



Innovative eProcurement Solutions

13263 Ventura Blvd., Suite 101 • Studio City, CA, 91604 • (818) 992-1771

**PB System™
SUPPORT SERVICES AGREEMENT**

This SUPPORT SERVICES AGREEMENT ("Agreement"), which describes the terms and conditions applicable to your use of the PlanetBids Online Support Services, is made and entered as of into the 23rd day of June, 2020, by and between PLANETBIDS, INC., a California corporation, ("PlanetBids") and the following customer ("Customer") for the period from 07-10-20 to 10-09-25:

Customer Name:	<u>City of Costa Mesa</u>
Street Address	<u>77 Fair Drive</u>
City, State ZIP	<u>Costa Mesa, CA 92626</u>
Department:	<u>Purchasing</u>
Principal Contact:	<u>Jackqueline Nguyen</u>
Title:	<u>Buyer</u>
Phone & Email:	<u>714.754.5630, jackqueline.nguyen@costamesaca.gov</u>
Method of Payment:	<u>Net 30 days</u>

THEREFORE, PlanetBids and the Customer agree as follows:

1. PlanetBids Services. Upon acceptance of this Agreement, PlanetBids shall provide the following Support Services to Customer, subject to the terms and conditions of this Agreement and as more fully described in Exhibit "A".

a) **"Services"** shall include one or more of the following PlanetBids PB System™ modules or features if, and only if, listed in Exhibit "A" hereto:

- (i) use of the PlanetBids "PB System™" by a specific number of Customer licensed System users
- (ii) Additional Customer licensed module users
- (iii) Vendor management and Bid management modules for vendor registration, posting and tracking Bid Requests and other information on Customer's website or private internet network, and, at Customer's option, to process and distribute Bid Requests to additionally available PlanetBids suppliers within their selected categories;
- (iv) Advanced eBidding for Public Works add-on module;
- (v) Evaluation Management add-on module;
- (vi) Business Certification module;
 - Prequalification Management (CUPCCAA or Standard version)
 - Business Forms
- (vii) Contract Management module;

- (viii) Insurance Certificate Management module;
- (ix) Insurance Certificate Management with My Insurance module;
- (x) Emergency Operations module (agency-wide access);
- (xi) An optional Reverse Auction feature that enables licensed Systems users to solicit bids from prospective suppliers selected by Customer in a price only based blind bidding process, which can be activated by giving notice thereof to PlanetBids in writing or by email
- (xii) Access and use of the PlanetBids "Outreach" database.

Customer shall not have access or use of any modules or features not listed in Exhibit "A"

b) PlanetBids shall have access and the right to market or otherwise promote its services to any vendor or supplier of Customer that registers with PB System™ via Customer's site on the PlanetBids PB System™. PlanetBids will not sell any Customer data to any third parties without a written consent from Customer.

c) Internet related equipment by its nature, is not fault tolerant, but PlanetBids (1 will use reasonable efforts to make the Services available 24 hours per day, 7 days per week, excluding downtime for scheduled and unscheduled maintenance, and (2) will promptly investigate any technical problems that Customer reports. **PlanetBids cannot, however, guarantee continuous service, service at any particular time or the integrity of data transmitted via the Internet. Further, PlanetBids shall not be responsible for the inadvertent disclosure, corruption or erasure of data transmitted, received or stored on the PB System™.**

d) PlanetBids may make improvements and/or amendments to the PB System™ at any time, and may provide other optional services, including enhanced versions of standard features or functions, for an additional fee as agreed in advance by the Customer. Any and all relevant portions of these terms and conditions will automatically apply to all such improvements, amendments and/or optional services as they appear.

PlanetBids does not guarantee that use of the Services will produce any quotes, business opportunities or other information helpful to the business of Customer, nor does it guarantee that any contact provided will be adequate or best suited for any transaction.

2. Fees and Payments.

Support Fees. Customer agrees to pay PlanetBids set up and services fees as set forth in Exhibit "B" hereto.

a) **Additional Services; Fees.** If requested by Customer, PlanetBids will provide any or all of the following additional services at the fees set forth in Exhibit "B":

- 1) Customization work in addition to standard set-up shall be contracted in the following manner and at PlanetBids' current standard rates: (a) Customer shall submit a written request describing the proposed project; (b) PlanetBids conduct a feasibility and assessment of the project and the work required , (c) if the project is technically feasible, PlanetBids will submit to Customer a written estimate setting forth the price, estimated schedule and any conditions of the project.. PlanetBids shall not proceed until approval is received in writing from Customer.
- 2) Training to Customer's designated users, in addition to that provided pursuant to Section 2(a)(1), is available at rates set in Exhibit "B".
- 3) For its own internal retrieval and restoration purposes, PlanetBids will record and maintain for a limited time a back-up of all data appearing on

Customer's website on a daily basis. The duration of such data retained will be for a minimum of 7 years and determined by PlanetBids in its sole discretion thereafter. However, Customer may, during the term of this Agreement, access and retrieve data in text delimited Microsoft Excel format and documents, at no cost. Additional Services related to the retrieval or restoration of any of Customer's data from such back-up files are available if necessary, at rates set forth in Exhibit "B".

b) **Purchase Orders/Billing.** Purchase orders, billing or any related matters must be emailed to alan@planetbids.com or mailed to the following address;

**PlanetBids, Inc.
13263 Ventura Blvd., Suite 101
Studio City, CA 91604
Attn: Alan Zavian**

3. Use of Services.

a) The compilations of data and content contained in the PlanetBids "Outreach" database is the proprietary information of PlanetBids. PlanetBids grants to Customer a non-exclusive right to use Outreach compilations solely in connection with bids and procurements solicited using the PlanetBids PB System™ Vendor Management and Bid Management. Customer agrees that it will not copy, use or access the Outreach compilations for any other purpose or for use in connection with any other bid or procurement solicitation service. In addition, Customer agrees to use information obtained through the Services only as necessary to the transaction of Customer and shall not use the Services for the benefit of any third party.

b) PlanetBids is not responsible for the content and/or transactions that Customer post on or through the Services. Notwithstanding the foregoing, PlanetBids reserves the right to monitor content that uses the Services and, in addition to other remedies for breach provided in this Agreement, to remove content which PlanetBids determines to be illegal, offensive, harmful or otherwise in violation of its operation policies.

1) Customer agrees to comply with all applicable laws, ordinances and regulations and prudent business practices related to the use of Services; and not make any unauthorized commercial use of the Services or of the PlanetBids name, marks or logos. Further, Customer agrees to not use the PlanetBids websites to (i) post information anonymously or under a false name; (ii) post any unlawful, threatening, abusive, harassing, libelous, defamatory, obscene, pornographic, profane or otherwise objectionable information of any kind, such as inducements to conduct that would constitute a criminal offense or give rise to civil or other liability, (iii) post the name of or otherwise identify or reference any service or entity that provides a service competitive to the Services.

2) If Customer uses standard identification codes, PlanetBids shall have the right to request for inspection an original copy of such codes and any necessary authorizations for use. If such identification codes are proprietary codes of third parties, such as NIGP, SIC or CSI, it shall be the responsibility of Customer to obtain the necessary licenses and Customer indemnifies and holds harmless PlanetBids from the unauthorized use or publication of any such identification codes with respect to the Services.

3) It shall be the responsibility of Customer to collect and pay any taxes, duties, imposts or tariffs that are applicable to sales via the Services.

c) Although the Customer's solicitation, bid and contract information is collected, processed, managed and stored on the PlanetBids PB System™, PlanetBids does not control or monitor any of such information or processes and is not aware of the specific uses thereof by the Services, Customer hereby releases, indemnifies, and holds harmless PlanetBids and its agents, employees, and affiliates from all claims, demands, costs and damages (actual and consequential) of every kind and nature arising out of or related to the communications or Bid Requests and the completed or uncompleted transactions of Customer utilizing the Services.

4. Warranty.

a) PlanetBids warrants that (i) the performance of Services by PlanetBids shall comply with all applicable federal, state, county and local laws and ordinances, and the PlanetBids PB System™ will comply with all applicable safety regulations and codes, (ii) all Services to be performed hereunder will be performed in a professional and workmanlike fashion and will comply with industry standards, (iii) the PlanetBids PB System™ does not infringe or violate any third party patent, copyright or other intellectual property, (iv) the PlanetBids PB System™ will be free from any liens, encumbrances or claims, and for a period of 90 days initial access by Customer, will conform in all material respects to applicable specifications and product descriptions. Further, PlanetBids will not knowingly include therein any malicious code designed to disrupt or otherwise impair the operation of the Services or to permit any surreptitious collection of information.

b) PLANETBIDS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY OR OTHER VIOLATION OF RIGHTS, EVEN IF PLANETBIDS HAS BEEN MADE AWARE IN ADVANCE OF SUCH POTENTIAL RISK, NOR ANY WARRANTY REGARDING THE ACCURACY, LIKELY RESULTS, OR THE RELIABILITY OF ANY SITES LINKED INTO THE SERVICES. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF PLANETBIDS HEREUNDER EXCEED \$2,000,000.00

c) Customer represents and warrants (a) the Customer information provided is current, complete and accurate, (b) that the person signing this Agreement is authorized to bind Customer, (c) Customer will update the information (including credit card information, if applicable) as required to keep such information current, complete and accurate. PlanetBids may, in its sole discretion, cancel or terminate this Agreement if Customer has willfully violated its obligations hereunder

5. Indemnity. Each party will indemnify and defend and hold harmless the other party from and against all claims, liabilities, damages and expenses, including reasonable attorney fees, arising out of any property damage, personal injury or death, sustained by such other party as a result of the gross negligence or willful misconduct of the indemnifying party or its agents or employees.

6. Termination.

a) **Termination for Cause.** This Agreement may be terminated by either party by providing the non-terminating party with no less than forty-five (45) business days written notice (and reasonable opportunity to cure) upon the occurrence of any breach of any material term or condition of this Agreement or any representation or warranty herein.

7. Confidentiality.

a) PlanetBids will take reasonable measures not to disclose website communications or information about its Customers, except to the extent that PlanetBids believes in good faith that such action is within the scope of the Services or reasonably

necessary to (a) comply with the law or the directives of courts or governmental agencies; (b) enforce this Agreement; (c) respond to claims of any third party; or (d) protect the legitimate interests of PlanetBids or its customers. Notwithstanding the foregoing, all communications directed to PlanetBids via the website such as questions, comments, inquiries, shall be deemed to be not confidential, unless specifically agreed otherwise in advance by PlanetBids.

b) Notwithstanding the foregoing, PlanetBids will have the right to use Customer's name in the performance of the Services, as a prospective user of products and services in the PlanetBids "Outreach" database, and to identify Customer as a customer and/or user of the Services for advertising, promotion and other reasonable business purposes. Further, PlanetBids may use any voluntary feedback of Customer for any reasonable business purpose that is not injurious to Customer.

8. Copyright Protection. The PB System™ and PlanetBids' data formats and compilations are protected by worldwide copyright laws and related international treaties, and may not be copied, reproduced, modified, published, uploaded, posted, transmitted, or distributed in any form or by any means other than as described herein. All rights not expressly granted herein are reserved. Any unauthorized use of the materials appearing on PlanetBids website may violate copyright, trademark and other applicable laws and could result in criminal or civil penalties.

a) Customer shall not reproduce, duplicate, copy, sell, resell or exploit for any commercial purpose the Services, website content, the PB System™ or any other PlanetBids tools. Customer shall not reverse engineer, decompile, or otherwise attempt to derive source code from any software or tools accessible or available through the Services.

b) Special use requests should be sent to customerservice@PlanetBids.com. Permission to use shall be granted in the sole discretion of PlanetBids.

9. Security.

(a) The PlanetBids ordering and posting processes are protected by the Secure Sockets Layer (SSL) protocol, which encrypts your information and confirms the identity of the PlanetBids server before allowing a transaction to be completed. It is recommended that Customer use the latest browsers to ensure that the SSL protocol is acceptable and you are protected by advances in security technology. For more detailed information, please refer to the PlanetBids Privacy Policy.

(b) Password-protection techniques will be provided to restrict access under Customer's account to authorized individuals. REGISTRANT ACKNOWLEDGES, HOWEVER, THAT ACCESS RESTRICTIONS, BY THEIR NATURE, ARE CAPABLE OF BYPASS AND PLANETBIDS DOES NOT GUARANTEE THAT THE SERVICES CANNOT BE ACCESSED BY UNAUTHORIZED PERSONS. Customer shall at all times maintain as confidential its usernames and passwords. If Customer is a corporation or other business entity, then it may allow employees to use its username and password, but the Customer shall be responsible for all activity and charges incurred by such employees and any fees resulting from the activation of the Reverse Auction feature. Permitting third parties to use the Services is prohibited and a violation of this Agreement.

(c) If a security breach occurs with respect to any account, the Customer must immediately change its password and notify PlanetBids at customerservice@PlanetBids.com. Customer shall be liable for any unauthorized use of the Services until PlanetBids is notified of the security breach.

10. Other Provisions.

a) **Notices.** PlanetBids shall provide notice to Customer via email, or (at its discretion) via certified U.S. Mail, to the address provided in this Agreement or such other address provided by Customer to PlanetBids. Customer shall provide notice to PlanetBids via email to customerservice@PlanetBids.com, with a copy sent via certified U.S. Mail to the address on the membership registration. Notices will be effective 6 hours after sending if sent via email (unless the sender receives a response indicating that the message was undelivered) or 3 business days after the mailing date, whether or not received.

b) **Assignment.** Customer shall not assign this Agreement or any of its rights or obligations without the prior written consent of PlanetBids, and any such attempted assignment will be void. Subject to the above, this Agreement will be binding upon the parties' respective successors and permitted assigns.

c) **No Waiver.** The failure of PlanetBids to exercise or enforce any right or provision under this Agreement will not constitute a waiver of such right or provision. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the terms and conditions shall remain in full force and effect.

d) **Governing Law.** The interpretation and enforcement of this Agreement shall be governed by laws of the United States of America and the State of California, excluding its choice of law rules and subject to the exclusive jurisdiction of the court located in Los Angeles County, California.

e) **Force Majeure.** PlanetBids will not be liable in any amount for failure to perform any obligation under this Agreement if such failure is caused by Internet outages or delays, unauthorized access (hacking), earthquakes, communications outages, fire, flood, war, an act of God, or the occurrence of any other unforeseen contingency beyond the reasonable control of PlanetBids.

- Signature Page on Next Page -

- Signature Page -

AGREED effective as of the date first written above.

PLANETBIDS, INC.

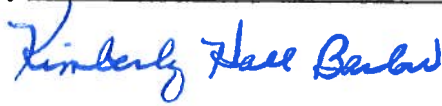
City of Costa Mesa

By: 
Alan Zavian, Chief Executive Officer

By: 
Carol Molina, Acting Finance Director

6/25/2020 (Date)

6/25/2020 (Date)

By: _____


(Name)
City Attorney (Title)
7/7/20 (Date)

EXHIBIT "A"

STATEMENT OF WORK FOR SETUP, IMPLEMENTATION AND TRAINING

1. Customer System Configuration:

Services available to Customer shall include access:

- A. For up to six (6) full licensed users of Customer to the following module(s) of the PlanetBids "PB System™":
 - (i) Vendor management and Bid management modules
- B. For up to six (6) licensed users of Customer to the following module(s) of the PlanetBids PB System™:
 - (i) Advanced eBidding for Public Works add-on (to the Bid management module)
- C. Use of the PlanetBids "Outreach" database.

2. PB System™ Access Services:

PlanetBids rate for maintaining the PB System™ Vendor management and Bid management modules is based upon an unlimited number of monthly transactions (Bids) and up to six (6) full user licenses acquired by Customer. PB System™ Access Services include the following:

- System Administration – PlanetBids will be responsible for system and data back-ups, disaster recovery, system reliability, availability, privacy, and security
- Hosting Infrastructure – PlanetBids will be responsible for hosting PB System™, maintaining the network, hardware and software infrastructure
- Customer Service – Is available from 8:00 a.m. to 5:00 p.m. PST, Monday through Friday (see Help Desk definition below)
- Account Management – PlanetBids will provide a dedicated Account Manager for post-sales support, PB System™ questions.

3. PB System™ Set-up, Implementation and Training:

- PlanetBids will initially install for Customer the specified number of licensed System users
- PlanetBids will provide a 2.5-hours training online for PB System™ Vendor Management and Bid Management modules and the Advanced eBidding for Public Works add-on module.

4. PB System™ set-up, implementation and training consists of the following:

A. Initial program definition

The PlanetBids implementation manager will work with one (1) designated Customer project manager to develop a roadmap for system implementation. The implementation manager will define and present a project management schedule to the Customer project manager. Customer will be required to submit information according with the project management schedule. Upon completion and review of the PB System™ by Customer, online training will be scheduled and performed.

B. System implementation and administration

PlanetBids will enter and configure Customer requirements into PB System™ for each licensed user access for Customer.

The following implementation services will be provided:

- a. Link from and to Customer's procurement web page.
- b. Online customized vendor registration form and ability to have vendors maintain their profiles.
- c. Complete management tools access to all users (i.e. buyers, project managers...).
- d. Customer specific database.
- e. Complete bid management from bid submission to awarding.
- f. Electronic bidding - Vendors submit bid quotes/responses online; Buyers analyze bid responses and award.
- g. Daily backups.
- h. PB System™ users and vendor support for the duration of the contract.

5. Professional Services

PlanetBids will provide consulting services for custom reports or PB System™ customizations, specific to Customer, not covered by this Statement of Work at an additional charge. Additional consulting services requested in writing by Customer will be billed at the rates set forth in Exhibit "B". No work will begin on professional services before a mutually agreed-upon statement of work is completed.

6. Help Desk

The PlanetBids Help Desk is available for support (as defined below) via our telephone number (818) 992-1771, from 8:00am to 5:00pm PST, Monday through Friday. Email Support, support@PlanetBids.com as well as on-line help services are also available.

To provide instant service to vendors and contractors, PlanetBids recommends Customer to initiate or provide basic "Level 1" support although PlanetBids will provide Level 1 or Level 2 support at any time:

- A Level 1 support representative will attempt to answer most or all questions, including help to vendors with simple problems (edit profile, etc.) or general "how-to" questions (search functionality, bidding, etc.). PB System™ related questions by Vendors/Contractors that cannot be answered or supported by Customer should be directed to a PlanetBids support representative. More complex, technical questions should be directed to a Level 2 PlanetBids support representative.
- A Level 2 support is more technical in nature. Level 2 questions may, for example, deal with Customer users (i.e. PB System™ administrative users including buyers, project administrators, etc.) or with password issues requiring special assistance, or with possible product bugs or failures. In this case, some research and investigation may be required.

7. User License(s) Management

It is the responsibility of Customer to monitor and maintain usernames and passwords if and when a licensed user of the PB System™ needs to be reassigned to a new user within the Customer's organization.

EXHIBIT "B"

FEEES AND PAYMENTS

a. **Support Fees.** Customer agrees to pay PlanetBids a total of \$16,375.00 for Year 1. Payment for Year 1 shall be due and payable 30 days from the time of execution of this Agreement. The period for Year 1 has been extended from 12 months to 15 months, from 07/10/20 to 10/09/21. This includes 90 days no cost addition to the beginning of Year 1 of the Agreement. The period for each year thereafter is for 12 months, from October 10 (10/10/YY) to October 9 (10/09/YY). The fees for each Year 2, Year 3, Year 4 and Year 5, as outlined in Table (A) below and are payable in advance within 30 days of the first day of each such year:

- 1) **Set-Up Fee.** Set-up fees have been waived as a special assistance to Customer due to Covid-19 situation. In addition, Customer shall pay no set-up fee for the Vendor and Bid management for the installation, customization and testing of the PB System™ portal link to Customer's website, plus administrator set-up and one-time online user training for up to the number of user licenses and additional modules as outlined in this Agreement and Exhibit "A".
- 2) **Service Fee Payment.** Customer agrees to pay for the use of the PB System™ modules; a service fee of \$16,375.00 for Year 1 of this Agreement and for each Year 2, Year 3, Year 4 and Year 5 as outlined in Table (A). A discounted fee of one and a half (1.5) percent increase in fees applies upon renewal each year for Year 4 and Year 5, as outlined in Table (A).

Table (A)

PB System™ MODULES	SETUP	YEAR 1 2020-2021	YEAR 2 2021-2022	YEAR 3 2022-2023	YEAR 4 2023-2024	YEAR 5 2024-2025
Vendor Management & Bid Management (up to 6 Full User Licenses)	\$ 0.00	\$11,875.00	\$11,875.00	\$11,875.00	\$12,053.12	\$12,233.92
Advanced eBidding (Add-on to Bid Management)	\$ 0.00	\$ 4,500.00	\$ 4,500.00	\$ 4,500.00	\$ 4,567.50	\$ 4,636.01
Sub-Total	\$ 0.00	\$16,375.00	\$16,375.00	\$16,375.00	\$16,620.62	\$16,869.93
TOTAL		\$16,375.00	\$16,375.00	\$16,375.00	\$16,620.62	\$16,869.93

b. **Additional Services.** If requested by Customer in writing, PlanetBids will provide any or all of the following additional services. The following rates are current as of the date of this Agreement but are subject to an increase of not more than 10% per year after the first year of this Agreement.

- 1) Training: \$500.00, for a single online training session of up to 2 hours.
- 2) Data Retrieval and Restoration: \$125.00 per hour, unless otherwise quoted for a specific project.