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

Contract #:

AGREEMENT FOR SERVICES BETWEEN

THE CITY OF MENLO PARK AND FATHOM Water Management, Inc.

THIS AGREEMENT made and entered into at Menlo Park, California, this 10th day of June, 2016, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY", and FATHOM Water Management, Inc., hereinafter referred to as "FIRST PARTY." This agreement, once executed, shall be effective starting June 1, 2016 and shall supersede the January 12, 2010 agreement with FATHOM (formerly Global Water Management).

WITNESSETH:

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

WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.

WHEREAS, FIRST PARTY owns and operates certain proprietary software, technology, and infrastructure, known as “FATHOM” for the support and optimization of water and wastewater utility management.

WHEREAS, CITY wishes to access and use the FATHOM Platform (defined below on Exhibit “B”) on a Software as a Service ("SaaS") basis for its utility services and to receive training from FATHOM on the use of the FATHOM Platform, and FATHOM is willing to grant such access and provide such training subject to the terms and conditions set forth herein.

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-1”, Scope of Services. Further, FIRST PARTY will provide CITY access to and use of the FATHOM Platform as set forth in Exhibit “B”, Software-as-a-Service Terms and Conditions.

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-1”, Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly 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 promptly 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.
3. PROSECUTION OF WORK
FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously to complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit “A-1”, Scope of Services).

4. COMPENSATION AND PAYMENT
A. CITY shall pay FIRST PARTY an all-inclusive fee as described in Exhibit “A-2” and subject to annual CPI adjustments as set forth in Exhibit “A-2”. Any additional services shall be based on the then-current prices or hourly rates. All payments, including fixed hourly rates, 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 in its reasonable discretion that the quantity or quality of the work performed is unacceptable.
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 invoiced monthly. Fifteen (15) days after delivery of the invoices, FIRST PARTY will automatically, and without notice, deduct any invoiced fees from utility bill payments made through the FATHOM Platform by CITY’s customers or end users. All payments shall be made in U.S. dollars in immediately available funds. 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.
D. Any amounts not paid when due shall bear interest at the maximum rate allowed by law.

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-consultants, 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.
F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY’s agreement with all sub-consultants.

6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST
Neither party may assign this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the other party hereto, 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. Notwithstanding the foregoing, FIRST PARTY may assign this Agreement without such approval to:
its affiliate; or (b) a successor-in-interest in connection with a change of control (whether by merger, sale of stock or assets, consolidation, reorganization, or otherwise) provided any such affiliate or successor has agreed in writing to be bound by and fully assume the terms and conditions set forth in this Agreement and, at FIRST PARTY’s sole discretion, has the ability to perform the Scope of Work at a comparable level of service. Notice of an intended assignment or transfer shall be furnished promptly to the CITY. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of each party and its respective successors and permitted assigns.

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 sufficiently skilled 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 professional and workmanlike manner consistent with industry standards. 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:

Justin Murphy, Public Works Director
Menlo Park Municipal Water District
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6725
jicmurphy@menlopark.org
water@menlopark.org

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

Jason Bethke, President & Chief Growth Officer
FATHOM Water Management, Inc.
21410 N. 19th Avenue, Suite 201
Phoenix, AZ 85027
480.252.2189
jason.bethke@gwfathom.com
contracts@gwfathom.com
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

A. 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, in each case brought by a third-party, that arise out of, pertain to, or relate to the gross 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.

B. FIRST PARTY’s indemnification obligations in Section 10.A above shall be subject to CITY’s providing FIRST PARTY with: (i) prompt written notice of any claim for which indemnification is sought by the CITY; (ii) sole control over the defense and settlement of the claim; and (iii) reasonable cooperation, at FIRST PARTY’s request and expense, in the defense and settlement of the claim. Further, CITY may not enter into any settlement of any such claim without FIRST PARTY’s prior written approval.

C. If FIRST PARTY is held or reasonably believed by the CITY to have caused physical property damage to the CITY’s existing metering infrastructure (e.g., by breaking curb stops when connecting or disconnecting a meter or scratching the meter face while trying to read meters), and such damage is proven to have been caused by the negligence, gross negligence, or willful misconduct of FIRST PARTY or its employees, contractors, or other agents, the CITY must notify FIRST PARTY in writing within thirty (30) calendar days of the damage-causing event and request reimbursement from FIRST PARTY for such damage. Upon mutual agreement of both parties that the damage at issue is FIRST PARTY’s responsibility, FIRST PARTY shall reimburse the CITY for any reasonable costs incurred by the CITY to repair such damage.

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. Worker's Compensation and Employer's Liability Insurance:

The FIRST PARTY shall have in effect during the entire life of this Agreement Worker's 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 Worker's 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-consultant 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.

3. Professional Liability Insurance:

FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this Agreement, in the amount of not less than One Million Dollars ($1,000,000) per claim and in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.

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, (but not for the Professional Liability and Worker’s 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.

E. Prior to the execution of this Agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.

12. PAYMENT OF PERMITS/LICENSES

Contractor shall use commercially reasonable efforts to obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, prior to commencement of said work/services.

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 sub-consultants and/or sub- contractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

14. OWNERSHIP OF WORK PRODUCT

Work products of FIRST PARTY as set forth in Exhibit “A-1”, Scope of Services, which are developed, produced and paid for under this Agreement and delivered under Exhibit “A-1’’”, Scope of Services, if
and only if described therein as being the property of CITY, shall become the property of CITY. The reuse of FIRST PARTY’s work products by City for purposes other than intended by this Agreement shall be at no risk to FIRST PARTY.

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-1" or as otherwise specified in Exhibit “A-1”.

16. TERMINATION OF AGREEMENT

A. Either party may terminate this Agreement effective immediately if the other party materially breaches any of the terms of this Agreement and such breach remains uncured thirty (30) days following the breaching party’s receipt of the terminating party’s notice. Notwithstanding any provision to the contrary herein, neither the termination nor expiration of this Agreement will relieve either party from its obligation to pay the other any sums accrued under this Agreement as of the date of termination.

B. The rights and remedies of each party provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

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

D. Upon termination or expiration of this Agreement, all licenses granted hereunder shall immediately terminate. For the avoidance of doubt, nothing herein shall require FIRST PARTY to return or destroy the FATHOM Data (as defined in Exhibit “B”, Software-as-a-Service Terms and Conditions).

E. Any clause or provision which, by its nature or terms, should reasonably survive the termination or expiration of this Agreement shall be deemed to survive any such termination or expiration.

17. COMPLIANCE WITH LAWS

It shall be the responsibility of each party to comply with all State and Federal Laws applicable to the performance of each party’s obligations pursuant to this Agreement, including but not limited to compliance with prevailing wage laws, if applicable.

18. BREACH OF AGREEMENT

A. This Agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this Agreement, shall constitute a breach of this Agreement.

B. Each 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 other party of actual damages occasioned by such breach of Agreement.

19. 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.

20. 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.

21. 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 "C", 'Dispute Resolution' attached hereto and by this reference incorporated herein.

22. RETENTION OF RECORDS

FIRST PARTY shall maintain all required records for two (2) 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.

23. TERM OF AGREEMENT

This Agreement shall remain in effect for the period of five (5) years from the effective date of this Agreement unless earlier extended, amended, or terminated (the "Initial Term"). At the conclusion of the Initial Term (or any subsequent Renewal Term), the Agreement shall automatically renew for additional renewal terms of one (1) year (each a "Renewal Term"), unless either party gives written notice of non-renewal (for any reason or for no reason) at least one-hundred eighty (180) days prior to the expiration of the then-current term. The Initial Term and any Renewal Terms are collectively referred to herein as the "Term." The parties acknowledge that non-renewal of this Agreement after completion of the Initial Term may be for or without default/cause.

24. 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.

25. STATEMENT OF ECONOMIC INTEREST

Consultants, 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 Consultant’s Scope of Work and determination by the City Manager, it is determined that Consultant 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.

26. COOPERATIVE PURCHASES

To the extent applicable law permits other state, municipal, or other government entities in the State of California to buy off of this Agreement without going to bid, CITY and FIRST PARTY agree that such entities may do so.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

FIRST PARTY:

Jason Bethke, P.E.
Name

33-1228530
Tax ID#

APPROVED AS TO FORM:

William L. McClure, City Attorney

CITY OF MENLO PARK:

Signature

ALEX D. MCINTYRE
Name

ATTEST:

Pamela Aguilar, City Clerk, City of Menlo Park

Date

President and Chief Growth Officer
Title

Date

CITY MANAGER
Title

Date
FATHOM services will be provided in accordance with the tasks described below. For items not specifically mentioned below, FATHOM is permitted to perform functions in accordance with FATHOM's most-current standard industry best practices, where applicable.

Incorporated herein by reference are the most current, mutually agreed to versions of the “Work Order Routing and Guidelines” (Work Order Routing and Guidelines) and “Menlo Park Collections Process” (Menlo Park Collections Process) documents. Revisions to either or both of these documents may be made in the future with written approval of both the CITY and FATHOM.

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<th>Description</th>
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<td>2</td>
<td>Billing Services</td>
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<td>Customer Service</td>
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<td>6</td>
<td>FATHOM Software and Services</td>
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</tbody>
</table>

**Task 1 – Meter Reading**

1.1 FATHOM shall physically field check, read meters, and record meter readings for each meter within the City's service area on a monthly basis. Individual monthly readings shall be read plus or minus two (2) days on or about the same date each month. The monthly meter reading schedule may vary because of holidays and weekends.

1.2 FATHOM shall notify the CITY for corrective actions that are the CITY'S responsibility within two (2) days for non-emergencies and within one (1) hour for emergencies by following the emergency contact process delineated in the “Work Order Routing and Guidelines”. Examples of emergencies are water leaks or other repair issues that could place the CITY in liability or create significant property damage. Notification of corrective actions requires a work order in the electronic work order system.

1.3 FATHOM shall provide a monthly report that summarizes the number of work orders
1.4 CITY and FATHOM responsibilities shall be clearly delineated in the “Work Order Routing and Guidelines” document which summarizes the various field activities that will occur and emergency notification procedures.

1.5 FATHOM shall have an AMR (Automated Meter Reader) device capable of reading Sensus meters.

1.6 FATHOM shall submit monthly reports summarizing the number of meters read each day within each cycle, the number of meters re-read and the reason, and the number of meters not read and the reason.

1.7 FATHOM meter reading staff will not be available before 7:00 am or after 5:00 pm CITY local time on business days, or any time on weekends and holidays.

1.8 Should the CITY opt to transition to a more automated meter reading system, the meter reading component, and associated costs, would be proportionately reduced, if not eliminated.

**Task 2 – Billing Services**

2.1 FATHOM shall mail monthly bills within five (5) business days of meters being read. Bills will be based on meter readings recorded by the meter readers and in accordance with the actual meter readings and prevailing usage tariffs in effect at the time of billing as presented in the CITY’S current water rate schedule. One bill, printed on a single 8.5” x 11” page, will be mailed per billing cycle per customer. FATHOM shall print customer bills on billing stock with “Menlo Park Municipal Water District” and the CITY’S logo printed on the top of the bill.

2.2 FATHOM shall accept and process customer payments each business day. Customers shall have the option of paying bills by several means, including mailing the payment to FATHOM, paying by credit card, authorizing payment via home banking, or by automatic deduction from customers’ bank accounts. If paying by credit card, customers shall pay the credit card transaction fee percentage applicable to the payment.

2.3 FATHOM shall use commercially reasonable efforts to maintain accurate customer records.

2.4 FATHOM shall provide customers the ability to access their account through a website that will show the current bill, monthly usage, account information, and payment history. The website shall also provide a graph showing historical water consumption compared to other similar City accounts.

2.5 FATHOM shall allow customer to pay bills online or set up automatic bill payments. For customers using online bill pay and automatic bill pay, within five business days of meter reading, FATHOM shall notify customers each time a bill is available for viewing and payment.
Customers whose checks or automatic bill payments or online payments are rejected for any reason will be charged a rejected payment processing fee. This fee will be added to the customer’s account in addition to the original payment amount.

2.6 FATHOM shall remit collected funds to the CITY by direct deposit, wire transfer or ACH within one week of collection of payments.

2.7 FATHOM shall accommodate two rate modifications per year.

2.8 FATHOM shall submit a weekly summary to the CITY with total customer payments received, the number of meters read and corresponding FATHOM fees, and other fees such as reconnection fees.

2.9 FATHOM shall establish a billing/collection calendar annually and submit to the CITY for approval.

**Task 3 – Past Due Collections**

3.1 FATHOM shall be responsible for notifying customers and collecting past due accounts.

3.2 CITY and FATHOM responsibilities shall be clearly delineated in the “Menlo Park Collections Process” document which summarizes the outreach, notices, and penalties.

**Task 4 – Data Sharing**

4.1 FATHOM shall provide authorized City employees unlimited access via the internet to water customers’ non-confidential account information to view online or download into Excel. FATHOM is not responsible for providing City employees access to the internet.

4.2 FATHOM shall provide monthly reports by the 15th of each month as follows:

a. Income Statement – Year to date income statement by month.
b. Transaction Summary – Transactions summarized by General Ledger number.
e. A/R Aging – A/R aging detailed by account including 0-30, 30-60, 60-90, and 90-120 days.
f. AR Roll-forward - tracks all financial transactions by type.
g. Deposits – Deposit detail by account.
h. Consumption Details
   i. Location / consumption summary (based on accounting system)
   ii. Location / consumption summary (adjusted for actual water usage, cannot show negative consumption to correct for past billings)
   iii. Top 20 customers by structure type
   iv. Commercial greater than 20%
   v. Residential greater than 50%
   i. Customer email addresses.

4.3 FATHOM shall provide customer mailing addresses in a bi-annual report.

4.4 FATHOM shall retain customer records for a minimum of 10 years.

4.5 FATHOM shall distribute six (6) CITY-provided 8.5”x11”, single page insert mailings per calendar year at no additional cost, provided that the inserts do not increase the postage of an individual bill.

4.6 FATHOM shall verify addresses by checking the USPS change of address database every month. FATHOM shall update the database with any address changes on a monthly basis.

4.7 FATHOM shall include utility messages written on customers’ billing statements at no charge.

**Task 5 — Customer Service**

5.1 FATHOM shall provide information to new customers regarding CITY water rates and conditions of service.

5.2 FATHOM will provide a local or 800 telephone number for customers to call and speak to a representative of FATHOM. FATHOM will provide sufficient personnel, including Spanish-speaking personnel, to respond to customer service calls by the next business day.

a. Live customer care representatives will be available Monday through Friday, at least 8:00 am to 5:00 pm CITY local time, excluding holidays observed by FATHOM.

b. Monthly call volume of up to ten percent (10%) of the total number of managed accounts, rounded up to the nearest whole number is included. Beginning on January 1, 2017, calls in excess of the monthly call volume shall be charged at a rate of ten dollars ($10) per call. Monthly call volume applies to calls handled by live customer care representatives only.

c. Seventy percent (70%) of customer contacts will be addressed within sixty (60) seconds.
5.3 FATHOM shall notify CITY for customer service requests or problems received which require field work not related to billing services. This will include, but not be limited to leaks, system damages, system low pressures, and water quality matters.

5.4 FATHOM shall provide an automated work order system to be used by FATHOM and CITY in reporting problems or service requests. FATHOM shall provide training via web-conferencing tools as necessary to the CITY at no charge. For onsite training, travel and expense charges may apply.

5.5 FATHOM shall provide an after-hour customer call service. FATHOM will determine which calls are considered emergencies and, if needed, will follow emergency response procedures outlined in the “Work Order Routing and Guidelines” document. For calls that are non-emergency, FATHOM will return calls the next business day. FATHOM shall provide the CITY with a weekly list of after-hour calls and followup status.

5.6 FATHOM shall provide and manage a client portal that the CITY can use for uploading, downloading and sharing utility digital media on the utility server.

Task 6 – FATHOM Software and Services

6.1 FATHOM shall provide a dedicated ticketing support management system to effectively manage CITY inquiries and concerns.

6.2 FATHOM shall provide support services (“Support Services”), including all modifications created by FATHOM that are made generally available to FATHOM’s clients. The Support Services to be provided by FATHOM shall not include: (i) support of Software operation on equipment not identified by FATHOM as an authorized device; (ii) support of software not supplied by FATHOM; (iii) support of Software not properly used or used in an operation environment not designated by FATHOM; or (iv) support of business processes not identified during the existing implementation of the project.

6.3 CITY shall designate those CITY employees authorized to contact FATHOM for provision of Support Services, and shall maintain and provide FATHOM with an updated list of employees, including all relevant contact information (such as email addresses). Only those CITY employees designated shall contact FATHOM for the provision of Support Services. In addition, FATHOM shall designate those FATHOM employees who CITY may contact for provision of Support Services, and shall maintain and provide CITY with all relevant contact information for such FATHOM employees.

6.4 FATHOM will issue maintenance releases from time to time at FATHOM’s discretion to subscribers of Support Services including bug fixes, updates, enhancements contained within new releases, new releases, and new versions of the Software and/or FATHOM platform.
Maintenance releases contain proprietary and confidential information and are provided for the CITY's internal use only and shall be treated as Confidential Information of FATHOM.

6.5 Additional services not included in this Scope of Work may be billed on a time and materials basis. Both parties must agree to the additional services and fees prior to work commencing.
Exhibit “A-2”

Fee Schedule

This schedule defines the fees to be paid by CITY to FATHOM under this Agreement.

Fees will be billed monthly as shown in the table below. Should the CITY opt to transition to a more automated meter reading system or perform in-house meter reading, the meter reading component, and associated costs, would be reduced, if not eliminated.

<table>
<thead>
<tr>
<th>Fee Type</th>
<th>Monthly Fee</th>
<th>Adjustments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meter Reading</td>
<td>$2.51 per account location per month</td>
<td>Inflation Adjuster: $2.51 per account location per month shall be subject to an increase each year equivalent to the CPI factor for the applicable region.</td>
</tr>
<tr>
<td>Customer Information System – Software as a Service – with Utility Billing and Customer Care Managed Services</td>
<td>$4.00 per account managed per month</td>
<td>Inflation Adjuster: $4.00 per account managed per month shall be subject to an increase each year equivalent to the CPI factor for the applicable region.</td>
</tr>
</tbody>
</table>

The above fees shall be adjusted annually on July 1 based on the Consumer Price Index – United States City Average – for All Urban Consumers and all items published by the United States Department of Labor, Bureau of Labor Statistics (the “Index”), per the Index for the month of May of the then-current year. The first adjustment will occur on July 1, 2017. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be utilized, and modified as necessary, to obtain substantially the same result as would have been obtained if the Index had not been discontinued or revised. Annual adjustments will be calculated based on the prior year’s fees for the Recurring Services, plus the inflation adjuster as described above. At no point will any change result in a reduction of fees.
Exhibit "A-3"

Contact Information

CLIENT PROJECT MANAGER

Public Works Director
Name: Justin Murphy
Address: 701 Laurel Way
City, State, Zip: Menlo Park, CA 94025
Phone: (650) 330-6725
Fax: _____________________________
Email: jicmurphy@menlopark.org

CLIENT IT PROJECT MANAGER

Name: Gene Garces
Title: Information Technology Manager
Address: 701 Laurel Street
City, State Zip: Menlo Park, CA 94025
Phone: (650) 330-6657
Fax: _____________________________
Email: ggarces@menlopark.org

FATHOM PROJECT MANAGER

FATHOM Water Management, Inc.
Name:
Address: 21410 N. 19th Avenue, Suite 201
City, State, Zip: Phoenix, AZ 85027
Phone:
Fax: (623) 580 9659
Email:

FATHOM IT PROJECT MANAGER

Name:
Title:
Address: 21410 N. 19th Avenue, Suite 201
City, State, Zip: Phoenix, AZ 85027
Phone:
Fax: (623) 580 9659
Email:
EXHIBIT “B”
SOFTWARE-AS-A-SERVICE TERMS AND CONDITIONS

The terms and conditions of this Exhibit “B”, Software-as-a-Service Terms and Conditions (these “Terms”) set forth the terms and conditions pursuant to which FIRST PARTY (or, as referred to herein, “FATHOM”) will provide access to and use of the FATHOM Platform (as defined below) to CITY (or, as referred to herein, “Client”). These Terms will supersede any conflicting term in the Agreement to the extent of such conflict.

1. Definitions.

A. “Confidential Information” means any information disclosed by either party pursuant to these Terms that is (i) in written, graphic, machine readable or other tangible form and is marked “Confidential,” “Proprietary” or in some other manner to indicate its confidential nature, or (ii) in the case of oral or visual disclosure is identified as confidential at the time of disclosure and reduced to tangible form, marked as confidential, and provided to the receiving party within a reasonable time not to exceed thirty days, or (iii) under the circumstances should in good faith be considered to be confidential. Confidential Information includes, without limitation, information related to: research, product plans, products, developments, inventions, processes, designs, markets, business plans, agreements with third parties, services, customers, marketing or finances of either party, the content or existence of any negotiations, and pricing. Notwithstanding the foregoing, all technology or proprietary information underlying the FATHOM Data and the FATHOM Platform, including without limitation any and all scripts, programming code, and algorithms related thereto, shall be deemed Confidential Information of FATHOM, and all Client Data and Client Content shall be deemed Confidential Information of Client, without any need for designating the same as confidential or proprietary.

B. “Client Content” means any content uploaded or made available by Client (or Customers) via the FATHOM Platform, which may include Client Data.

C. “Customer” means a customer of Client who is also an end-user of the FATHOM Platform.

D. “Client Data” means data relating to Client or Customers that is provided or otherwise made available to FATHOM through FATHOM’s performance of the Services or otherwise through Client’s (and its Customers’) use of the FATHOM Platform.

E. “Developments” means the collective ideas, know-how, or techniques developed or conceived by FATHOM as a result of providing the FATHOM Platform to Client, including without limitation any derivative works, improvements, enhancements and/or extensions made to the Fathom Data and/or the FATHOM Platform, as well as all suggestions, comments, or other feedback provided by Client or Customers related thereto or any other Confidential Information of FATHOM, and all Intellectual Property Rights therein and thereto throughout the world.

F. “FATHOM Content” means all content, including without limitation data, information, structural hierarchies, processes, HTML code, trademarks, images, illustrations, graphics, multimedia files and/or text, contained in the FATHOM Platform (except for Client Content).

G. “FATHOM Data” means all data generated by the FATHOM Platform, including without limitation, data relating to Client’s and Customers’ usage of the FATHOM Platform, and aggregated, anonymized summaries of Client Data.

H. “FATHOM Platform” means the Software operated on FATHOM’s hosting servers or those of its hosting service provider intended to enable Client and/or Customers to interact with the same via the internet. Without limiting the foregoing, the FATHOM Platform shall include,
individually and collectively, the Software, the FATHOM Content, and the User Interface.

1. **"Intellectual Property Rights"** means all rights of the following types, under the laws of any jurisdiction worldwide: (i) rights associated with works of authorship, including exclusive exploitation rights, copyrights, and moral rights; (ii) trade secret rights; (iii) patent and industrial property rights; (iv) other proprietary rights of every kind and nature; and (v) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the above.

J. **"Services"** means, collectively, the standard services set forth in Exhibit “A-1”.

K. **"Software"** means the software and mobile application(s) set forth in Exhibit “A-1”, any accompanying documentation, and all updates, upgrades, and enhancements thereof that may be provided by FATHOM hereunder.

L. **"User Interface"** means: (i) the web-based interface located at http://www.gwfathom.com/, and all subdomains, subpages, and successors sites thereof, hosted by FATHOM by which Client and/or Customers may access the FATHOM Platform; and/or (ii) the mobile application interface provided by FATHOM by which Client and/or Customers may access the FATHOM Platform.

2. **FATHOM’s Responsibilities.**

A. FATHOM will host and maintain the FATHOM Platform on servers operated and maintained by or at the direction of FATHOM or otherwise. FATHOM may in its sole discretion modify, enhance or otherwise change the FATHOM Platform (or any part thereof). FATHOM may delegate the performance of certain portions of the FATHOM Platform to third parties, including but not limited to FATHOM’s affiliates.

B. FATHOM will be solely responsible for obtaining and maintaining appropriate insurance coverage for the training activities conducted by FATHOM personnel under these Terms, including by not limited to, comprehensive general liability insurance with limits of not less than $1,000,000 for injury to or death of one or more persons in any one occurrence and for damage or destruction to property in any one occurrence, and professional liability insurance with limits of not less than $500,000 per occurrence and $1,000,000 in the aggregate. The insurance must certify that no alteration, modification, or termination of such coverage will be effective without at least thirty (30) days’ advance written notice to Customer.

C. FATHOM will provide Software Services in accordance with Exhibit B-1, Service Level Agreement.

D. FATHOM will establish, implement, monitor, maintain and comply with a written system and information security program (the “Data Safeguards”) that includes administrative, technical and physical protocols and controls for safeguarding physical and electronic access and preventing unauthorized disclosure, access, destruction, loss, damage, alteration and use of Systems and Customer Data in FATHOM’s possession or control that are no less rigorous than the most stringent of (a) FATHOM’s then-current data security requirements for systems and data of a similar nature, (b) the Payment Card Industry Data Security Standard ("PCI DSS"), and (c) any systems or data security requirements required by applicable Law. FATHOM will review and test (and re-test as necessary) at least annually the Data Safeguards to assess adherence to and the effectiveness of the Data Safeguards, and implement action plans to remediate identified vulnerabilities and deficiencies. FATHOM will provide signed audits to the Client upon request.

3. **Client’s Responsibilities.**

A. Client will, at FATHOM’s reasonable request, provide FATHOM with detailed information regarding Customers’ account information, billing rates, workflow, billing and collecting
procedures, transaction volumes, and current and historical account data to assist FATHOM in establishing the FATHOM Platform for Client’s and Customers’ use, provided that such information is not otherwise subject to disclosure restrictions under applicable law. Such information shall be treated as Confidential Information of Client under Section 13. Any costs incurred by the Client to obtain the information are the Client’s responsibility.

B. During Client’s transition to the FATHOM Platform, Client will continue to operate its existing processing operations until the FATHOM Platform has been tested and is operational. Client acknowledges and agrees that FATHOM is not responsible for any damages that Client may suffer to its existing operations as a result of the transition to the FATHOM Platform (unless solely caused by FATHOM’s gross negligence or willful misconduct).

C. Client will be responsible for obtaining and maintaining at its expense all necessary computer hardware, software, modems, connections to the internet, tablets, wireless data plans, and other items or services that may be required for Client’s access and use of the FATHOM Platform and the User Interface.

4. Mutual Responsibilities. Each party will designate a project manager or an information technology team to coordinate and assist FATHOM in the installation, implementation, and support of the FATHOM Platform, including ongoing testing of the FATHOM Platform following installation. Such project managers’ contact information will be provided in Exhibit “A-3”, Contact Information, as amended from time to time.

5. Support and Training Services.

A. [REMOVED]

B. General Support. FATHOM will provide the general support services set forth in Schedule 1.

C. [REMOVED]

6. License Grants; Restrictions.

A. License from FATHOM. Subject to the terms and conditions of these Terms, FATHOM hereby grants Client a limited, personal, non-transferable license during the Term to grant to its Customers and end users the rights to: (i) access and use the Software and FATHOM Content via the FATHOM Platform solely in the manner contemplated by these Terms; (ii) use the FATHOM Data solely as necessary to use the features and functionality of the FATHOM Platform; (iii) access and use the User Interface as may be required to use the Software and FATHOM Content via the FATHOM Platform; and (iv) permit Customers to exercise the rights set forth above in subsections (i) through (iii) (inclusive).

B. License to FATHOM. Client hereby grants FATHOM a worldwide, non-exclusive, royalty-free, fully paid-up license to use, reproduce, electronically distribute, transmit, have transmitted, display, store, archive, and make derivative works of the Client Content in order to provide the FATHOM Platform.

C. License Restrictions. Client shall not, and shall not permit any third party, including without limitation any Customer, to: (i) use the FATHOM Data or the FATHOM Platform (or any part thereof) except to the extent permitted in Section 6(A); (ii) modify or create any derivative work of any part of the FATHOM Data or the FATHOM Platform; (iii) market, sublicense, publish, distribute, reproduce, resell, assign, transfer, rent, lease, or loan the FATHOM Data or the FATHOM Platform (or any part thereof); (iv) reverse engineer, disassemble, or otherwise attempt to gain access to the source code of all or any portion of the FATHOM Platform; or (v) use the FATHOM Data or the FATHOM Platform (or any part thereof) for commercial time-sharing or service-bureau use.
D. Use of Client Data. Notwithstanding anything to the contrary in these Terms, FATHOM may use Client Data for the purposes of: (i) providing the FATHOM Platform and the Services to Client and its Customers; (ii) for FATHOM’s internal research and development purposes; (iii) enforcing its rights under these Terms; and (iv) on an aggregated and anonymized basis, create FATHOM Data.

E. Reservation of Rights. FATHOM reserves all rights to the FATHOM Data and the FATHOM Platform (and all parts thereof) not otherwise expressly granted in this Section 6.

F. Audit. During the Term and for one (1) year thereafter, FATHOM may, upon reasonable advance notice and no more than one (1) time per calendar year, inspect Client’s books and records relating to Client’s use of the FATHOM Platform in order to assess Client’s compliance with the terms and conditions of these Terms, including but not limited to this Section 6.

7. [REMOVED]

8. Warranties and Disclaimers.

A. Mutual. Each party represents and warrants that: (i) such party is a corporation duly organized, validly existing, and in good standing under the laws of the state of its incorporation, and has the full power and authority to enter into and perform its obligations under these Terms; (ii) the execution of these Terms by such party, and the performance by such party of its obligations and duties hereunder do not and will not violate any other agreement to which such party is a party or by which it is otherwise bound; (iii) when executed and delivered by such party, these Terms will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms; and (iv) such party acknowledges that the other party makes no representations, warranties, or agreements related to the subject matter of these Terms that are not expressly provided for in these Terms.

B. FATHOM’s Warranties. FATHOM represents and warrants that: (i) the FATHOM Platform will substantially conform to the then-applicable scope of service as it relates to FATHOM Platform; and (ii) the Services will be performed in a professional and workmanlike manner in accordance with industry standards.

C. Client’s Warranties. Client represents and warrants that: (i) the execution, delivery, and performance by Client of these Terms, including without limitation the provision of any Client Content, does not and will not violate any applicable statute, regulation, or law, or infringe any intellectual property right or other legal right of any third party; and (ii) it will not, and will not permit any third party to, violate Section 6(C).

D. Disclaimers. EXCEPT AS PROVIDED IN THIS SECTION 8 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE FATHOM PLATFORM AND ALL RELATED INFORMATION, TECHNOLOGY, AND SERVICES PROVIDED BY OR ON BEHALF OF FATHOM ARE PROVIDED “AS IS,” “AS AVAILABLE,” AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND FATHOM EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF WE ARE ADVISED OF THE PURPOSE), ACCURACY, AND/OR NON-INFRINGEMENT. IN ADDITION, FATHOM DOES NOT WARRANT THAT ACCESS TO THE FATHOM PLATFORM WILL BE UNINTERRUPTED OR ERROR FREE, THAT THE FATHOM PLATFORM WILL MEET CLIENT’S OR CUSTOMERS’ NEEDS, OR THAT DATA WILL NOT BE LOST. WITHOUT LIMITING THE FOREGOING, FATHOM DOES NOT WARRANT THAT THE FATHOM PLATFORM IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE FATHOM PLATFORM IS DOWNLOADED AT CLIENT’S AND CUSTOMERS’ OWN RISK AND CLIENT AND ITS CUSTOMERS WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD OR THEIR USE OF THE FATHOM PLATFORM.

9. Effects of Termination.
A. **Effect of Termination.** Upon termination or expiration of these Terms, all licenses granted hereunder shall immediately terminate. In the event of any termination or expiration of these Terms, each party will either promptly return or, at the disclosing party's request, promptly destroy the Confidential Information of the other party. For the avoidance of doubt, nothing herein shall require FATHOM to return or destroy the FATHOM Data. At the disclosing party's request, the receiving party must certify in writing the complete return or destruction of the disclosing party's Confidential Information within thirty (30) days of the request.

B. **Survival.** The following provisions shall survive any termination or expiration of these Terms: Sections 1, 6(B), 6(C), 6(D), 6(E), 6(F), and 7 through 14 (inclusive).

C. Upon termination of the contract, FATHOM will upon request of Client promptly provide to Client, in an industry standard format and on industry-standard media, all or any part of Client's Confidential Information, up to ninety (90) days after the effective date of the expiration or termination of this Agreement.

10. **Limitation of Liability.** The aggregate liability of FATHOM and its licensors to Client arising from its access to or use of the FATHOM Platform, or FATHOM's provision of the Services in connection therewith, or otherwise in connection with these Terms or its subject matter, however caused, and on any theory of liability, including without limitation contract, strict liability, negligence and/or other tort, shall in no event exceed the amount of fees that have been paid to FATHOM for access to and use of the FATHOM Platform during the twelve (12) months immediately preceding the first event giving rise to such liability. In no event will FATHOM or its licensors be liable for any indirect, incidental, special, or consequential damages, including without limitation damages for loss of profits, revenue, data, or data use, even if advised of the possibility of such damages, including, without limitation, any liability related to the procurement of substitute goods. The foregoing limitations form an essential basis for these Terms and shall survive regardless of the failure of any remedy of its essential purpose.

11. **Ownership.**

A. **FATHOM's Ownership Rights.** Subject only to the limited license expressly granted under these Terms, FATHOM shall retain all right, title, and interest in and to the FATHOM Platform (and all parts thereof, excluding Client Content) and FATHOM Data, and all Intellectual Property Rights therein. Nothing in these Terms will confer on Client or Customers any right of ownership or interest therein. To the extent Client has or obtains any right, title, or interest in the FATHOM Platform (or any part thereof, excluding Client Content) or the FATHOM Data, Client hereby assigns, and agrees to assign, without further consideration, to FATHOM all such right, title, and interest Client may have or obtain.

B. **Client's Ownership Rights.** Subject only to the limited license expressly granted hereunder, as between Client and FATHOM, Client shall retain all right, title and interest in and to the Client Content, and all Intellectual Property Rights therein. Nothing in these Terms will confer on FATHOM any right of ownership or interest in the Client Content, or the Intellectual Property Rights therein.

C. **Execution of Documents.** During the Term, and at any other time thereafter, at FATHOM's request Client shall execute any and all documents and perform any and all acts that FATHOM may reasonably require in order to protect and perfect any FATHOM Intellectual Property Rights, or to apply for, obtain, and vest in the name of FATHOM alone all patents, copyrights, trademarks, or other similar protection for any FATHOM Intellectual Property Rights, and, when so obtained or vested, to maintain, renew, and restore the same.

12. **Indemnity.**

A. **Mutual Indemnity.** Each party shall indemnify, defend, and hold the other party and
its affiliates, and its and their officers, members, directors, employees, agents, successors and assigns (each an “Indemnified Party”) harmless from and against all liabilities (including liabilities arising out of the application of the doctrine of strict liability), obligations, losses, damages, penalties, fines, claims, penalties, actions, suits, judgments, costs, expenses, and disbursements (including reasonable legal fees and expenses and reasonable costs of investigation) (“Losses”) caused by or otherwise arising from: (i) such party’s breach of its representations and warranties in Section 8; (ii) such party’s (or its agents’) gross negligence or intentional misconduct.

B. FATHOM Indemnity. FATHOM shall indemnify, defend, and hold Client and its Indemnified Parties harmless from and against all third-party claims and Losses arising from any claim that the Software or the FATHOM Platform infringes or otherwise violates any third-party’s U.S. Intellectual Property Rights.

C. Client Indemnity. Client shall indemnify, defend, and hold FATHOM and its Indemnified Parties harmless from and against all third-party claims and Losses caused by or otherwise arising from: (i) Client’s use of and access to the FATHOM Platform, including any data or content transmitted or received by Client (or anyone else utilizing Client’s credentials); or (ii) any infringement or misappropriation claim that arises from Client’s breach of its representations and warranties in Section 8.

D. Process. The Indemnified Party shall promptly notify the indemnifying party in writing of any claim for which it seeks indemnification hereunder; provided that the failure to provide such notice shall not relieve the indemnifying party of its indemnification obligations hereunder except to the extent of any material prejudice directly resulting from such failure. The indemnifying party shall bear full responsibility for, and shall have the right to solely control, the defense (including any settlements) of any such claim; provided, however, that (i) the indemnifying party shall keep the Indemnified Party informed of, and consult with the Indemnified Party in connection with the progress of such litigation or settlement and (ii) the indemnifying party shall not have any right, without the Indemnified Party’s written consent, to settle any such claim in a manner that does not unconditionally release the Indemnified Party.

E. Remedies. In the event any portion of the FATHOM Platform is held or believed by FATHOM, or any portion of the Client Content is held or believed by the Client, to infringe intellectual property rights of any third party (such portion to be deemed the “Infringing Materials”) in any place where the FATHOM Platform is used or accessed, then in addition to any other rights in this Section 12, FATHOM (where the Infringing Materials are the FATHOM Platform) or Client (where the Infringing Materials are the Client Content) shall, at its sole expense and at its option: (i) obtain from such third party the right for the other party to continue to use the Infringing Materials; or (ii) modify the Infringing Materials to avoid and eliminate such infringement or misappropriation, as the case may be; or (iii) upon mutual agreement with the other party, remove and disable the Infringing Materials; or (iv) if none of the foregoing remedies is commercially feasible, terminate these Terms.

F. Sole Remedy for Intellectual Property Violations. This Section 12 contains each party’s sole and exclusive remedy, and each party’s entire liability, with respect to infringement or alleged infringement of third party Intellectual Property Rights relating to the FATHOM Platform and the subject matter of these Terms.

13. Confidentiality. During the Term and for three (3) years thereafter (and perpetually with respect to any source code or trade secrets of the disclosing party in the receiving party’s possession), each party shall treat as confidential all Confidential Information of the other, shall not use such Confidential Information except as set forth in these Terms, and will not disclose such Confidential Information to any third party except as expressly permitted herein without the
disclosing party's written consent. The receiving party shall use at least the same degree of care which it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of the disclosing party's Confidential Information, but in no event less than reasonable care. The receiving party shall promptly notify the disclosing party of any actual or suspected misuse or unauthorized disclosure of any of the Confidential Information.

Notwithstanding the foregoing, the obligations set forth in this Section 13 shall not apply with respect to any information to the extent that it is: (A) already in the possession of the receiving party prior to the first disclosure hereunder as shown by records or files; (B) is already part of the public knowledge or becomes part of the public knowledge after the time of disclosure other than as a result of any improper action by the receiving party; (C) is approved in writing by the disclosing party; (D) is required to be disclosed by applicable legal authority provided that, if practicable, adequate notice and assistance is given by the receiving party to the disclosing party for the purpose of enabling the disclosing party to prevent and/or limit the disclosure; or (E) is independently developed by either party without use of the Confidential Information from the other party.

14. **Force Majeure.** Other than for payment of money, a party shall be excused from any delay or failure in performance hereunder due to any labor dispute, government requirement, internet congestion or breakdown, or any other cause beyond its reasonable control. Such party shall use commercially reasonable efforts to cure any such failure or delay in performance arising from such a condition, and shall timely advise the other party of such efforts.
Exhibit B-1

FATHOM Service Level Agreement

1.0 General

This Exhibit sets out the maintenance and support that FATHOM will provide to the Client for the FATHOM suite of software-as-a-service products.

2.0 Software Service Level Objective

2.1 Uptime. Uptime is defined as the amount of time during a calendar month that FATHOM is not experiencing Downtime. During the Term, FATHOM will use commercially reasonable efforts to provide a Monthly Uptime Percentage of at least 99.7% (the “Service Level Objective” or “SLO”).

2.2 Downtime. Downtime is defined as loss of external connectivity and/or access for all running FATHOM modules combined with the Client’s inability to connect to their FATHOM sites. FATHOM sites that are down for a period of five consecutive minutes or more, will immediately be counted towards Downtime. Intermittent downtime for a period of less than five minutes will not be counted towards Downtime.

2.3 Exclusions. The following events are not included in Downtime:

2.3.1 Scheduled FATHOM Maintenance Windows. Includes upgrades or repairs to shared infrastructure, such as core routing or switching infrastructure that FATHOM scheduled at least 72 hours in advance and that occurs during off peak hours in the time zone where the data center is located.

2.3.2 Scheduled Client Maintenance. Includes maintenance of the Client’s configuration that the Client requests and that FATHOM schedules with the Client in advance (either on a case by case basis, or based on standing instructions), such as hardware or software upgrades.

2.3.3 Emergency Maintenance. Includes critical unforeseen maintenance needed for the security or performance of your configuration or the FATHOM network.

2.3.4 Extraordinary Events. Includes downtime or outages resulting from denial of service attacks, virus attacks, hacking attempts, or any other circumstances that are not within our control.

2.4 Remedy. This Exhibit states the sole and exclusive remedy for any failure by FATHOM to meet the SLO

2.4.1 If FATHOM does not meet the SLO stated, the Client will be eligible to receive a Service Credit as described below.

2.4.2 If FATHOM Uptime falls below 97.0% for any three (3) months of the most recent six (6) months, the Client may request FATHOM provide the Client access to APIs to build or procure a third-party customer portal. Such a request must be made in writing, either via a support ticket or by postal mail, no later than thirty (30) days after the occurrence of the event giving rise to the request. Client and FATHOM will negotiate an appropriate adjustment of fees as necessary.
3.0 Software Support and Maintenance

FATHOM shall offer on-going maintenance and support for the provided software-as-a-service for the Term and shall include the following:

3.1 Types of Support. Support for the Client will be provided by the FATHOM Technical Support Help Desk which utilizes a collaboration support model (non-tiered) which provides the agents the ability to resolve any issues in the most efficient way possible.

3.1.1 The Support Desk can be reached through the FATHOM Support website, via email or by phone depending on the requestor's preference.

3.1.2 The Support Desk is staffed by live agents from 7 AM to 9 PM Eastern (4 AM to 6 PM Pacific).

3.1.3 The Client will be able to submit tickets 24 hours a day if needed and will be addressed during business hours the following day.

3.2 Response Times. FATHOM will respond to the Client request for support via support ticket, telephone call, or both depending upon the severity of the situation and consistent with any procedures we have established with the Client for the Client's account. FATHOM will respond to your support requests made via ticket or telephone within the following time frames during normal business hours:

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Example</th>
<th>Response Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emergency:</td>
<td>Client cannot access site from the public Internet.</td>
<td>Within 15 minutes</td>
</tr>
<tr>
<td>Site, switch, or server down</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Urgent:</td>
<td>Client site is accessible but in a reduced state (timeouts or slow response)</td>
<td>Within 1 hour</td>
</tr>
<tr>
<td>Site or server functioning improperly or at less than optimal performance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Standard:</td>
<td>Client site is functioning with acceptable parameters, but you require assistance on the software or have a help desk-type question</td>
<td>Within 4 hours</td>
</tr>
<tr>
<td>Non-critical; site or server is functioning normally, but requires information or assistance on services, wish to schedule maintenance outages, or any other non-immediate tasks</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Response Time applies to the initial contact from FATHOM regarding the request and is not a guarantee for resolution.

3.3 Remedy. If FATHOM does not meet the Response Time guarantees stated, the Client will be eligible to receive a Service Credit as described below. This Exhibit states the sole and exclusive remedy for any failure by FATHOM to meet the Response Time guarantees.

4.0 Service Credit

4.1 Service Credit
4.1.1 **Software Service Level Objective.** If FATHOM does not meet the SLO, the Client will be eligible to receive the Service Credit described below.

<table>
<thead>
<tr>
<th>MONTHLY UPTIME PERCENTAGE</th>
<th>ELIGIBLE SERVICE CREDIT, PERCENTAGE OF EQUIVALENT MONTHLY RECURRING FEE FOR SAAS SERVICES</th>
</tr>
</thead>
<tbody>
<tr>
<td>99.0% - &lt; 99.7%</td>
<td>10%</td>
</tr>
<tr>
<td>95.0% - &lt; 99.0%</td>
<td>25%</td>
</tr>
<tr>
<td>&lt; 95.0%</td>
<td>50%</td>
</tr>
</tbody>
</table>

For avoidance of doubt, at no time are the fees associated with managed services, including but not limited to utility billing, customer care and meter reading services, eligible for Service Credit as described in this Exhibit B-1.

4.1.2 **Support.** If FATHOM does not meet the Response Time guarantees stated above, the Client will be eligible to receive a Service Credit of 5% of the equivalent monthly recurring fee for SaaS Services per event for the affected software module.

For avoidance of doubt, at no time are the fees associated with managed services, including but not limited to utility billing, customer care and meter reading services, eligible for Service Credit as described in this Exhibit B-1.

4.2 **Limitations on Service Credit**

4.2.1 **Cumulative Dollar Amount.** Notwithstanding anything to the contrary, the maximum total Service Credit for any calendar month, including all guaranties, shall not exceed 50% of the Client's equivalent monthly recurring fee for the affected configuration for any given month. Service Credits that would be available but for this limitation will not be carried forward to future months.

4.2.2 **Client Breach of Agreement.** The Client is not eligible to receive a Service Credit if the Client is in breach of the Agreement (including payment obligations to FATHOM) at the time of the occurrence of the event giving rise to the Service Credit until the breach has been cured. In addition, the Client is not eligible to receive a Service Credit if the event giving rise to the Service Credit would not have occurred but for the Client's breach of the Agreement.

4.3 **Service Credit Request**

4.3.1 The Client must request a Service Credit in writing either via a support ticket or by postal mail no later than seven (7) days following the occurrence of the event giving rise to the Service Credit.

4.3.2 FATHOM will contact the Client within 30 days to approve or reject the claim or to request more information.
EXHIBIT “C” - DISPUTE RESOLUTION

C1.0 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:

C2.0 Mediation

C2.1 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 C3.1.

C3.0 Arbitration

C3.1 Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph C2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the 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.

C3.2 The provisions of the Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:

C3.3 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.

C3.4 The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years’ experience in construction litigation.

C3.5 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.

C3.6 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.

C3.7 Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.

C3.8 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.

C3.9 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.

C3.10 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.