section for successive 12-month periods commencing with the implementation date of the Licensed Software (each a "Support Term").

Technical Support includes the following:

- a) Telephone and/or email assistance with basic and intended use of the Licensed Software. Basic use is defined as "how to" questions requiring less than 5 minutes to answer. However, during the first ninety (90) business days following "go-live" basic use is defined as "how to" questions requiring less than 10 minutes to answer.
- b) Issues caused by errors or other problems in the Licensed Software.
- c) Hardware and/or software issues related to Contractor's ASP services, and other issues in the control of Contractor or its parent company.

Technical Support *does not include* the following:

- a) Assistance in creating new, or modifying existing reports.
- b) Extended Training on the Licensed Software. "How to" questions requiring more than 5 minutes are considered Extended Training.
- c) Assistance with non-standard usage of the Licensed Software, i.e. uses and/or purposes outside of the intended capabilities.
- d) Hardware and/or software issues not in the control of Contractor. This includes, but is not limited to, City's Internet Service Provider, internal network and internet connections, and internal hardware or software issues.

Support Hours

Support shall be provided by telephone from 7:30 a.m. to 5:00 p.m. Mountain Time. Telephone support is available outside of these hours for the additional fee of \$200 per hour with a \$100 minimum charge per call.

Software Updates:

During each Support Term, Contractor will provide to City all the fixes, updates and

upgrades to the Licensed Software that Contractor makes generally available. All existing functionality, features, and/or modules included in the Licensed Software which are available at the date of implementation, will be updated as part of the “ClaimZone Annual Support and Upgrade Fees”.

First Report of Injury Reports:

During each Support Term, CONTRACTOR will maintain all state First Report of Injury reports. When state reports are changed or replaced, CONTRACTOR will provide City with new, printable versions of the reports.

During the term of this Agreement, Contractor will maintain and properly update all necessary hardware and software used to host the ClaimZone application. City shall have full access to the ClaimZone application, to the ClaimZone Administration application, and to all City data at all times.

City data will be maintained and stored on Contractor’s servers for the life of this Agreement. Contractor will backup and maintain City’s databases on a daily basis. It is acknowledged that the City will not have access to the service, and will therefore not be able to make any changes to the ASP server information or structure.

**(e) ASP Hosting; Access, Storage and Backup**

Contractor will maintain and properly update all necessary hardware and software used to host the ClaimZone application. City will have full access to the ClaimZone application, to the ClaimZone Administration application, and to all City’s data. City will not have access to the server, and will therefore not be able to make any changes to the ASP server information or structure.

City’s data will be maintained and stored on Contractor servers for the life of this Agreement. Contractor will backup and maintain City’s databases on a daily basis.

Contractor guarantees to maintain and update all hardware and associated software used to provide ASP services. Contractor further guarantees acceptable response times from the ASP server, including but not limited: when a user requests to open a claim, the page will be served in sub-second time; or, when a claim search is performed using a claim number as criteria, the result set will be served in sub-second time. (It is acknowledged that once the page is served, Contractor will not have control over the speed of the internet connection. Response times may vary depending on many factors, including City’s connection speed and available bandwidth).

City agrees to maintain and provide to all licensed users an internet connection capable of the high volume of data transferred as part of the normal use of ClaimZone, and a version of Microsoft Internet Explorer® recommended by Contractor (currently version 7.0 or higher).

**(f) ASP Upgrades.** All ASP customers utilize the same base code, and will therefore be updated and/or upgraded simultaneously. Contractor will give City, as an ASP customer, at least seven days' notice for all scheduled upgrades. For issues requiring immediate, or non-scheduled updates, the City will be notified *at least* 24 hours in advance.

Customer-specific features which have been added to ClaimZone will be tested to ensure compatibility with any updates or upgrades. Contractor will be responsible for any changes which may be required to customer-specific features due to updates/upgrades.

2. Timetable for Completion of Services

Once contracting is complete a project plan will be developed with the City.

3. Implementation.

**(a) Scope.** Contractor will provide necessary services for the implementation and configuration of the applications.

- ClaimZone Reporter – Setup and Implementation including a standard General Liability questionnaire
- Development of two additional questionnaires for ClaimZone Reporter
- Three days of implementation services
- Custom development is not required but is offered at a standard rate of \$175/Hr.
- Custom report development is not required but is offered at a standard rate of \$100/Hr.

These services will be provided via phone call, email, WebEx, and during onsite training (if necessary)

**(b) Project Management/Implementation Services.** Contractor will provide Project Management services during the pre-implementation and initial implementation phases. These services are priced separately on Exhibit B. It is acknowledged by the parties that Project Management services are a critical component to the successful and timely implementation of the Software.

4. Training Services.

Contractor will provide a trainer at the City's location to instruct application users in the proper use of the product. This training generally occurs the day before and the day of "go-live".

(a) **Off-site Administrator Training.** System administrator training generally occurs via WebEx internet and phone call prior to on-site training. This training encompasses the setup and configuration of the applications with the City's specific information.

(b) **On-site Training.** During the Implementation Phase, one or more Contractor personnel will travel to City's office to configure the ClaimZone program. Contractor will adapt and apply training to City's business and specific needs. Training shall include at a minimum:  
-setting up banking information,  
-creating the contents of the many drop-down fields present throughout the program,  
- construction of the hierarchal structure of your company within the program.

Additionally this time will also be utilized to properly train City staff on the use of ClaimZone.

It is acknowledged that the City has relied on Contractor's assertion that the number of training days and the number of personnel included in the pricing for these services in Exhibit B is sufficient to perform training and implementation services.

(c) **Training Personnel.** All training and implementation services will be performed by qualified, trained Contractor personnel, who will perform services in a timely, professional manner in accordance with generally accepted industry practices and standards.

## 5. Service Guarantees.

(a) **Hardware Service Levels.** Contractor's Application Service Provider Hosting Environment (ASP) will ensure the following:

i) Contractor servers will be functioning and available at least 99% of the time, excluding standard holidays and system maintenance time which has been pre-approved by City.

ii) Contractor agrees to proper web and application server sizing, fail-over, and redundancy to ensure application performance and availability.

(b) **Service Guarantee, Standard.** Contractor guarantees to provide "best effort" service to City in all areas, including Technical Support, and ASP Services. For the purposes of this Agreement "Best Effort" services includes the following:

i) Prompt response to all City inquiries and issues. Contractor will respond to all inquiries no later than four working hours from the time of the initial contact.

ii) For issues which cannot be resolved immediately, Contractor will continually

attempt to resolve them until a satisfactory resolution can be found. Regular contact will be made between Contractor and City during the resolution process.

(c) **Quality of Service Contact.** During the term of this Agreement, if the City is dissatisfied at any time with the level of service provided, the City agrees to advise Terry Preece, Senior Vice President MVSC ([terry@mvsc.com](mailto:terry@mvsc.com))(801-336-5004) or such other person as Contractor may provide as a contact person through written notice as specified in Article XII of this Agreement. Such contact is in addition to, and at the City's option, to the rights of the City specified in Article X of this Agreement.

8. Other Services:

(a) **Custom Development Projects.** Contractor provides custom development services to enhance Licensed Software to meet the specific needs of each City, including writing data feeds to/from third party software applications. Contractor guarantees to respond to each initial custom development request within two working days. The standard process for custom development is as follows:

- i) City provides Contractor a written description of required enhancement(s) and/or interface(s).
- ii) Contractor will meet with (on-site, or via conference call), City for analysis of custom request.
- iii)) Contractor will provide either a Fixed-Price estimate, or a Time & Expense estimate (whichever method City prefers), for completing the project.
- iv) Contractor will also provide an estimated time frame for completion of the project.
- v) Contractor begins development upon written notification of City.

Additional Terms

The following additional terms of service shall apply to this Agreement.

**Limitation on Warranty and Liability.** Contractor undertakes no liability and shall not be held liable to City for the accuracy of information (data) entered into the Licensed Software. To the fullest extent possible pursuant to applicable law, Contractor disclaims, implied warranties of merchantability and fitness for a particular purpose. Under no circumstances, including, but not limited to, negligence, shall Contractor or its suppliers be liable for any indirect, special, incidental or consequential damages, or loss of data or loss of profits, arising out of the use, or the inability to use, the licensed software, even if Contractor has been advised of the possibility of such damages.

**Intellectual Property Indemnification.** Contractor warrants and guarantees that all software components, programs, and code utilized in the development and/or operation of any and all MountainView Software products has been properly licensed by Contractor. Furthermore, Contractor warrants and guarantees that no copyright laws have been violated in any way during the production, development, and distribution of Contractor products. In the event of an action brought against City claiming that the Licensed Software infringes a United States patent or copyright of a third party, or violates a trade secret of a third party, Contractor shall defend City at Contractor's expense.

Furthermore, in the event a final injunction is obtained against City's use of the Software Product by reason of Infringement, or in Contractor's opinion, City's use of the Software Product is likely to become the subject of Infringement, Contractor may at its option and expense: (a) procure for City the right to continue to use the Software Product as contemplated hereunder, (b) replace the Software Product in question with a non-infringing, functionally equivalent substitute Software Product, or (c) suitably modify the Software Product to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the Software Product.

**Proprietary Rights.** The Licensed Software is protected by United States copyright law and international treaties. Contractor reserves all rights not expressly granted to City in this Agreement and all right, title, and interest (including all copyrights and other intellectual property rights) in the Licensed Software are and shall remain the property of Contractor.

City will not (i) distribute, disclose, market, rent, lease or transfer to any third party any portion of the Licensed Software, (ii) decompile, reverse engineer, disassemble, re-program, modify, install on other machines, translate, sublicense, or create derivative works from the Licensed Software.

Any changes or improvements to the Licensed Software made or suggested by City shall be the property of Contractor and City hereby assigns to Contractor all right, title and interest therein.

ClaimZone® is a registered trademark of Contractor. No license or other right to use this mark is granted hereunder.

**Non-Disclosure Obligations.** City acknowledges that the Licensed Software constitutes and incorporates proprietary information developed or acquired by or licensed to Contractor. City shall not allow the removal or defacement of any proprietary notice placed on the Licensed Software. The placement of copyright notices on these items shall not constitute publication or otherwise impair their confidential nature.

**U.S. Government Restricted Rights.** If City is acquiring the license to the Licensed Software on behalf of any part of the United States government, the following provisions apply. The Licensed Software and any associated documentation are deemed to be "commercial software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Licensed Software and any associated documentation

by the U.S. Government or any of its agencies shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of the Agreement. Manufacturer is MountainView Software Corporation, 350 N. 400 W., Kaysville, Utah 84037.

## **EXHIBIT B COMPENSATION**

The total fee to be paid Contractor for those Services performed pursuant to this Agreement shall not exceed **\$37,175.00** inclusive of all reimbursable expenses (if applicable), in accordance with the terms and conditions herein. The Compensation Schedule below states nature and amount of compensation the Contractor may charge the City:

- A. Fee Schedule. Contractor's Cost Proposal, dated February 23, 2011, is attached as Exhibit B-1 and incorporated herein.
- B. Schedule of Payments. Upon execution of this Agreement, Contractor will send an invoice for fifty percent (50%) of the total amount shown on Exhibit B-1 of this Agreement to City. City agrees to pay said invoice within Thirty (30) days.

Thirty (30) days after the first day of implementation ("go-live"), Contractor will send a new invoice for the remaining fifty percent (50%) of the total amount shown on Exhibit B-1 of this Agreement to City. City agrees to pay said invoice within Thirty (30) days.

Contractor will invoice City for the Annual Support Fee sixty (60) days in advance of each subsequent Support Term. Each support term will begin with the initial implementation of the software. Any additional services or additional licenses will be invoiced by Contractor in accordance with its billing policies then in effect. Terms are net 30 days.

- C. Reimbursable Expenses. Reimbursable Expenses are defined as those expenses necessary and authorized by the City to perform the Services. The total Reimbursable Expenses to be paid to Contractor under this contract shall not exceed \$2,500 . The following expenses are authorized: Travel, Meals and Lodging for no more than 2 Days, included in NTE amount.
- D. Extended Training/non-Technical Support. It is acknowledge that should the City request Extended Training and other non-Technical Support services the City will be invoiced by Contractor at the then-prevailing hourly rates. Time will be billed in 15 minute increments and will be rounded up to the next highest increment for billing purposes. In addition, time spent researching or otherwise attempting to resolve an issue which turns out to be under the control of an entity other than Contractor, will be considered billable and will be invoiced to the City.
- E. Software Update Pricing: Contractor guarantees that no currently existing functionality will be extracted from the base product and priced separately. Contractor reserves the right to charge additional fees for *new, optional* features or modules which may be developed in the future.

**EXHIBIT B-1**

**ClaimZone<sup>®</sup> Licensing and Services**

**Price Estimate**

This ClaimZone Licensing and Services Estimate is provided by MOUNTAINVIEW SOFTWARE, a division of Gallagher Bassett Services, Inc. This Estimate is effective for 90 days from the Effective Date listed below.

<b>Product or Service Provided</b>	<b>Quant.</b>	<b>Unit Price</b>	<b>1<sup>st</sup> Year Costs</b>	<b>On-going Annuals</b>
<b>ClaimZone Manager Licensing</b> <ul style="list-style-type: none"> <li>- Concurrent Full-User Licenses, no limit on named users.</li> <li>2 additional view-only licenses included</li> </ul>	2	\$8,300	\$16,600	
<b>ClaimZone Annual Subscription, Support, Hosting and Upgrades</b>	2	\$2,100	\$4,200	\$4,200
<b>ClaimZone Reporter – Setup and Implementation</b> <ul style="list-style-type: none"> <li>- Provides FROI and OSHA</li> <li>- Web based claim intake/reporting module</li> <li>- No limit on users</li> </ul>	1	\$12,500 (Fee waived for AJG Clients)	\$12,500	\$6/per claim (billed quarterly)
Custom questionnaires	2	\$2,500	\$5,000	
<b>Implementation</b> - Generally implementation occurs in the weeks leading up to the go live date, and includes the configuration, setup and implementation of the program.	3	\$1,295	\$3,885	0
<b>Training Services</b> <ul style="list-style-type: none"> <li>- Initial training is done via WebEx</li> <li>- Final training is done on-site, generally the day before and the day of go live. (travel additional)</li> <li>- Includes all products and users</li> </ul>	2 days	\$1,295	\$2,490 + <b>\$2,500</b> travel	0
<b>Custom Development</b> <ul style="list-style-type: none"> <li>- Complete estimates available after requirements are established.</li> </ul>		\$175/hour		
<b>Custom Reports</b> <b>Additional Form Development (if needed)</b>		\$100/hour	<b>\$2,500</b>	
<b>Total Estimate</b>			<b>Total First Year</b>  <b>\$37,175</b>	<b>On-going Annuals</b>  <b>\$4,200 + quarterly claim costs</b>

## **Important Information Related to this Price Estimate**

### Data Conversions / Data Feeds

MountainView Software defines a Data Conversion as the process of moving claim data (including claim notes, financial transactions, etc.), from a previously used claim system to ClaimZone. Data conversions are typically one-time projects.

MountainView Software defines Data Feeds as the process of *importing* data from outside systems into ClaimZone, or *exporting* data from ClaimZone to an outside system. For example, sending claim data to an insurance carrier would be considered a data feed. Data feeds may be used on a one-time basis, or may be used on a regular basis such as weekly, monthly, or other periodic time frames.

### Custom Development

MountainView Software defines Custom Development as any development (including design, programming, and testing) arising from enhancements and/or new functionality requested by the customer which is not currently part of the ClaimZone application.

### Customization

The price estimate provided includes only those features and modules available as of the date of this estimate. Other features or modules will require custom development. In addition this price estimate does not include specialized features and/or enhancements required licensee or their customers. If such requests are made, development fees will be applied.

### Training and Implementation Services

MountainView Software provides on-site training services for each new customer, and for existing customers if requested. The number of days required for training depends on several factors, including; number of users, specialized features, and other unique requirements. Typically, each user can be thoroughly trained in a one day session. Each person trained is provided with a printed Training Guide.

Implementation Services include learning the customer's business. This will help us know how ClaimZone will best fit into the customer's environment, and how it can best assist users. Also included in these services: entering codes, required fields, and other important set up components in the ClaimZone Admin program.

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

Effective the date of this Agreement, and continuing without interruption during the term of this Agreement, Contractor shall provide certificates of insurance to the City on behalf of itself, and when requested any subContractor(s). The certificates of insurance shall meet the following minimum requirements.

1. Professional Liability Insurance protecting the Contractor and its employees in an amount not less than \$1,000,000.
2. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident  
Bodily Injury by Disease - \$500,000 each employee  
Bodily Injury by Disease - \$500,000 each policy limit

3. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements including, but not limited to: Products and Completed Operations, Explosion, Collapse and Underground Coverage or Pollution. Further, the following minimum limits of liability are required:

\$1,000,000 Each occurrence as respect Bodily Injury Liability or  
Property Damage Liability, or both combined  
\$2,000,000 Per Job General Aggregate  
\$1,000,000 Personal and Advertising Injury

4. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97 or current equivalent. The City of Ann Arbor shall be protected by Contractor getting an endorsement for leased vehicles Contractor uses during on-site visits. There shall be no added exclusions or limiting endorsements. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.
5. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for

aggregate in the amount of \$1,000,000.

- B. Insurance required under V.A.3 and V.A.4 of this contract shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the City.
- C. Documentation must provide and demonstrate an unconditional 30 day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the City, in its sole discretion; (c) that the policy conforms to the requirements specified. An original certificate of insurance may be provided as an initial indication of the required insurance, provided that no later than 21 calendar days after commencement of any work the Contractor supplies a copy of the endorsements required on the policies. Upon request when necessary to address a claim, the Contractor shall provide within 30 days a copy of relevant provisions of the policy(ies) to the City. If any of the above coverages expire by their terms during the term of this contract, the Contractor shall deliver proof of renewal and/or new policies to the Administering Service Area/Unit at least ten days prior to the expiration date.