AGREEMENT AMENDMENT

City Manager’s Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620

AGREEMENT FOR SERVICES BETWEEN
THE CITY OF MENLO PARK AND MINOL, INC.

Amendment #: 2849.1

THIS FIRST AMENDMENT is made and entered into this 1/22/2021, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as “CITY,” and MINOL, Inc., hereinafter referred to as “FIRST PARTY.”

1. Pursuant to Section 4. COMPENSATION AND PAYMENT of Agreement No. 2989, (“Agreement”), Section 4. COMPENSATION AND PAYMENT [amendment to section] to read as follows

“CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed $210,525 as described in Exhibit "A, A-1, A-2" Scope of Services. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.”

2. Pursuant to Section 24. TERM OF AGREEMENT of Agreement No. 2849, (“Agreement”), Section 24. TERM OF AGREEMENT [amendment to section] to read as follows

“This agreement shall remain in effect for the period of December 15, 2019 through December 31, 2021 with the option to extend two additional one-year terms.”

Except as modified by this Amendment, all other terms and conditions of Agreement No. 2849 remain the same.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

SIGNATURE PAGE TO FOLLOW
FOR FIRST PARTY:

Wilmar Basson
Printed name
________________________
Tax ID# 

1/22/2021
Date

FOR CITY OF MENLO PARK:

Starla Jerome-Robinson
Printed name
________________________
Tax ID# 

1/22/2021
Date

APPROVED AS TO FORM:

Cara E. Silver
Printed name
________________________
1/22/2021
Date

ATTEST:

Judi A. Herren
Printed name
________________________
1/22/2021
Date
FIRST AMENDMENT TO THE AGREEMENT FOR SERVICES BETWEEN
THE CITY OF MENLO PARK AND MINOL, INC

THIS FIRST AMENDMENT ("Amendment") is entered into by and between Minol, Inc., a Colorado corporation, with its principal office located at 15280 Addison Road, Suite 100, Addison, Texas 75001 ("First Party"), and City of Menlo Park, a California municipal corporation, with its principal office located at 701 Laurel St. Menlo Park, CA 94025 ("City"), and effective as of the 1st day of January, 2021 ("Effective Date"). First Party and City may be referred to herein individually as “Party” or collectively as “Parties”.

WHEREAS, this Amendment amends the terms of the Agreement For Services Between the City of Menlo Park and Minol, Inc. between the Parties, effective December 18, 2019, ("Agreement"); and

WHEREAS, the Agreement, and any prior amendment thereof, shall be modified in accordance with this Amendment and all other terms of the Agreement shall remain unchanged; and

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties, intending to be legally bound, hereby agree to amend the Agreement as follows:

I. **Term.** The Term of the Agreement shall be extended for a renewal term beginning on January 01, 2021 for a period of one (1) year, ending on December 31, 2021 ("First Renewal Term"), unless extended, amended, or terminated in writing by the City.

II. **Fee Schedule for Phase Two.** Per Unit Fee per monthly billing shall be amended as follows:

| Per Unit Fee per monthly billing | Renewal Year 1: $3.86 per account (includes postage) | Includes invoice print and mail; postage; lockbox collections; Client customer update processing; online Client customer and Client portal access; daily or weekly payment collection reimbursements via wire; inbound Customer Service Call Center; Minol’s standard Water Utility Reporting packages, and up to three customized reports for financial system and other reporting needs. |

This Amendment shall supersede any conflicting terms in the Agreement, and any prior amendments thereto.

IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute this Addendum.

**City: City of Menlo Park**

By: ____________________________ Date: ____________________________

Print Name: ____________________________ Title: ____________________________

**First Party: Minol, Inc.**

By: ____________________________ Date: ____________________________

Print Name: ____________________________ Title: ____________________________
# SERVICES AGREEMENT

City Manager's Office  
701 Laurel St., Menlo Park, CA 94025  
tel 650-330-6620

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<th>Agreement #:</th>
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## AGREEMENT FOR SERVICES BETWEEN  
THE CITY OF MENLO PARK AND MINOL, INC

THIS AGREEMENT made and entered into at Menlo Park, California, this 12/18/2019, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and MINOL, INC., a Colorado Corporation, hereinafter referred to as “FIRST PARTY.”

WITNESSETH:

WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: Municipal utility billing services

WHEREAS, FIRST PARTY has experience in performing said services and desires to and does hereby undertake to perform said services.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:

### 1. SCOPE OF WORK

In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A," Scope of Services, attached hereto.

### 2. SCHEDULE FOR WORK

FIRST PARTY’s proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by written notice, or as otherwise required in Exhibit “A-1.” Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other’s employees and agents.

FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, except as otherwise specifically defined. FIRST PARTY’s timing of completion of work shall be as set forth in Exhibit “A”.

### 3. PROSECUTION OF WORK

FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with Exhibit "A-1," Scope of Services.
4. COMPENSATION AND PAYMENT

A. CITY shall pay FIRST PARTY pursuant to the Fee Schedule as described in Exhibit "A," Scope of Services. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable upon thirty (30) days' written notice to FIRST PARTY, with FIRST PARTY'S right to cure within such time period or CITY shall have the right to terminate the Agreement with all fees due to FIRST PARTY through date of termination.

B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.

C. Payments shall be monthly for the invoice amount. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number.

D. Payments are due upon receipt of written invoices and the CITY shall have thirty (30) days upon receipt to submit payments. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges, at CITY'S sole expense. Except for invoiced payments that the CITY has successfully disputed, all late payments shall bear interest at the lesser of the rate of 1.5% per month (18% annum) or the highest rate permissible under applicable law, calculated daily and compounded monthly. CITY shall also reimburse FIRST PARTY for all costs incurred in collecting any large payments, including, without limitation attorneys' fees and court costs.

5. EQUAL EMPLOYMENT OPPORTUNITY

A. FIRST PARTY, with regard to the work performed by it under this agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap, marital status or age in the retention of sub-contractors, including procurement of materials and leases of equipment.

B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.

C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.

E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.

6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

A. FIRST PARTY shall not assign this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.

B. In the event there is a change of more than 30 percent of the stock ownership or ownership in FIRST PARTY from the date of this agreement is executed, then CITY shall be notified before the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this agreement.
7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY's services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

8. CONTRACTOR QUALIFICATIONS

It is expressly understood that FIRST PARTY is skilled in the services necessary to perform the work agreed to be done by it under this agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the industry. The acceptance of FIRST PARTY's work by CITY does not operate as a release of FIRST PARTY from said understanding.

9. NOTICES

All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

Nicole Nagaya
Public Works Department
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6740
eromero@menlopark.org

Notices required to be given to FIRST PARTY shall be addressed as follows:

Wilmar Basson, President
Minol, Inc.

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

10. HOLD HARMLESS

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.
11. INSURANCE

A. FIRST PARTY shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.

B. There shall be a contractual liability endorsement extending the FIRST PARTY’s coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days’ notice must be given, in writing, to the CITY, at the address shown in Section 9, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.
   1. Workers’ compensation and employer’s liability insurance:
      The FIRST PARTY shall have in effect during the entire life of this agreement workers’ compensation and Employer’s Liability Insurance providing full statutory coverage. In signing this agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: “I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this agreement” (not required if the FIRST PARTY is a Sole Proprietor).
   2. Liability insurance:
      The FIRST PARTY shall take out and maintain during the life of this agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY’s operations under this agreement, whether such operations be by FIRST PARTY or by any sub-contractor or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than one million dollars ($1,000,000) per occurrence and one million dollars ($1,000,000) in aggregate, or one million dollars ($1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this agreement in an amount of not less than one million dollars ($1,000,000) for each accident combined single limit or not less than one million dollars ($1,000,000) for any one (1) person, and one million dollars ($1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, ($300,000) property damage.

C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (not for workers’ compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.

D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.
12. PAYMENT OF PERMITS/LICENSES

Contractor shall obtain a city of Menlo Park business license, for the work/services to be performed, at his/her own expense, before commencement of said work/services or forfeit any right to compensation under this agreement.

13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its subcontractors for the accuracy and competency of the work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the documents prepared by FIRST PARTY or its subcontractors.

14. OWNERSHIP OF WORK PRODUCT

Not applicable.

15. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A."

16. TERMINATION OF AGREEMENT

A. Except as provided under Exhibit “A-1”, CITY may give sixty (60) days written notice to FIRST PARTY, terminating this agreement in whole or in part at any time, either for its contractual obligations, subject to any applicable cure period prescribed herein. Upon receipt of such notice, FIRST PARTY shall:

1. Immediately discontinue all services affected (unless the notice directs otherwise); and
2. Deliver to the CITY all data, specifications, reports, estimates, and summaries as may have been accumulated or produced by FIRST PARTY in performing work under this agreement, whether completed or in process.

B. If the termination is due to the failure of FIRST PARTY to fulfill its agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise.

C. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this agreement. Conditions for termination by FIRST PARTY are provided under Exhibit “A-1”.

D. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.

17. INSPECTION OF WORK

It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY. An expense shall be incurred by CITY for inspections or reviews in excess of two (2) per calendar year.

18. COMPLIANCE WITH LAWS

It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this agreement, including but not limited to compliance with prevailing wage laws, if applicable.
19. BREACH OF AGREEMENT

A. This agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY or the CITY for any reason from the requirements thereof, or from any other provision of this agreement, shall constitute a breach of this agreement and may be cause for termination at the election of the non-breaching party.

B. Either party reserves the right to waive any and all breaches of this agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event a party chooses to waive a particular breach of this agreement, it may condition same on payment by the breaching party of actual damages occasioned by such breach of agreement.

20. SEVERABILITY

The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

21. CAPTIONS

The captions of this agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this agreement.

22. LITIGATION OR ARBITRATION

In the event that suit or arbitration is brought to enforce the terms of this agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B," 'Dispute Resolution' attached hereto and by this reference incorporated herein.

23. RETENTION OF RECORDS

FIRST PARTY shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the City, a federal agency, and the state of California.

24. TERM OF AGREEMENT

This agreement shall remain in effect for the period of December 15, 2019 through December 31, 2020 unless extended, amended, or terminated in writing by CITY.

25. ENTIRE AGREEMENT

This document constitutes the sole agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties to this agreement.
26. STATEMENT OF ECONOMIC INTEREST

Contractors, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract. Based upon review of the Contractor’s Scope of Work and determination by the City Manager, it is determined that Contractor IS NOT required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk’s office no later than 30 days after the execution of the agreement.

27. MISCELLANEOUS PROVISIONS

A. **Intellectual Property.** All intellectual property rights of FIRST PARTY, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "Intellectual Property Rights") in and to all documents, work product and other materials that are used in the course of performing the Services [except for any Confidential Information or intellectual property of CITY] shall be owned exclusively by FIRST PARTY.

B. **Confidentiality.** From time to time during the Term of this Agreement, either Party (as the "Disclosing Party") may disclose or make available to the other Party (as the "Receiving Party"), non-public, proprietary, and confidential information of Disclosing Party that, if disclosed in writing or other tangible form is clearly labeled as "confidential," or if disclosed orally, is identified as confidential when disclosed and within 120 days thereafter, is summarized in writing and confirmed as confidential ("Confidential Information"); provided, however, that Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Receiving Party’s breach of this Section 6; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (c) was in Receiving Party’s possession prior to Disclosing Party’s disclosure hereunder; or (d) was or is independently developed by Receiving Party without using any Confidential Information. The Receiving Party shall: (i) protect and safeguard the confidentiality of the Disclosing Party’s Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (ii) not use the Disclosing Party’s Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (iii) not disclose any such Confidential Information to any person or entity, except to the Receiving Party’s Group (defined hereinafter) who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement.

If the Receiving Party is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify Disclosing Party of such requirements to afford Disclosing Party the opportunity to seek, at Disclosing Party’s sole cost and expense, a protective order or other remedy. For purposes of this Section 9(e) only, Receiving Party’s Group shall mean the Receiving Party’s subsidiaries, affiliates, employees, officers, directors, shareholders, partners, agents, independent contractors, FIRST PARTY’s, sub-licensees, subcontractors, attorneys, accountants, and financial advisors, of whom shall all be subject to the same protection requirements of the Confidential Information as the Receiving Party.

C. **Limited Warranty and Limitation of Liability.**
   1. FIRST PARTY warrants that it shall perform the Services:
      a. In accordance with the terms and subject to the conditions set under Exhibit “A-1” of this Agreement.
      b. Using personnel of commercially reasonable skill, experience and qualifications.
c. In a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services; provided, however, that CITY provides all information timely that is required for FIRST PARTY to perform the Services in such manner.

2. FIRST PARTY’s sole and exclusive liability and CITY’s sole and exclusive remedy for breach of this warranty shall be as follows:
   a. FIRST PARTY shall use reasonable commercial efforts to promptly cure any such breach; provided that if FIRST PARTY cannot cure such breach within a reasonable time (but no more than 30 days) after CITY’s written notice of such breach, CITY may, at its option, terminate the Agreement by serving written notice of termination in accordance with Section 16 of this Agreement.
   b. In the event the Agreement is terminated pursuant to Section 16 above, FIRST PARTY shall within ten (10) days after the effective date of termination, provide CITY with all information and data related to the CITY’s customer accounts for purposes of transitioning the Services to a new provider.
   c. The foregoing remedy shall not be available unless CITY provides written notice of such breach within 30 days after the Client discovered, or should have discovered, the occurrence of the breach.

3. FIRST PARTY MAKES NO WARRANTIES EXCEPT FOR THAT PROVIDED IN THIS SECTION HEREIN. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, ARE EXPRESSLY DISCLAIMED.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

FOR FIRST PARTY:

Wilmar Basson

__________________________
Signature

Wilmar Basson

__________________________
Printed name

__________________________
Tax ID#

__________________________
President

__________________________
Title

12/18/2019

APPROVED AS TO FORM:

William L. McClure

__________________________
Date

William L. McClure, City Attorney

__________________________
__________________________
__________________________
Starla Jerome-Robinson, City Manager

__________________________
__________________________
__________________________
Judi A. Herren, City Clerk

__________________________
__________________________
__________________________
12/18/2019
EXHIBIT “A” – SCOPE OF SERVICES

A1. SCOPE OF WORK

FIRST PARTY agrees to provide services for CITY’s Public Works Department pursuant to Exhibit “A-1”. In the event of any discrepancy between any of the terms of Exhibit “A-1” and those of this agreement, Exhibit “A-1” shall prevail.

FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY’s satisfaction.

A2. COMPENSATION

CITY hereby agrees to pay FIRST PARTY at the rates set forth in Exhibit “A-1”. FIRST PARTY shall be paid within thirty (30) days. Invoices shall be submitted containing all information contained in Section A5 below. Except as provided under Exhibit “A-1” in no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work.

A3. SCHEDULE OF WORK

FIRST PARTY’S proposed schedule for the various services required will be set forth in Exhibit “A-1”.

A4. CHANGES IN WORK -- EXTRA WORK

In addition to services described in Section A1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:

- Change in the services because of changes in scope of the work.
- Additional tasks not specified herein as required by the CITY.

The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY’s services before the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. In the event that the CITY agrees to such it shall provide compensation to the FIRST PARTY in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and FIRST PARTY. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the Public Works Director.

A5. BILLINGS

FIRST PARTY’s bills shall include the following information: A brief description of services performed, project title and the agreement number; the date the services were performed; the current invoice amount. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this agreement shall be incurred at the FIRST PARTY’s discretion. Such expenses shall be FIRST PARTY’s sole financial responsibility.
EXHIBIT "A-1"
SCOPE OF WORK

1. Implementation. Implementation shall be completed in two (2) separate phases as follows:
   a. Phase One. The following to commence upon execution of the Agreement with completion within seventy-five (75) days provided that CITY performs its obligations as required herein:
      i. Upon receipt of customer data from the CITY, FIRST PARTY shall import and setup all current customer, meter, and last meter read data into the FIRST PARTY's Customer Information System ("CIS"), to include the posting of balance transfer adjustments to each customer account based on the final aged accounts receivable report provided by the CITY's previous billing provider.
      ii. Upon receipt of current water utility rate structure from CITY, FIRST PARTY shall set up utility rates in its billing system.
      iii. FIRST PARTY shall provide a CITY-branded billing statement layout and design using one of its existing layouts to help expedite Implementation. Billing statement layout shall include CITY bill messaging, the breakdown of tiers and other water charges, total amount due, due date, amount of late penalty if paid after the due date, and other pertinent billing data as requested by the CITY. CITY approval is not required for this initial billing statement layout and design that will be in use until completion of Phase Two of Implementation.
      iv. FIRST PARTY shall setup and provide an online customer portal for the CITY's customers to obtain access to account information, make payments, and enroll in automatic payments and/or electronic billing ("Customer Portal"). CITY customers will have access to customer portal 24/7, excluding routine maintenance times and any unplanned outages.
      v. FIRST PARTY shall setup and provide an online client portal for CITY's staff to obtain access to customer information, meter information, reports, work orders, and any other pertinent information described herein. CITY staff will have access to client portal 24/7, excluding routine maintenance times and any unplanned outages.
      vi. FIRST PARTY shall establish a minimum set of Automated Call Distribution ("ACD") menu options for incoming customer calls.
   b. Phase Two. The following shall commence upon completion of Phase One:
      i. FIRST PARTY shall upload and store at least two (2) years' of customer historical billing data (i.e., transactions), meter reads, and customer notes into the CIS, if provided by CITY. This does not include the maintenance of aged receivables as the CIS cannot accept back-dated transactions.
      ii. FIRST PARTY shall make any CITY-requested changes to the billing statement layout, provided that the CITY pays FIRST PARTY for the costs of such changes, if any, to complete the requested changes. CITY understands that only minimal modifications can be made to the remittance coupon portion of the billing statement due to the bank lockbox requirements. The billing statement changes herein shall include the addition of separate itemization of payment arrangements (i.e. next scheduled payments) listed on the billing statement.
      iii. FIRST PARTY shall provide customers the ability to pay bills in-person at locations designated by the CITY, via check or money order to be deposited by CITY, cash to be deposited by CITY, credit card or echeck/ACH to be processed via FIRST PARTY's system, and paper check conversion to echeck via FIRST PARTY's system.
      iv. FIRST PARTY shall incorporate any portions of the California Senate Bill 998 that the FIRST PARTY is unable to incorporate during Phase One implementation in the CIS for use by CITY personnel, provided that such actions required by the California Senate Bill 998 are processed internally by FIRST PARTY staff.
      v. FIRST PARTY shall incorporate certain features or functionalities that were not incorporated by the FIRST PARTY into the CIS during Phase One due to time constraints.
      vi. FIRST PARTY shall develop a complete ACD Menu, which includes self-service over-the-phone payments available 24/7/365, excluding maintenance windows.
vii. FIRST PARTY shall develop up to three (3) custom reports, in addition to the standard reports provided, based on CITY’s requirements, to include California Senate Bill 998 reporting.

2. Monthly Services
   a. FIRST PARTY shall provide remote access to the CIS via FIRST PARTY’s standard, CITY-branded client portal for CITY personnel to view customer information, historical water use, billing information, notes, work order requests, and other pertinent information, along with access to run reports. To access the CIS, the CITY must have a current version of Google Chrome, Firefox, or Internet Explorer, and a version of Windows Operating System 2010 or newer. CITY staff will have access to client portal 24/7, excluding routine maintenance times and any unplanned outages.
   b. FIRST PARTY shall provide availability for the download and/or upload of customer meter reads by the CITY’s meter read contractor. FIRST PARTY shall perform quality control on reads received from the CITY’s meter read contractor and notify the CITY through a ticketing system or work orders of any abnormal reads as needed (e.g. abnormally high, no consumption, etc.) to ensure customer billing is as accurate as possible. Any maintenance required to repair or replace meters shall be provided solely by the CITY. FIRST PARTY can also estimate meter reads based on guidelines provided by CITY to expedite billing activities, if so desired by CITY.
   c. Based on the CITY’s customer requests, FIRST PARTY shall set up new accounts, process move-ins and move-outs, process final accounts, updating meter change-outs and reads upon notice from CITY, provide refunds, add appropriate notes to customer accounts, and make customer bill adjustments as needed.
   d. Using the rate structure provided by the CITY, FIRST PARTY shall complete the following:
      i. Calculate each customer’s monthly water utility charges based on the applicable meter reading;
      ii. Print and mail paper billing statements, including return envelope, with each billing statement to include a detailed breakdown of current charges, a summary of all payment and adjustment amounts, and the total amount due; and
      iii. Generate electronic billing statements for transmission to customer via email for all customers enrolled in electronic billing through the CIS.
   e. FIRST PARTY shall provide customer access to pay bills by (1) mail, (2) online via Customer Portal, and (3) by phone, using any of the following methods: check, credit card, echeck/ACH bank draft, or automatic payment.
   f. FIRST PARTY shall remit collected funds to the CITY on a weekly basis by direct deposit, ACH, or wire transfer (additional fees may apply).
   g. FIRST PARTY shall also include one (1) rate change implementation per year as part of our monthly services, if required by CITY.

3. Training. FIRST PARTY shall provide training of the CIS to CITY personnel as follows:
   a. One (1) on-site training during Implementation, or alternative date as agreed upon by the parties. The CITY must schedule the on-site training with FIRST PARTY at least two (2) weeks prior to the scheduled training date.
   b. Up to three (3) online remote trainings, as requested by the CITY with at least two (2) business days’ notice to FIRST PARTY.
   c. Any training requested by the City that is in addition to the trainings provided hereinabove shall be billed at the hourly or daily rate provided within the attached Fee Schedule under “Professional Services”, plus all related travel expenses. The CITY must provide FIRST PARTY with at least two (2) weeks’ notice for on-site training and two (2) days’ notice for online remote training.
4. **Reports.** FIRST PARTY shall provide the CITY with billing reports as follows:
   a. Phase One reports shall consist of the following:
      i. Cash Reconciliation Report: a report reflecting the reconciliation of customer payments collected to funds remitted to the CITY.
      ii. Monthly Billing Report: a multi-tab Excel report containing the following individual reports:
          1. AR Summary: a summary of aged accounts receivable by service category and/or rate type;
          2. AR Detail: a detailed aged accounts receivable by Customer;
          3. Top 50 Customers: a summary of the top 50 customers with high consumption and high utility charges;
          4. Top 200 Customers: a summary of the top 200 customers with high consumption and high utility charges;
          5. Usage and Number of Accounts by Type: a summary of charges and consumption by customer type (i.e., residential, commercial, industrial);
          6. Customer Consumption Summary: a summary count of active customers by customer type and meter size;
          7. Customer Details: a detail listing of all customers’ charges and consumption; and
          8. CITY Account Consumption Summary: a summary of consumption by city department, if such information is provided by the CITY.
      iii. Monthly Interface Files, to include the following:
          1. CITY accounts revenue
          2. Non-CITY accounts revenue
          3. Non-CITY accounts adjustments
      iv. Annual files for Accruals, Aged AR, and Payments received but not reimbursed to CITY. Accruals are for CITY and non-CITY accounts. Monthly Billing Report does contain YTD and/or 12-month figures, so the Monthly Billing Report for the last year-end month provide annual usage and charges.

5. **Customer Service.**
   a. FIRST PARTY shall provide a remote Customer Service Call Center accessible by CITY’s customers by use of a toll-free number during operating hours of Monday through Friday, 7:30 am to 5:30 pm PST. The Customer Service Call Center will not be available during holidays set by FIRST PARTY.
   b. For incoming customer calls, FIRST PARTY shall provide a CITY-branded automated message, to include the ACD menu options setup during Phase One Implementation.
   c. Customer Service Call Center shall provide bilingual services in Spanish and be able to handle all customer related billing questions, to include payments, billing adjustments, meter read inquiries, and establishment of payment arrangement pursuant to CITY’s requirements.

6. **Ad-Hoc Services.**
   a. FIRST PARTY shall offer the CITY the optional service to have closed accounts with past due balances sent to a third-party collection agency based on conditions set by the CITY (i.e., number of days after account closure, minimum amount past due, etc.). The cost of this service is set forth in the attached Fee Schedule.
   b. FIRST PARTY shall offer the provision of late notices for customer delinquent accounts. The cost of this service is set forth in the attached Fee Schedule.

7. **City Obligations, Representations, and Warranties.**
   a. CITY must provide FIRST PARTY with CITY’s customer account information within 72 hours of FIRST PARTY’s request for the initial setup. CITY shall be solely responsible for providing updates to CITY’s customer account information, as needed, to ensure FIRST PARTY is able to perform the Services timely and accurately. CITY represents and warrants that all customer information provided to FIRST PARTY is accurate and complete in all material respects as of the date such
information is provided to the FiRST PARTY. Customer information provided by CITY shall be provided in a mutually agreed upon format, and shall continue to be provided in such format unless format changes are mutually agreed upon in writing between the parties.

b. CITY agrees that all monthly utility type invoices mailed by FIRST PARTY are final and cannot be modified and/or reissued, as to the CITY’s customers, or any changes thereof, however, adjustments (i.e., credits or debits) may be applied to a current customer accounts if necessary.

c. CITY shall provide tariff and applicable rate information, as well as any applicable updates, no later than sixty (60) days prior to effective date of any changes to the tariff and applicable rate information. Failure by CITY to timely provide tariff and applicable rate information may delay customer utility billing and FIRST PARTY shall not be liable for such delays.

8. **Miscellaneous Provisions.**
   
a. **Additional Requirements.** FIRST PARTY shall provide all labor, material, tools and equipment, including postage for customer billing statements, required to complete this Scope of Work, unless noted otherwise herein.

b. **Staffing.** FIRST PARTY shall provide remote staffing to perform the services provided herein during business hours of Monday through Friday between 7:30 am and 5:30 pm PST (i.e. 9:30 am to 7:30 pm CST), with the exception of any holidays.

c. **Compliance.** FIRST PARTY shall meet California Senate Bill 998 requirements including noticing and identifying low-income customers, customers that have a medical need for water, and customers eligible for reduced reconnection fees.
## FEE SCHEDULE FOR PHASE ONE

<table>
<thead>
<tr>
<th>FEE TYPE</th>
<th>PRICING</th>
<th>FEE DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Implementation Fee</td>
<td>$50,000 billed over two months at $25,000 each commencing after fully executed agreement.</td>
<td>Includes the setup of initial service addresses, customers, and meter data in Mino's CIS; creation of city-branded customer and client portals; new online credit card and ACH payment processing portal; setup of LA Lockbox for processing checks; and creation of a branded invoice in Mino's existing standard format.</td>
</tr>
<tr>
<td>Flat monthly billing</td>
<td>$12,500 per month commencing upon initial billing, (includes postage)</td>
<td>Includes invoice print and mail; postage; lockbox collections; client customer update processing; online client customer and client portal access; daily or weekly payment collection reimbursements via wire; inbound Customer Service Call Center; Mino's standard Water Utility Reporting packages, and up to three customized reports for financial system and other reporting needs.</td>
</tr>
<tr>
<td>Back billing per unit</td>
<td>$0.00 included with flat monthly billing</td>
<td>Billing for Client's customers for billing periods that were not billed in prior months due to actions, or omissions, of Client.</td>
</tr>
<tr>
<td>Customer Refund or Over-payment Processing (optional)</td>
<td>$0.00 included with flat monthly billing</td>
<td>Generation and mailing of Client customer refund and overpayments.</td>
</tr>
<tr>
<td>Late Notices (optional)</td>
<td>$0.00 included with flat monthly billing</td>
<td>Includes printing and mailing a late notice after due date for delinquent accounts. Mino's would provide a service that satisfies the SB 598 requirements.</td>
</tr>
<tr>
<td>Collection Agency Services</td>
<td>TBD (charges are based on the Collection Agency's Fees)</td>
<td>Mino can either contract directly with a partner Collection Agency or we can work with the City's existing.</td>
</tr>
<tr>
<td>Billing Inserts</td>
<td>By Quote</td>
<td>Additional inserts printed and mailed with monthly invoices as requested by the Client.</td>
</tr>
</tbody>
</table>
| Professional Services/Ad-Hoc Services | Current hourly rate $150  
Current daily rate $1200  
Or By Quote based on scope of work | As needed and/or based on Scope of Work provided by City.                                                                                                                                                      |

## FEE SCHEDULE FOR PHASE TWO

<table>
<thead>
<tr>
<th>FEE TYPE</th>
<th>PRICING</th>
<th>FEE DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Implementation Fee</td>
<td>Remaining balance: $36,000 one-time fee to be billed over three (3) months, if City desires. Remaining balance details: $20 per unit (one-time) for estimated 4,300 account = $86,000 less $50,000 already paid</td>
<td>Includes the setup of initial service addresses, customers, and meter data in Mino's CIS; creation of city-branded customer and client portals; Importing of 2-years of Fathom's historical transaction and meter read data for access by City Staff; new online credit card and ACH payment processing portal; setup of LA Lockbox for processing checks; and creation of a branded invoice in Mino's existing standard format.</td>
</tr>
<tr>
<td>Per Unit Fee per monthly billing</td>
<td>$3.75 per account (includes postage)</td>
<td>Includes invoice print and mail; postage; lockbox collections; client customer update processing; online client customer and client portal access; daily or weekly payment collection reimbursements via wire; inbound Customer Service Call Center; Mino's standard Water Utility Reporting packages, and up to three customized reports for financial system and other reporting needs.</td>
</tr>
<tr>
<td>Back billing per unit</td>
<td>$3.75 per account/per cycle back-billed (includes postage)</td>
<td>Billing for Client's customers for billing periods that were not billed in prior months due to actions, or omissions, of Client.</td>
</tr>
<tr>
<td>Customer Refund or Over-payment Processing (optional)</td>
<td>$10.00 per check issued to Client's customers</td>
<td>Generation and mailing of Client customer refund and overpayments.</td>
</tr>
<tr>
<td>Late Notices (optional)</td>
<td>$3.75 per notice</td>
<td>Includes printing and mailing a late notice after due date for delinquent accounts. Mino's would provide a service that satisfies the SB 598 requirements.</td>
</tr>
<tr>
<td>Collection Agency Services</td>
<td>TBD (charges are based on the Collection Agency's Fees)</td>
<td>Mino can either contract directly with a partner Collection Agency or we can work with the City's existing.</td>
</tr>
<tr>
<td>Billing Inserts</td>
<td>By Quote</td>
<td>Additional inserts printed and mailed with monthly invoices as requested by the Client.</td>
</tr>
</tbody>
</table>
| Professional Services Fee/Ad-Hoc Services | Current hourly rate $150  
Current daily rate $1200  
Or By Quote based on scope of work | As needed and/or based on Scope of Work provided by City. Professional Services Fee is subject to change on an annual basis, not to exceed 3%.                                                              |
| Annual Fee Increase             | $3.10                             | The Per Unit, Late Notices, and the Back-billing per unit fees are subject to this increase on an annual basis.                                                                                                 |
| Postage Increase                | Per USPS                          | The Per Unit, Late Notices, and the Back-billing per unit fees are subject to any increases in the USPS bulk metered rates.                                                                                      |
EXHIBIT “B” - DISPUTE RESOLUTION

B1.0 All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:

B2.0 Mediation
B2.1 The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator’s fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph B3.1.

B3.0 Arbitration
B3.1 Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the agreement.

B3.2 The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:
B3.3 Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.
B3.4 The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years’ experience in construction litigation.
B3.5 All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.
B3.6 The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.
B3.7 Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.
B3.8 The prevailing party shall be awarded reasonable attorneys’ fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.
B3.9 Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.
B3.10 The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.
EXHIBIT “C” – CONFIDENTIALITY AND DATA MAINTENANCE

C1.0 City Data

a. Ownership of City Data. The FIRST PARTY agrees that, all CITY’S rights, including all intellectual property rights, in and to the City Data and shall remain the exclusive property of the City. FIRST PARTY’s intellectual property rights are provided under Section 27 of the Agreement.

b. Data Security. FIRST PARTY shall at all times during the Term provide and maintain up-to-date security with respect to (a) the Services, (b) the FIRST PARTY’s Website, (c) FIRST PARTY’s physical facilities, and (d) FIRST PARTY’s networks, to prevent unauthorized access or "hacking" of City's Data. FIRST PARTY shall provide security for its networks and all Internet connections consistent with best practices observed by well-managed contractors working in the financial services industry, and will promptly install all patches, fixes, upgrades, updates and new versions of any security software it employs. FIRST PARTY will maintain appropriate safeguards to restrict access to City's Data to those employees, agents or service providers of FIRST PARTY who need the information to carry out the purposes for which it was disclosed to FIRST PARTY. For information disclosed in electronic form, FIRST PARTY agrees that appropriate safeguards include electronic barriers (e.g., "firewalls", Transport Layer Security (TLS), Secure Socket Layer (SSL) encryption, or most current industry standard encryption, intrusion prevention/detection or similar barriers) and secure authentication (e.g. password protected) access to the City's Confidential Information and hosted City Data. For information disclosed in written form, FIRST PARTY agrees that appropriate safeguards include secured storage of City's Data. City's Data classified as Confidential Information shall be encrypted at rest and in transit with controlled access. FIRST PARTY also will establish and maintain any additional physical, electronic, administrative, technical and procedural controls and safeguards to protect the City's Data that are no less rigorous than accepted industry practices (including, as periodically amended or updated, the International Organization for Standardization's standards: ISO/IEC 27001:2005 – Information Security Management Systems – Requirements and ISO-IEC 27002:2005 – Code of Practice for International Security Management, NIST Special Publication 800-53 Revision 4 or its successor, the Information Technology Library (ITIL) standards, the Control Objectives for Information and related Technology (COBIT) standards or other applicable industry standards for information security), and shall ensure that all such controls and safeguards, including the manner in which Confidential Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement.

c. Use of City Data. FIRST PARTY is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for FIRST PARTY'S own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data, including user tracking and exception City Data within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of City Data by FIRST PARTY or third parties is prohibited. For purpose of this requirement, the phrase “unauthorized use” means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized.

d. Access to and Extraction of City Data. City shall have access to City’s Data pursuant to the terms provided under Exhibit “A-1”.

CC Rev 20190906
e. **Backup and Recovery of City Data.** As a part of the Services, FIRST PARTY is responsible for maintaining a backup of City Data and for an orderly and timely recovery of such data in the event of data corruption or interruption of the Services. FIRST PARTY shall maintain a contemporaneous backup of City Data that can be recovered within the requirements in this Agreement and maintaining the security of City Data as further described herein. FIRST PARTY’s backup of City Data shall not be considered in calculating storage used by City.

f. **Data Breach: Loss of City Data.** In the event of any Data Breach, act, error, omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of City Data or the physical, technical, administrative, or organizational safeguards put in place by FIRST PARTY that relate to the protection of the security, confidentiality, or integrity of City Data, FIRST PARTY shall, as applicable:

i. **Notify City immediately following discovery, but no later than twenty-four (24) hours of becoming aware of such occurrence or suspected occurrence.** FIRST PARTY’S report shall identify:

1. the nature of the unauthorized access, use or disclosure;
2. the Confidential Information accessed, used or disclosed;
3. the person(s) who accessed, used and disclosed and/or received protected information (if known);
4. what FIRST PARTY has done or will do to mitigate any deleterious effect of the unauthorized access, use or disclosure; and
5. what corrective action FIRST PARTY has taken or will take to prevent future unauthorized access, use or disclosure.

ii. In the event of a suspected Breach, FIRST PARTY shall keep the City informed regularly of the progress of its investigation until the uncertainty is resolved.

iii. **FIRST PARTY shall coordinate with the City in its breach response activities including without limitation:**

1. immediately preserve any potential forensic evidence relating to the breach, and remedy the breach as quickly as circumstances permit;
2. Promptly (within 2 business days) designate a contact person to whom the City will direct inquiries, and who will communicate FIRST PARTY responses to City inquiries;
3. As rapidly as circumstances permit, apply appropriate resources to remedy the breach condition, investigate, document, restore City service(s) as directed by the City, and undertake appropriate response activities;
4. Provide status reports to the City on Breach response activities, either on a daily basis or a frequency approved by the City; e. Make all reasonable efforts to assist and cooperate with the City in its Breach response efforts;
5. Ensure that knowledgeable FIRST PARTY staff are available on short notice, if needed, to participate in City-initiated meetings and/or conference calls regarding the Breach; and
6. Cooperate with City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by City.

iv. In the case of personally identifiable information (PII), (a) notify the affected individuals as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or, (b) reimburse City for any costs in the CITY notifying the affected individuals;
v. In the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no fewer than eighteen (18) months following the date of notification to such individuals;

vi. Perform or take any other actions required to comply with applicable law as a result of the occurrence;

vii. Without limiting FIRST PARTY’s obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless City for any and all claims, including reasonable attorneys’ fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from City in connection with the occurrence;

viii. Recreate lost City Data in the manner and on the schedule set by City without charge to City; and

ix. Provide to City a detailed plan within ten (10) calendar days of the occurrence describing the measures FIRST PARTY will undertake to prevent a future occurrence.

x. Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain information that may include: name and contact information of FIRST PARTY’S (or City’s) representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps FIRST PARTY has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by FIRST PARTY.

xi. FIRST PARTY shall retain and preserve City Data in accordance with the City’s instruction and requests, including without limitation any retention schedules and/or litigation hold orders provided by the City to FIRST PARTY, independent of where the City Data is stored.

xii. City shall conduct all media communications, unless at its sole discretion directs FIRST PARTY to do so, related to such Data Breach.

C2.0 Indemnification.

General Indemnification. FIRST PARTY shall indemnify and hold harmless City and it officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, “Claims”), arising from or in any way connected with FIRST PARTY performance of the Agreement, including but not limited to, any: (i) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; or (ii) strict liability imposed by any law or regulation. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City’s costs of investigating any claims against the City. In addition to FIRST PARTY’s obligation to indemnify City, FIRST PARTY specifically acknowledges and agrees that it has an immediate
and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such Claim is tendered to FIRST PARTY by City and continues at all times thereafter. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

C3.0 Transition Services and Disposition of Content

Upon expiration or termination of the Services under this Agreement:

a. FIRST PARTY may immediately discontinue the Services. FIRST PARTY shall within five (5) calendar days of the expiration or termination of the Services return City’s data in an agreed-upon machine readable format. This provision shall also apply to all City Data that is in the possession of subcontractors, agents or auditors of FIRST PARTY. Such data transfer shall be done at no cost to the City. Once FIRST PARTY has received written confirmation from City that City’s Data has been successfully transferred to City, FIRST PARTY shall within thirty (30) calendar days purge or physically destroy all City Data from its hosted servers or files and provide City with written certification within five (5) calendar days that such purge and/or physical destruction has occurred. Secure disposal shall be accomplished by “purging” or “physical destruction,” in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

b. FIRST PARTY shall provide to City and/or Successor Service Provider assistance requested by City to effect the orderly transition of the Services, in whole or in part, to City or to Successor Service Provider. During the transition period, City Data access shall continue to be made available to City without alteration. Such Transition Services shall be provided on a time and materials basis if the City opts to return to its own servers or City chooses a Successor Service Provider. Transition costs may include: (a) developing a plan for the orderly transition of the terminated Services from FIRST PARTY to Successor Service Provider; (b) if required, transferring the City Data to Successor Service Provider; and (c) such other activities upon which the Parties may agree. All applicable terms and conditions of this Agreement shall apply to the Transition Services. This Section shall survive the termination of this Agreement.