

**AMENDMENT NO. 3 TO CONTRACT NO. S18165157
BETWEEN THE CITY OF PALO ALTO AND
SMART ENERGY SYSTEMS, INC**

This Amendment No. 3 (this “Amendment”) to Contract No. S18165157 (the “Contract” as defined below) is entered into as of April 1, 2023, by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and SMART ENERGY SYSTEMS, INC., dba SMART ENERGY WATER, a Delaware corporation (“CONSULTANT”). CITY and CONSULTANT are referred to collectively as the “Parties” in this Amendment.

RECITALS

A. The Contract (as defined below) was entered into by and between the Parties hereto for the provision and deployment of a comprehensive customer engagement portal (the SEW Portal) and mobile solutions services for City’s residential, commercial, industrial, and institutional customers utilizing natural gas, electricity, water, sewer, fiber, refuse, and storm drainage services, as detailed therein.

B. The Parties now wish to amend the Contract to extend the term to March 31, 2026, and increase total compensation to Contractor by Six Hundred Eighty-Four Thousand Twenty-Three Dollars (\$684,023) over a three-year Extension Term to a new total not-to-exceed amount of One Million Thirty Thousand One Hundred Forty-Six Dollars (\$1,030,146.) over the Term of the Agreement, as detailed herein.

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions of this Amendment, the Parties agree:

SECTION 1. Definitions. The following definitions shall apply to this Amendment:

- a. **Contract.** The term “Contract” shall mean Contract No. S18165157 between CONSULTANT and CITY, dated October 17, 2017, as amended by:

Amendment No. 1, dated October 7, 2019
Amendment No. 2, dated October 11, 2022

- b. **Other Terms.** Capitalized terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Contract.

SECTION 2. Section 2 “TERM” of the Contract is hereby amended to read as follows:

“SECTION 2. TERM.”

Vers.: Aug. 5, 2019

The term of this Agreement shall be from the date of its full execution through March 31, 2026, unless terminated earlier pursuant to Section 19 (Termination) of this Agreement.

“Extension Term” refers to the period commencing April 1, 2023, through March 31, 2026.”

SECTION 3. Section 4 “NOT TO EXCEED COMPENSATION” of the Contract is hereby amended to add the following:

“SECTION 4. NOT TO EXCEED COMPENSATION”

During the Extension Term, the compensation to be paid to CONSULTANT for performance of the Supplemental Services shown in Exhibit A-1 as specific to this Third Amendment shall be based on the compensation structure detailed in Exhibit C, entitled “COMPENSATION,” including any reimbursable expenses specified therein, and the maximum total compensation shall not exceed **Six Hundred Eighty-Four Thousand Twenty-Three Dollars (\$684,023)**. The hourly schedule of rates, if applicable, is set out in Exhibit C-2, entitled “SCHEDULE OF RATES.” Any work performed or expenses incurred for which payment would result in a total exceeding the maximum compensation set forth in this Section 4 shall be at no cost to the CITY.

The total maximum compensation to be paid to CONSULTANT for performance of the Services described in Exhibit “A” and Exhibit “A-1”, shall not exceed One Million Thirty Thousand One Hundred Forty-Six Dollars (\$1,030,146) over the Term.

SECTION 4. The following exhibit(s) to the Contract is/are hereby amended or added, as indicated below, to read as set forth in the attachment(s) to this Amendment, which is/are hereby incorporated in full into this Amendment and into the Contract by this reference:

- a. Exhibit “A-1” entitled “SUPPLEMENTAL SCOPE OF SERVICES”, AMENDED, REPLACES PREVIOUS.
- b. Exhibit “B” entitled “SCHEDULE OF PERFORMANCE”, AMENDED, REFLECTS EXTENSION TERM ONLY.
- c. Exhibit “C-1” entitled “SCHEDULE OF RATES,” AMENDED, REPLACED PREVIOUS
- d. Exhibit “C-2” entitled “COMPENSATION, AMENDMENT 3”, ADDED.
- e. Amendment 3 Appendices, ADDED, entitled:
 - i) “Appendix 1 - Text Messaging Service”
 - ii) “Appendix 1-A – SEW Notification Services Agreement”
 - iii) “Appendix 1-B –Data Retention Policy”

- iv) "Appendix 2- SCM Non-Production Cloud Tenant"
- v) "Appendix 3 – Max Support Plan"
- vi) "Appendix 3 -A – Service Request Form".

SECTION 5. Legal Effect. Except as modified by this Amendment, all other provisions of the Contract, including any exhibits thereto, shall remain in full force and effect.

SECTION 6. Incorporation of Recitals. The recitals set forth above are terms of this Amendment and are fully incorporated herein by this reference.

(SIGNATURE BLOCK FOLLOWS ON THE NEXT PAGE.)

SIGNATURES OF THE PARTIES

IN WITNESS WHEREOF, the Parties have by their duly authorized representatives executed this Amendment effective as of the date first above written.

CITY OF PALO ALTO

City Manager

APPROVED AS TO FORM:

City Attorney or designee

SMART ENERGY SYSTEMS, INC., dba SMART ENERGY WATER

DocuSigned by:
By: Harman Sandhu
B15E7D788BA6426...

Name: Harman Sandhu

Title: President

DocuSigned by:
By: Sangeeta Kumar
14BC7D82C64D455...

Name: Sangeeta Kumar

Title: VP Finance

Attachments:

EXHIBIT "A-1" – SUPPLEMENTAL SCOPE OF SERVICES, AMENDED, REPLACES PREVIOUS
EXHIBIT "B" – SCHEDULE OF PERFORMANCE, AMENDED, REFLECTS EXTENSION TERM ONLY
EXHIBIT "C-1" – SCHEDULE OF RATES, AMENDED, REPLACES PREVIOUS
EXHIBIT "C-2" – COMPENSATION, AMENDMENT 3", ADDED
AMENDMENT 3 APPENDICES, ADDED, ENTITLED:

- "Appendix 1 - Text Messaging Service"
- "Appendix 1-A – SEW Notification Services Agreement"
- "Appendix 1-B –Data Retention Policy"
- "Appendix 2- SCM Non-Production Cloud Tenant"
- "Appendix 3 – Max Support Plan"
- "Appendix 3 -A – Service Request Form".

EXHIBIT "A-1"
SUPPLEMENTAL SCOPE OF SERVICES (AMENDED, REPLACES PREVIOUS)

Tasks Pursuant to Amendment 1:

1. Single Sign On Integration

- a. CONSULTANT will setup SCM (Smart Customer Mobile) as an Identity Provider for a SAML-based Single Sign On (SSO) integration with CITY 3rd Party Applications, to be identified by CITY.

Specifically, CONSULTANT will

- i. Provide CITY with a SAML metadata file for SCM as an Identity Provider
 - ii. Provide CITY with a secure SSO endpoint for the 3rd party vendors to consume
 - iii. Provide technical support during the SSO setup process
 - iv. Verify that the SSO link can be accessed from SCM
 - v. SSO will use standard SAML tokenization and bindings as provided in the metadata definition
 - vi. Verify that the SSO link from the 3rd party back to SCM results in appropriate behavior on SCM (i.e. mapped to correct account, log out completely if requested, etc.)
- b. 3rd Party Applications will satisfy the following requirements:
- i. Must support SAML 2.0
 - ii. Must consume SCM authentication request service for Single Sign-On (SSO)
 - iii. Must be able to consume the logout service
 - iv. CONSULTANT will not validate user licensing details for 3-party applications/portals.
- c. CONSULTANT will develop custom user experience to enable users to access the 3rd party vendor's services. The user experience elements include, but are not limited to the following:
- i. Dashboard tiles that are displayed to eligible customers. The tiles will have a static image and will link to the 3rd party vendor service. The tiles will match the look and feel of CITY's current version of SCM.
 - ii. Navigation "tabs" that are displayed to eligible customers. The tabs will have a label and will link to the 3rd party vendor services. The tabs will match the look a feel of CITY's current version of SCM.
 - iii. CITY shall provide to CONSULTANT a list of the eligibility designations for each of the 3rd party vendors.

- d. CONSULTANT will facilitate communication preference coordination between SCM and 3rd party vendors.
 - i. CONSULTANT will develop custom notification types in the existing preference center based on the 3rd party vendor customer communication options.
 - ii. CONSULTANT will setup transfers of notification preference updates to CITY and 3rd party vendors.
- e. CITY Responsibilities
 - i. CITY will be responsible for coordinating the access to any Client owned and 3rd party systems required for integration.
 - ii. CITY agrees to provide integration access with any CITY and 3rd party vendor systems prior to the completion of Planning and Design.
 - iii. CITY will participate in a detailed planning and design process with CONSULTANT to define user experience, data elements and service aspects.

2. Implement AMI Interval Data requirements

These requirements pertaining to Smart Grid AMI listed in Exhibit G of the original contract will be implemented:

Req ID	Requirement - Description	Classification
Customer Services		
FF25	Ability to integrate weather data for conservation analysis	Desired
FF26	Ability to combine weather, landscape area, rainfall and consumption data to determine when an account may be overwatering	Desired
FF28	Ability to have a "live chat" feature when customer have questions/issues while using the customer portal	Desired
Usage/Rates		
FF72	Smart Grid – water and gas leak alert setup	Desired
FF73	Smart Grid – water and gas leak detection	Desired

FF74	Smart Grid – calculate and display calculated usage using meter multiplier, therm factor multiplier, and other calculations	Desired
FF75	Smart Grid – calculate and display calculated usage with hourly data with daily allowance pricing considerations	Desired
FF76	Smart Grid – display bidirectional, delivered (usage) and received (generation), information	Desired
FF77	Smart Grid – monthly usage/cost charts and data downloads	Desired
FF78	Smart Grid - availability and presentation of detailed utilities data (e.g. hourly meter reads)	Mandatory
FF79	Smart Grid - daily usage/cost charts and data downloads	Desired
FF80	Smart Grid - hourly usage/cost charts	Desired
FF81	Smart Grid - mobile support	Desired
FF82	Smart Grid - predicted bill & usage alerts	Desired
FF83	Smart Grid - price plan comparison tool	Desired
FF84	Smart Grid – demand response notification and calculation capabilities	Desired
FF85	Smart Grid – real time pricing display and indicators for time-of-use, demand response and energy generation	Desired
FF86	Smart Grid - secure real-time access to smart meter data	Mandatory
Interfaces		
IN02	The portal must be able to integrate with any CIS or Utility Billing system	Mandatory
IN07	Smart Grid - Meter Data Management Database and Portal	Mandatory

Tasks Pursuant to Amendment 3:

1. Annual Subscription for Extension Term. The Parties hereby agree that the annual subscription fees for its current subscriptions during the period commencing April 1, 2023, through March 31, 2026 (the “Extension Term”) will be the rates shown in Exhibit C-1.
2. Removal of Utility Account limitation Per User in Smart Customer Mobile (SCM).
 - a. Removes the current 65 utilities account restriction per user/Business partner.
3. Increase Number of SCM Users. The Parties hereby agree to increase the authorized number of SCM users by 5,000 from 25,000 to 30,000 during the Extension Term.

4. Increase Number of Customer Service Portal (CSP) Admin Accounts. The Parties hereby agree to increase the number of CSP Admin Accounts by 5 from 30 to 35 during the Extension Term.
5. Text Short Message Service (SMS) Notification Services - Refer to Amendment 3 **Appendix “1” – Text Messaging Service**
 - a. Implement and provide the option for customers to receive text notifications for SCM billing module related notifications (e.g., new monthly invoice and late notices).
6. Additional Cloud Tenant - Refer to Amendment 3 **Appendix “2”- SCM Non-Production Cloud Tenant**
 - a. Implement and provide a stand-alone and dedicated User Acceptance Testing (UAT) environment dedicated to long term project testing (e.g., AMI) as required.
7. Max Support Plan - Refer to Amendment 3 **Appendix “3” – Max Support Plan**
 - a. Adds a “max support” option for additional dedicated SEW resources and services to resolve complicated SCM and integration issues in a timely manner
8. Instructional Video - Create two instructional videos to help guide customers through the more complex processes in the portal (e.g., bill autopay and registration or AMI)
9. Additional Enhancements: In anticipation of enhancements required post go-live, Consultant shall provide up to \$150,000 worth of software enhancements to the City upon the City’s request and approval in writing using the change request process. These enhancements may include, but are not limited to, the following:
 - a. Add/change/enhance software modules
 - b. Add/change/enhance features
 - c. Add/change/enhance reporting
 - d. Add/change/enhance API integrations or other integration between SCM® and the various City business systems and hosted environments
 - e. Add/change/enhance the City’s SAP environments
10. Additional Professional Services: In anticipation of consultant services required post go-live, Consultant will perform up to \$105,000 worth of consulting and support services beyond what is already required in this Agreement. Such services will be upon the City’s request and approval in writing using the change request process. These services may include, but are not limited to, the following:
 - a. Assistance with software updates and/or upgrades
 - b. Functional and technical assistance
 - c. Functional and technical training
 - d. Project management
 - e. Software configuration and development

EXHIBIT “B”
SCHEDULE OF PERFORMANCE, (AMENDED, REFLECTS EXTENSION TERM ONLY)

CONSULTANT shall perform the Services to complete each milestone within the number of days/weeks specified below for each task in scope. The time to complete each milestone may be increased or decreased by mutual written agreement of the project managers for CONSULTANT and CITY so long as all work is completed within the term of the Agreement. CONSULTANT shall provide a detailed schedule of work consistent with the schedule. The total duration of system set up, deployment and stabilization will be completed within **180** days from the date of the notice to proceed (NTP). This Scope of Work for the Project will be broken into six milestones. Unless otherwise agreed to upon the parties in writing, each milestone must be completed before any work is conducted on the next milestone.

Tasks Pursuant to Amendment 1

Task	Phase	SES Deliverables	City Deliverables		Completion Date
1	3 rd Party SSO Integration	<ul style="list-style-type: none"> Functioning Dashboard tiles and links to each SSO integration 	<ul style="list-style-type: none"> Availability of 3rd Party and City project managers Timely UAT and approval 		180Days from Amendment 3
2	AMI Interval Data (previously Year 5) requirements)	Functioning Usage graph with interval data (e.g. 15 mins to hourly)	<ul style="list-style-type: none"> Availability of 3rd Party and City project managers Timely UAT and approval 		90Days from Amendment 3

Tasks Pursuant to Amendment 3

Task	Phase	SES Deliverables	City Deliverables		Completion Date
1	Annual SCM Subscription services extended	Functioning portal with the My Account, Usage, Billing, Services, and Notification modules operational	<ul style="list-style-type: none"> Amendment No. 3 approval 		At the time of Amendment NTP

2	Removal of Utility Account limitation Per User in SCM	<ul style="list-style-type: none"> For those users with more than 65 accounts, all accounts visible in the dashboard dropdown and online services are functioning. 	<ul style="list-style-type: none"> Availability of 3rd Party and City project managers Timely UAT and approval 		180Days from Amendment NTP
3	Increase Number of SCM Users	Portal allows up to 30,000 SCM users	<ul style="list-style-type: none"> Amendment No. 3 approval 		At the time of Amendment NTP
4	Increase Number of CSP Admin User Accounts	Portal allows up to 30 CSP admin users	<ul style="list-style-type: none"> Amendment No. 3 approval 		At the time of Amendment NTP
5	Text Short Message Service (SMS) Notification Services	<ul style="list-style-type: none"> Functioning notification feature sending text notifications for the billing module 	<ul style="list-style-type: none"> Availability of 3rd Party and City project managers Timely UAT and approval 		180Days from Amendment NTP
6	Additional Cloud Tenant	<ul style="list-style-type: none"> Functioning and separate User Acceptance Testing (UAT) environment 	<ul style="list-style-type: none"> Availability of 3rd Party and City project managers Timely UAT and approval 		180Days from Amendment NTP
7	Max Support Plan	Dedicated resources are available to resolve issues per Appendix 2 terms and conditions.	<ul style="list-style-type: none"> Amendment No. 3 approval 		At the time of Amendment NTP
8	Two (2) Instruction Videos	Functioning videos available within the portal	<ul style="list-style-type: none"> Availability of 3rd Party and City project managers Timely UAT and approval 		90Days from Amendment NTP
9	Additional Enhancements	Future enhancements functioning as per the specifications in the approved Change Request (CR) document	<ul style="list-style-type: none"> Availability of 3rd Party and City project managers Timely UAT and approval 		Up to 3 years from Amendment NTP

10	Additional Professional Services	Future professional services functioning as per the specifications in the approved Change Request (CR) document	<ul style="list-style-type: none">• Availability of 3rd Party and City project managers• Timely UAT and approval		Up to 3 years from Amendment NTP
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City, in its sole discretion, may agree to an extension of time for completion of tasks provided such extension is reflected in writing, in advance, below within 10 days of the date of the notice to proceed (NTP). SES shall have the ability to change dates if such change is reasonable and in the interest of the Project.

EXHIBIT "C-1"
SCHEDULE OF RATES (AMENDED, REPLACES PREVIOUS)

The table set forth below includes certain hourly rates which may be utilized by SEW in the event it agrees to perform unanticipated work for client in connection with this agreement.

Original Agreement:

1. Original Agreement, Amendment 1-2 Tasks:

Labor Category	Hourly Rate
Delivery Director	\$120
Project Manager	\$110
Product/ Technical Integration Lead	\$110
Business Analyst	\$75
QA Lead	\$75
SAP Technical Lead	\$110
Training Lead SAP Supplemental Resource	\$70 -\$120

2. Amendment 3 Tasks:

The rates below apply for calendar year 2023 only and shall be subject to change annually thereafter, upon minimum 60 days' written notice to the City, provided however, that the increase in rates shall not exceed the higher of: (i) the percentage change in the CPI Index, West region as published by the U.S. Bureau of Labor for the trailing 12 (twelve) months or (ii) 3 (three) percent.

Category	Hourly Rate
Delivery Director	\$150
Project Manager	\$135
Product/Technical Integration Lead	\$135
Business Analyst	\$90
QA Lead	\$90
SAP Technical Lead	\$135
Training Lead	\$85
SAP Supplemental Resource	\$150

**EXHIBIT “C-2”
COMPENSATION, AMENDMENT 3 (ADDED)**

City agrees to compensate Consultant for professional services performed as designated under the Supplemental Scope of Work – Amendment 3 Tasks, and for the software subscription as set forth in the budget schedule below for the Extension Term. Any services provided or hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to City.

Compensation during the Extension Term shall not exceed a maximum total amount of **\$684,023.00 dollars**, which includes AMI software implementation fees and, an annual subscription fee for year six (6) (April 2023-March 2024), seven (7) (April 2024-March 2025), and eight (8) (April 2025-Mar 2026), text notification, elevated maximum support plan and any Additional Services as authorized by City in accordance with this Agreement:

Summary Table for Years 6, 7, and 8

Description	Year 6	Year 7	Year 8	Total
Subscription Services:				
Subscription Fee	\$ 63,130	\$ 63,130	\$ 63,130	\$ 189,390
User and Admin Accounts	\$ 8,475	\$ 8,475	\$ 8,475	\$ 25,425
Max Support	\$ 39,000	\$ 39,000	\$ 39,000	\$ 117,000
Text Notification	\$ 10,000	\$ 10,000	\$ 10,000	\$ 30,000
QA Cloud Tenant	\$ 3,726	\$ 14,904	\$ 3,726	\$ 22,356
Additional Services:				
Enhancements	\$ 50,000	\$ 50,000	\$ 50,000	\$ 150,000
Professional Services	\$ 35,000	\$ 35,000	\$ 35,000	\$ 105,000
Instruction Videos	\$ 14,250			\$ 14,250
AMI Implementation	\$ 4,602			\$ 4,602
Single Sign On	\$ 26,000			\$ 26,000
Total	\$ 254,183	\$ 220,509	\$ 209,331	\$ 684,023

I. Pricing breakdown for Years 6, 7, and 8

April 1, 2023, through March 31, 2026 (the Amendment No. 3 - “Extension Term”)

Description	Amount	Due
1. Single Sign On 3 rd Party Integration (3 SSO at \$26,000 each)	\$26,000	25% to be paid upon SEW UAT in QAS 50% to be paid upon City UAT sign off in QAS 25% to paid upon deployment in production
2. AMI Interval Data (previously Year 5) requirements)	\$4,602	25% to be paid upon SEW UAT in QAS 50% to be paid upon City UAT sign off in QAS 25% to paid upon deployment in production

Vers.: Aug. 5, 2019

3.	SCM® Annual User Connections for Year 6 (25,000 users and 25 admin users)	\$71,605	100% to be paid on Effective Date
	SCM® Annual User Connections for Year 7 (25,000 users and 25 admin users)	\$71,605	100% to be paid on anniversary of Effective Date
	SCM® Annual User Connections for Year 8 (25,000 users and 25 admin users)	\$71,605	100% to be paid on anniversary of Effective Date
4.	Text Short Message Service (SMS) Notification Services		<u>Fixed Fees</u>
	Year 6	\$10,000	100% to be paid upon effective date
	Year 7	\$10,000	100% to be paid one year after effective date
	Year 8	\$10,000	100% to be paid two years after effective date
			<u>Volume-Based Fees</u>
			\$0.04 for each message in excess of 50,000 SMS messages in any year
5.	Additional Cloud Tenant	\$22,356	\$1,242 monthly upon implementation of service and as required monthly
6.	Max Support Plan		
	Year 6	\$39,000	100% to be paid upon implementation of service
	Year 7	\$39,000	100% to be paid one year after implementation of service
	Year 8	\$39,000	100% to be paid two years after implementation of service
7.	Two (2) Instructional Videos	\$14,250	25% to be paid upon SEW UAT in QAS 50% to be paid upon City UAT sign off in QAS
			25% to paid upon deployment in production
8.	Additional Enhancements	\$150,000	Invoiced at actual costs as incurred via Change Request process
9.	Additional Professional Services	\$105,000	Invoiced at actual cost as incurred
10.	Additional User Connections and Admin User.	\$5,000 per allotment; \$250 per admin user	At any time during a current subscription term, Palo Alto may purchase the right to service additional connections (users) under its SCM subscription at a rate of \$1.00 per connection (user) per year, purchased in allotments of 5,000 connections (users). Should Palo Alto

		elect to expand its subscription connection coverage pursuant to the foregoing option during a then-ongoing subscription term, the total charged will be suitably prorated over the said term's remaining duration. Additional administrative user access may be similarly purchased at a rate of \$250 per admin user per year.
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**Amendment 3 Appendix "1" –
Text Messaging Service**

Supplement to SEW Subscription Order Form

Between Smart Energy Systems, Inc. dba Smart Energy Water
15495 Sand Canyon Avenue, STE 100
Irvine, CA 92618
("SEW")

And City of Palo Alto
250 Hamilton Avenue
Palo Alto, CA 94301
("Customer")

1. Order Form

This Supplement, as issued by SEW, shall constitute an amendment to the existing City of Palo Alto Contract S18165157 dated October 17, 2017, between SEW and Customer (the "Agreement") and is governed by and incorporates the terms and conditions attached hereto as Appendix A and B.

2. Notification Subscriptions

The table below shows the SEW Notification Services to be added or updated to the Agreement. The fixed annual fees for the services below are invoiced annually upfront. The volume-based fees, if any, shall be invoiced and payable monthly.

TEXT MESSAGING SERVICE		
	Service Type	Price (USD)
X	Outbound SMS Text Bill Notification	\$10,000 annually for first 50,000 SMS messages and \$0.04 for each message thereafter

Note: SMS Text message speed shall be up to 5 messages/second. Higher speeds require additional fees.

3. Term and Invoicing

The term of this Supplement commences on April 1, 2023, and ends March 31, 2026.

Total Fixed Fees for this Supplement (excluding volume-based fees)	Payment Conditions for Term
\$30,000 (\$10,000 annually)	Total fee due upon signing and invoiced according to the below schedule: <ul style="list-style-type: none"> \$10,000 upon signature \$10,000 upon 1st anniversary of Effective Date \$10,000 upon 2nd anniversary of Effective Date

4. Acceptance and Authorization

Customer	Smart Energy Water
Signature:	Signature:
Name:	Name: Harman Sandhu
Title:	Title: President
Effective Date:	Date:

Vers.: Aug. 5, 2019

Amendment 3 Appendix 1-A

SEW Notification Services Agreement

Smart Energy Systems, Inc. dba Smart Energy Water ("Provider" or "SEW") has developed certain proprietary software applications and services for a Customer, and the Parties have agreed that Provider will make the Services described in the Order Form available to the Customer hereunder. Therefore, in consideration of the mutual covenants, terms, and conditions set forth below and in any relevant exhibits or documents, the adequacy of which is hereby acknowledged, the Parties agree as follows

1. Definitions

- 1.1. **"Monthly Uptime Percentage"** shall refer to the difference between 100% and the percentage of time during which the Services are unavailable.
- 1.2. **"Services"** shall refer to notification services for the SCM® Cloud Services platform utilized to establish form(s) of contact between the Customer and end user of the SEW Cloud Services Platform, which include, but are not limited to, SMS text messaging, email, and interactive voice response (IVR) services.
- 1.3. **"SEW Cloud Services Platform"** shall refer to Customer's deployment of the SCM® platform, or other applicable software of SEW sold through an authorized reseller.
- 1.4. **"Term"** shall mean the Term set forth in the applicable license agreement, SaaS subscription agreement, cloud services agreement, or if not defined in an applicable signed writing, one (1) year from the Effective Date.

2. Scope and General Terms

- 2.1. SEW shall provide the following Services selected within the Order Form in accordance with the following terms and conditions.
- 2.2. Customer may use the Services solely to:
 - a) Use and make the Services available to end users in connection with the use of SEW Cloud Services Platform.
 - b) Use the Services in connection with and as necessary for Customer's activities pursuant to these terms or the terms set forth in an applicable license agreement, SaaS subscription agreement, or cloud services agreement.
 - c) Allow any affiliates to use the Services, subject to the terms hereunder.
- 2.3. In relation to the Services provided under this Agreement, Customer agrees that:
 - a) Customer shall not transfer, resell, lease, license, or otherwise make available the Services or SEW Cloud Services Platform to third parties or offer it on a standalone basis, or make any representation, warranty, or guarantee to any end user or third party on behalf of SEW concerning the Services.
 - b) SEW shall be entitled to use any Customer data that is necessary to provide the Services.
 - c) Customer's use of the Services does not violate the terms of this Agreement.
 - d) Customer shall not use the Services or SEW Cloud Services Platform to create, train, or improve (directly or indirectly) a substantially similar product or service.
 - e) Customer shall not reverse engineer, decompile, disassemble, or otherwise create, attempt to create or derive, or permit or assist anyone else to create or derive the source code of any Services or SEW Cloud Services Platform provided in connection with this Agreement.
- 2.4. SEW shall make the Services available and guarantee a Monthly Uptime Percentage of 99.5%, notwithstanding any unavailability or performance issues of the Services caused by or as a result of the following (collectively, the "Exclusions"):
 - a) Factors that are outside of SEW's reasonable control, including, without limitation, any force majeure event, telecommunications provider-related problems or issues, internet access or related problems occurring beyond the point in the network where SEW maintains access and control of the Services.
 - b) Any actions or inactions of Customer or any third party.
 - c) Any Customer application(s), equipment, software, or other technology, third party equipment, software, etc. not authorized for use with the Services.
 - d) Routine or scheduled maintenance for which SEW will provide at least twenty-four (24) hours of advanced notice.
 - e) Problems or issues related to alpha, beta, or not otherwise generally available in SEW features or products.
- 2.5. Notification Services shall commence at the rates and volumes selected by Customer in the Order Form.
 - a) In the event that Customer exceeds the number of emails per month selected, SEW shall automatically escalate Customer to the next service tier and corresponding rates. Customer shall thereafter be invoiced according to the rates set forth for the escalated tier for the remaining Term for such Order Form.
 - b) At any time during the Term of the Order Form, Customer can contact SEW to request to be change their service to a lower tier. Such changes to revert to a lower tier and corresponding rates can be made only once during a twelve month period. Customer shall not be entitled to any credits for unused volumes when reverting to a lower service tier after having been escalated to a higher tier as a result of having exceeded notification volume limits.
 - c) In the event Customer requires a higher notification Volume SLA tier in order to meet increased demand or to ensure timely delivery of the Services for Customer's end users, Customer shall contact SEW detailing the Email Volume SLA or SMS Volume SLA tier customer wishes to upgrade to.

3. Term

- 3.1. The Initial Term of this Agreement shall begin on the Effective Date and continue for the Term as stated in the applicable Order Form.

4. Renewals

- 4.1. This Agreement shall automatically renew upon the expiration of the Initial Term as stated in the Order Form for one (1) year intervals ("Renewal Term"), unless terminated by Customer by providing written notice to SEW ninety (90) days prior to the expiration of the Term. For the avoidance of doubt, SEW shall not be required to refund any previously paid fees, regardless of when termination occurs during the Term or Renewal Term.

5. Fees

- 5.1. Fees for the Services shall be set forth in the Order Form. Customer shall be invoiced for applicable one-time initial setup fees, maintenance and support fees, and monthly service type fees upfront upon signing of this Agreement and annually thereafter if applicable. The usage fees applicable to inbound and outbound SMS messaging or voice call messages that are selected by the Customer shall be invoiced based on monthly intervals. Customer agrees to make all payments to SEW within thirty (30) calendar days after receipt of invoice. Late invoices will incur a late payment fee of 1.5% or the maximum allowable under the law, whichever is less. If Customer's account is sixty (60) days or

Vers.: Aug. 5, 2019

more overdue, SEW reserves the right with prior written notice to withhold performance of its obligations under this Agreement, without liability, until such payments are paid in full, or to terminate for cause. Fees under this Agreement shall additionally be exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for all applicable taxes, levies, or duties hereunder.

6. Warranty and Liability

- 6.1. **DISCLAIMER OF WARRANTY.** WITH THE EXCEPTION OF THE SERVICE LEVEL COMMITMENT SET FORTH IN SECTION 2.4, THE SERVICES UNDER THIS AGREEMENT ARE PROVIDED "AS-IS," EXCLUSIVE OF ANY WARRANTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ANY OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED. SEW DOES NOT WARRANT THAT THE SERVICES ARE OR WILL BE ERROR-FREE OR MEET ALL CUSTOMER REQUIREMENTS. WITHOUT LIMITING THE FOREGOING, SERVICES MAY BE SUBJECT TO LIMITATIONS OF THE TELECOMMUNICATIONS PROVIDER, HOSTING ENVIRONMENT, DELAYS, INTERNET SERVICE PROVIDER, THIRD PARTIES, ACTIONS OR INACTIONS OF THE CUSTOMER, AND OTHER PROBLEMS INHERENT TO THE USE OF MASS-MARKET NOTIFICATION SERVICES AND ELECTRONIC COMMUNICATIONS. SEW IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, DELETIONS, LOSS OF DATA, DATA CORRUPTION, THIRD-PARTY PUBLICATION, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS NOT CAUSED BY SEW OR OUTSIDE OF SEW'S REASONABLE CONTROL. TO THE EXTENT SUCH DISCLAIMER CONFLICTS WITH APPLICABLE LAW, THE SCOPE AND DURATION OF ANY APPLICABLE WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW. SEW SHALL NOT BE LIABLE AND WILL HAVE NO OBLIGATION TO INDEMNIFY CUSTOMER FOR END USER DATA OR ANY OTHER PERSONALLY IDENTIFIABLE INFORMATION SENT TO SEW.
- 6.2. **LIMITATION OF LIABILITY.** IN NO EVENT WILL SEW'S AND ITS LICENSORS' TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT EXCEED THE AMOUNT PAID FOR THE NOTIFICATION SERVICES UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY BEFORE SUCH CLAIM AROSE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL SEW OR ITS LICENSORS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL OR SIMILAR DAMAGES, INCLUDING WITHOUT LIMITATION, ANY LOST PROFITS, OPPORTUNITIES, DATA, OR USE, ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICES, EVEN IF SEW HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- 6.3. **Recordings and Communications Monitoring.** In the event Customer records or monitors any SMS messages, IVR communications, or other communications using the Services, then Customer represents and warrants that it shall comply with all applicable laws prior to doing so at all times. SEW makes no representations or warranties with respect to recording or monitoring telephone calls/IVR communications, SMS messages, or other communications, and recommends that Customer always secure prior consent to record or monitor communications using the Services. Customer acknowledges that these representations, warranties, and obligations are essential to SEW's ability to provide the Services, and further agrees to indemnify SEW and its affiliates or providers in the event of any acts or omissions in connection with recording or monitoring IVR communications, SMS messages, or other communications, whether such claims arise under contract, tort, statute, or other legal theory.

7. Additional Terms

- 7.1. **Short Codes.** If Customer utilizes a short code with SEW as a part of the Services, Customer:
- Shall not change the short code use case without first having such new use case approved by SEW or the applicable provider.
 - Shall stop sending additional messages to any party that replies by texting "STOP" (or the equivalent) to the short code, except for a single text message confirming that such party has been successfully opted out of the short code.
 - Shall follow all applicable rules, regulations, laws, statutes, or guidelines set by state, local, or federal legal authorities, or as imposed by SEW or its affiliates, providers, etc. pertaining to the use of short codes or voice recordings.
- 7.2. **Compliance with Laws.** Both Customer and SEW agree to comply with the applicable laws relating to each Party's respective activities pursuant to this Agreement.
- 7.3. **No Waiver.** Our failure to enforce at any time, any provision of this Agreement, or any other applicable policy or signed writing in connection hereto shall not waive our right to do so later. Any waiver must be in writing and signed by both Parties to be legally binding.
- 7.4. **Independent Contractors.** The Parties are independent contractors and will so represent themselves in all regards. Neither Party is the agent of the other, and neither may make commitments on the other's behalf.
- 7.5. **Force Majeure.** No delay, failure, or default, other than a failure to pay fees, will constitute a breach of this Agreement to the extent that such delay, failure, or default, or any other breach is caused by acts of war, terrorism, earthquakes, other acts of God or of nature, strikes or labor disputes, embargoes, or other causes beyond the performing Party's reasonable control.
- 7.6. **Assignment & Successors.** Customer may not assign this Agreement or any of its rights or obligations hereunder without Provider's prior written consent. Except to the extent forbidden herein, this Agreement will be binding upon and inure to the benefit of the Parties' respective successors and assigns. Any attempt to assign, transfer, or delegate the terms under this Agreement shall be null and void.
- 7.7. **Notices.** Any notice required or permitted to be given under this Agreement will be given in writing to the receiving Party by personal delivery, certified mail, return receipt requested, overnight delivery recognized by a nationally recognized carrier, or by email upon confirmation of receipt. Notices to SEW shall be copied to contracts@sew.ai.
- 7.8. **Modification.** Modifications to the Services and associated fees thereof may be made from time to time, and any modifications made to the Services, or associated fees, shall be noticed to the Customer thirty (30) days prior to such modifications taking effect.
- 7.9. **Severability.** To the extent permitted by law, the Parties waive any provision of law that would render any clause of this Agreement invalid or unenforceable. In the event that a provision herein is held to be invalid or unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by law, and the remaining provisions of this Agreement will continue in full force and effect.
- 7.10. **Choice of Law & Jurisdiction:** This Agreement will be governed by the laws of the State of California, without reference to any conflicts of law principles. The Parties consent to the personal and exclusive jurisdiction of the federal and state courts of Orange County, California.
- 7.11. **Conflicts.** Should this Agreement conflict with any other agreements, this Agreement will govern.
- 7.12. **Construction.** The Parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.
- 7.13. **Entire Agreement.** This Agreement sets forth the entire agreement of the Parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter, with the exception of an applicable license agreement, SaaS subscription agreement, or statement of work. Neither Party has relied upon any such prior or contemporaneous communications except those expressly referenced and named herein.
- 7.14. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.
- 7.15. **Amendment.** This Agreement may only be amended in writing by authorized representatives of each Party.

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Appendix 1-B**Data Retention Policy****1) Data Retention Policy****a) Introduction**

- i) It shall be the policy of Smart Energy Water to maintain complete and accurate records for the usage, billing, behavior, or any of the specified types of data ("Data") of Client and its Users, for the duration described for historical reference, contractual or legal requirements, or for any other purposes as set forth in this Data Retention Policy ("Policy"). The types of Data stored and subsequent durations for each type, described in the Retention Summary set forth in Section 1(h) below, shall be the recommended and standard retention periods based on legal requirements and practical considerations. In the event that Client wishes to have such Data retained for an extended period, such additional retention periods shall be agreed upon in a separate writing.
- ii) Data Retention shall include, but is not limited to, paper and electronic records, documentary materials, Customer Data, personally identifiable information, billing records, usage information, etc. Such information shall be managed and maintained in a manner that protects the integrity of the Data, while ensuring appropriate access for the durations described above.
- iii) Upon expiration of the above retention periods, such data shall be destroyed, deleted, returned or otherwise disposed of according to standard industry guidelines and in compliance with legal requirements, EXCEPT for those records pertaining to (1) matters under investigation or those matters that are the subject of any claim or litigation, and (2) matters that are anticipated to be the subject of reasonably foreseeable investigation, claim, or litigation.

b) Definitions

- i) **"Audit Logs"** shall refer to recordings of key system events, timestamps, and other records that otherwise maintain evidence of any processes or activities.
- ii) **"Billing Data"** shall refer to any information regarding the billing information of customers, which may include, but is not limited to, credit card information, security codes, expiration dates, billing addresses, names of customers, etc.
- iii) **"Billing Summaries"** shall refer to any information regarding the costs or charges relating to a customer's usage of utilities maintained over monthly billing periods.
- iv) **"Customer Data"** shall refer to any personally identifiable information of a Client's users, which may include, but is not limited to, name, address, personal Usage information, etc.
- v) **"Investigation"** shall refer to any business or legal process which requires the retention, examination, or review of any Data.
- vi) **"Notifications"** shall refer to logs of the information events (email, IVR, SMS text messaging) sent by a utility and received by a customer.
- vii) **"Outages"** shall refer to logs of outage events reported via OMS to the Services, by either the customer, if approved, or the Client.
- viii) **"Retention"** shall refer to storage of Data on either local, cloud-based, or archive storage or servers.
- ix) **"Usage"** shall refer to any customer's use of a utility as tracked and maintained by the Services.
- x) **"User Behavior"** shall refer to the interaction of Client's customers on the portal or mobile application, which may include, but is not limited to, log-on periods, active periods, interactions with particular modules, clicks, etc.

c) General

- i) SEW shall be bound in its obligations regarding the Data it processes and controls. These obligations shall include how long SEW retains Data, and when and how SEW can destroy such Data. These obligations may arise from industry standards, local laws or regulations, or arising out of agreements between the Parties.
- ii) SEW shall ensure that necessary records, documents, or Data are adequately protected and maintained, and additionally, that such records, documents, or Data are properly disposed of.
- iii) SEW shall not use Client or Customer Data except as necessary to provide the Services, or as necessary to comply with the law or binding order of a governmental body.

d) Cloud-Based Storage

- i) In maintaining the Data, SEW shall utilize its cloud-based scalable storage solutions which shall allow Client to store and display historical usage data, billing information, payment history, etc. SEW shall utilize industry standard methodologies, which shall ensure business continuity, continuous retention for the periods described, data recovery, and availability for its Users.

e) Archiving and Backups

- i) SEW shall utilize similar industry standard solutions for archiving, restoring, and backing up Data. Incremental Data (daily usage, user behavior, notifications, outages) shall be recorded nightly, and full Data backups shall be executed over the weekend. Data shall be retained in both Cloud-based local storage form, as well as Array-based replication form offsite to be utilized as back-ups or archives in the event of system failure of the local Cloud-based storage.
- ii) SEW shall be notified via email confirmation of backups of Data being saved successfully or such backups failing to be saved. Backups shall be tested periodically by restoring such Data to a staging database to ensure that Data is not corrupted and are in proper usage compliance in its application configuration.

f) Destruction and Purging of Data

- i) Data that is personal or confidential in nature shall be disposed of according methodologies agreed upon by and between the parties in a signed writing.
- ii) Electronic Data shall be subject to secure electronic deletion.
- iii) Physical or paper documents shall be shredded using secure consoles through which waste shall be properly screened for disposal.
- iv) Specific deletion or destruction processes shall be carried out by an employee of SEW or by an internal or external service provider employed for the purposes of such proper and compliant disposal of Data.
- v) Data of Users or Clients who have been inactive for a period of twenty-four (24) months shall be deleted. Clients, if such Client or User account(s) are inactive for a period of eighteen (18) months, shall be notified of such inactivity via email.

g) Litigation or Investigation

- i) In the event that SEW becomes involved in any unforeseen litigation or business event that requires access to Client and Customer Data, such Data may need to be archived beyond its active use or as required by law.
- ii) Documents shall be retained in the event that they are subject to matters under investigation or those that are subject to any claim or litigation, or those matters that are anticipated to be the subject of reasonably foreseeable investigation, claim, or litigation.
- iii) Prior to the disclosure of any Client and Customer Data, SEW shall first disclose to Client of such requirement, so that Client may inform its users and allow users the opportunity to seek protection from such disclosure.

h) Retention Summary

- i) SEW, for the purposes of historical reference, contractual or legal requirements, or other requirements as a part of its delivery and maintenance of Services or Software to Client, shall retain the following types of Data for the durations set forth, and pursuant to the terms set forth in this Data Retention Policy.

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Data Type	Description	Duration
Usage	Monthly Read	24 months
	Daily Read	12 months
	Hourly Read	6 months
	15-minute Read	3 months
Billing Data/Summary	Overview of Past Bills	24 months
User Behavior	User Interactions with Portal	12 months
Notifications	Text Message, IVR, Email Logs	6 months
Audit Logs	Timestamps, Recordings of Key Events	6 months
Bill PDF Storage	* Add-on Feature	12 months
Outages	History of Reported Outages	12 months

Amendment 3 Appendix "2" - SCM Non-Production Cloud Tenant**Order Form for Smart Energy Water Cloud Services****Between****Smart Energy Systems, Inc. dba Smart Energy Water****15495 Sand Canyon Ave., Suite 100****Irvine, CA 92618****("SEW")****And****City of Palo Alto****250 Hamilton Avenue****Palo Alto, CA 94301****("Customer")****1. Order Form**

This Order Form, as issued by SEW, shall constitute an offer made by SEW to a Customer. When signed and returned to SEW by Customer, it shall become a binding agreement for the SEW Cloud Service(s) or other Services listed in this Order Form and effective on the date signed by Customer. This Order Form is governed by and incorporates the Terms and Conditions attached hereto.

2. SEW Platform Modules and Service(s)

The table below shows the purchased SEW Platform(s) and associated Service(s) thereof, which shall be listed and selected by Customer below and subject to the Terms and Conditions which govern this Purchase Order. In addition to the Terms and Conditions which govern this Purchase Order, Customer shall be restricted in its use to internal, non-production, non-commercial, training and marketing purposes only.

	Product Code	Product Name
<input checked="" type="checkbox"/>	SCM-10-NONPROD	Additional Non-production cloud tenant

3. Term and Fees

The initial term of this Order Form shall be for one (1) month commencing on the April 1, 2023. Thereafter, it shall automatically renew for successive one (1)-month periods until such time as it is terminated pursuant to Section 4.2 of the attached terms and conditions.

Description	Number of Environments	Monthly Fee (USD)	Payment Terms
SCM Non-Production Cloud Tenant	1	\$1,242	<ul style="list-style-type: none"> \$1,242 upon signing \$1,242 on the first of each month thereafter

4. Acceptance and Authorization

Customer	Smart Energy Water
Signature:	Signature:
Name:	Name:
Title:	Title:
Effective Date:	Date:

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Dual/Non-Production Environment Terms & Conditions

Smart Energy Systems, Inc. dba Smart Energy Water ("Provider" or "SEW"), may offer to "Customer", a right to access and use a duplicate or non-production environment of the cloud-hosted software purchased by Customer, in consideration of the mutual covenants, terms, and conditions set forth below and in any relevant exhibits or documents incorporated to this Agreement, and, if applicable, subject to any License Agreement and Order Form between Customer and any reseller of SEW services, the adequacy of which is hereby acknowledged. SEW and Customer, each a "Party," and collectively referred to as the "Parties," agree as follows:

1. Definitions: As used in this Agreement or any document(s) associated herewith:

- 1.1 **"License Agreement"** shall refer to any license agreement, terms and conditions, or other provisions in a signed writing pertaining to software licensed or implemented by SEW, or any of its resellers, for Customer.
- 1.2 **"Non-Production Environment"** shall refer to the non-production environment or cloud tenant of any SEW software, or other software as implemented by SEW for an applicable License Agreement or Order Form.
- 1.3 **"Order Form"** shall refer to an item list or writing authorizing the provision of software by SEW for a License Agreement or SaaS Agreement between SEW and a Customer or any reseller and a Customer, which is attached and incorporated hereunder.
- 1.4 **"SaaS Agreement"** shall refer to a software-as-a-service agreement, terms and conditions, or other provisions in a signed writing pertaining to software provided or implemented by SEW, or any of its resellers.
- 1.5 **"Term"** shall refer to the license term as set forth in the applicable Order Form, or if separate from another Order Form, then as listed in Section 4.1 below.

2. Grant of Rights

Subject to the terms and conditions of this Agreement, SEW hereby grants Customer a non-exclusive, non-transferable, non-assignable, limited right to access and use the Non-Production Environment solely for Customer's internal, non-production, non-commercial, training or marketing-related evaluation or use of such non-production service in accordance with the applicable Order Form. Except as otherwise provided in an additional writing, SOW, or Order Form, the foregoing access and use right shall be limited to a single tenant instance. All rights not expressly granted to Customer shall be reserved by SEW and its licensors.

3. Limitations on Use and Customer Responsibilities

- 3.1. Customer shall not disclose to any third party, the results of any evaluation or other use of the Non-Production Environment, performed by or on behalf of Customer, without the prior written authorization of SEW. (e.g. any monitoring of service availability, performance, or functionality, or any other benchmarking). SEW does not guarantee any service availability/uptime of the Non-Production Environment greater than 90.00%.
- 3.2. Customer shall not: (a) commercially exploit the Non-Production Environment by licensing, sublicensing, selling, reselling, transferring, assigning, or distributing, or otherwise making it available or accessible to any third party in any way; (b) modify or make any derivative works based upon the Non-Production Environment; (c) reverse engineer the Non-Production Environment; or (d) access or use the Non-Production Environment in order to build a product or service that competes with the Non-Production Environment, or production environment or software upon which such Non-Production Environment is based.
- 3.3. Customer must not access or use the Non-Production Environment to: (a) send spam or otherwise duplicative or unsolicited messages in violation of any applicable laws, statutes, ordinances, etc.; (b) send or store infringing, threatening, obscene, libelous, or otherwise unlawful or tortious material; (c) send or store material containing software viruses, worms, trojan horses, or other harmful computer code, files scripts, agents or programs; (d) interfere with or disrupt the integrity or performance of the Non-Production Environment, or if applicable, the production environment or the data contained therein; or (e) attempt to gain any unauthorized access to the Non-Production Environment, production environment, or their related systems or networks.
- 3.4. Customer shall be responsible for all activity occurring under the provisioned Non-Production Environment. Customer shall notify SEW immediately upon any suspected or actual unauthorized use or breach of security with respect to the Non-Production Environment and use reasonable efforts to immediately cease any use, distribution, or provision of access to any of Customer's end users of the Non-Production Environment during such actual or suspected breach or misuse.
- 3.5. Customer is entitled to one database refresh every three (3) months per additional non-production cloud tenant.

4. Term and Termination

- 4.1. **Term.** The term of this Agreement is set forth in the above Order Form.
- 4.2. **Termination.** Either Party may terminate this Agreement for cause if the other Party breaches any material term of this Agreement or any Order Document and fails to cure such breach within thirty (30) days after delivery of notice of such breach. In addition, Customer may terminate this Agreement at any time for convenience upon providing written notice of thirty (30) business days of such termination. Such termination shall not impact the fees due to SEW.

5. Confidentiality and Nondisclosure

- 5.1. **Confidentiality.** Subject also to the Confidentiality and Nondisclosure terms of any Order Form, "Confidential Information" herein shall refer to the following types of material or content one Party to this Agreement ("Discloser") discloses to the other ("Recipient"): (a) any information Discloser marks or designates as "Confidential" at the time of disclosure; and (b) any other nonpublic, sensitive information disclosed by Discloser including, but not limited to code, inventions, know-how, business, technical, and financial information, or other information which should reasonably be known by the Recipient to be confidential at the time it is disclosed, due to the nature of the information and the circumstances surrounding such disclosure. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in Recipient's possession at the time of disclosure; (ii) is independently developed by Recipient without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of Recipient's improper action or inaction; or (iv) is rightfully obtained by Recipient from a third party without breach of any confidentiality obligations.

- 5.2. **Nondisclosure.** Recipient shall not use Confidential Information for any purpose other than to facilitate this Agreement (the "Purpose"). Recipient: (a) shall not disclose Confidential Information to any employee or contractor of Recipient unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with Recipient with terms no less restrictive than those of this Article 6; and (b) shall not disclose Confidential Information to any third party without Discloser's prior written consent. Notwithstanding the foregoing, Recipient shall protect Confidential Information with the same degree of care it uses to protect its own confidential information, but with no less than reasonable care. Recipient shall promptly notify Discloser of any misuse or misappropriation of Confidential Information that comes to Recipient's attention. Notwithstanding the foregoing, Recipient may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Recipient shall give Discloser prompt notice of any such legal or governmental demand and reasonably cooperate with Discloser in any effort to seek a protective order or otherwise to contest such required disclosure, at Discloser's expense.
- 5.3. **Injunction.** Recipient agrees that breach of this Section would cause Discloser irreparable injury, for which monetary damages would be inadequate, and in addition to any other remedy, Discloser will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage.
- 5.4. **Termination & Return.** With respect to each item of Confidential Information, the obligations of Section 4.2 above (Nondisclosure) will terminate three (3) years from the expiration of this Agreement. Upon such termination, Recipient shall return all copies (excepting one (1) copy archived for purposes of Recipient's back-up processes) of Confidential Information to Discloser or certify, in writing, the destruction thereof.
- 5.5. **Retention of Rights.** This Agreement does not transfer ownership of Confidential Information or grant a license or any other right thereto. Discloser will retain all right, title, and interest in and to all Confidential Information.
- 6. Intellectual Property Rights and Feedback**
- 6.1. **Intellectual Property Rights.** SEW retains all right, title, and interest in and to the Non-Production Environment and any associated software of SEW acquired through applicable Order Forms, including but not limited to, the services and any upgrades, as well as any related methodologies, techniques, processes, and instruction developed by SEW and used in the course of performing the Services (collectively "SEW IP") for Customer under this Agreement and an applicable Statement of Work. Nothing in this Agreement shall be construed to grant Customer any ownership rights, title, or interest in the Provider IP except to the extent of the limited rights specifically set forth in Section 1. Customer recognizes that the Non-Production Environment and its components are protected by copyright and other laws. Customer shall not (and shall not allow or cause any third party to) reverse engineer, disassemble, alter, or otherwise translate the Non-Production Environment, or as applicable, any production environment, or other software, documentation, services or upgrades.
- 6.2. **Feedback.** Customer hereby grants SEW a perpetual, irrevocable, unrestricted, worldwide license to use any Feedback (as defined below) Customer communicates to SEW during the Term, without compensation or any obligation to report on such use, and without any other restriction. Such rights shall include, without limitation, the right to exploit Feedback in any way and the right to grant sublicenses. Notwithstanding the provisions of Article 4 (*Confidential Information*). Feedback will not be considered Customer's Confidential Information. ("Feedback" refers to any suggestion or idea for modifying any of Provider's products or services, including all intellectual property rights therein.)
- 7. Warranty and Liability**
- 7.1. **DISCLAIMER OF WARRANTY.** THE NON-PRODUCTION ENVIRONMENT IS PROVIDED "AS-IS," EXCLUSIVE OF ANY WARRANTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ANY OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED. SEW DOES NOT WARRANT THAT THE NON-PRODUCTION ENVIRONMENT IS OR WILL BE ERROR-FREE, MEET ALL CUSTOMER REQUIREMENTS, OR BE TIMELY OR SECURE, OR MIRROR SERVICE LEVEL AVAILABILITY OF THE PRODUCTION ENVIRONMENT. WITHOUT LIMITING THE FOREGOING, SEW'S NON-PRODUCTION ENVIRONMENT MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT TO THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. SEW IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS NOT CAUSED BY SEW.
- 7.2. **LIMITATION OF LIABILITY.** IN NO EVENT WILL SEW'S AND ITS LICENSORS' TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT EXCEED THE AMOUNT PAID FOR THE NON-PRODUCTION ENVIRONMENT UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY BEFORE SUCH CLAIM AROSE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL SEW OR ITS LICENSORS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL OR SIMILAR DAMAGES, INCLUDING WITHOUT LIMITATION, ANY LOST PROFITS, OPPORTUNITIES, DATA, OR USE, ARISING OUT OF THE USE OR INABILITY TO USE THE NON-PRODUCTION SERVICE, EVEN IF SEW HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- 8. Fees and Payment Terms**
- 8.1. Fees for the Subscription Services shall be set forth in the attached Order Form and incorporated hereto. Customer shall be invoiced for the first-year fees upon signing of this Agreement and annually thereafter upon the anniversary date of the Effective Date for the remaining term until the fees have been paid in full. Customer agrees to make all payments to SEW within thirty (30) calendar days after receipt of invoice. Late invoices will incur a late payment fee of 1.5% or the maximum allowable under the law, whichever is less. If Customer's account is sixty (60) days or more overdue, SEW reserves the right with prior written notice to withhold performance of its obligations under this Agreement, without liability, until such payments are paid in full, or to terminate for cause. Fees under this Agreement shall additionally be exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for all applicable taxes, levies, or duties hereunder based on Customer's income.

9. Additional Terms

- 9.1. **Independent Contractors.** The Parties are independent contractors and will so represent themselves in all regards. Neither Party is the agent of the other, and neither may make commitments on the other's behalf.
- 9.2. **Force Majeure.** No delay, failure, or default, other than a failure to pay fees, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, earthquakes, other acts of God or of nature, strikes or labor disputes, embargoes, or other causes beyond the performing Party's reasonable control.
- 9.3. **Assignment & Successors.** Customer may not assign this Agreement or any rights or obligations hereunder without Provider's written consent. Except to the extent forbidden herein, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.
- 9.4. **Severability.** To the extent permitted by law, the Parties waive any provision of law that would render any clause of this Agreement invalid or unenforceable. In the event that a provision herein is held to be invalid or unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by law, and the remaining provisions of this Agreement will continue in full force and effect.
- 9.5. **Choice of Law & Jurisdiction:** This Agreement will be governed by the laws of the State of California, without reference to any conflicts of law principles. The Parties consent to the personal and exclusive jurisdiction of the federal and state courts of Orange County, California.
- 9.6. **Conflicts.** Should this Agreement conflict with any other agreements, this Agreement will govern.
- 9.7. **Construction.** The Parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.
- 9.8. **Entire Agreement.** This Agreement sets forth the entire agreement of the Parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither Party has relied upon any prior or contemporaneous communications.
- 9.9. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.
- 9.10. **Modification.** This Agreement may be modified from time to time by SEW, with Customer to be provided notice of no less than thirty (30) days prior to such Terms and Conditions taking effect

Amendment 3 Appendix "3" – Max Support Plan**Subscription Order Form for SEW Max Support Plan**

Between Smart Energy Systems Inc. dba Smart Energy Water
15495 Sand Canyon Ave. STE #100
Irvine, CA 92618
("SEW")

And City of Palo Alto
250 Hamilton Avenue
Palo Alto, CA
("Customer")

1. Order Form

This Order Form, as issued by SEW, shall constitute an offer made by SEW to a Customer. When signed and returned to SEW by Customer, it shall become a binding agreement for the SEW Software or other Services listed in this Order Form and effective on the date signed by Customer. This Order Form is governed by and incorporates the Terms and Conditions attached hereto.

2. Plan Details & Fees

The table below shows the purchased Service(s) fees which shall be listed and selected by Customer below and subject to the Terms and Conditions which govern this Purchase Order.

		MAX SUPPORT PLAN (MSP)	STANDARD SUPPORT PLAN (SSP)
1	Production Support		
a	Issue Reporting	Direct Line Reporting to SEW CSM or SEW TDM (In addition to SSP options)	Contact SEW Support
b	Issue Response	Accelerated	Standard
c	RCA Analysis & Review	Monthly RCA & Diagnostics Review with TDM	Self-service via SEW Support
2	Enhanced Support		
a	Named Technical Delivery Manager (TDM)	✓	Not Included
b	Accelerated Incident Management ("AIM")	✓	Not Included
c	End-to-end Supportability	✓	Not Included
d	Product/ Support Specialist Services	20 Hours per Month Included Max Rollover Hours: 40	Available at additional cost
e	On Call Live Support		Not Included
f	Support Services Hours		Not Included
3	Learning and Enablement		
a	Monthly Meet-the-Expert Sessions	✓	Not Included
b	Certified Training	Customer Specific Digital Self-Service Content Library (30 minutes) and Quarterly 1-hour Webinar credit	Available at additional cost

Annual Fee**\$39,000 per year**

Included in License Subscription Fee

Fees as set forth herein shall be invoiced and paid on an annual basis upfront. Company agrees to make all payments to SEW within thirty (30) calendar days after receipt of invoice. Late undisputed invoices will incur a late payment fee of 1.5% or the maximum allowable under the law, whichever is less. Upon a termination for convenience by Company, SEW shall be entitled to payment of all Fees which would be due under the initial Term of this Agreement.

3. Term

Vers.: Aug. 5, 2019

The initial term of the Max Support Services shall commence upon the April 1, 2023, and continue for a period of one (1) year.

4. **Acceptance and Authorization**

Customer	Smart Energy Water
Signature:	Signature:
Name:	Name: Harman Sandhu
Title:	Title: President
Effective Date:	Date:

SEW Max Support Plan Agreement

1. Introduction

This Max Support Plan Agreement, including any exhibits or attachments hereto, is made as of the Effective Date stated in the Order Form, and pertains to the Max Support Plan ("MSP") as offered by Smart Energy Systems, Inc. dba Smart Energy Water ("SEW") to the "Customer" or "Company". In addition to the support services defined in SEW Standard Support & Maintenance, the MSP includes enhanced support and designated hours which are utilized by Company to obtain professional services, which may facilitate or provide enhanced services, product enhancements, customizations, and other related projects.

2. Definitions

- 2.1. **Customer Success Manager:** Refers to the individuals which both support and liaise with the Company for any Product or Support needs.
- 2.2. **Edge Systems:** Company or Third-party systems that have data integrations setup with SEW Product or Platform for Company's specific environments.
- 2.3. **End-to-End Supportability ("ETES"):** Refers to support for incidents that occur in integrated business scenarios consisting of SEW Platform, integration services and interfaces including middleware, Company's network environment, and Company's source systems.
- 2.4. **Max Support Plan ("MSP"):** Refers to the support plan and details listed herein.
- 2.5. **Product / Support Specialist ("PSS") Services:** Refers to as a team consisting of the SEW product expert resources who are enabled to support on various technical matters, advisory or consulting topics.
- 2.6. **Rollover Hours:** Refers to unused monthly hours which roll over to the following month for use. Total accumulated Rollover Hours shall not exceed equivalent of three-month service quota hours at any point of time during the Term of this Agreement.
- 2.7. **SEW Platform:** Refers to the deployed SEW Product or Cloud Services for Company.
- 2.8. **SEW Product and Cloud Services:** Refers to SEW's enterprise software platforms and other cloud-hosted services offered to its customers.
- 2.9. **Support Services Quota:** Refers to the quantity of hours, as stated in the Order Form, available to Company per month under this Max Support Plan to leverage such services associated under this Max Support Plan.
- 2.10. **Technical Delivery Manager ("TDM"):** Refers to a resource designated to Company to support in optimizing the delivery or execution of the MSP.
- 2.11. **Term:** Refers to the period during which the Max Support Plan subscription shall be active as stated in the Order Form. Thereafter, unless this Agreement is earlier terminated in accordance with its terms, this Agreement will automatically renew for additional one (1) year terms (each, a "Renewal Term", and together with the Initial Term, the "Term"), unless either party delivers to the other party written notice of non-renewal at least forty-five (45) days' prior to the end of the then-current term. SEW shall provide an extension proposal ninety (90) days prior to the end of the term.
- 2.12. **Trusted Custom Code:** Custom software adaptors or programs developed by SEW professional services or reviewed and certified thru SEW Release Management process that are installed in the SEW Cloud environment or used in the integration/interfaces connecting SEW Platform with Company's Edge Systems.

3. Max Support Plan

3.1. Services Scope

3.1.1 SEW Platform Management and Support

Services provided by SEW for the SCM Platform shall include:

- Service Pack/bug fixes, etc.:
 - Proactive and regular monitoring for new Software Releases, Software Updates, and/or Service Packs and bug fixes, which may include minor or incremental updates as they become necessary to maintain Proper Functionality of Product, and which may address various updates, enhancements, or changes to the Product.
 - Notifying COMPANY of upcoming requirements
 - Testing both internally and externally all releases and updates in the Testing Environment to detect any potential or discovered impairments to the Proper user Functionality of the Product prior to implementation into Production
 - Development of repair/fixes for any discovered issues
 - Providing Updates and Implementation Plans to COMPANY utilizing COMPANY Test environments, as timely as possible to ensure continued Proper Functionality
 - Providing Real-Time support to COMPANY during implementation
- Continuing Service upon Release of Security Updates:
 - Proactively and regularly monitoring for any new Security Updates, etc. that are required to maintain compliance with security requirements according to state, federal or international regulations, which shall be implemented on the system back-end via proper maintenance of hardware and software necessary to ensure protection of customer data, personally identifiable information, and to maintain functionality upon such releases, etc.
 - Notifying COMPANY of upcoming requirements
 - Validating Security Updates prior to the third Tuesday of each month to correspond with COMPANY policy of applying security updates as they are provided by Microsoft
 - Reporting to COMPANY any identified issues, and advise whether or not to implement the Security Update

Vers.: Aug. 5, 2019

- Providing an implementation plan (if implementation is recommended by SEW), which shall include any instructions required for remedy of any issues identified during Security Update validation
- Providing Real-Time support to COMPANY during implementation

3.1.2 Mobile Application Management and Support

Services provided by SEW for the Mobile Application shall include:

- Operating System Updates
 - Proactively and regularly monitoring for new bug fixes, security updates, enhancements, and support for updated Operating Systems or Platform support as defined above
 - Proactively detecting and repairing or providing fixes for any potential or discovered impairments to the Proper Functionality of the Mobile Application
 - Notifying COMPANY of any upcoming changes
 - Testing prior to the launch of any new version of either Apples' iOS or Google's Android operating systems, in which SEW shall perform beta testing both internally and externally with a select number of users, as well as testing of run-time, use, and interactions, within an artificial testing environment, to identify any issues, bugs, or defects, which shall be addressed prior to release or launch of the latest versions as described above.
 - Providing Updates and Implementation Plans to COMPANY, as timely as possible to ensure continued Proper Functionality
 - Providing Real-Time support to COMPANY during implementation
- Mobile App Store Functionality Management and Support
 - Apple iTunes App Store Maintenance, which shall include maintenance of the developer account, XCode development environment, developer certificates, product certificates, and availability of the application in the iTunes App Store. Maintenance of the Application within the Apple iTunes environment shall include internal testing prior to any software Release or Software Update, in which SEW, whether to address the release of a new version of iOS, or to roll out SEW's own updates to its services, shall conduct testing of all functionality related to the Services within an artificial testing environment over a sufficient period of time with a sufficient number of users, prior to such Software Update or Release.
 - Google Play Store Maintenance, which shall include maintenance of the Google Developer Account, Android Studio Repository, and availability of the applications in the Google Play Store. Maintenance of the Application within the Google Play Store environment shall include internal testing prior to any Software Release or Software Update, in which SEW, whether to address the release of a new version of Android, or to roll out SEW's own updates to its services, shall conduct testing of all functionality related to the Services within an artificial testing environment over a sufficient period of time with a sufficient number of users, prior to such Software Update or Release.
 - Notifying Company of any upcoming changes and/or issues
 - SEW shall not release subsequent versions of the mobile app to the public without Company approval.

3.1.3 Incident Support

Services provided by SEW for Reported Incidents shall be governed by the existing SEW Standard Support Terms in place.

3.2. Enhanced Support Services

The MSP enhances the Company experience using SEW Product and Cloud Services through the included Enhanced Support Services and the included Support Services Quota hours. The following Enhanced Support Services are provided as core services within the MSP and have no impact on the Support Services Quota hours consumption.

3.2.1. Accelerated Incident Management ("AIM") for Critical Incidents Services

The TDM provides: (i) incident activity and status monitoring for Critical classified incidents; (ii) trend reporting of Company's incident situation on all incident priorities of selected systems; (iii) incident management process empowerment session(s); and (iv) periodic remote meetings with Company to review the status of Company incidents.

In addition, SEW will make available a critical situation manager within SEW's support organization to remotely coordinate and/or assist a Company designated management contact ("Customer Contact") with Critical classified incidents. Assignment of a critical situation manager will occur within one (1) hour following Company's request documented in an incident support ticket. The critical situation manager will be available to Company's Contact and will remain engaged until the earliest of the following: (i) resolution or workaround of the Critical classified incident; (ii) reduction of the incident priority level to a priority level other than Critical classified incidents; or (iii) agreement of the parties to disengage the assigned critical situation manager.

Company will designate at least one (1) and can designate up to three (3) qualified English-speaking contacts ("Company AIM Contact(s)") and shall provide contact details (in particular, e-mail address and telephone number) by means of which the Company AIM Contact can be contacted.

As preparation for delivery of AIM Services, Company's AIM Contacts and the assigned TDM will jointly perform one (1) initial remote set-up meeting.

3.2.2. End-to-end Supportability ("ETES") Services

The ETES service expands the scope of troubleshooting and support services from just the SEW Platform to include the Trusted Custom Code and Edge System integrations/interfaces. Scope of implementation for fixes, enhancements, security updates, software releases, and software updates (service packs), etc. into Company's non-production and production environments shall be limited to the SEW Platform only. The ETES service does not include any remediation or implementation for non-SEW software or technology products.

To deliver this service, Company shall provide SEW with administrator access to Company's development and test environments for purposes of Management and Support of Product. Company will provide SEW with read-only access to Company's UAT and production environments.

ETES service is limited to Trusted Custom Code or customer specific integration services or interfaces deployed in production environment to connect SEW platform with Company's Edge Systems.

ETES services include the support for following activities:

- Third Party Vendor support and troubleshooting services
- Participate in impact testing for Edge Systems for migration of SEW software service packs and updates
- Audit and testing support
- On demand certified administrative support

For Company Trusted Custom Code, SEW provides mission-critical support root-cause analysis and may provide guidance for incident resolution, for Critical incidents related to the Company installations. The scope of this service is limited to identifying possible root causes for the incident and/or failure of Company's Trusted Custom Code. SEW's root cause analysis for Trusted Custom Code does not include providing corrections; work arounds; or incident resolution for Third Party technology or Edge Systems regardless of who created Company's Trusted Custom Code.

3.2.3. Monitor Services

The Monitor services include proactive monitoring of the SCM (Smart Customer Mobile) Customer Web Portal and Mobile Apps including both the technical metrics as well as the customer or user feedback on continuous basis as reported via various channels.

3.2.4. Report Services

The scope of services shall include tracking and reporting of the application status, support tickets, and overall health of the service. With this service the Company shall be able to view monthly, quarterly, and yearly trends. The reports will be shared with the Company monthly. Together with SEW, the Company's designated personnel will be able to review and improve the customer journey, identify the customer pain points, and understand their behavior.

A root cause analysis may be performed and provided to detail the facts or issues leading up to the submission of an incident and the steps taken to resolve such issues. If a detailed root cause analysis is deemed to be required in accordance with the Standard Support Plan, for Critical and High priority issues, (and for Medium and Low priority issues as agreed by the parties), it shall be provided within fourteen (14) days after incident closure.

Specifically, the activities under this Report Services include:

- Weekly reporting on incident resolution
- Monthly management level status reporting
- Root Cause Analysis review for key issues
- Monthly Support Services Quota report detailing hours consumed and hours remaining inclusive of Rollover Hours

3.3. Support Services Quota

SEW will provide designated Support Services Quota hours and personnel to facilitate or provide enhanced services, product enhancements, customizations, and other related projects to fulfill the requirements of the MSP. The resource time to provide these services shall be charged against the Support Services Quota hours.

The Company shall have Support Services Quota as stated in the Order Form. Such hours for Support Services expended in any given calendar month shall be requested using a Services Request form, attached below as Attachment A which will be reported as hours consumed in the monthly Support Services Quota Services report which will then be reviewed with the Company. For TDM Services, these hours will be reported as consumed in the monthly Support Services Quota Services report which will then be reviewed with the Company.

3.3.1. Software Enhancement Services

Company can request enhancements to the SEW software and SEW shall prioritize such requests. To the extent the enhancements are not planned in the software roadmap, such enhancements will be delivered as a Company Change Request using the Company Change Request template in Appendix A. In-Scope Services include Product Engineering and development, Quality Assurance, Cloud Engineering and other services necessary to deliver agreed upon software enhancement as documented, estimated and agreed upon in Service Request.

3.3.2. Technical Delivery Manager ("TDM") Services

SEW will provide access to an English speaking named contact within SEW's support organization between 8:30 am to 5:30 pm local time, Monday through Friday, unless otherwise agreed to in writing by the parties, to support Company in optimizing the processing of Company Change Requests, Product / Support Specialist ("PSS") Services and incidents as defined in this MSP.

The assignment of the TDM will occur within two (2) weeks of execution of this Agreement.

In-Scope Services:

- Lead requirement and design sessions required to support Software Enhancement Services
- Serve as project manager and technical liaison to Company for Software Enhancement Services
- Lead troubleshooting and incident management related activities under scope of this agreement.
- Provide advice, guidance, and assistance to Company with agreed to focus areas:
 - SEW support requirements, Company support processes and use of SEW support tools
 - Integrated end-to-end application lifecycle management
 - Integration validation of complex Company solutions
 - Operate the SEW solution more efficiently

- Accelerated innovation for custom built solutions and rapid prototyping
 - Solution availability management, monitoring and performance
 - Risk mitigation plan(s) for critical maintenance issues or Incident reduction and/or avoidance
- Track Company's implementation of SEW's recommendations and action plans resulting from the delivery of Product Specialist Services defined below
- Provide periodic status and risk reporting at Company's project management level
- Manage quality gates for selected focus area projects

3.3.3. Product / Support Specialist ("PSS") Services

As a part of the MSP, the Company shall have access to SEW Product and support experts, from whom you can request support on various technical matters, advisory or consulting topics. The Company may contact their TDM or Customer Success Manager to request PSS Services under this section using the Service Request Form in Appendix A. Such specialist resources shall be available virtually or at the Company location(s) during Normal Business Hours for the time period or date as requested and approved.

**Amendment 3 Appendix 3-A
Service Request Form**

Client Name	COMPANY NAME
Change Summary	DESCRIPTION OF SERVICES REQUIRED
Software	SCM
CR ID	JIRA NUMBER
Contract ID	LEGAL TO FILL
Change Request Details	
Pursuant to the SEW Max Support Plan Agreement executed between Smart Energy Water ("SEW") and COMPANY NAME ("Company"), Company would like to:	
<ul style="list-style-type: none"> • [ENTER BRIEF OVERVIEW HERE] 	
Recommended Solution	
<ENTER DETAILED SOLUTION AND EFFORT. E.G. ADDING NEW MODULES, ADD REQUESTED FUNCTIONALITY THROUGH SOFTWARE CUSTOMIZATION, ADDITIONAL LICENSES, ETC. >	
Type of Change	<input type="checkbox"/> Additional Modules <input type="checkbox"/> Customization <input type="checkbox"/> Additional Licenses <input type="checkbox"/> Additional Services <input type="checkbox"/> System Integration
Implementation Priority	<input type="checkbox"/> Critical <input type="checkbox"/> High <input type="checkbox"/> Normal <input type="checkbox"/> Low
Fees and Payment Terms	
Total Hours	Hours
Payment Terms	<ul style="list-style-type: none"> • The compensation for the work effort under this request shall be adjusted against the Support Services Quota hours as stated in the active Max Support Plan. In case the Company has exhausted the hours available in the plan the fees shall be invoiced at an hourly services rate. • Payment will be due net-30 days from receipt of invoice by Company. • Late Payment penalties are applicable in accordance with the terms of the SEW Max Support Plan Agreement. • This Change Request shall result in the allocation and dedication of resources for the commencement and delivery of the change(s) or solution(s) described above. Therefore, any delay in schedules by Company may adversely affect the timely delivery of this and other Change Requests and incur additional charges.
Acceptance and Authorization	
Requested By: Company	Accepted By: SEW
Name:	Signature:
Title:	Name:
Date:	Date:

Certificate Of Completion

Envelope Id: 435B801A317547B6B54CFDB0D207799F

Status: Completed

Subject: Complete with DocuSign: S18165157 Amendment No. 3 final.pdf

Source Envelope:

Document Pages: 31

Signatures: 2

Certificate Pages: 2

Initials: 0

AutoNav: Enabled

Envelope Stamping: Enabled

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Envelope Originator:

Annmarie Romero

250 Hamilton Ave

Palo Alto , CA 94301

annmarie.romero@cityofpaloalto.org

IP Address: 199.33.32.254

Record Tracking

Status: Original

4/11/2023 9:53:38 AM

Holder: Annmarie Romero

annmarie.romero@cityofpaloalto.org

Location: DocuSign

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: City of Palo Alto

Location: DocuSign

Signer Events

Harman Sandhu

harman.sandhu@sew.ai

President

Smart Energy Water (SEW)

Security Level: Email, Account Authentication
(None)**Signature**

DocuSigned by:



B15E7D788BA6426...

Signature Adoption: Pre-selected Style

Using IP Address: 64.147.23.106

Timestamp

Sent: 4/11/2023 9:55:12 AM

Viewed: 4/11/2023 9:57:46 AM

Signed: 4/11/2023 9:58:10 AM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Sangeeta Kumar

sangeeta.kumar@sew.ai

VP Finance

Security Level: Email, Account Authentication
(None)

DocuSigned by:



14BC7D82C64D455...

Signature Adoption: Pre-selected Style

Using IP Address: 64.147.23.106

Sent: 4/11/2023 9:58:12 AM

Resent: 4/12/2023 2:21:08 PM

Resent: 4/12/2023 2:21:10 PM

Viewed: 4/12/2023 3:33:04 PM

Signed: 4/12/2023 3:33:14 PM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp**

Tabatha Boatwright

Tabatha.Boatwright@CityofPaloAlto.org

Utilities Administrative Assistant

City of Palo Alto

Security Level: Email, Account Authentication
(None)**COPIED**

Sent: 4/12/2023 3:33:16 PM

Viewed: 4/12/2023 4:43:45 PM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Carbon Copy Events	Status	Timestamp
Dave Yuan Dave.Yuan@CityofPaloAlto.org Utilities Strategic Business Manager Dave Yuan Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	<div>COPIED</div>	Sent: 4/12/2023 3:33:17 PM

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/11/2023 9:55:12 AM
Certified Delivered	Security Checked	4/12/2023 3:33:04 PM
Signing Complete	Security Checked	4/12/2023 3:33:14 PM
Completed	Security Checked	4/12/2023 3:33:17 PM

Payment Events	Status	Timestamps
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