

visionLive™ Subscription Services Agreement
Vision Internet Providers Incorporated
Account Terms and Conditions

These Terms and Conditions, and any addendum attached hereto, represents the complete agreement and understanding ("Agreement") between Vision Internet Providers Inc. ("Vision Internet"), a California corporation, and CITY OF TEMPE (the "Client"), and supersedes any other written or oral agreement with regard to the Subscription Services provided for herein. Client and Vision Internet are sometimes individually referred to as "Party" and collectively as "Parties."

1. Ongoing Service Provisions

Pursuant to the terms herein, Vision Internet agrees to provide Hosting Services, Upgrade Services, and Support Services (collectively "Subscription Services") as provided below for the Client's website, which utilizes Vision Internet's Vision Content Management System ("VCMS") developed under a prior or concurrent agreement by and between Vision Internet and Client ("Website Development Agreement"). Unless otherwise provided herein, to the extent that the Website Development Agreement and/or any other prior agreement entered into by and between Vision Internet and Client conflicts with this Agreement, then the terms and conditions of the Website Development Agreement shall supersede, replace, and amend any and all conflicting provisions of such prior agreement and/or this Agreement. Vision Internet will provide Subscription Services to the Client in exchange for payment of fees and compliance with the terms and conditions of this Agreement. Subscription Services include the following:

(a) **Hosting Services**

Vision Internet will provide shared website hosting on a Microsoft Windows Server and shared database hosting on a Microsoft SQL Server for one (1) unique VCMS website.

(b) **Upgrade Services**

Vision Internet will provide Upgrade Services which include:

- Enhancements to the backend VCMS functionality.
- Enhancements to the Included Interactive Components that were developed under the Website Development Agreement or other prior agreement entered into by and between Vision Internet and Client.
- New Interactive Components released from time to time according to the visionLive™ Roadmap ("Roadmap").
- Bug fixes to the VCMS code.
- Updates to provide compatibility to future versions of Supported Web Browsers (as defined below) within three months of their release. Compatibility with previous versions of Supported Web Browsers is not guaranteed.

Client understands and agrees that the Supported Web Browsers for the frontend of the website currently are Firefox, Internet Explorer, Chrome, and Safari. Client understands and agrees that Supported Web Browsers for the backend of the website currently are the latest released versions at the time of Completion of Firefox and Internet Explorer. Client understands and agrees that Supported Web Browsers for visionMobile™ currently are iOS Safari, Android Chrome, and Windows Phone 7 Internet Explorer. All of the web browsers listed in this paragraph, and any others added by Vision Internet at its discretion are herein referred to collectively as the "Supported Web Browsers".

To receive the Upgrade Services, a non-interrupted Subscription Services Agreement must be in place from time of website launch and the VCMS code must be unmodified.

Upgrade Services do not include:

- Optional Interactive Components.
- Modules, Programs, or Software Applications.
- Conversion to new platforms.
- Modification of third-party products.
- Updates to provide compatibility to third-party products, except for those included in VCMS.
- Upgrades that require modification or customization to website design.
- System configuration, website content editing and/or formatting, website design, custom data updates, etc.

(c) **Support Services**

Support Services is defined as technical support for the unmodified VCMS. Vision Internet will provide Support Services to a designated Client account manager, system administrator or webmaster. Technical support is generally available by email and telephone from 6:00 AM to 6:00 PM Pacific Time Monday through Friday excluding holidays ("Business Hours"), with emergency support available 24 hours a day, 7 days a week. An emergency is defined as the website being down for more than ten (10) minutes.

(d) **Redesign Services**

At the conclusion of year four of an uninterrupted Subscription Services agreement, the Client will be entitled to a basic graphic redesign of one (1) website. Basic graphic redesign does not include Design Themes. Services shall include:

- Project Management
- Wireframe Development
- Graphic Design Development with one preliminary concept
- Graphic Production

Vision Internet will not develop a sitemap or new content as part of the redesign, but will assist the Client in transferring existing content into the new design

2. Fees

Rate: \$6,600 per year payable to Vision Internet in U.S. funds in advance, which rate shall be increased by four percent (4%) per year, for each year of the Initial Term (defined below), and any and all renewal terms, as provided in Section 3 below. Vision Internet shall invoice Client annually within thirty days of start of service or any renewal term as defined below. Any services not covered in this Agreement will be subject to additional fees and will be considered extra work ("Extra Work"). Notwithstanding Section 7 of the Website Development Agreement, Extra Work will be billed at Vision Internet's prevailing hourly rates, which are currently as follows: HTML Programming, Content Migration, \$85/hr; Graphic Production \$95/hr; Quality Assurance, Testing, Debugging, Technical Support, Webmaster Services, \$105/hr; Consulting, Project Management, Database Design, Dynamic Programming, \$135/hr; Graphic Design, Training, \$125/hr. Client shall be responsible for any or all additional fees including, without limitation: software, applications, online promotion, marketing, copy writing, redesign, change orders, mailings, fees to any third party vendors if applicable, and websites exceeding 10GB of storage. Websites exceeding 10GB of storage shall be subject to a

monthly fee of \$50 per 5GB increment. Maintenance work is considered Extra Work as defined herein. Calls outside of Business Hours not deemed an emergency as defined above will be subject to a minimum fee of \$135.

3. Term

The Subscription Services will begin when the website is hosted on the production server and remain in effect for a period of three (3) years thereafter (the "Initial Term"). With respect to the Initial Term, unless one party has given written notice to the other party of its intent not to renew this Agreement at least thirty (30) days prior to expiration of the Initial Term, this Agreement will continue in effect on a year-to-year basis thereafter until one party gives written notice to the other of its intent not to renew this Agreement at least thirty (30) days prior to the expiration of any renewal term. If the term of this Agreement is extended or renewed in accordance with the foregoing, all of the terms and conditions of this Agreement shall continue, unmodified, in full force and effect, until the end of the last applicable renewal or extension term, except that all rates, fees, charges, and compensation payable to Vision Internet hereunder shall be increased by four percent (4%) per year, for each annual renewal term extending the term hereof. Upon termination of the hosting of Client's website by Vision Internet, Vision Internet will transfer the website to a successor hosting service at the then current prevailing rate.

4. Subscription Services Website Usage

(a) The Client shall use the Subscription Services in strict accordance with, but not limited to, all local, state, and federal laws. The Client shall not use the Subscription Services for any unlawful or destructive purpose including, but not limited to, copyright and/or trademark infringement. The Client hereby represents and warrants that any text, data, graphics, or any other material displayed or published by the Client on its Website is, and shall continue to be, throughout the term of this Agreement, free from violation of or infringement upon copyright, trademark, service mark, patent, trade secret, statutory, common law or proprietary or intellectual property rights of others, and is free from obscene or libelous material.

(b) The Client represents and warrants that it has or has obtained all rights necessary to display all the images, data, information or other items being displayed at the Client's Website. The Client expressly authorizes Vision Internet to display those images, data, information or other items.

(c) The Client shall not misuse any of Vision Internet's resources or cause any disruption to Vision Internet's business ("Misuse"). Examples of Misuse include, but are not limited to, the display of pornography or linking to pornographic material, the sending of chain letters, advertisements, solicitations, or mass mailings to individuals who have not agreed to be contacted in this manner (including, but not limited to, what is commonly referred to as "Spam").

(d) The Client shall not use any process, program or tool via Vision Internet for gaining unauthorized access to the accounts of other parties, including but not limited to, other Vision Internet clients, customers or account holders or other Vision Internet systems. The Client shall not use Subscription Services to make unauthorized attempts to access the systems and networks of others. Client shall not use Vision Internet's services as a door or signpost to another server.

(e) The Client shall not use Subscription Services in a manner in which system or network resources are denied to other Vision Internet clients, customers or account holders. This includes, but is not limited, to excessive memory usage and programs that consume excessive CPU resources.

(f) The Client will have password access to the VCMS through the Subscription Services.

The Client agrees to be responsible for keeping all passwords secure and will immediately notify Vision Internet if a password is lost, stolen or compromised in any way. The Client shall be responsible for all use of Subscription Services accessed through the Client's passwords. The Client's passwords are not transferable to any third party and are subject to any limits established by Vision Internet.

5. Disclaimers and Acknowledgments

(a) The Internet

(i) The Client acknowledges that, when using the Internet, the Client is using a completely different physical network than the Vision Internet communications network and different content than available on Vision Internet. The reliability, availability and performance of resources accessed through the Internet are beyond Vision Internet's control and are not in any way warranted or supported by Vision Internet. The Client acknowledges that safeguards relative to copyright, ownership, decency, reliability and integrity of content may be entirely lacking with respect to the Internet and content accessible through it. Vision Internet makes no warranty that any systems accessed will be free of computer viruses. The Client is responsible for making backup copies of its files. The Client assumes all risk and liability of its use of the Internet.

(ii) The Client specifically acknowledges that Vision Internet provides access to other systems not controlled by Vision Internet including, but not limited to, discussion groups, websites and databases, that may contain pictures and language intended for adult audiences. The Client further understands that Vision Internet is not responsible for any damages that may result from exposure to such material and the Client shall hold Vision Internet harmless from any damages that may result.

(iii) To the extent provided herein, Vision Internet agrees to the limitation of liability provision under Section 11 of the Website Development Agreement. Vision Internet does not warrant (a) any connection to, transmission over, nor results or use of, any network connection or facilities provided under this Agreement or (b) any third-party applications and software obtained by, for, or on behalf of Client. **VISION INTERNET MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS OF THE SUBSCRIPTION SERVICES FOR ANY PARTICULAR PURPOSE WHATSOEVER.** Vision Internet assumes no responsibility for any damages suffered by the Client, including, but not limited to, server down time outside of scheduled and routine maintenance, loss of business, mis-deliveries, delays, non-deliveries, access speed, service interruptions of any kind, or to third-party applications and software used by Client. Contractor shall not be responsible for any consequential, indirect, special, incidental or punitive damages arising out of or related to this Agreement.

(iv) The Client acknowledges that the information available through the Internet may not be accurate. Vision Internet has no ability or authority over the material. In addition, Vision Internet has no liability for the quality, accuracy, or validity of the data/information delivered over the Internet. Use of information gathered through the use of Vision Internet services is at the risk of the Client.

(b) Domain Name and Secure Digital Certificate

If agreed to under this Agreement, Vision Internet will apply for a custom domain name of the Client's choosing. Vision Internet cannot guarantee the availability of any particular name. Client is responsible for all fees charged by the registrar (i.e. Verisign or Dotster) including setup and renewal fees. Client shall be responsible for all licensing fees, if any, including but not limited to secure digital certificate renewal fees. Vision Internet shall not be responsible for maintaining or renewing domain names, digital

certificates, or any other third party registrations.

(c) **Weekly Backup**

At a minimum, Vision Internet will provide Client with weekly updates to the backup for \$105/month.

6. Indemnification

To the extent provided herein, Vision Internet agrees to the indemnity provision in RFP 10-121 of the Website Development Agreement. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, officer, officials, and employees from and against all claims, damages, losses and expenses (including but not limited to attorney's fees, court costs, and the costs of appellate proceedings), arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work, services, or professional services of the Contractor, its agents, employees, or any other person (not the City) for whose acts, errors, mistakes, omissions, work, services, or professional services the Contractor may be legally liable in the performance of this contract. Contractor's duty to hold harmless and indemnify the City, its agents, officers, officials and employees shall arise in connection with any claim for damage, loss or expenses that is attributable to bodily injury, sickness disease, death, or injury to, impairment, or destruction of any person or property, including loss of use resulting from, caused by any acts, errors, mistakes, omissions, work, services, or professional services in the performance of this contract by Contractor or any employee of the Contractor or any other person (not the City) for whose acts, errors, mistakes, omissions, work, or services the Contractor may be legally liable. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph.

7. Defaults

The occurrence of any one or more of the following shall constitute an Event of Default under this Agreement:

- (a) Any Misuse of Vision Internet resources that disrupts Vision Internet's business.
- (b) The Client's breach of any representation, warranty, term or provision of this Agreement.

8. Remedies

(a) If Vision Internet discovers that the Client is displaying content that is in violation of any of the foregoing provisions, Vision Internet may discontinue or suspend access to the Client's Website without prior notice, until the violating item(s) have been resolved. However, the Client shall remain liable for all payments due under this Agreement as if access had not been interrupted;

(b) If an Event of Default occurs, Vision Internet may immediately discontinue or suspend access to the Client's Website without prior notice and may immediately terminate this Agreement. However, if access is only suspended, the Client shall remain liable for all payments due under this Agreement as if access had not been interrupted; and/or

(c) If an Event of Default occurs and remains uncured for at least ten (10) days after Vision Internet's delivery of written or email notice to Client, Vision Internet may immediately terminate Subscription Services and this Agreement.

9. Work for Hire and Ownership of Deliverables

To the extent provided herein, Vision Internet agrees to the Work for Hire and Ownership of Deliverables provision under Section 5 of the Website Development Agreement. Vision Internet hereby agrees and covenants that all the results and proceeds of Vision Internet's work and/or services specified herein ("Work Product"), for Vision Internet and all of its agents, employees, officers and subcontractors, shall be owned by the Client, including the copyright thereto, as work for hire. In the event, for any reason such results and proceeds are not deemed work for hire, Vision Internet agrees and covenants that it shall be deemed to have assigned to Client all of its right, title and interests in such results, proceeds and content to the Client, without limitation. Vision Internet agrees to indemnify and hold Client harmless from and against all claims, liability, losses, damages and expenses, including reasonable legal fees and costs, arising from or due to any actual trademark, patent or copyright infringement and any litigation based thereon, with respect to any work, services and/or materials contemplated in this Contract. Vision Internet agrees to pay to defend any and all such actions brought against the Client. Vision Internet's obligations hereunder shall survive acceptance by the Client of all covenants herein. Notwithstanding anything to the contrary in any of the contract documents, Work Product shall not include the Vision Internet Content Management Tool (also known as the Vision Content Management Tool, VCMT, VCMS and the Vision Content Management System), dynamic components, interactive components (collectively, the "Vision Internet's Proprietary Tools"), and other materials or components reasonably designated by Vision Internet, or any portion thereof, which: (a) have been previously made available to the public or which is made available to third parties by Client hereafter (except through ordinary interface with or use of Client's website by members of the public), and/or (b) which was already in Vision Internet's possession prior to services performed under this Agreement ("Vision Internet's Proprietary Information"). Vision Internet shall retain all right, title, and interest in all of Vision Internet's Proprietary Tools and Vision Internet's Proprietary Information; however, Vision Internet hereby grants to Client a perpetual, non-exclusive, royalty free license to use for its own use any of Vision Internet's Proprietary Tools and Vision Internet's Proprietary Information that is embedded in the Work Product.

10. Other

(a) The headings in this Agreement are intended solely for convenience and shall be given no effect in the construction or interpretation of this Agreement.

(b) The Client agrees that a failure to exercise or delay in exercising any right, power or privilege on the part of Vision Internet will not operate as a waiver or estoppel thereof.

(c) Neither the course of conduct between parties nor any trade practice shall act to modify the provisions of this Agreement except as expressly stated herein.

(d) This Agreement shall be governed by and construed in accordance with the laws of the United States of America, and the State of Arizona. Any cause of action of the Client with respect to the services provided hereunder must be instituted within two years after the claim or cause of action has arisen or be forever barred. Further, jurisdiction and venue for any cause of action or claim with respect to the services provided hereunder shall be exclusively in the County of Maricopa.

(e) Intentionally omitted.

(f) Intentionally omitted.

(g) With the intent to be legally bound, each of the undersigned hereby covenants and acknowledges that he, she or it (i) has read each of the terms set forth herein, (ii) has the authority to execute this Agreement for such person or entity, and (iii) expressly consents and agrees that the person or entity upon behalf of which the undersigned is acting shall be bound by all terms and conditions contained herein.

(h) The parties have each been advised to seek independent legal counsel in entering into this Agreement and the transactions described herein. In the event a party chooses not to seek independent legal counsel, that party does so freely and knowingly and waives any such rights to counsel. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party.

(i) Any delay in the performance by either Party hereto of its obligations hereunder shall be excused when such delay in performance is due to any cause or event of any nature whatsoever beyond the reasonable control of such Party, including, without limitation, any act of God; any fire, flood, or weather condition; any computer virus, worm, denial of service attack; any earthquake; any act of a public enemy, war, insurrection, riot, explosion or strike; provided, that written notice thereof must be given by such Party to the other Party within ten (10) days after occurrence of such cause or event.

(j) This Agreement, including any attached addendum, is the entire, complete, final and exclusive expression of the parties with respect to the Subscription Services and supersedes all other agreements or understandings, whether oral or written, or entered into between Client and Vision Internet prior to the execution of this Agreement related thereto. No amendment to this Agreement shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

(k) It is understood and agreed that if any interpretation is to be made of this Agreement, the same shall not be construed for or against any of the Parties. If any provision of this Agreement is determined to be invalid, all other provisions shall remain in full force and effect.

(l) Intentionally omitted.

(m) All notices under this Agreement shall be in writing and effective on the date of delivery if delivered by personal service, Federal Express, or e-mail; or effective three (3) days after deposit in first class U.S. mail, postage prepaid, to each party as follows:

(1) Client: City of Tempe, AZ
Address: 120 E 5th St, Second Floor - IT
Tempe, Arizona 85281
Attn: Lisa Ernst
E-mail: lisa_ernst@tempe.gov

CC City: City of Tempe
660 S. Mill Ave, Suite 204
Tempe, Arizona 85281
Attn: Sylvia Cardenas
E-mail: sylvia_cardenas@tempe.gov

(2) Vision Internet:

2530 Wilshire Boulevard, 2nd Floor
Santa Monica, California 90403
Attn: Steven Chapin
Cc: Rose De Vries
e-mail: contracts@visioninternet.com

(n) This Agreement is governed by the laws of the State of Arizona. In the event of a dispute, either party may call for escalation by written notice to the other. Within five (5) business days of such notice, each party will designate a representative with authority to make commitments that would resolve the dispute. The parties' representatives will meet in person or by telephone ("Dispute Conference") within ten (10) business days of their designation and will negotiate in good faith to resolve the dispute. Except to the extent necessary to prevent irreparable harm or to preserve rights or remedies, neither party will initiate litigation until ten (10) business days after a failed attempt at mediation as set forth below. If the parties cannot themselves resolve a dispute arising out of or related to this Agreement, they will attempt to resolve such dispute through non-binding mediation in Maricopa County, Arizona, with the parties sharing equally the costs of mediation. The parties shall select an independent mediator experienced in commercial information systems contract disputes, and each shall designate a representative(s) to meet with the mediator in good faith in an effort to resolve the dispute. The specific format for the mediation shall be left to the discretion of the mediator and the designated party representative and may include the preparation of agreed-upon statements of fact or written statements of position furnished to the other party. Except to the extent necessary to prevent irreparable harm or to preserve rights or remedies, neither party will initiate litigation until at least ten (10) days after the first mediation conference, unless the other party has materially breached its obligations set forth in the preceding sentence. Except where clearly prevented by the issue in dispute, both parties shall continue performing their obligations under this Agreement while the dispute is being resolved under this Section, unless and until the dispute is resolved or until this Agreement is terminated as provided herein. Except for disputes relating to the payment of Vision Internet fees as set forth in Section 4, the time frame for a party to cure any breach of the terms of this Agreement shall not be tolled by the pendency of any dispute resolution procedures. Notwithstanding anything contained in this Agreement to the contrary, the parties shall be entitled to seek injunctive or other equitable relief whenever the facts or circumstances would permit a party to seek such equitable relief in a court of competent jurisdiction.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth next to their signatures below.

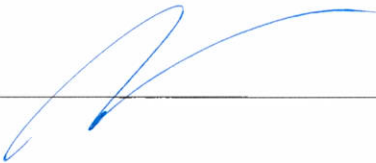
CITY OF TEMPE, a municipal corporation

DATE: 3/19/14 By: 

Print Name Michael Greene, Central Services Administrator

DATE: 3/19/14 By: 

VISION INTERNET PROVIDERS, INC.

DATE: 3/21/14 By: 
STEVEN CHAPIN, President

Addendum 1 to Subscription Services Agreement

Client and Vision Internet may have already entered into one or more separate agreements which specify (1) the inclusion of Included and/or Optional Interactive Components and Features and/or (2) browser compatibility, and/or (3) hosting provisions. To the extent that any prior agreement entered into by and between Vision Internet and Client conflicts with this the Included Interactive Components and Features table below, then the below table shall supersede, replace, and amend any and all conflicting provisions of such prior agreement.

1. Included Interactive Components and Features

The following are the initial Included Interactive Components and Features provided in Client's project, subject to upgrades and revisions based on Vision Internet's then current Included Interactive Components listed on the Roadmap. Additional options may be available and can be added for an additional fee:

SITE ADMINISTRATION AND SECURITY

- | | |
|---|---|
| • Audit Trail Log | • Flexible Site Variable Settings |
| • Backend Content Title Search | • Image Library |
| • Backend Dashboard | • Page Template Library |
| • Broken Link Reporter | • Personal Toolbar |
| • Content Review and Publishing | • Role-Based Security |
| • Component Manager | • Scheduled Content Review |
| • Content Scheduling | • SiteMaster™ Template Builder |
| • Context Sensitive Online Help | • Submission Validation (reCAPTCHA) |
| • Departmental Page Restrictions | • Recycle Bin |
| • Document Central | • Updated and Expired Content Reporting |
| • Drag and Drop Multiple File and Image Uploading | • Web Traffic Statistics |
| • Email Address Masking | • Widget-based Layout Options |
| • Enhanced User Interface | • Workspace |

CONTENT EDITING

- | | |
|---------------------------|-------------------|
| • Advanced WYSIWYG Editor | • Table Wizard |
| • Search and Replace | • Undo/Redo |
| • Spell Checker | • User Commenting |
| • Style Gallery | • Version Control |

ADVANCED NAVIGATION MANAGEMENT

- | | |
|---------------------------------------|----------------------------|
| • Automatic Breadcrumbs | • Navigation Control |
| • Connected Pages | • Navigation Redirect |
| • Content Categories | • Page Linking |
| • Dynamic Drop Down Menus | • Quick Links |
| • Error 404 (Page Not Found) Handling | • Single-Source Publishing |
| • External Link Splash Page | • Site Search (Google CSE) |

- Friendly URL Redirect
- Sitemap Generator

USER EXPERIENCE AND INTERACTIVITY

- Business Directory
- Community Spotlight
- Dynamic Calendar System
- Dynamic Homepage
- Facilities Directory
- Facilities Reservations
- Feedback Form
- Form Builder
- Frequently Asked Questions
- In-page Content Editing
- Job Posts
- News
- RFP Posts
- Rotating Homepage Banners
- Service Directory
- Staff Directory
- Sticky News
- Weather Update

DEPARTMENT MANAGEMENT

- Department-Level Administration
- Department-Level Navigation
- Department-Level Sitemap

OUTREACH, MEDIA, AND SOCIAL NETWORKING

- Audio and Video Embedding
- Bookmark and Share
- eNotification
- Emergency Alert (site wide)
- Facebook FeedReader™
- Forward to a Friend
- govTrack CRM™
- OneClick Social Networking™
- Photo Gallery & Slideshow
- RSS FeedReader™
- Twitter FeedReader™

ACCESSIBILITY

- Automatic Alt-Tags
- Dynamic Font Resizing
- Dynamic Reader Download Links
- Google Translation Integration
- Printer Friendly Pages
- Table Accessibility Tools

2. Customizations

The following are customizations provided in Client's project:

- None.