

SECTION 3. That the contract for such services be awarded to Benevate, Inc., dba Neighborly Software, and that the proper officials of the City execute the contract in the name of and on behalf of said City.

ADOPTED this the _____ day of _____, 2025.

CITY COUNCIL

APPROVED this the _____ day of _____, 2025.

MAYOR

ADOPTED & APPROVED this the _____ day of _____, 2025.

Development Specialist	Email: salbright@florencal.org
Alternate Contact Name & Title: Lyndsey Borden, Assistant Director of Community Development	Phone: 256.760.6453 Email: lborden@florencal.org

PURCHASE SUMMARY

Annual Fees	Unit Price	Quantity*	Annual Total
User Subscription Fee for One Year	\$2,520.00	5	\$12,600.00
One-Time Fees	Unit Price	Quantity	One-Time Total
Implementation of Program(s)	\$4,000.00	1	\$0.00
Subtotals			
Annual Fees Subtotal:			\$12,600.00
One-Time Fees Subtotal:			\$0.00
TOTAL:			\$12,600.00

*A minimum of three (3) users is required to maintain a portal.

2. Lead Alleviation
3. ESG
4. CDBG – Public Services
5. Public Infrastructure

Standard Features:

- Dedicated portal for all CORE programs
- Hosted Software to Administer Program(s)
- Dedicated Client Success Manager
- Technical Support (Monday – Friday: 8:00 a.m. to 8:00 p.m. EST)
- Supported on all modern web browsers
- Data Storage, Backup, and Recovery
- Upgrades and Enhancements

Security Features:

- Hosted in the cloud by Microsoft Azure
- All data stored in U.S. FedRAMP certified Microsoft datacenters
- Geo-replication across multiple U.S. data centers for business continuity
- SQL Database encryption protects and encrypts all data “at rest”

Implementation Services:

- System Configuration
- Program Design
- Administrator Training

- a. "Authorized User" or "User" means those individuals designated by the Customer to use one of the purchased subscriptions to access the Portal, using his or her login credentials (email address and password), which may only be used by that single, named user.
- b. "Confidential Information" means all information, in any form, that either Party discloses ("Discloser") to the other ("Recipient") relating to the business of Discloser, whether furnished before or after the Effective Date of this Agreement, including, without limitation, information related to pricing, products, services, security, and any implementing regulations or guidelines, proprietary business practices, policies, finances, procedures, sales, costs, liabilities, markets, strategies, concepts, methods or employees, that is not generally ascertainable from public or published information or sources, and all analyses, compilations, data, studies, notes, memoranda or other documents prepared by Discloser based on such Confidential Information.
- c. "Customer Data" means all non-public information or data that is inputted into the Customer's Portal by the Customer or the Customer's end users.
- d. "Documentation" means the applicable training materials, user guides, publicly available marketing and/or proposal materials, and other similar information, or other documents disseminated under or governed by confidentiality obligations which pertain to the Software or Services provided by Company, which may be updated by Company at any time without notice to include information about new features and incorporate feedback to help Company's customers understand how to use the Software and Services. Documentation accessible to Authorized Users through the Portal, requiring a Username and Password, is considered Company's Confidential Information.
- e. "Effective Date" means the date stated above. If the date is left blank, then the Effective Date shall be the last signature date on the Signature Page.
- f. "Professional Services" refers to non-standard, fee-based services that are not included as part of the Company's standard Software or Services offering. These services are available upon request and are defined in a mutually agreed-upon Statement of Work or Addendum. Examples of Professional Services include, but are not limited to:
- Customized training sessions tailored to the Customer's unique workflows or user groups
 - Professional development services
 - Power BI consulting or report development
 - Data migration assistance beyond standard import templates
 - Custom integrations or configurations

Company will use commercially reasonable efforts to ensure that (i) new features or enhancements to existing features are synchronized with the previous version, and (ii) updates will not degrade the performance, functionality, or operation of the Services. General maintenance of the system is completed on a regular basis to ensure optimal performance of the Services.

- d. **Service Levels.** Company will use commercially reasonable efforts to maintain the availability of the Services at a level of 99.5%. For further specifications regarding the Service Levels, refer to Service Level Terms attached as Exhibit "A" to this Agreement.
- e. **Technical Support.** With the exclusion of Federal Holidays, Technical Support is available from 8:00 a.m. to 8:00 p.m. EST, Monday - Friday. ("Support Hours"). Customer shall initiate a helpdesk ticket during Support Hours by sending an email to support@neighborlysoftware.com. Company will use commercially reasonable efforts to respond to all Helpdesk tickets within one (1) business day.
- f. **Data Storage.** All Customer Data will be stored, processed, and maintained solely in data centers located in the United States.
- g. **Backup and Recovery of Customer Data.** Company is responsible for maintaining a backup of the Customer Data and for an orderly and timely recovery. Company shall maintain a contemporaneous backup of Customer Data that can be recovered within a reasonable period of time.

3. CUSTOMER RESTRICTIONS AND RESPONSIBILITIES.

- a. Customer will not, directly or indirectly: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation, or data related to the Services ("Software"); (ii) modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services); nor (iii) use the Services or any Software for timesharing or service bureau purposes.
- b. Customer represents, covenants, and warrants that Customer will use the Software in compliance with all applicable laws and regulations. Customer hereby agrees to hold harmless Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing

have occurred or is likely to occur. Customer hereby agrees to hold harmless Company against any damages, losses, liabilities, settlements and expenses in connection with any claim or action that arises from an alleged violation of the foregoing.

4. CONFIDENTIALITY; PROPRIETARY RIGHTS

- a. **Duty Not to Disclose Confidential Information.** In connection with the Agreement, Recipient, and its employees and agents, may have access to the Confidential Information of the Discloser. Recipient shall, and shall ensure that its employees and agents shall, keep the Confidential Information of the Discloser in strict confidence and use it only for the purpose of performing its duties under this Agreement. Recipient will not directly or indirectly disclose, publish, disseminate, make available or otherwise communicate in any way, to any third person not having a need to know in order to perform its duties under this Agreement, any Confidential Information of the Discloser, without the Discloser's prior written consent. Recipient will have appropriate safeguards in place within its organization to restrict access to Confidential Information to only those individuals as needed in connection with the performance of this Agreement. Recipient will take care of Confidential Information using at least the same standard of care it would use with its own confidential information, but in no event shall Recipient use less than reasonable care in protecting such Confidential Information.
- b. **Mandatory Disclosures.** In the event that Recipient is required by a binding order of a governmental agency or court of competent jurisdiction to disclose any Confidential Information of the Discloser, it shall, if legally permitted, provide the Discloser with prompt written notice (via e-mail that is acknowledged as received) to allow the Discloser an opportunity to appear and object prior to Recipient's compliance with requested disclosure. The written notice shall provide Discloser with sufficient information describing the content of the information to be disclosed. If such objection is unsuccessful, then Recipient shall produce only such Confidential Information as is required by the court order or governmental action.
- c. Customer shall own all rights, title, and interest in and to the Customer Data, as well as any data that is based on or derived from the Customer Data and provided to Customer as part of the Services.
- d. Company shall own and retain all rights, title and interest in and to (a) the Services and Software, all improvements, enhancements, or modifications thereto, (b) any software, applications, inventions, or other technology developed in connection with implementation of services or support, and (c) all intellectual property rights related to any of the foregoing.

- d. One-Time Fees. All one-time fees (including new programs) will be charged at the Company's current rates at the time the service is requested.
- e. Additional Implementation Fees. Implementation fees are based on a mutually agreeable Implementation Schedule (based on the number of programs purchased). Customer agrees to allocate the time and personnel necessary to complete implementation during this period. Unless the Parties agree to an alternative schedule, in writing, implementations extending beyond the allocated time will be subject to a weekly charge of \$1,000.00 per additional week.
- f. Fee Adjustments. Company reserves the right to adjust the fees listed in the Order Form at the end of the Initial Renewal Term or then-current renewal term. Notice of any fee adjustment will be provided to the Customer via an invoice (via e-mail) based on the Company's then-current pricing, sixty (60) days prior to end of the Initial Renewal Term or then-current renewal term.
- g. Taxes. The fees do not include any taxes, including, without limitation, sales, use or excise tax. If Customer is a tax-exempt entity, you agree to provide Company with a tax-exempt certificate. Otherwise, Company will pay all applicable taxes to the proper authorities and Customer will reimburse Company for such taxes (this excludes Company's income taxes, both federal and state, as applicable, arising from Company's performance of this Agreement).
- h. The parties acknowledge that appropriation of funds is a governmental function which the Customer cannot contractually commit itself in advance to perform and this Agreement does not constitute such commitment. The Customer's obligation to pay under this Agreement is contingent upon Customer's annual appropriation of funds for such purpose, and the non-appropriation of funding for such purpose in any fiscal year shall immediately relieve both parties of their respective obligations hereunder, as of the last day for which funds have been appropriated. The Customer shall immediately notify the Company in writing (via e-mail), upon determining that sufficient funds will not be budgeted and appropriated in any fiscal year under this Agreement.

6. TERM AND TERMINATION

- a. Term and Automatic Renewal. Subject to earlier termination as provided below, the term of the Agreement shall commence on the Effective Date and shall cover the Initial Renewal Term as specified in the Order Form and shall **automatically renew** for additional one (1) year periods following the Initial Renewal Term (collectively, the "Term"). unless either party requests termination of least thirty (30) days prior to the end of the Initial Renewal Term.

the Customer Data ninety (90) days after the termination of the Agreement. Customer is solely responsible for ensuring that the Customer Data is downloaded, stored, and reviewed. Customer acknowledges and agrees that Company has no obligations whatsoever with regard to the Customer Data following the final destruction. Upon request, Company will provide Customer with a Certification of Data Destruction. This Section shall survive the termination of this Agreement.

- d. **Optional Data Retention.** If Customer desires for Company to retain the Customer Data beyond sixty (60) days from the date of the final extraction, Customer must make that request, in writing (via email), and receive an acknowledgement of said request. Requests that do not receive an acknowledgement or requests that are made after the sixty (60) day window are not considered valid. The minimum cost for continued data retention is \$6,000.00 for six (6) months.

7. WARRANTY AND DISCLAIMER

- a. **Company Warranty.** Company represents and warrants the following: (a) the Documentation sufficiently describes features, functionality, and operation of the Software as applicable; (b) the Software, as applicable, conforms to the Documentation and is free from defects in material and workmanship; (c) the Software does not contain any viruses or other malicious threats, programs, features, or devices (“Viruses”) that could harm Customer, and Company uses commercially reasonable efforts to prevent and eradicate such Viruses. Furthermore, consistent with prevailing industry standards, Company shall maintain the Software in a manner which minimizes errors and interruptions and shall perform the Services in a professional and workmanlike manner. Notwithstanding the foregoing, the Software may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, or because of other causes beyond Company’s reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.
- b. **DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COMPANY DISCLAIMS ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED OR GUARANTEE THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOFTWARE. THE LIMITED WARRANTIES PROVIDED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED BY THE COMPANY.

without such modifications.

- (2) Customized portions of the Software designed in accordance with written specifications provided by Customer where the Software would not be infringing but for Company's compliance with such written specifications.
 - (3) The combined use by Customer of the Software with other components, products, or services not provided by Company where the Software would not be infringing but for such combination.
 - (4) Workflows, analytic applications, algorithms, or other applications or programming built by Customer or created by or on behalf of Customer without Company's approval.
- b. The indemnification obligations set forth in this Section are subject to the following conditions:
- (1) Customer provides Company with prompt written notice of any Infringement Claim;
 - (2) Company is permitted to assume sole control over the defense and settlement of the Infringement Claim;
 - (3) Customer provides reasonable cooperation and assistance in the defense of such claim, at Company's expense.
 - (4) Customer does not settle or compromise any Infringement Claim without the prior written consent of Company.
- c. If the Software becomes, or in Company's reasonable opinion is likely to become, the subject of an Infringement Claim, Company may, at its sole option and expense: (i) obtain the right for Customer to continue using the Software; (ii) replace or modify the Software to make it non-infringing while maintaining substantially similar functionality; or (iii) if neither (i) nor (ii) is commercially reasonable, terminate Customer's license to the affected Software and refund any prepaid, unused fees for the remaining subscription term.
- d. The Company's total liability under this Section shall not exceed the limits of insurance coverage required to be maintained under this Agreement.

10. LIMITATION OF LIABILITY

- a. NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR LIABILITY RESULTING FROM (1) A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS; (2) A PARTY'S INDEMNIFICATION OBLIGATIONS; OR (3) A PARTY'S WILLFUL MISCONDUCT OR FRAUD IN NO

During the course of performing its duties under this Agreement, Company agrees to maintain the following levels of insurance: (a) Commercial General Liability of at least \$2,000,000 in aggregate and \$1,000,000 each occurrence; (b) Professional Liability (E&O) of at least \$5,000,000; (c) Cyber Liability of at least \$5,000,000; (d) Commercial Auto Insurance for Hired and Non-Owned vehicles of at least \$1,000,000; and (e) Workers Compensation complying with applicable statutory requirements. Company will provide Customer with copies of certificates of insurance upon Customer's written request.

12. DISPUTE RESOLUTION

- a. With the exception of actions for injunctive relief for actions arising under the Confidentiality provisions of Section 4 of this Agreement, the Parties intend that any and every dispute by and between them, including but not limited to any dispute arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, be resolved first by resorting to mediation, to be conducted in a mutually agreeable location in accordance with the laws of the State of Delaware.

13. NOTICE

- a. Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient when delivered (a) personally or by overnight courier, (b) sent by email, or (c) forty-eight (48) hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at such party's address or email address as set forth in this section. E-mail is the preferred method of notice. Any change of address, e-mail address, telephone number, or person to receive notice shall be made by notice given to the other Party.
- b. Addresses. Subject to change pursuant to this Section above, the addresses for notices are as follows:

For the Company:

Jason Rusnak, President

3423 Piedmont Rd, NE

Atlanta, GA 30305

Phone: 702-864-7231

Email: Jason.Rusnak@NeighborlySoftware.com

Sarah Bohertic

- only with the written consent of the Parties.
- c. Permissible Use. Company is permitted to use the Customer's name and logo solely for marketing or promoting the provided services subject to terms and conditions of this Agreement.
 - d. Entire Agreement & Amendments. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein.
 - e. Assignment. This Agreement is not assignable, transferable, or sub-licensable by either Party without the other Parties prior written consent, except as such assignment, transfer or sublicense is in connection with a merger, acquisition, or similar change of control event.
 - f. Relationship. No agency, partnership, joint venture, or employment is created as a result of this Agreement and the Parties do not have any authority of any kind to bind the other Party in any respect whatsoever.
 - g. Force Majeure. Neither Party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of amounts due) to the extent caused by strikes, shortages, riots, insurrection, fires, flood, storm, explosions, pandemics, acts of God, terror, war, governmental action, labor conditions, earthquakes, material shortages or any other cause which is beyond the reasonable control of such party. Upon an occurrence of an event of force majeure, Company cannot ensure uninterrupted or error free service or access to the Software or Services and there may be periods where access is delayed, limited or unavailable. Company shall use commercially reasonable efforts to provide the Software or Services to Customer in accordance with its Business Continuity and Disaster Recovery Plan a copy of which will be provided upon written request.
 - h. Applicable Law. This Agreement, and all matters arising out of or relating to it, including any disputes, claims, or causes of action, shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflict of laws principles.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE FOLLOWS

Title: President, Benevate, LLC

Title: _____

Date: _____

Date: _____

- b. “Scheduled Downtime” means any period of time during which the Software or Services are unavailable due to the Company’s planned maintenance and support of the Software or Services. Scheduled Downtime is excluded from the 99.5% Service Availability calculation.
- c. “Support Services” means technical support assistance provided by Company personnel to Customer’s designated administrators for problem resolution, bug reporting, and/or technical assistance.
- d. “Unscheduled Downtime” means any time the Software is not available due to an event or circumstance excluding Scheduled Downtime or Force Majeure and the amount of time required by Company to resolve or provide a work around for the failure of any documented feature required to complete a primary function of the Software in accordance with the Documentation.
- e. “Update” means any error correction, bug fix, patch, enhancement, improvement, update, upgrade, new version, release, revision or other modification to the Software or Services provided or made available by the Company pursuant to the Agreement, including, without limitation, any update designed, intended, or necessary to make the Software, Services, or Customer’s use thereof compliant with applicable law.

2. Service Availability.

- a. Company will use commercially reasonable efforts to maintain the availability of the Software to the Customer at 99.5%. All Updates will be completed outside of standard business hours (same as Support Hours). Notification of Updates will not be provided unless downtime is expected. If major Updates are required during standard business hours due to necessity, Company will provide notification to Customer as soon as reasonably possible. Updates during Scheduled Downtime and are excluded from the 99.5% Service Availability calculation.

3. Technical Support.

- a. Availability: With the exclusion of Federal Holidays, Technical Support is available from 8:00 a.m.

all Standard tickets within eight (8) business hours of notification.

- b. Priority Ticket: Software is usable, but some features (not critical to operations) are unavailable.
 - (i) Response Metric: Company will use commercially reasonable efforts to respond to all Priority tickets within two (2) hours and resolve Priority tickets within six (6) business hours of notification.
- c. Emergency Ticket: Issue has rendered software unavailable or unusable, resulting in a critical impact on business operations. The condition requires immediate resolution.
 - (i) Response Metric: Company will use commercially reasonable efforts to respond to all Emergency tickets within one (1) hour and resolve Emergency tickets within two (2) business hours of notification.

5. **Remedies.** If Customer reasonably believes that Company has failed to achieve its Service Availability commitments in any given month, the Company shall, following Customer's written request, provide a report that contains true and correct information detailing Company's actual Service Availability performance. Customer must have reported an issue with the Service Availability within the calendar month and must request the report within ten (10) days of the end of the calendar month. The sole remedies for failure to meet the Service Availability level of commitment is a service refund based on the following:

- a. less than 99.5% but equal to or above 97%, Company shall provide Customer with a root cause analysis and a written plan for improving Company's Service Availability to attain the 99.5% Service Availability and Company shall promptly implement such plan;
- b. between 96.9% and 95%, Company shall provide Customer with a service refund in an amount equal to 10% of the prorated amount of the Subscription Fees for one month;
- c. between 94.9% and 92%, Company shall provide Customer with a service refund in an amount equal to 25% of the prorated amount of the Subscription Fees for one month;

