



PO BOX 8127, BEND, OR, USA 97708
Phone: 855-487-6776

SOLE SOURCE LETTER

May 12, 2023

To Whom It May Concern:

This letter is to confirm that Virtual Project Manager is a sole source product, manufactured, sold, and distributed exclusively by Virtual Project Manager, LLC. No division of Virtual Project Manager, LLC, nor any other company, makes a similar or competing product.

This product must be purchased directly by institutions from Virtual Project Manager, LLC at the address listed above. There are no dealers authorized to represent this product.

Additionally, competition is precluded by the existence of exclusive rights to market this patented product. The software is unique and proprietary from other competitors. No other software is designed to work specifically for public agencies and offers unlimited users, projects, and storage.

There is no other like items or products available for purchase that would serve the same purpose or function and there is only one price for the above-named item because it is only offered by Virtual Project Manager, LLC.

If you desire additional information, don't hesitate to contact me at (855) 487-6776 at any time or visit our website at www.virtual-pm.com. Thank you for your interest in our product.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lex Zuber", with a large, stylized flourish at the end.

Lex Zuber
President/CEO
Virtual Project Manager, LLC
lex@virtual-pm.com



SERVICE AGREEMENT

This Service Agreement (“Agreement”) is entered into as of the Effective Date (defined below) by and between **Virtual Project Manager LLC**, an Oregon limited liability company (“VPM”), whose address is P.O. Box 8127 Bend, Oregon 97701, and the person or entity identified below (“Customer”).

VPM agrees to make its web-based project management system known as Virtual Project Manager and related services available to Customer, on and subject to the terms and conditions of this Agreement. This Agreement consists of the Specific Terms listed below and the Standard Terms and Conditions attached hereto for Virtual Project Manager.

SPECIFIC TERMS


Customer:	County of Kitsap, WA
Effective Date:	August 1, 2024
Fees (see breakdown):	<p>Service Fee:</p> <p>\$18,000 per year, billed annually (may be paid monthly at \$1,500/month) with payments due upon receipt of invoice.</p> <p>Implementation/Training Fee:</p> <p>\$6,000 – one-time fee payable upon execution of this Agreement.</p> <p>Guarantee/Refunds: If Customer is not satisfied with the VPM Service for any reason, Customer may terminate this Agreement by written notice given to VPM within sixty (60) days after the Effective Date and all previously paid Service Fees will be refunded. If no such termination notice is given, all fees are nonrefundable.</p> <p>Additional Fees: The above fees are for one Customer location. Customer location is defined as all projects that are funded in whole or in part by the customer. Additional locations are subject to additional fees.</p>

Term of Agreement:	One year after the Effective Date, subject to renewal or termination as provided in this Agreement.
VPM Service:	VPM's Web-based project management system known as Virtual Project Manager, which consists of the modules/features from time to time listed on the VPM website. The VPM Service will also include new modules/features added to the VPM Service by VPM from time to time, provided such new modules/features are generally made available at no additional charge to customers of the VPM Service.

The parties' duly authorized representatives have executed this Agreement (including the Standard Terms and Conditions on the following pages) effective as of the date set forth above.

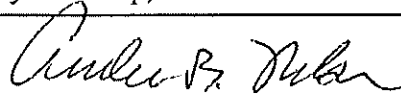
VPM:

VIRTUAL PROJECT MANAGER, LLC

By: 
Lex Zuber, President/CEO

CUSTOMER:

County of Kitsap, WA

By: 

Name: Andrew B. Nelson

Title: Public Works Director

Customer Invoice Information

Email: mfilley@kitsap.gov, knelson@kitsap.gov
(Please provide the email address where to send invoices)

Mail:
(Please provide the mailing address where to send invoices)

Name: Kitsap County Dept. of Public Works
Attn: Michele Filley
Address: 614 Division St MS-26
City: Port Orchard
State: Washington
Zip Code: 98366

Preferred Invoicing Method:

Email Mail

**VIRTUAL PROJECT MANAGER
STANDARD TERMS AND CONDITIONS**

These Standard Terms and Conditions, together with the above Specific Terms for the VPM Service, govern Customer's use of the VPM web-based project management system and associated services (the "VPM System").

1. **Use of VPM System.** Subject to the terms of this Agreement, VPM hereby grants Customer and its authorized employees and consultants, as well as Customer's contractors and their respective employees to the extent authorized by Customer (each, an "Authorized User"), the right to access and use the VPM System via the Internet for Customer's customary and ordinary project management purposes (the "Permitted Use"), to enter into the VPM System data and information regarding Customer projects ("Customer Data"), to have the Customer Data stored on servers owned or leased by VPM, and to use the Customer Data available through the VPM System for the Permitted Use. Customer shall be solely responsible for determining the Authorized Users who have access to the VPM System, and VPM shall have no liability to Customer, any Authorized User, or any third party arising out of any use of the VPM System by any Authorized User.
2. **Restrictions.** Customer understands and agrees that it is not being granted the right to use the VPM System or any software associated with it except by accessing the VPM System website through VPM-provided Web interfaces as described above. Customer shall not: (a) copy, reproduce or duplicate the VPM System or website or any software related thereto for any purposes; (b) modify, disassemble, reverse engineer, decompile or prepare derivative works of the VPM System or website or any software related thereto, or in any way use the VPM System to assist in developing any competing product or service; (c) rent, sublicense, assign, transfer, or grant any third party any rights in the VPM System or website or any software related thereto; or (d) use, adopt or attempt to register anywhere in the world, whether alone or together with any other mark, symbol or name, "Virtual Project Manager." The VPM Service is intended for access and use by means of Web browsing software, and VPM does not commit to support Web browsing platforms or guarantee that the VPM System will be compatible with all browsing platforms.
3. **Passwords and Login.** All access to the VPM System shall be by password, and each Authorized User shall have his or her own uniquely identifiable login and password. Authorized Users shall not share their logins or passwords with other persons or provide online access to VPM for any other person without VPM's prior written consent. Customer agrees to notify VPM promptly if it has any reason to believe that any third party has unauthorized access to such information. Customer shall be solely responsible for any and all use of the VPM System occurring under its Authorized Users' logins and passwords and for each Authorized User's compliance with the terms of this Agreement and the TOS. VPM reserves the right to suspend or terminate an Authorized User's access to the VPM System if such Authorized User violates any of the terms of this Agreement or the TOS.
4. **Terms of Service.** The VPM System is provided subject to the terms and conditions of this Agreement.
5. **Customer Data; No Loading of Personal Information.** All Customer Data shall be owned by Customer. Customer and its Authorized Users are solely responsible for any Customer Data posted or uploaded into the VPM Service or transmitted via the VPM System. VPM does not control and does not make any representations or warranties whatsoever regarding the Customer Data. Customer agrees that it shall be responsible for and bear all risks associated with the accuracy, integrity, completeness, or quality of Customer Data. Neither Customer nor any Authorized User shall load into the VPM

System any “personally identifiable information” or “sensitive personal information” as such terms are defined in applicable state or Federal privacy laws or any “personal information” as defined in the EU General Data Protection Regulation (to the extent it is applicable). VPM reserves the right to delete from the VPM System any Customer Data that violates the terms of this Agreement.

6. Representations and Warranties; Indemnification. Each party represents and warrants that (a) the making, execution and performance of this Agreement on behalf of such party has been duly authorized by all necessary company or governmental action, and no consent from any third party is required for such party to enter into this Agreement or perform its obligations hereunder, and (b) the individual executing this Agreement on behalf of such party has been duly authorized to do so. VPM represents and warrants to Customer that it has the right to grant Customer access to the VPM System as contemplated in this Agreement, and the VPM System does not infringe the Intellectual Property Rights (as defined below) of any third party. Customer represents and warrants to VPM that it has all required legal and other rights to load Customer Data into the VPM System and otherwise use such data in connection with the VPM System, that such actions will not violate any applicable laws or infringe the Intellectual Property Rights or privacy or other rights of any third party. Each party (“Indemnifying Party”) agrees to indemnify, defend and hold harmless the other party and its owners, members, managers, directors, employees and agents from and against all losses, expenses, damages and costs, including reasonable attorneys' fees, arising out of third party claims alleging or based on the breach of any representation or warranty made by the Indemnifying Party hereunder.

7. Modifications of VPM System. VPM reserves the right at any time to revise and modify the VPM System and alter its features, specifications, capabilities and/or functions, without the consent of or notice to Customer or any Authorized User unless revisions or modifications affect the Customer’s use and functionality of the VPM System.

8. System Maintenance; Downtime. Customer acknowledges and agrees that (i) it may be necessary to take down the VPM System and Website from time to time or on a periodic basis for maintenance or to resolve technical problems, upgrade software, or otherwise help ensure the reliable and efficient operation of the VPM System, and (ii) due to the foregoing or due to power interruptions, communication systems failures or other conditions outside VPM’s control, the VPM System may occasionally be unavailable. Customer waives any and all claims against VPM arising from any such availability. VPM will use reasonable efforts to minimize the time during which the VPM System is down for such reasons.

9. Payment of Fees; Taxes. In consideration of the rights granted by VPM under this Agreement, Customer agrees to pay VPM the fees set forth in the Specific Terms or otherwise agreed to by the parties. All fees are due upon receipt of an invoice. All fees are deemed fully earned when due or upon invoicing and will not be prorated or refunded if this Agreement is terminated or expires except as expressly set forth in the Specific Terms. Overdue amounts shall, at VPM’s option, accrue interest at the rate of 1.5% per month. Fees payable under this Agreement are net amounts and do not include sales, use, value-added, or any other taxes except for income taxes levied on VPM with respect to such fees. All such taxes will be the responsibility of and paid or reimbursed by Customer.

10. Limitation on Warranties. VPM warrants that (a) the VPM System will perform materially in accordance with the applicable Documentation; (b) VPM will not materially reduce the core functionality of the VPM System during the current Subscription Term; (c) VPM will use industry standard measures to deliver the VPM System free of Harmful Code; and (d) VPM will perform the Professional Services in a diligent and professional manner. The customer’s exclusive remedy and VPM’s entire liability for a breach of the above warranties will be, at VPM’s option, (x) the correction of the deficient Service that caused the breach of warranty, or (y) provision of comparable functionality. If VPM cannot accomplish (x) or (y) in a commercially reasonable manner, as determined in its

reasonable discretion, VPM may terminate the deficient Service and refund to Customer any prepaid Fees for the terminated Service, prorated to cover the remaining portion of the Subscription Term following notice of the breach of warranty.

11. Limitation of Liability. IN NO EVENT SHALL VPM, ITS MEMBERS, MANAGERS, EMPLOYEES, CONTRACTORS OR OTHER REPRESENTATIVES BE LIABLE UNDER ANY THEORY, INCLUDING BUT NOT LIMITED TO CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE) OR PRODUCT LIABILITY, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION ANY LOSS OF PROFITS OR DATA, BUSINESS INTERRUPTION, OR OTHER PECUNIARY LOSS), ARISING FROM OR RELATING TO THE USE OF OR INABILITY TO USE THE VPM SYSTEM OR ANY VPM DATA OR FROM ERRORS, OMISSIONS OR OTHER INACCURACIES IN ANY VPM DATA ACCESSED THROUGH THE VPM SYSTEM, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT PREJUDICE TO THE FOREGOING LIMITATIONS, THE AGGREGATE LIABILITY OF VPM TO CUSTOMER UNDER THIS AGREEMENT UNDER ANY AND ALL THEORIES, INCLUDING BUT NOT LIMITED TO CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR PRODUCT LIABILITY, SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER TO VPM UNDER THIS AGREEMENT DURING THE IMMEDIATELY PRECEDING TWELVE MONTH PERIOD.

12. Intellectual Property Ownership. VPM and its licensors, where applicable, own all right, title and interest, including all Intellectual Property Rights, in and to the VPM System, all content provided on the VPM System website and all underlying software used in connection with the VPM System. This Agreement is not a sale and does not convey you any rights of ownership in any of the foregoing. The "VPM" and "Virtual Project Manager" name, logo and taglines, including but not limited to "Built by Cities for Cities" and "Built for Municipalities by Municipalities" are trademarks of VPM and no right or license is granted to use them. If Customer or any Authorized User gives VPM verbal or written feedback regarding the VPM System, Customer agrees that VPM will have a perpetual, unrestricted, assignable and royalty-free license and right to use and incorporate some or all of such feedback into the VPM System or other product or service offered by VPM. As used herein, "Intellectual Property Rights" means all present and future worldwide copyrights, trademarks, trade secrets, patents, patent applications, moral rights, contract rights, and other proprietary rights.

13. Term and Termination. The initial term of this Agreement is set forth on the Specific Terms. Unless otherwise provided in the Specific Terms, the term shall automatically renew for successive periods equal to the initial term; provided, however, either party may terminate this Agreement at any time for any reason by giving the other party at least sixty (60) days prior written notice. This Agreement may also be terminated by either party if the other party breaches any provision of this Agreement and does not cure the breach, if curable, within twenty (20) days after written notice thereof specifying the default.

14. Effect of Termination. Upon termination or expiration of this Agreement for any reason, all rights granted by VPM under this Agreement, other than for data retrieval purposes, will immediately cease. Upon termination or expiration of this Agreement, all unpaid fees owed by Customer through the end of the then-current term shall be due and payable immediately, and no prepaid fees shall be refunded except as expressly provided in the Specific Terms. In addition, for thirty (30) days following termination or expiration of this Agreement, VPM shall make Customer Data available to Customer, via read-only access to the Subscription Service, solely for the purpose of allowing Customer to retrieve Customer Data. After thirty (30) days, VPM will have no responsibility for Customer Data and shall have the right to delete some or all Customer Data from its systems.

15. Use of Customer Name. VPM shall have the right to identify Customer as a customer of the VPM

System, and use Customer's name and logo, on VPM's website and in other marketing materials pertaining to the VPM System.

16. Communications with Users; Marketing. Subject to VPM's privacy policy in effect from time to time and applicable law, unless Customer has opted out of receiving such communications, Customer agrees that VPM will have the right to (a) transmit or cause to be transmitted to Customer and its Authorized Users (unless they have opted out) marketing and related communications from VPM relating to its products and services, and (b) transmit or permit to be transmitted to Customer and its Authorized Users (unless they have opted out) marketing and related communications from VPM's affiliates and/or business partners relating to their products and services. Customer and its Authorized Users may opt out of receiving some or all of these communications at that time by changing preferences or through email notification of VPM. Because the VPM System is a hosted, online application, VPM may occasionally need to communicate with all Authorized Users, whether or not they have opted out, due to important announcements regarding the operation of or modifications to the VPM System.

17. Definitions.

"Documentation" means the official VPM-provided instructions, user guides, help and training manuals, descriptions of support and other descriptive product information applicable to the Services, whether in electronic, paper or equivalent form as updated from time to time.

"Harmful Code" means code, files, scripts, agents, malware or programs intended to do harm, including but not limited to viruses, worms, time bombs and Trojan horses.

"Professional Service" means the implementation, technical, consulting, training and similar services provided by or through VPM or its Affiliates, as described in the Specific Terms.

"Subscription Services" means the VPM software-as-a-service and all associated updates, offered on a subscription basis by VPM via an Agreement that provides the functionality described in the Documentation.

"Subscription Term" means the entire period during which Customer is entitled to use the Subscription Services, including the initial term and any applicable renewal terms.

18. **Miscellaneous.** This Agreement (including the Specific Terms) constitute the entire agreement between the parties regarding the subject matter hereof and supersede all prior or contemporaneous agreements, understandings, proposals, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties. This Agreement will be governed by the laws of the Oregon. Any action or proceeding arising from or relating to this Agreement shall be brought in a federal or state court in Deschutes County, Oregon, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive, in any bankruptcy case, arbitration proceeding or court case. Customer may not assign any of its rights or obligations under this Agreement without VPM's prior written consent. This Agreement may be executed manually or by facsimile in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. Any delay in the performance of any duties or obligations of either party will not be considered a breach of this Agreement if such delay is caused by a local, regional or national communications or power failure or interruption, labor dispute, shortage of materials, database corruption, fire, earthquake, flood, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible. The parties do not intend by this Agreement to confer any right or remedy on any third party. The provisions of Sections 2, 6, 10, 11, 12, 14 and 16, and any other provisions of this Agreement that should reasonably be expected to survive, shall survive the termination or expiration of this Agreement. Each party acknowledges and agrees that remedies at law for a breach or threatened breach of any of the provisions of this Agreement may be inadequate and, in recognition of this fact, each party agrees that in addition to any remedies at law (including, without limitation, damages), equitable relief in the form of specific performance, a temporary restraining order, a temporary or permanent injunction or any other equitable remedy shall be available in the event of a breach or threatened breach of this Agreement.