



**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF YUMA
AND
VENDINI, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is entered into as of the Effective Date set forth below between the City of Yuma, an Arizona municipal corporation (the "City"), and [Vendini, Inc.](#), a(n) [corporation](#) (the "Provider"). The City and the Provider are sometimes referred to individually as the "Party" and collectively as the "Parties".

RECITALS

A. The City issued a Request for Proposals, RFP #[2019-20000112 "Ticketing Services"](#) (the "RFP"), a copy of which is on file in the City Clerk's Office and incorporated herein by reference, seeking proposals from Providers for [Ticketing Services](#) (the "Services").

B. The Provider responded to the RFP by submitting a proposal (the "Proposal"), attached hereto as [Exhibit A](#) and incorporated herein by reference, and the City desires to enter into an Agreement with the Provider for the Services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Provider hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the Effective Date set forth below and shall remain in full force and effect for one (1) year from the Effective Date (the "Initial Term"), unless terminated as otherwise provided in this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for up to four (4) successive one-year terms (each, a "Renewal Term") unless terminated as otherwise provided in this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.
2. Scope of Work. Provider shall provide the Services as set forth in the Scope of Work, attached hereto as [Exhibit B](#) and incorporated herein by reference.
3. Compensation. The City shall pay Provider for the Initial Term and for each subsequent Renewal Term, if any, an annual aggregate amount not to exceed the agreed terms for ticketing services (as described in the Scope of Work) at the rates for ticketing services, as set forth in the Fee Proposal, attached hereto as [Exhibit C](#) and incorporated herein by reference. The maximum aggregate amount for this Agreement shall not exceed the value set for in this agreement and value is based off of ticket sales.
4. Payments. The City shall pay the Provider monthly, based upon work performed and completed to date, and upon submission and approval of invoices. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.
5. Documents. All documents, including any intellectual property rights thereto, prepared and submitted to the City pursuant to this Agreement shall be the property of the City.
6. Provider Personnel. Provider shall provide adequate, experienced personnel, capable of and devoted to the successful performance of the Services under this Agreement. Provider

agrees to assign specific individuals to key positions. If deemed qualified, the Provider is encouraged to hire City residents to fill vacant positions at all levels.

7. Intentionally Deleted.

8. Licenses; Materials. Provider shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Provider. The City has no obligation to provide Provider, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement. The City has no obligation to provide tools, equipment or material to Provider.

9. Performance Warranty. Provider warrants that the Services rendered will conform to the requirements of this Agreement and to the highest professional standards in the field.

10. Indemnification and Limitation of Liability.

- A. General Indemnification. To the fullest extent permitted by law, the Provider shall indemnify, defend and hold harmless the City and each council member, officer, director, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all third party losses, claims, damages, liabilities, fines, penalties, judgements, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the cost of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (collectively "Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the intentional, reckless, or negligent acts, misconduct, errors, directives, mistakes or omissions, in connection with the work or services of the Provider, its officers, employees, agents, or any tier of subcontractor or person for which Provider may be legally liable in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section 10. Other than with respect to the Intellectual Property Indemnification in Section 10.B below, in no event will the total cumulative liability of Provider to any Indemnified Party for any claims arising out of or relating to this Agreement or the Services, exceed the amounts paid by the City to Provider in the twelve (12) months preceding the date of the applicable claim.
- B. Intellectual Property Indemnification. Provider agrees to indemnify, defend, and hold harmless the Indemnified Parties from and against any and all third party Claims, which directly relate to or directly arise out of the violation or infringement of any Canadian or United States copyright, patent, trade-mark or trade secret by the City's authorized use of the Services. Notwithstanding the foregoing, Provider shall not be liable under this section with respect or related to, or in connection with: (i) the City's data and other records made available to Provider by or on behalf of the City under this Agreement or otherwise processed or created on behalf of the City in connection with the Services; (ii) unauthorized or negligent uses of the Services; or (iii) alteration of the Services except with Provider's prior written consent.
- C. Indemnification Procedures. Provider agrees to the indemnification obligations in Sections 10.A and 10.B above provided that the City (i) gives Provider prompt notice of any such claim; (ii) gives Provider all reasonable co-operation, information and assistance to handle the defence or settlement; (iii) except to the extent required by law, makes no admission regarding any such claim without Provider's prior written consent; and (iv) is not in breach of this Agreement, if the breach was a cause of such infringement.

11. Insurance.

11.1 General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of Provider, Provider shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to Arizona Revised Statutes (“A.R.S.”) § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City’s option.

B. No Representation of Coverage Adequacy. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Provider from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Intentionally Deleted

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

E. Primary Insurance. Provider’s insurance shall be endorsed to indicate its primary, non-contributory insurance with respect to performance of this Agreement.

F. Claims Made. In the event any insurance policies required by this Agreement are written on a “claims made” basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

G. Waiver. All policies, except for Professional Liability, including Workers’ Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Provider. Provider shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement.

H. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Provider shall be solely responsible for any such deductible or self-insured retention amount.

I. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Provider shall be fully and solely responsible for its subcontractors.

J. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Provider will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Provider’s insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this

Agreement and that such coverage and provisions are in full force and effect. The City may reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, Provider shall forward renewal certificates and declaration page(s) to the City thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the RFP number and title of this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFP number and title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

- (1) Provider's insurance shall be primary, non-contributory insurance with respect to performance of the Agreement.
- (2) All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Provider under this Agreement.
- (3) ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

11.2 Required Insurance Coverage.

A. Commercial General Liability. Provider shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, bodily injury, personal and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

B. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Provider engages in any professional services or work adjunct or residual to performing the work under this Agreement, the Provider shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Provider, or anyone employed by the Provider, or anyone for whose negligent acts, mistakes, errors and omissions the Provider is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

C. Technology Professional Liability (Errors and Omissions) Insurance appropriate to the Provider's profession, with unimpaired limits not less than \$2,000,000 per occurrence, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Provider in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of

privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

D. Workers' Compensation Insurance. Provider shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Provider's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

11.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days' prior written notice to the City.

12. Termination; Cancellation.

12.1 Termination for Convenience. Notwithstanding Section VI (D) (Termination of Contract) of the RFP, the City does not have the right to terminate any part of or the entirety of this Agreement without cause with 30 calendar- written notice by the City.

12.2 For Cause. If either Party fails to perform any obligation pursuant to this Agreement and such Party fails to cure its nonperformance within thirty (30) days after notice of nonperformance is given by the non-defaulting Party, such Party will be in default. In the event of such default, the non-defaulting Party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting Party's nonperformance is such that it cannot reasonably be cured within thirty (30) days, then the defaulting Party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting Party immediately (A) provides written notice to the non-defaulting Party and (B) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed ninety (90) days. In the event of such termination for cause, payment shall be made by the City to the Provider for the undisputed portion of its fee due as of the termination date.

12.3 Intentionally Deleted.

12.4 Conflict of Interest. This Agreement is subject to the provisions of A.R.S. § 38-511. The City may cancel this Agreement without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or any of its departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other Party to the Agreement in any capacity or a Provider to any other Party of the Agreement with respect to the subject matter of the Agreement.

12.5 Gratuities. The City may, by written notice to the Provider, cancel this Agreement if it is found by the City that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Provider or any agent or representative of the Provider to any officer, agent or employee of the City for the purpose of securing this Agreement. In the event this Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Provider an amount equal to 150% of the gratuity.

12.6 Agreement Subject to Appropriation. The City is obligated only to pay its obligations set forth in the Agreement as may lawfully be made from funds appropriated and budgeted for that

purpose during the City's then current fiscal year. The City's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the City concerning budgeted purposes and appropriation of funds. Should the City elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the City shall be relieved of any subsequent obligation under this Agreement. The Parties agree that the City has no obligation or duty of good faith to budget or appropriate the payment of the City's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which the Agreement is executed and delivered. The City shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The City shall keep Provider informed as to the availability of funds for this Agreement. The obligation of the City to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the City. Provider hereby waives any and all rights to bring any claim against the City from or relating in any way to the City's termination of this Agreement pursuant to this section.

13. Miscellaneous.

13.1 Independent Contractor.

It is clearly understood that each Party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one Party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Provider acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the City. Provider, its employees and subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of Provider, its employees or subcontractors. The Provider, and not the City, shall determine the time of its performance of the services provided under this Agreement so long as Provider meets the requirements of its agreed Scope of Work as set forth in Section 2 above and Exhibit B. Provider is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Provider do not intend to nor will they combine business operations under this Agreement.

13.2 Applicable Law; Venue. Any action to enforce any provision of this Agreement or to obtain any remedy with respect this Agreement shall be brought exclusively in the Superior Court, Yuma County, Arizona (or, as may be appropriate, in the Justice Courts of Yuma County, Arizona or in the United States District Court for the District of Arizona, if, and only if, the Superior Court lacks jurisdiction over such action). The Parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action.

13.3 Laws and Regulations. Provider shall make a good faith, concerted effort using available best practices to comply with the Americans with Disabilities Act (ADA) and subject to the limitations in Section 10.A, shall indemnify City for any costs, including but not limited to, damages, attorney's fees, and staff time in any third-party action or proceeding brought alleging violation of the ADA.. Provider shall not discriminate against any person on the basis of race, religion, color, age, sex, or national origin in the performance of this Agreement, and must comply with the terms and intent of Title VII of the Civil Rights Act of 1964, P.L. 88-354 (1964) and State Executive Order No. 2009-09. The Provider shall not to participate in or cooperate with an international boycott, as defined in Section 999(b)(3) and (4) of the Internal Revenue Code of 1954, as amended, or engage in conduct declared to be unlawful by Arizona state law. Provider shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Provider is responsible abides

by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (A) existing and future City and County ordinances and regulations; (B) existing and future State and Federal laws; and (C) existing and future Occupational Safety and Health Administration standards. Provider shall comply with all federal, state, and local laws, regulations, and ordinances applicable to its performance under this Agreement.

13.4 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Provider.

13.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Agreement will promptly be physically amended to make such insertion or correction.

13.6 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

13.7 Entire Agreement; Interpretation; Parol Evidence. Entire Agreement; Interpretation; Parol Evidence. This Agreement and the documents incorporated herein represent the entire agreement of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the Party drafting the Agreement. The Parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

13.8 Assignment; Delegation. No right or interest in this Agreement shall be assigned or delegated by Provider without prior, written permission of the City, signed by the City Administrator. Any attempted assignment or delegation by Provider in violation of this provision shall be a breach of this Agreement by Provider. The requirements of this Agreement are binding upon the heirs, executors, administrators, successors, and assigns of both Parties.

13.9 Subcontracts. The Provider is responsible for performance under this Agreement, whether or not subcontractors are used.

13.10 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release the Provider from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.

13.11 Attorneys' Fees. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing Party shall be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be

deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

13.12 Liens. All materials or services shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.

13.13 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the City may offset from any money due to the Provider any amounts Provider owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The City may offset from any money due to the Provider any amounts Provider owes to the City for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

13.14 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the Party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City: City of Yuma
Attn: City Administrator
One City Plaza
Yuma, Arizona 85364

If to Provider: Vendini, Inc.
200 Wellington Street W, 2nd Floor
Toronto, ON M5V 3 C7

or at such other address, and to the attention of such other person or officer, as any Party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the Party, (B) three (3) business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

13.15 Force Majeure. The Parties shall be excused from performance during the time and to the extent that they are prevented from obtaining, delivering, or performing by act of God, fire, strike, loss or shortage of transportation facilities, lock-out, commandeering of materials, products, plants or facilities by the government, when satisfactory evidence is presented to the City, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the Party not performing.

13.16 Confidentiality of Records. The Provider shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that information contained in its records or obtained from the City or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Provider's duties under this Agreement. Persons requesting such information should be referred to the City. Provider also agrees that any information pertaining

to individual persons shall not be divulged other than to employees or officers of Provider as needed for the performance of duties under this Agreement.

13.17 INFORMATION TECHNOLOGY

13.17.1 LIMITED ACCESS: If necessary for the fulfillment of the Agreement, the City may provide the Provider with non-exclusive, limited access to the City's information technology infrastructure. The Provider understands and agrees to abide by all the City policies, standards, regulations and restrictions regarding access and usage of the City's information technology infrastructure. The Provider shall enforce all such policies, standards, regulations and restrictions with all the Provider's employees, agents or any tier of subcontractor granted access in the performance of this Agreement, and shall be granted and authorize only such access as may be necessary for the purpose of fulfilling the requirements of the Agreement.

13.17.2 DATA CONFIDENTIALITY: All data, regardless of form, including originals, images and reproductions, prepared by, obtained by or transmitted to the Provider in connection with this Agreement is confidential, proprietary information owned by the City. Except as specifically provided in this Agreement or as required to provide the Services, the Provider shall not disclose data generated in the performance of the service to any third person without the prior, written consent of the City Manager or authorized designee

13.17.3 DATA SECURITY: Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, the Provider must encrypt and/or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices. When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary or this Agreement is terminated (whichever occurs first), the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed or reconstructed. Before the information discussed in this subsection 13.19.3 is destroyed, the Provider shall send a copy of such information to the City in a format specified by the City.

13.17.4 COMPROMISED SECURITY:
In the event that data collected or obtained by the Provider in connection with this Agreement is believed to have been compromised, the Provider shall notify the City Manager, or authorized designee immediately. Subject to the limitations in Section 10.A, Provider agrees to reimburse the City for any costs incurred by the City to investigate actual breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

13.17.5 PERMITTED ACCESS: Other than as required in order to provide the Services, the Provider's employees, agents and subcontractors must receive prior, written approval from the City before being granted access to the City's information technology infrastructure and data and the City, in its sole determination, shall determine accessibility and limitations thereto. The Provider agrees that the requirements of this Section shall be incorporated into all subcontractor/subProvider agreements entered into by the Provider. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.

13.17.6 SURVIVAL: The obligations of the Provider under this Section shall survive the termination of this Agreement.

13.18 E-verify Requirements. To the extent applicable under Arizona Revised Statutes (“A.R.S.”) § 41- 4401, the Provider and its subcontractors warrant compliance, and are contractually obligated to comply, with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. § 23-214(A) (“Immigration Warranty”). Provider’s or its subcontractor’s failure to comply with Immigration Warranty shall be deemed a material breach of this Agreement and may subject Provider to penalties up to and including termination of this Agreement at the sole discretion of the City.

The City retains the legal right to inspect the papers of all Provider personnel who provide services under this Agreement to ensure that Provider or its subcontractors are complying with the Immigration Warranty. Provider agrees to assist the City, as reasonably required, in regard to any such inspections. The City may, at its sole discretion, request random verification of the employment records of Provider and any subcontractor to ensure compliance with the Immigration Warranty. Provider, acting reasonably, may assist the City in regard to any random verification performed.

Neither Provider nor any subcontractor will be deemed to have materially breached the Provider Immigration Warranty if Provider or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214 (A).

13.19 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, the Scope of Work, any City-approved Purchase Order (which includes Provider’s Member Service Agreement and Terms of Service), the Fee Proposal, the RFP and the Provider’s Proposal, the documents shall govern in the order listed herein.

13.20 Non-Exclusive Agreement. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods and services from another source when necessary.

13.21 Cooperative Purchasing

Specific eligible political subdivisions and nonprofit educational or public health institutions (“Eligible Procurement Unit(s)”) are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Provider. Provider may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the Parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Provider. Payment for such purchases will be the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

13.22 Time of the Essence. Time is of the essence in this Agreement. Unless otherwise specifically provided, any consent to delay in Provider's performance of its obligation is applicable only to the particular transaction to which it relates, and is not applicable to any other obligation or transaction.

13.23 Signatory Authority. Each person signing this Agreement represents that such person has the requisite authority to execute this Agreement on behalf of the entity the person represents and that all necessary formalities have been met.

13.24 Boycott of Israel. Pursuant to A.R.S. § 35-393.01, Provider certifies that Provider is not engaged in a boycott of Israel as of the effective date of this Agreement, and agrees for the duration of this Agreement to not engage in a boycott of Israel. However, the Parties recognize that the U.S. District Court for the District of Arizona has entered an injunction barring enforcement of this statute in *Mikkel Jordahl, et al., v. Mark Brnovich, et al.*, No. CV-17-08263-PCT-DJH, and unless and until the District Court's injunction is stayed or lifted, A.R.S. § 35-393.01 is unenforceable and the City can take any action to enforce it.

13.26 Survival. The obligations of Contractor under this Section shall survive the termination of this Agreement.

13.27 Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, and counterparts may be exchanged by electronic transmission (including by email), each of which will be deemed an original, but all of which together constitute one and the same instrument.

Vendini, Inc.

By: _____
(Signature Required)

Name: Lawrence Franco
Please Print

Title: Secretary

ACKNOWLEDGMENT

PROVINCE _____
COUNTY OF _____

On _____, 2019, Lawrence Franco as the Secretary of Vendini, Inc., a _____ corporation, personally appeared before me whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document on behalf of Vendini, Inc.

CITY OF YUMA

IN WITNESS WHEREOF, the parties have this Contract as of this _____ day of _____, 2019 (the "Effective Date").

By: _____ ATTEST: _____
Philip Rodriguez, City Administrator Lynda L. Bushong, City Clerk

APPROVED AS TO FORM: _____
Richard W. Files, City Attorney

EXHIBIT A
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF YUMA
AND
VENDINI, INC.
[Provider's Proposal]

See following pages.

TO BE ADDED AFTER COUNCIL APPROVAL

EXHIBIT B
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF YUMA
AND
VENDINI, INC.

[Scope of Work]

See following page(s).

TO BE ADDED AFTER COUNCIL APPROVAL

EXHIBIT C
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF YUMA
AND
VENDINI, INC.

[Fee Proposal]

See following page(s).

TO BE ADDED AFTER COUNCIL APPROVAL