

**CITY OF PALO ALTO CONTRACT NO. C23185605****GENERAL SERVICES AGREEMENT**

**THIS AGREEMENT** made and entered into on the 23rd day of January, 2023, by and between the **CITY OF PALO ALTO, a California chartered municipal corporation ("CITY")**, and **LINKO TECHNOLOGY, INC.**, a Washington corporation and wholly owned subsidiary of Aquatic Informatics Inc., located at 1999 Broadway, Suite 830, Denver, CO 80202, Telephone Number: (602) 809-2509 ("**CONTRACTOR**"). In consideration of their mutual covenants, the parties hereto agree as follows:

1. **SERVICES.** CONTRACTOR shall provide or furnish the services (the "Services") described in the Scope of Services, attached at Exhibit A.
2. **EXHIBITS.** The following exhibits are attached to and made a part of this Agreement:

- ☒ "A" - Scope of Services
- ☒ "B" - Schedule of Performance
- ☒ "C" - Schedule of Fees
- ☒ "D" - Insurance Requirements
- ☒ "E" - Information Privacy Policy
- ☒ "F" - Cybersecurity Terms & Conditions

***CONTRACT IS NOT COMPLETE UNLESS ALL INDICATED EXHIBITS ARE ATTACHED.***

3. **TERM.**

The term of this Agreement is from March 1, 2023 to February 28, 2030 inclusive, subject to the provisions of Sections R and W of the General Terms and Conditions.

4. **SCHEDULE OF PERFORMANCE.** CONTRACTOR shall complete the Services within the term of this Agreement in a reasonably prompt and timely manner based upon the circumstances and direction communicated to CONTRACTOR, and if applicable, in accordance with the schedule set forth in the Schedule of Performance, attached at Exhibit B. Time is of the essence in this Agreement.

5. **COMPENSATION FOR ORIGINAL TERM.** CITY shall pay and CONTRACTOR agrees to accept as not-to-exceed compensation for the full performance of the Services and reimbursable expenses, if any:

- ☒ A sum calculated in accordance with the fee schedule set forth at Exhibit C, not to exceed a total maximum compensation amount of Two Hundred and Nineteen Thousand Four Hundred and Forty Seven dollars (\$219,447.00).

CONTRACTOR agrees that it can perform the Services for an amount not to exceed the total maximum compensation set forth above. Any hours worked or services performed by CONTRACTOR for which payment would result in a total exceeding the maximum amount of compensation set forth above for performance of the Services shall be at no cost to CITY.

- ☒ CITY has set aside the sum of Nineteen Thousand Nine Hundred and Fifty dollars (\$19,950.00) for Additional Services. CONTRACTOR shall provide Additional Services only by advanced, written authorization from the City Manager or designee. CONTRACTOR, at the CITY's request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONTRACTOR's proposed maximum compensation, including reimbursable expense, for such services. Compensation shall be based on the hourly rates set forth above or in Exhibit C (whichever is applicable), or if such rates are not applicable, a negotiated lump sum. CITY shall not authorize and CONTRACTOR shall not perform any Additional Services for which payment would exceed the amount set forth above for Additional Services. Payment for Additional Services is subject to all requirements and restrictions in this Agreement.

#### **6. COMPENSATION DURING ADDITIONAL TERMS.**

- ☒ CONTRACTOR'S compensation rates for each additional term shall be the same as the original term; **OR**

#### **7. CLAIMS PROCEDURE FOR "9204 PUBLIC WORKS PROJECTS".** For purposes of this Section 7, a "9204 Public Works Project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind. Public Contract Code Section 9204 mandates certain claims procedures for Public Works Projects, which are set forth in "Appendix \_\_\_ Claims for Public Contract Code Section 9204 Public Works Projects".

- ☒ **This project is not a 9204 Public Works Project.**

#### **8. INVOICING.** Send all invoices to CITY, Attention: Project Manager. The Project Manager is: Isabel Zacharczuk, Dept.: Public Works, Watershed Protection, Telephone: (650) 329-2585. Invoices shall be submitted based on the Invoice Schedule in Exhibit C: Schedule of Fees. Invoices shall provide a detailed statement of Services performed during the invoice period and are subject to verification by CITY. CITY shall pay the undisputed amount of invoices within 30 days of receipt.

#### **GENERAL TERMS AND CONDITIONS**

- A. ACCEPTANCE.** CONTRACTOR accepts and agrees to all terms and conditions of this Agreement. This Agreement includes and is limited to the terms and conditions set forth in sections 1 through 8 above, these general terms and conditions and the attached exhibits.
- B. QUALIFICATIONS.** CONTRACTOR represents and warrants that it has the expertise and qualifications to complete the services described in Section 1 of this Agreement, entitled "SERVICES," and that every individual charged with the performance of the services under this Agreement has sufficient skill and experience and is duly licensed or certified, to the extent such licensing or certification is required by law, to perform the Services. CITY expressly relies on CONTRACTOR's representations regarding its skills, knowledge, and certifications. CONTRACTOR shall perform all work in accordance with generally accepted business practices and performance standards of the industry, including all federal, state, and local operation and safety regulations.
- C. INDEPENDENT CONTRACTOR.** It is understood and agreed that in the performance of this Agreement, CONTRACTOR and any person employed by CONTRACTOR shall at all times be considered an independent CONTRACTOR and not an agent or employee of CITY. CONTRACTOR shall be responsible for employing or engaging all persons necessary to complete the work required under this Agreement.
- D. SUBCONTRACTORS.** CONTRACTOR may not use subcontractors to perform any Services under this Agreement unless CONTRACTOR obtains prior written consent of CITY. CONTRACTOR shall be solely responsible for directing the work of approved subcontractors and for any compensation due to subcontractors.
- E. TAXES AND CHARGES.** CONTRACTOR shall be responsible for payment of all taxes, fees, contributions or charges applicable to the conduct of CONTRACTOR's business.
- F. COMPLIANCE WITH LAWS.** CONTRACTOR shall in the performance of the Services comply with all applicable federal, state and local laws, ordinances, regulations, and orders.
- G. PALO ALTO MINIMUM WAGE ORDINANCE.** CONTRACTOR shall comply with all requirements of the Palo Alto Municipal Code Chapter 4.62 (Citywide Minimum Wage), as it may be amended from time to time. In particular, for any employee otherwise entitled to the State minimum wage, who performs at least two (2) hours of work in a calendar week within the geographic boundaries of the City, CONTRACTOR shall pay such employees no less than the minimum wage set forth in Palo Alto Municipal Code section 4.62.030 for each hour worked within the geographic boundaries of the City of Palo Alto. In addition, CONTRACTOR shall post notices regarding the Palo Alto Minimum Wage Ordinance in accordance with Palo Alto Municipal Code section 4.62.060.
- H. DAMAGE TO PUBLIC OR PRIVATE PROPERTY.** CONTRACTOR shall, at its sole expense, repair in kind, or as the City Manager or designee shall direct, any damage to public or

private property that occurs in connection with CONTRACTOR's performance of the Services. CITY may decline to approve and may withhold payment in whole or in part to such extent as may be necessary to protect CITY from loss because of defective work not remedied or other damage to the CITY occurring in connection with CONTRACTOR's performance of the Services. CITY shall submit written documentation in support of such withholding upon CONTRACTOR's request. When the grounds described above are removed, payment shall be made for amounts withheld because of them.

- I. WARRANTIES.** CONTRACTOR expressly warrants that all services provided under this Agreement shall be performed in a professional and workmanlike manner in accordance with generally accepted business practices and performance standards of the industry and the requirements of this Agreement. CONTRACTOR expressly warrants that all materials, goods and equipment provided by CONTRACTOR under this Agreement shall be fit for the particular purpose intended, shall be free from defects, and shall conform to the requirements of this Agreement. CONTRACTOR agrees to promptly replace or correct any material or service not in compliance with these warranties, including incomplete, inaccurate, or defective material or service, at no further cost to CITY. The warranties set forth in this section shall be in effect for a period of one year from completion of the Services and shall survive the completion of the Services or termination of this Agreement.
- J. MONITORING OF SERVICES.** CITY may monitor the Services performed under this Agreement to determine whether CONTRACTOR's work is completed in a satisfactory manner and complies with the provisions of this Agreement.
- K. CITY'S PROPERTY.** Any reports, information, data or other material (including copyright interests) developed, collected, assembled, prepared, or caused to be prepared under this Agreement will become the property of CITY without restriction or limitation upon their use and will not be made available to any individual or organization by CONTRACTOR or its subcontractors, if any, without the prior written approval of the City Manager.
- L. AUDITS.** CONTRACTOR agrees to permit CITY and its authorized representatives to audit, at any reasonable time during the term of this Agreement and for three (3) years from the date of final payment, CONTRACTOR's records pertaining to matters covered by this Agreement. CONTRACTOR agrees to maintain accurate books and records in accordance with generally accepted accounting principles for at least three (3) following the terms of this Agreement.
- M. NO IMPLIED WAIVER.** No payment, partial payment, acceptance, or partial acceptance by CITY shall operate as a waiver on the part of CITY of any of its rights under this Agreement.
- N. INSURANCE.** CONTRACTOR, at its sole cost, shall purchase and maintain in full force during the term of this Agreement, the insurance coverage described at Exhibit D.

Insurance must be provided by companies with a Best's Key Rating of A-:VII or higher and which are otherwise acceptable to CITY's Risk Manager. The Risk Manager must approve deductibles and self-insured retentions. In addition, all policies, endorsements, certificates and/or binders are subject to approval by the Risk Manager as to form and content. CONTRACTOR shall obtain a policy endorsement naming the City of Palo Alto as an additional insured under any general liability or automobile policy. CONTRACTOR shall obtain an endorsement stating that the insurance is primary coverage and will not be canceled or materially reduced in coverage or limits until after providing 30 days prior written notice of the cancellation or modification to the Risk Manager. CONTRACTOR shall provide certificates of such policies or other evidence of coverage satisfactory to the Risk Manager, together with the required endorsements and evidence of payment of premiums, to CITY concurrently with the execution of this Agreement and shall throughout the term of this Agreement provide current certificates evidencing the required insurance coverages and endorsements to the Risk Manager. CONTRACTOR shall include all subcontractors as insured under its policies or shall obtain and provide to CITY separate certificates and endorsements for each subcontractor that meet all the requirements of this section. The procuring of such required policies of insurance shall not operate to limit CONTRACTOR's liability or obligation to indemnify CITY under this Agreement.

- O. HOLD HARMLESS.** To the fullest extent permitted by law and without limitation by the provisions of section N relating to insurance, CONTRACTOR shall indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents from and against any and all demands, claims, injuries, losses, or liabilities of any nature, including death or injury to any person, property damage or any other loss and including without limitation all damages, penalties, fines and judgments, associated investigation and administrative expenses and defense costs, including, but not limited to reasonable attorney's fees, courts costs and costs of alternative dispute resolution), arising out of, or resulting in any way from or in connection with the performance of this Agreement. CONTRACTOR's obligations under this Section apply regardless of whether or not a liability is caused or contributed to by any negligent (passive or active) act or omission of CITY, except that CONTRACTOR shall not be obligated to indemnify for liability arising from the sole negligence or willful misconduct of CITY. The acceptance of the Services by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section survive the completion of the Services or termination of this Agreement.
- P. NON-DISCRIMINATION.** As set forth in Palo Alto Municipal Code section 2.30.510, CONTRACTOR certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. CONTRACTOR acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and

agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

- Q. WORKERS' COMPENSATION.** CONTRACTOR, by executing this Agreement, certifies that it is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and certifies that it will comply with such provisions, as applicable, before commencing and during the performance of the Services.
- R. TERMINATION.** The City Manager may terminate this Agreement without cause by giving ten (10) days' prior written notice thereof to CONTRACTOR. If CONTRACTOR fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, the City Manager may terminate this Agreement immediately upon written notice of termination. Upon receipt of such notice of termination, CONTRACTOR shall immediately discontinue performance. CITY shall pay CONTRACTOR for services satisfactorily performed up to the effective date of termination. If the termination is for cause, CITY may deduct from such payment the amount of actual damage, if any, sustained by CITY due to CONTRACTOR's failure to perform its material obligations under this Agreement. Upon termination, CONTRACTOR shall immediately deliver to the City Manager any and all copies of studies, sketches, drawings, computations, and other material or products, whether or not completed, prepared by CONTRACTOR or given to CONTRACTOR, in connection with this Agreement. Such materials shall become the property of CITY.
- S. ASSIGNMENTS/CHANGES.** This Agreement binds the parties and their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written consent of CITY. No amendments, changes or variations of any kind are authorized without the written consent of CITY.
- T. CONFLICT OF INTEREST.** In accepting this Agreement, CONTRACTOR covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. CONTRACTOR further covenants that, in the performance of this Agreement, it will not employ any person having such an interest. CONTRACTOR certifies that no CITY officer, employee, or authorized representative has any financial interest in the business of CONTRACTOR and that no person associated with CONTRACTOR has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. CONTRACTOR agrees to advise CITY if any conflict arises.
- U. GOVERNING LAW.** This Agreement shall be governed and interpreted by the laws of the State of California.

**V. ENTIRE AGREEMENT.** This Agreement, including all exhibits, represents the entire agreement between the parties with respect to the services that may be the subject of this Agreement. Any variance in the exhibits does not affect the validity of the Agreement and the Agreement itself controls over any conflicting provisions in the exhibits. This Agreement supersedes all prior agreements, representations, statements, negotiations and undertakings whether oral or written.

**W. NON-APPROPRIATION.** This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This Section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

**X. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS.** CONTRACTOR shall comply with CITY's Environmentally Preferred Purchasing policies which are available at CITY's Purchasing Division, which are incorporated by reference and may be amended from time to time. CONTRACTOR shall comply with waste reduction, reuse, recycling and disposal requirements of CITY's Zero Waste Program. Zero Waste best practices include first minimizing and reducing waste; second, reusing waste and third, recycling or composting waste. In particular, CONTRACTOR shall comply with the following zero waste requirements:

- All printed materials provided by CONTRACTOR to CITY generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by CITY's Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable based inks.
- Goods purchased by Contractor on behalf of CITY shall be purchased in accordance with CITY's Environmental Purchasing Policy including, but not limited to, Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Division's office.
- Reusable/returnable pallets shall be taken back by CONTRACTOR, at no additional cost to CITY, for reuse or recycling. CONTRACTOR shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

**Y. AUTHORITY.** The individual(s) executing this Agreement on behalf of the parties represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

**Z. PREVAILING WAGES**

☒ **This Project is not subject to prevailing wages.** CONTRACTOR is not required to pay prevailing wages in the performance and implementation of the Project in accordance with SB 7, if the Agreement is not a public works contract, if Agreement does not include a public works construction project of more than \$25,000, or the Agreement does not include a public works alteration, demolition, repair, or maintenance (collectively, 'improvement') project of more than \$15,000.

**AA.DIR REGISTRATION.** In regard to any public work construction, alteration, demolition, repair or maintenance work, CITY will not accept a bid proposal from or enter into this Agreement with CONTRACTOR without proof that CONTRACTOR and its listed subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work, subject to limited exceptions. City requires CONTRACTOR and its listed subcontractors to comply with the requirements of SB 854.

CITY provides notice to CONTRACTOR of the requirements of California Labor Code section 1771.1(a), which reads:

"A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the Agreement is awarded."

CITY gives notice to CONTRACTOR and its listed subcontractors that CONTRACTOR is required to post all job site notices prescribed by law or regulation and CONTRACTOR is subject to SB 854-compliance monitoring and enforcement by DIR.

CITY requires CONTRACTOR and its listed subcontractors to comply with the requirements of Labor Code section 1776, including:

Keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by, respectively, CONTRACTOR and its listed subcontractors, in connection with the Project.

The payroll records shall be verified as true and correct and shall be certified and made available for inspection at all reasonable hours at the principal office of CONTRACTOR and its listed subcontractors, respectively.



At the request of CITY, acting by its project manager, CONTRACTOR and its listed subcontractors shall make the certified payroll records available for inspection or furnished upon request to the project manager within ten (10) days of receipt of CITY's request.

☐ [For state- and federally-funded projects] CITY requests CONTRACTOR and its listed subcontractors to submit the certified payroll records to the project manager at the end of each week during the Project.

If the certified payroll records are not produced to the project manager within the 10-day period, then CONTRACTOR and its listed subcontractors shall be subject to a penalty of one hundred dollars (\$100.00) per calendar day, or portion thereof, for each worker, and CITY shall withhold the sum total of penalties from the progress payment(s) then due and payable to CONTRACTOR.

Inform the project manager of the location of CONTRACTOR's and its listed subcontractors' payroll records (street address, city and county) at the commencement of the Project, and also provide notice to the project manager within five (5) business days of any change of location of those payroll records.

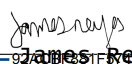
**BB. CONTRACT TERMS.** All unchecked boxes do not apply to this Agreement. In the case of any conflict between the terms of this Agreement and the exhibits hereto or CONTRACTOR's proposal (if any), the Agreement shall control. In the case of any conflict between the exhibits hereto and CONTRACTOR's proposal, the exhibits shall control.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

**CITY OF PALO ALTO**

\_\_\_\_\_  
City Manager

**LINKO TECHNOLOGY, INC.**

DocuSigned by:  
By   
Name James Reyes  
Title VP Sales  
Telephone: 604-657-4859

**Approved as to form:**

\_\_\_\_\_  
City Attorney or Designee

## **EXHIBIT A SCOPE OF SERVICES**

### **BACKGROUND**

The Palo Alto Regional Water Quality Control Plant (RWQCP) regulates wastes discharged to the sanitary sewer from industrial and commercial facilities located within its service area through its Regulatory Compliance Program. Operations within the Industrial Waste Discharge Program involve issuing discharge permits, collecting wastewater samples, and processing period compliance reports from industrial and commercial users.

To manage the data for the Regulatory Compliance Program, the RWQCP requires CONSULTANT services to continue maintaining a hosted database and software solution hereafter referred to as “Pretreatment Information Management System” (PIMS). The new PIMS was contracted in 2019 and went live in 2020 to replace the RWQCP’s previous site-specific PIMS. The hosted service shall include software and/or service implementation, configuration, training, tailoring and testing as follows:

### **SCOPE OF SERVICES**

#### **Task 1.0 Year 1 PIMS Hosting and Software Subscription**

CONSULTANT shall host PIMS as an offsite cloud service and shall support no more than 6 concurrent City users. PIMS shall be provided as an annual subscription service that includes software support, maintenance, and updates, in accordance with the terms set forth in Exhibit A-1. CONSULTANT shall provide hosting and support for the following software modules:

- LinkoCTS
- LabSync 2.0
- Remote Inspector
- Sampling Assistant
- Remote Sampler
- RDP User(s)
- Aquatic Academy User(s)

#### **Task 2.0 Year 2 PIMS Hosting and Software Subscription**

CONSULTANT shall host PIMS as an offsite cloud service and shall support no more than 6 concurrent City users. PIMS shall be provided as an annual subscription service that includes software support, maintenance, and updates, in accordance with the terms set forth in Exhibit A-1. CONSULTANT shall provide hosting and support for the following software modules:

- LinkoExchange
- LinkoCTS
- LabSync 2.0
- Remote Inspector
- Sampling Assistant

- Remote Sampler
- RDP User(s)
- Aquatic Academy User(s)

### **Task 3.0 Year 3 PIMS Hosting and Software Subscription Services**

CONSULTANT shall host PIMS as an offsite cloud service and shall support no more than 6 concurrent City users. PIMS shall be provided as an annual subscription service that includes software support, maintenance, and updates, in accordance with the terms set forth in Exhibit A-1.

CONSULTANT shall provide hosting and support for the following software modules:

- LinkoExchange
- LinkoCTS
- LabSync 2.0
- Remote Inspector
- Sampling Assistant
- Remote Sampler
- RDP User(s)
- Aquatic Academy User(s)

### **Task 4.0 Year 4 PIMS Hosting and Software Subscription Services**

CONSULTANT shall host PIMS as an offsite cloud service and shall support no more than 6 concurrent City users. PIMS shall be provided as an annual subscription service that includes software support, maintenance, and updates, in accordance with the terms set forth in Exhibit A-1.

CONSULTANT shall provide hosting and support for the following software modules:

- LinkoExchange
- LinkoCTS
- LabSync 2.0
- Remote Inspector
- Sampling Assistant
- Remote Sampler
- RDP User(s)
- Aquatic Academy User(s)

### **Task 5.0 Year 5 PIMS Hosting and Software Subscription Services**

CONSULTANT shall host PIMS as an offsite cloud service and shall support no more than 6 concurrent City users. PIMS shall be provided as an annual subscription service that includes software support, maintenance, and updates, in accordance with the terms set forth in Exhibit A-1.

CONSULTANT shall provide hosting and support for the following software modules:

- LinkoExchange
- LinkoCTS
- LabSync 2.0
- Remote Inspector

- Sampling Assistant
- Remote Sampler
- RDP User(s)
- Aquatic Academy User(s)

#### **Task 6.0 Year 6 PIMS Hosting and Software Subscription Services**

CONSULTANT shall host PIMS as an offsite cloud service and shall support no more than 6 concurrent City users. PIMS shall be provided as an annual subscription service that includes software support, maintenance, and updates, in accordance with the terms set forth in Exhibit A-1. CONSULTANT shall provide hosting and support for the following software modules:

- LinkoExchange
- LinkoCTS
- LabSync 2.0
- Remote Inspector
- Sampling Assistant
- Remote Sampler
- RDP User(s)
- Aquatic Academy User(s)

#### **Task 7.0 Year 7 PIMS Hosting and Software Subscription Services**

CONSULTANT shall host PIMS as an offsite cloud service and shall support no more than 6 concurrent City users. PIMS shall be provided as an annual subscription service that includes software support, maintenance, and updates, in accordance with the terms set forth in Exhibit A-1. CONSULTANT shall provide hosting and support for the following software modules:

- LinkoExchange
- LinkoCTS
- LabSync 2.0
- Remote Inspector
- Sampling Assistant
- Remote Sampler
- RDP User(s)
- Aquatic Academy User(s)

### **SUPPORT AND MAINTENANCE OF SERVICE OFFERINGS**

Description of Service Offerings obtained by Subscriber:

Provide software implementation and training for PIMS (the “Service Offerings”). Tasks include the migration of data from the City’s existing database into PIMS. Consultant shall perform customization and or tailoring of the software package to ensure it meets the requirements described in Sections A and B of Exhibit A (Scope of Services) of the Agreement. Consultant shall train City staff on PIMS and provide training materials for Industrial Users on the PIMS electronic document/data submission process.

**A. Support and maintenance is provided with all Service Offerings.**

Consultant will maintain the Service Offerings at the latest release making new enhancements and improvements available as part of Consultant's development methodology. In addition to regular maintenance of the Service Offerings, Consultant will support City by answering queries from technically-trained users designated by Subscriber and resolve such queries in manner set out below

**1.0 DEFINITIONS**

- (a) "Case priority 1" means the Service Offering is causing data loss or a system outage with no work around;
- (b) "Case priority 2" means the Service Offering doesn't work as per the Documentation with no work around;
- (c) "Case priority 3" means the Service Offering doesn't work as per the Documentation and a work around exists;
- (d) "Case priority 4" means the Service Offering doesn't work as expected and the desired functionality is not in the Documentation;
- (e) "Case priority 5" means the case is an enhancement request;
- (f) "Documentation" means the instruction manual or help on the Service Offering;
- (g) "Operating Hours" are 7:30 am – 5:00 pm (Mon – Fri) Pacific Time excluding Province of British Columbia and Canadian statutory holidays via the Vancouver, Canada office, and 9:00 am - 5:00 pm (Mon – Fri) Australian Eastern Time excluding Tasmanian and Australian statutory holidays via the Hobart, Australia office;
- (h) "Resolution" means one or more of the following outcomes: a) a mutually acceptable work around, b) a configuration/data change or c) a Service Offering Change;
- (i) "Service Offering Change" means changes to Service Offering functionality;

**2.0 SUPPORT AND MAINTENANCE SERVICES****2.1 Description of Services.**

During any Subscription Term and subject to the provisions of this Agreement, Consultant will use commercially reasonable efforts to provide the following Support and Maintenance Services:

- (a) Live telephone support with a support representative during Operating Hours;
- (b) Email support during Operating Hours;
- (c) Live Web conferencing with a support representative during Operating Hours where required to understand the support case;
- (d) Case tracking through our online case tracking system; and
- (e) Access to an online Support Portal 24 hours a day, 7 days a week.

**2.2 Support Service Level Agreement**

Case Priority	Initial Response	Target Time to Resolution
1	1 business day or sooner	2 business days
2	1 business day	3 business days

3	1 business day	10 business days
4	1 business day	At Consultant's discretion
5	At Consultant's discretion	At Consultant's discretion

- (a) Initial Response and Target Time to Resolution time periods start once a case is logged in with a Consultant support representative or in Consultant's Support Portal.
- (b) Resolution times may exceed the Target Time to Resolution time targets depending on the complexity involved in determining the root cause of the case and the complexity of finding a resolution for it. Should this situation arise for priority 1 or 2 cases, the City will be provided a credit towards their next Annual Subscription Fee calculated as follows:
  - a.  $\text{Credit} = \text{Annual Subscription Fee} \times ((\text{Number of business days in excess of Target Time in a given Subscription Term}) / (\text{Total Number of business days in the same Subscription Term}))$
- (c) The credit for any Subscription Term cannot exceed the Annual Subscription Fee.
- (d) Subscription Term Credits can only be used as a rebate toward the purchase of a subsequent Subscription Term and otherwise has no cash value.
- (e) Subscription Term Credits are City's sole remedy if resolution times exceed the Target Time to Resolution.

## 2.3 Resolution of Service Offering Anomaly.

A Service Offering anomaly will be considered to be resolved when:

- (a) The Service Offering is working in substantial accordance with the Documentation when operated on the supported hardware, operating system and peripheral as designated by Consultant; or
- (b) Consultant has advised the City of one of the following:
  - (i) how to correct or bypass the Service Offering anomaly;
  - (ii) that the anomaly falls within an exception to this Agreement.

## 3.0 EXCEPTIONS

### 3.1 Support and Maintenance Exclusions

Maintenance and Support Services are not provided for and do not apply to:

- (a) Third party software and middleware or services;
- (b) When the City is in breach of this Agreement or any other agreement between the Company and the City;
- (c) Service Offerings that are improperly implemented;

- (d) Hardware, peripherals (including printers) or software other than the Service Offering;
- (e) Anomalies in the Service Offering that are not reproducible; or
- (f) Anomalies, damage or problems in the Service Offering or its operation caused by:
  - i. an incompatible or non-functioning configuration, operating system or hardware system;
  - ii. accident, abuse or misapplication for which Consultant is not responsible;
  - iii. malfunction or non-performance of products supplied by third parties;
  - iv. use contrary to its intended purpose or contrary to the Documentation; or
  - v. any other matters beyond Consultant's control.

### 3.2 Third Party Vendors.

The City will look solely to the third party vendors of third party software, middleware, hardware or peripheral if there are any anomalies, damage or problems to the Services Offering in or caused by such software, middleware, hardware and/or peripheral.

### 3.3 Interfaces.

Consultant will not be responsible for any of the City's integration requirements for the Services Offering resulting from a City's use of third party vendors who may not integrate with the Services Offering.

### 3.4 Service Commitment

Consultant will use commercially reasonable efforts to make Service Offerings available with a Monthly Uptime Percentage (defined below) of at least 99.9%, in each case during any calendar month (the "Service Commitment"). In the event Service Offerings do not meet the Service Commitment, City will be eligible to receive a Service Credit as described below.

## Definitions

- 1) "Monthly Uptime Percentage" is calculated by subtracting from 100% the percentage of minutes during the month in which Service Offerings, as applicable, was "Unavailable." Monthly Uptime Percentage measurements exclude downtime resulting directly or indirectly from any Service Offerings SLA Exclusion (defined below).
- 2) "Unavailable" means Your Service Offering has no external (to/from internet) connectivity.
- 3) A "Service Credit" is a dollar credit, calculated as set forth below, that we may credit back to an eligible account.

## Service Commitments and Service Credits

Service Credits are calculated as a percentage of the total monthly-equivalent charges paid by City (excluding one-time payments such as upfront payments made for initial instance setup) for Service Offerings in accordance with the schedule below.

Monthly Uptime Percentage	Service Credit %
Less than 99.9% but equal to or greater than 99.0%	10%
Less than 99.0%	30%

Consultant will apply any Service Credits only against future Service Offerings payments otherwise due from City. Service Credits will not entitle you to any refund or other payment from Consultant. A Service Credit will be applicable and issued only if the credit amount for the applicable billing cycle is greater than one dollar (\$1 USD). Service Credits may not be transferred or applied to any other billing account. Unless otherwise provided in the Agreement, your sole and exclusive remedy for any unavailability, non-performance, or other failure by us to provide Service Offerings is the receipt of a Service Credit (if eligible) in accordance with the terms of this Schedule.

### **Credit Request and Payment Procedures**

To receive a Service Credit, City must submit a claim by opening a support case with Consultant. To be eligible, the credit request must be received by us no later than calendar 15 days after the unavailability incident occurred and must include:

- 1) the words “Service Offerings SLA Credit Request” in the subject line;
- 2) the dates and times of each Unavailability incident that you are claiming;
- 3) the URL(s) to the affected Service Offerings instance(s); and
- 4) City request logs that document the errors and corroborate City’s claimed outage (any confidential or sensitive information in these logs should be removed or replaced with asterisks).

If the Monthly Uptime Percentage of such request is confirmed by Consultant and is less than the Service Commitment, then Consultant will issue the Service Credit to City within one month after City’s request is confirmed by us. City’s failure to provide the request and other information as required above will disqualify City from receiving a Service Credit.

### **Service Offerings SLA Exclusions**

The Service Commitment does not apply to any unavailability, suspension or termination of Service Offerings, or any other Service Offerings performance issues: (i) that result from a suspension of City’s Service Offering for reasons set out in the Agreement; (ii) caused by factors outside of consultant’s reasonable control, including any force majeure event or Internet access or related problems beyond the



demarcation point of the infrastructure provider for Service Offerings); (iii) that result from any actions or inactions of City or any third party; (iv) that result from your equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within our direct control); (v) that result from failures of individual instances not attributable to Service Offerings Unavailability; (vi) that result from any maintenance as provided for pursuant to the Agreement; (vii) arising from Consultant's suspension and termination of City's right to use Service Offerings in accordance with the Agreement; or (viii) arising from downtime related to scheduled maintenance windows (defined below) (collectively, the "Service Offerings SLA Exclusions"). If availability is impacted by factors other than those used in Consultant's Monthly Uptime Percentage calculation, then Consultant may issue a Service Credit considering such factors at Consultant's discretion.

### **Scheduled Maintenance Windows**

From time to time, City's Service Offering instance may require maintenance to upgrade or repair hardware or software that will cause downtime and therefore unavailability to City. We will notify City at least 7 calendar days before such maintenance is required and provide an estimate of the duration required to perform the maintenance. Most maintenance can be performed with less than 2 hours of downtime but some may take longer.

Consultant will work with City to schedule a start time & date for the maintenance (a scheduled maintenance window) that is mutually acceptable to City and Consultant. Once maintenance has started at the agreed time, Consultant will use commercially reasonable efforts to return City's Service Offerings instance(s) to service within the estimated duration window – but this will not always be possible due to unforeseen complications that may arise.

Scheduled Maintenance Windows are excluded from the Service Offerings SLA.

**EXHIBIT B**  
**SCHEDULE OF PERFORMANCE**

CONTRACTOR shall perform the Services according to the following schedule:

<b>Milestones</b>	<b>Completed By</b>
Task 1.0	February 29, 2024
Task 2.0	February 28, 2025
Task 3.0	February 28, 2026
Task 4.0	February 28, 2027
Task 5.0	February 29, 2028
Task 6.0	February 28, 2029
Task 7.0	February 28, 2030

## EXHIBIT C SCHEDULE OF FEES

CITY shall pay CONTRACTOR according to the following rate schedule. The maximum amount of compensation to be paid to CONTRACTOR, including both payment for services and reimbursable expenses, shall not exceed the amounts set forth in Sections 5 and 6 of the Agreement. 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.

<b>BUDGET SCHEDULE</b>	<b>FIXED FEE</b>
Task 1 (PIMS Hosting and Software Support)	\$20,343
Task 2 (PIMS Hosting and Software Support)	\$28,852
Task 3 (PIMS Hosting and Software Support)	\$29,247
Task 4 (PIMS Hosting and Software Support)	\$29,647
Task 5 (PIMS Hosting and Software Support)	\$30,054
Task 6 (PIMS Hosting and Software Support)	\$30,468
Task 7 (PIMS Hosting and Software Support)	\$30,886
Sub-Total Basic Services	<b>\$199,497</b>
Reimbursable Expenses	\$0.00
Additional Services	\$19,950
Maximum Total Compensation	<b>\$219,447</b>

### **INVOICE SCHEDULE**

CONSULTANT shall invoice the City as follows:

- 100% of Task 1 by February 1, 2023.
- 100% of Task 2 by February 1, 2024.
- 100% of Task 3 by February 1, 2025.
- 100% of Task 4 by February 1, 2026.
- 100% of Task 5 by February 1, 2027.
- 100% of Task 6 by February 1, 2028.
- 100% of Task 7 by February 1, 2029.

## EXHIBIT D INSURANCE REQUIREMENTS

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A-:VII, OR HIGHER, AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS SPECIFIED HEREIN.

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES	WORKER'S COMPENSATION	STATUTORY		
YES	EMPLOYER'S LIABILITY	STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, PRODUCTS/COMPLETED OPERATIONS AND FIRE LEGAL LIABILITY	BODILY INJURY	\$2,000,000	\$2,000,000
		PROPERTY DAMAGE	\$2,000,000	\$2,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$2,000,000	\$2,000,000
YES	<p>TECHNOLOGY ERRORS AND OMISSIONS LIABILITY COVERAGE. THE POLICY SHALL AT A MINIMUM COVER PROFESSIONAL MISCONDUCT OR LACK OF REQUISITE SKILL FOR THE PERFORMANCE OF SERVICES DEFINED IN THE CONTRACT AND SHALL ALSO PROVIDE COVERAGE FOR THE FOLLOWING RISKS:</p> <p>(i) NETWORK SECURITY LIABILITY ARISING FROM UNAUTHORIZED ACCESS TO, USE OF, OR TAMPERING WITH COMPUTERS OR COMPUTER SYSTEMS, INCLUDING HACKERS, EXTORTION, AND</p> <p>(ii) LIABILITY ARISING FROM INTRODUCTION OF ANY FORM OF MALICIOUS SOFTWARE INCLUDING COMPUTER VIRUSES INTO, OR OTHERWISE CAUSING DAMAGE TO THE CITY'S OR THIRD PERSON'S COMPUTER, COMPUTER SYSTEM, NETWORK, OR SIMILAR COMPUTER RELATED PROPERTY AND THE DATA, SOFTWARE AND PROGRAMS THEREON. CONTRACTOR SHALL MAINTAIN IN FORCE DURING THE FULL LIFE OF THE CONTRACT.</p> <p>THE POLICY SHALL PROVIDE COVERAGE FOR BREACH RESPONSE COSTS AS WELL AS REGULATORY FINES AND PENALTIES AS WELL AS CREDIT MONITORING EXPENSES WITH LIMITS SUFFICIENT TO RESPOND TO THESE OBLIGATIONS.</p>	ALL DAMAGES	\$2,000,000	\$2,000,000

YES	CYBER AND PRIVACY INSURANCE. SUCH INSURANCE SHALL INCLUDE COVERAGE FOR LIABILITY ARISING FROM COVERAGE IN AN AMOUNT SUFFICIENT TO COVER THE FULL REPLACEMENT VALUE OF DAMAGE TO, ALTERATION OF, LOSS OF, THEFT, DISSEMINATION OR DESTRUCTION OF ELECTRONIC DATA AND/OR USE OF CONFIDENTIAL INFORMATION, “PROPERTY” OF THE CITY OF PALO ALTO THAT WILL BE IN THE CARE, CUSTODY, OR CONTROL OF VENDOR, INFORMATION INCLUDING BUT NOT LIMITED TO, BANK AND CREDIT CARD ACCOUNT INFORMATION OR PERSONAL INFORMATION, SUCH AS NAME, ADDRESS, SOCIAL SECURITY NUMBERS, PROTECTED HEALTH INFORMATION OR OTHER PERSONAL IDENTIFICATION INFORMATION, STORED OR TRANSMITTED IN ELECTRONIC FORM.	ALL DAMAGES	\$2,000,000	\$2,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY EACH PERSON EACH OCCURRENCE  PROPERTY DAMAGE  BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000 \$1,000,000 \$1,000,000  \$1,000,000  \$1,000,000	\$1,000,000 \$1,000,000 \$1,000,000  \$1,000,000  \$1,000,000
YES	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	\$1,000,000	
YES	<b>THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED:</b> CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS’ COMPENSATION, EMPLOYER’S LIABILITY AND PROFESSIONAL INSURANCE, <b>NAMING AS ADDITIONAL INSURED CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.</b>			

- I. INSURANCE COVERAGE MUST INCLUDE:
- A. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY.
- II. CONTRACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE AT THE FOLLOWING URL:  
<https://www.planetbids.com/portal/portal.cfm?CompanyID=25569>.
- III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSURED"
- A. PRIMARY COVERAGE
- WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSURED.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURED UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSURED, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

**VENDORS ARE REQUIRED TO FILE THEIR EVIDENCE OF INSURANCE AND ANY OTHER RELATED NOTICES WITH THE CITY OF PALO ALTO.**

## EXHIBIT E

### INFORMATION PRIVACY POLICY

DocuSign Envelope ID: 87E1232D-F46E-405A-95CD-91CC38106A93

**POLICY AND PROCEDURES 1-64/IT**

Revised: December 2017

**INFORMATION PRIVACY POLICY****POLICY STATEMENT**

The City of Palo Alto (the "City") strives to promote and sustain a superior quality of life for persons in Palo Alto. In promoting the quality of life of these persons, it is the policy of the City, consistent with the provisions of the California Public Records Act, California Government Code §§ 6250 – 6270, to take appropriate measures to safeguard the security and privacy of the personal (including, without limitation, financial) information of persons, collected in the ordinary course and scope of conducting the City's business as a local government agency. These measures are generally observed by federal, state and local authorities and reflected in federal and California laws, the City's rules and regulations, and industry best practices, including, without limitation, the provisions of California Civil Code §§ 1798.3(a), 1798.24, 1798.79.8(b), 1798.80(e), 1798.81.5, 1798.82(e), 1798.83(e)(7), and 1798.92(c). Though some of these provisions do not apply to local government agencies like the City, the City will conduct business in a manner which promotes the privacy of personal information, as reflected in federal and California laws. The objective of this Policy is to describe the City's data security goals and objectives, to ensure the ongoing protection of the Personal Information, Personally Identifiable Information, Protected Critical Infrastructure Information and Personally Identifying Information of persons doing business with the City and receiving services from the City or a third party under contract to the City to provide services. The terms "Personal Information," "Protected Critical Infrastructure Information", "Personally Identifiable Information" and "Personally Identifying Information" (collectively, the "Information") are defined in the California Civil Code sections, referred to above, and are incorporated in this Policy by reference.

**PURPOSE**

The City, acting in its governmental and proprietary capacities, collects the Information pertaining to persons who do business with or receive services from the City. The Information is collected by a variety of means, including, without limitation, from persons applying to receive services provided by the City, persons accessing the City's website, and persons who access other information portals maintained by the City's staff and/or authorized third-party contractors. The City is committed to protecting the privacy and security of the Information collected by the City. The City acknowledges federal and California laws, policies, rules, regulations and procedures, and industry best practices are dedicated to ensuring the Information is collected, stored and utilized in compliance with applicable laws.

DocuSign Envelope ID: 87E1232D-F46E-405A-95CD-91CC38106A93

## **POLICY AND PROCEDURES 1-64/IT**

Revised: December 2017

The goals and objectives of the Policy are: (a) a safe, productive, and inoffensive work environment for all users having access to the City's applications and databases; (b) the appropriate maintenance and security of database information assets owned by, or entrusted to, the City; (c) the controlled access and security of the Information provided to the City's staff and third party contractors; and (d) faithful compliance with legal and regulatory requirements.

### **SCOPE**

The Policy will guide the City's staff and, indirectly, third party contractors, which are by contract required to protect the confidentiality and privacy of the Information of the persons whose personal information data are intended to be covered by the Policy and which will be advised by City staff to conform their performances to the Policy should they enjoy conditional access to that information.

### **CONSEQUENCES**

The City's employees shall comply with the Policy in the execution of their official duties to the extent their work implicates access to the Information referred to in this Policy. A failure to comply may result in employment and/or legal consequences.

### **EXCEPTIONS**

In the event that a City employee cannot fully comply with one or more element(s) described in this Policy, the employee may request an exception by submitting Security Exception Request. The exception request will be reviewed and administered by the City's Information Security Manager (the "ISM"). The employee, with the approval of his or her supervisor, will provide any additional information as may be requested by the ISM. The ISM will conduct a risk assessment of the requested exception in accordance with guidelines approved by the City's Chief Information Officer ("CIO") and approved as to form by the City Attorney. The Policy's guidelines will include at a minimum: purpose, source, collection, storage, access, retention, usage, and protection of the Information identified in the request. The ISM will consult with the CIO to approve or deny the exception request. After due consideration is given to the request, the exception request disposition will be communicated, in writing, to the City employee and his or her supervisor. The approval of any request may be subject to countermeasures established by the CIO, acting by the ISM.

### **MUNICIPAL ORDINANCE**

This Policy will supersede any City policy, rule, regulation or procedure regarding information privacy.

### **RESPONSIBILITIES OF CITY STAFF**



DocuSign Envelope ID: 87E1232D-F46E-405A-95CD-91CC38106A93

**POLICY AND PROCEDURES 1-64/IT**

Revised: December 2017

**A. RESPONSIBILITY OF CIO AND ISM**

The CIO, acting by the ISM, will establish an information security management framework to initiate and coordinate the implementation of information security measures by the City's government.

The City's employees, in particular, software application users and database users, and, indirectly, third party contractors under contract to the City to provide services, shall be guided by this Policy in the performance of their job responsibilities.

The ISM will be responsible for: (a) developing and updating the Policy; (b) enforcing compliance with and the effectiveness of the Policy; (c) the development of privacy standards that will manifest the Policy in detailed, auditable technical requirements, which will be designed and maintained by the persons responsible for the City's IT environments; (d) assisting the City's staff in evaluating security and privacy incidents that arise in regard to potential violations of the Policy; (e) reviewing and approving department-specific policies and procedures which fall under the purview of this Policy; and (f) reviewing Non-Disclosure Agreements (NDAs) signed by third party contractors, which will provide services, including, without limitation, local or 'cloud-based' software services to the City.

**B. RESPONSIBILITY OF INFORMATION SECURITY STEERING COMMITTEE**

The Information Security Steering Committee (the "ISSC"), which is comprised of the City's employees, drawn from the various City departments, will provide the primary direction, prioritization and approval for all information security efforts, including key information security and privacy risks, programs, initiatives and activities. The ISSC will provide input to the information security and privacy strategic planning processes to ensure that information security risks are adequately considered, assessed and addressed at the appropriate City department level.

**C. RESPONSIBILITY OF USERS**

All authorized users of the Information will be responsible for complying with information privacy processes and technologies within the scope of responsibility of each user.

**D. RESPONSIBILITY OF INFORMATION TECHNOLOGY (IT) MANAGERS**

The City's IT Managers, who are responsible for internal, external, direct and indirect connections to the City's networks, will be responsible for configuring, maintaining and securing the City's IT networks in compliance with the City's information security and privacy policies. They are also responsible for timely internal reporting of events that may have compromised network, system or data security.

**POLICY AND PROCEDURES 1-64/IT**

Revised: December 2017

**E. RESPONSIBILITY OF AUTHORIZATION COORDINATION**

The ISM will ensure that the City's employees secure the execution of Non-Disclosure Agreements (NDA), whenever access to the Information will be granted to third party contractors, in conjunction with the Software as a Service (SaaS) Security and Privacy Terms and Conditions. An NDA must be executed prior to the sharing of the Information of persons covered by this Policy with third party contractors. The City's approach to managing information security and its implementation (i.e. objectives, policies, processes, and procedures for information security) will be reviewed independently by the ISM at planned intervals, or whenever significant changes to security implementation have occurred.

The CIO, acting by the ISM, will review and recommend changes to the Policy annually, or as appropriate, commencing from the date of its adoption.

**GENERAL PROCEDURE FOR INFORMATION PRIVACY****A. OVERVIEW**

The Policy applies to activities that involve the use of the City's information assets, namely, the Information of persons doing business with the City or receiving services from the City, which are owned by, or entrusted to, the City and will be made available to the City's employees and third party contractors under contract to the City to provide Software as a Service consulting services. These activities include, without limitation, accessing the Internet, using e-mail, accessing the City's intranet or other networks, systems, or devices.

The term "information assets" also includes the personal information of the City's employees and any other related organizations while those assets are under the City's control. Security measures will be designed, implemented, and maintained to ensure that only authorized persons will enjoy access to the information assets. The City's staff will act to protect its information assets from theft, damage, loss, compromise, and inappropriate disclosure or alteration. The City will plan, design, implement and maintain information management systems, networks and processes in order to assure the appropriate confidentiality, integrity, and availability of its information assets to the City's employees and authorized third parties.

**B. PERSONAL INFORMATION AND CHOICE**

Except as permitted or provided by applicable laws, the City will not share the Information of any person doing business with the City, or receiving services from the City, in violation of this Policy, unless that person has consented to the City's sharing of such information during the conduct of the City's business as a local government agency with third parties under contract to the City to provide services.

**POLICY AND PROCEDURES 1-64/IT**

Revised: December 2017

**C. METHODS OF COLLECTION OF PERSONAL INFORMATION**

The City may gather the Information from a variety of sources and resources, provided that the collection of such information is both necessary and appropriate in order for the City to conduct business as a local government agency in its governmental and proprietary capacities. That information may be gathered at service windows and contact centers as well as at web sites, by mobile applications, and with other technologies, wherever the City may interact with persons who need to share such formation in order to secure the City's services.

The City's staff will inform the persons whose Information are covered by this Policy that the City's web site may use "cookies" to customize the browsing experience with the City of Palo Alto web site. The City will note that a cookie contains unique information that a web site can use to track, among others, the Internet Protocol address of the computer used to access the City's web sites, the identification of the browser software and operating systems used, the date and time a user accessed the site, and the Internet address of the website from which the user linked to the City's web sites. Cookies created on the user's computer by using the City's web site do not contain the Information, and thus do not compromise the user's privacy or security. Users can refuse the cookies or delete the cookie files from their computers by using any of the widely available methods. If the user chooses not to accept a cookie on his or her computer, it will not prevent or prohibit the user from gaining access to or using the City's sites.

**D. UTILITIES SERVICE**

In the provision of utility services to persons located within Palo Alto, the City of Palo Alto Utilities Department ("CPAU") will collect the Information in order to initiate and manage utility services to customers. To the extent the management of that information is not specifically addressed in the Utilities Rules and Regulations or other ordinances, rules, regulations or procedures, this Policy will apply; provided, however, any such Rules and Regulations must conform to this Policy, unless otherwise directed or approved by the Council. This includes the sharing of CPAU-collected Information with other City departments except as may be required by law.

Businesses and residents with standard utility meters and/or having non-metered monthly services will have secure access through a CPAU website to their Information, including, without limitation, their monthly utility usage and billing data. In addition to their regular monthly utilities billing, businesses and residents with non-standard or experimental electric, water or natural gas meters may have their usage and/or billing data provided to them through non-City electronic portals at different intervals than with the standard monthly billing.

DocuSign Envelope ID: 87E1232D-F46E-405A-95CD-91CC38106A93

**POLICY AND PROCEDURES 1-64/IT**

Revised: December 2017

Businesses and residents with such non-standard or experimental metering will have their Information covered by the same privacy protections and personal information exchange rules applicable to Information under applicable federal and California laws.

**E. PUBLIC DISCLOSURE**

The Information that is collected by the City in the ordinary course and scope of conducting its business could be incorporated in a public record that may be subject to inspection and copying by the public, unless such information is exempt from disclosure to the public by California law.

**F. ACCESS TO PERSONAL INFORMATION**

The City will take reasonable steps to verify a person's identity before the City will grant anyone online access to that person's Information. Each City department that collects Information will afford access to affected persons who can review and update that information at reasonable times.

**G. SECURITY, CONFIDENTIALITY AND NON-DISCLOSURE**

Except as otherwise provided by applicable law or this Policy, the City will treat the Information of persons covered by this Policy as confidential and will not disclose it, or permit it to be disclosed, to third parties without the express written consent of the person affected. The City will develop and maintain reasonable controls that are designed to protect the confidentiality and security of the Information of persons covered by this Policy.

The City may authorize the City's employee and or third party contractors to access and/or use the Information of persons who do business with the City or receive services from the City. In those instances, the City will require the City's employee and/or the third party contractors to agree to use such Information only in furtherance of City-related business and in accordance with the Policy.

If the City becomes aware of a breach, or has reasonable grounds to believe that a security breach has occurred, with respect to the Information of a person, the City will notify the affected person of such breach in accordance with applicable laws. The notice of breach will include the date(s) or estimated date(s) of the known or suspected breach, the nature of the Information that is the subject of the breach, and the proposed action to be taken or the responsive action taken by the City.

**H. DATA RETENTION / INFORMATION RETENTION**

DocuSign Envelope ID: 87E1232D-F46E-405A-95CD-91CC38106A93

**POLICY AND PROCEDURES 1-64/IT**

Revised: December 2017

The City will store and secure all Information for a period of time as may be required by law, or if no period is established by law, for seven (7) years, and thereafter such information will be scheduled for destruction.

**I. SOFTWARE AS A SERVICE (SAAS) OVERSIGHT**

The City may engage third party contractors and vendors to provide software application and database services, commonly known as Software-as-a-Service (SaaS).

In order to assure the privacy and security of the Information of those who do business with the City and those who received services from the City, as a condition of selling goods and/or services to the City, the SaaS services provider and its subcontractors, if any, including any IT infrastructure services provider, shall design, install, provide, and maintain a secure IT environment, while it performs such services and/or furnishes goods to the City, to the extent any scope of work or services implicates the confidentiality and privacy of the Information.

These requirements include information security directives pertaining to: (a) the IT infrastructure, by which the services are provided to the City, including connection to the City's IT systems; (b) the SaaS services provider's operations and maintenance processes needed to support the IT environment, including disaster recovery and business continuity planning; and (c) the IT infrastructure performance monitoring services to ensure a secure and reliable environment and service availability to the City. The term "IT infrastructure" refers to the integrated framework, including, without limitation, data centers, computers, and database management devices, upon which digital networks operate.

Prior to entering into an agreement to provide services to the City, the City's staff will require the SaaS services provider to complete and submit an Information Security and Privacy Questionnaire. In the event that the SaaS services provider reasonably determines that it cannot fulfill the information security requirements during the course of providing services, the City will require the SaaS services provider to promptly inform the ISM.

**J. FAIR AND ACCURATE CREDIT TRANSACTION ACT OF 2003**

CPAU will require utility customers to provide their Information in order for the City to initiate and manage utility services to them.

Federal regulations, implementing the Fair and Accurate Credit Transactions Act of 2003 (Public Law 108-159), including the Red Flag Rules, require that CPAU, as a "covered financial institution or creditor" which provides services in advance of payment and which can affect consumer credit, develop and implement procedures for an identity theft program for new and existing accounts to detect, prevent, respond and mitigate potential identity theft of its customers' Information.

DocuSign Envelope ID: 87E1232D-F46E-405A-95CD-91CC38106A93

**POLICY AND PROCEDURES 1-64/IT**

Revised: December 2017

CPAU procedures for potential identity theft will be reviewed independently by the ISM annually or whenever significant changes to security implementation have occurred. The ISM will recommend changes to CPAU identity theft procedures, or as appropriate, so as to conform to this Policy.

There are California laws which are applicable to identity theft; they are set forth in California Civil Code § 1798.92.

NOTE: Questions regarding this policy should be referred to the Information Technology Department, as appropriate.

Recommended:	<div>DocuSigned by: <i>Jonathan Reidental</i> 7614D9807576424...</div>	12/5/2017
	Director Information Technology/CIO	Date
Approved:	<div>DocuSigned by: <i>J. J. J.</i> 39E7208F82064DB...</div>	12/13/2017
	City Manager	Date

## EXHIBIT F

### CYBERSECURITY TERMS AND CONDITIONS



City of Palo Alto  
Information Security  
Document Version: V3.0  
Doc: InfoSec 110

#### CYBERSECURITY TERMS AND CONDITIONS

In order to assure the privacy and security of the personal information of the City's customers and people who do business with the City, including, without limitation, vendors, utility customers, library patrons, and other individuals and companies, who are required to share such information with the City, as a condition of receiving services from the City or selling goods and services to the City, including, without limitation, the Software as a Service services provider (the "Consultant") and its subcontractors, if any, including, without limitation, any Information Technology ("IT") infrastructure services provider, shall design, install, provide, and maintain a secure IT environment, described below, while it renders and performs the Services and furnishes goods, if any, described in the Statement of Work, Exhibit B, to the extent any scope of work implicates the confidentiality and privacy of the personal information of the City's customers. The Consultant shall fulfill the data and information security requirements (the "Requirements") set forth in Part A below.

A "secure IT environment" includes (a) the IT infrastructure, by which the Services are provided to the City, including connection to the City's IT systems; (b) the Consultant's operations and maintenance processes needed to support the environment, including disaster recovery and business continuity planning; and (c) the IT infrastructure performance monitoring services to ensure a secure and reliable environment and service availability to the City. "IT infrastructure" refers to the integrated framework, including, without limitation, data centers, computers, and database management devices, upon which digital networks operate.

In the event that, after the Effective Date, the Consultant reasonably determines that it cannot fulfill the Requirements, the Consultant shall promptly inform the City of its determination and submit, in writing, one or more alternate countermeasure options to the Requirements (the "Alternate Requirements" as set forth in Part B), which may be accepted or rejected in the reasonable satisfaction of the Information Security Manager (the "ISM").

#### **Part A. Requirements:**

The Consultant shall at all times during the term of any contract between the City and the Consultant:

- (a) Appoint or designate an employee, preferably an executive officer, as the security liaison to the City with respect to the Services to be performed under this Agreement.
- (b) Comply with the City's Information Privacy Policy.
- (c) Have adopted and implemented information security and privacy policies that are documented, are accessible to the City, and conform to ISO 27001/2 – Information Security Management Systems (ISMS) Standards. See the following:  
[http://www.iso.org/iso/home/store/catalogue\\_tc/catalogue\\_detail.htm?csnumber=42103](http://www.iso.org/iso/home/store/catalogue_tc/catalogue_detail.htm?csnumber=42103)  
[http://www.iso.org/iso/iso\\_catalogue/catalogue\\_tc/catalogue\\_detail.htm?csnumber=50297](http://www.iso.org/iso/iso_catalogue/catalogue_tc/catalogue_detail.htm?csnumber=50297)
- (d) Conduct routine data and information security compliance training of its personnel that is appropriate to their role.
- (e) Develop and maintain detailed documentation of the IT infrastructure, including software versions and patch levels.
- (f) Develop an independently verifiable process, consistent with industry standards, for performing professional and criminal background checks of its employees that (1) would permit verification of employees' personal identity and employment status, and (2) would enable the immediate denial of access to the City's confidential data and information by any of its employees who no

Page 1 of 3





City of Palo Alto  
Information Security  
Document Version: V3.0  
Doc: InfoSec 110

- longer would require access to that information or who are terminated.
- (g) Provide a list of IT infrastructure components in order to verify whether the Consultant has met or has failed to meet any objective terms and conditions.
  - (h) Implement access accountability (identification and authentication) architecture and support role-based access control ("RBAC") and segregation of duties ("SoD") mechanisms for all personnel, systems, and Software used to provide the Services. "RBAC" refers to a computer systems security approach to restricting access only to authorized users. "SoD" is an approach that would require more than one individual to complete a security task in order to promote the detection and prevention of fraud and errors.
  - (i) Assist the City in undertaking annually an assessment to assure that: (1) all elements of the Services' environment design and deployment are known to the City, and (2) it has implemented measures in accordance with industry best practices applicable to secure coding and secure IT architecture.
  - (j) Provide and maintain secure intersystem communication paths that would ensure the confidentiality, integrity, and availability of the City's information.
  - (k) Deploy and maintain IT system upgrades, patches and configurations conforming to current patch and/or release levels by not later than one (1) week after its date of release. Emergency security patches must be installed within 24 hours after its date of release.
  - (l) Provide for the timely detection of, response to, and the reporting of security incidents, including on-going incident monitoring with logging.
  - (m) Notify the City within one (1) hour of detecting a security incident that results in the unauthorized access to or the misuse of the City's confidential data and information.
  - (n) Inform the City that any third party service provider(s) meet(s) all of the Requirements.
  - (o) Perform security self-audits on a regular basis and not less frequently than on a quarterly basis, and provide the required summary reports of those self-audits to the ISM on the annual anniversary date or any other date agreed to by the Parties.
  - (p) Accommodate, as practicable, and upon reasonable prior notice by the City, the City's performance of random site security audits at the Consultant's site(s), including the site(s) of a third-party service provider(s), as applicable. The scope of these audits will extend to the Consultant's and its third-party service provider(s)' awareness of security policies and practices, systems configurations, access authentication and authorization, and incident detection and response.
  - (q) Cooperate with the City to ensure that to the extent required by applicable laws, rules and regulations, and the Confidential Information will be accessible only by the Consultant and any authorized third-party service provider's personnel.
  - (r) Perform regular, reliable secured backups of all data needed to maximize the availability of the Services. Adequately encrypt the City of Palo Alto's data, during the operational process, hosted at rest, and the backup stage at the Vendors' environment (including Vendor's contracting organization's environment).
  - (s) Maintain records relating to the Services for a period of three (3) years after the expiration or earlier termination of this Agreement and in a mutually agreeable storage medium. Within thirty (30) days after the effective date of expiration or earlier termination of this Agreement, all of those records relating to the performance of the Services shall be provided to the ISM.
  - (t) Maintain the Confidential Information in accordance with applicable federal, state, and local data and information privacy laws, rules, and regulations.
  - (u) Encrypt the Confidential Information before delivering the same by electronic mail to the City and or any authorized recipient.
  - (v) Provide Network Layer IP filtering services to allow access only from the City of Palo Alto's IP address to the Vendor environment (primarily hosted for the City of Palo Alto).
  - (w) Offer a robust disaster recovery and business continuity (DR-BCP) solutions to the City for the systems and services the Vendor provides to the City.

Page 2 of 3





City of Palo Alto  
Information Security  
Document Version: V3.0  
Doc: InfoSec 110

- (x) Provide and support Single Sign-on (SSO) and Multifactor Authentication (MFA) solutions for authentication and authorization services from the "City's environment to the Vendor's environment," and Vendor's environment to the Vendor's cloud services/hosted environment." The Vendor shall allow two employees of the City to have superuser and super-admin access to the Vendor's IT environment, and a cloud-hosted IT environment belongs to the City.
- (y) Unless otherwise addressed in the Agreement, shall not hold the City liable for any direct, indirect or punitive damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the City's IT environment, including, without limitation, IT infrastructure communications.
- (z) The Vendor must provide evidence of valid cyber liability insurance policy per the City's **EXHIBIT "D" INSURANCE REQUIREMENTS.**

**Part B. Alternate Requirements:**