

SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

ARTICLES OF AGREEMENT

This Agreement between **CITY OF NAPA, CA**, as "CLIENT", and **LUCITY, INC.**, as "CONTRACTOR".

WITNESSETH:

Whereas, the CONTRACTOR (a Kansas Corporation with offices located at 10561 Barkley, Suite 100, Overland Park, KS 66212) owns certain software programs that are licensed under individual program titles which are known collectively as "*Lucity™ Software*"; and

Whereas, the CLIENT (located at 1340 Clay Street, Napa, CA 94559) would like to use, and the CONTRACTOR would like to grant the CLIENT the right to use, those software programs accessing databases residing at the CLIENT's site, while protecting the copyrights, trade secrets, confidential information, and other valuable intellectual property they contain; and

Whereas, the CLIENT is authorized and empowered to contract with the CONTRACTOR to provide professional services as hereinafter described; and

Whereas, the CONTRACTOR is registered in accordance with the laws of the State of Kansas, and is qualified to provide the professional services desired by the CLIENT; now, therefore,

IT IS AGREED THAT:

SECTION I – SOFTWARE LICENSE

The CONTRACTOR agrees to furnish various *Lucity* software programs, and grant the CLIENT a license to use these programs, in consideration of the mutual covenants and obligations expressed in the *Lucity™ Software License Agreement* attached as Exhibit "A". These programs shall consist of the items listed in the Schedule of Software attached as Exhibit "B".

SECTION II – SCOPE OF SERVICES

The basic Scope of Services for the supply, implementation, support and maintenance of **CMMS SOFTWARE LICENSE, CONFIGURATION AND IMPLEMENTATION**, herein referred to as "PROJECT", is as follows:

1. The CONTRACTOR agrees to furnish and perform various professional services related to on-going software technical support and maintenance items outlined in the Software Support and Maintenance Provisions attached as Exhibit "C".
2. The CONTRACTOR agrees to furnish and perform various professional services related to the items outlined the Schedule of Services attached as Exhibit "D".

Any items beyond the basic Scope of Services shall be considered as Additional Services. If authorized in writing by CLIENT, CONTRACTOR shall furnish, or obtain from others, services resulting from significant changes in the basic Scope of Services.

ATTACHMENT 2

SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

The cost to perform Additional Services shall be based on the rates outlined in the Schedule of Costs and Payments attached as Exhibit "E".

SECTION III – RESPONSIBILITIES OF THE CLIENT

The CLIENT shall provide information and assistance as follows:

1. Assist CONTRACTOR by placing at their disposal all available information pertinent to the PROJECT including data, standards, specifications, processes, workflows, and reports relative to the CONTRACTOR'S services.
2. Give prompt written notice to CONTRACTOR whenever CLIENT observes or otherwise becomes aware of any development that affects the Scope or timing of CONTRACTOR'S Services.
3. Bear all costs incident to compliance with the requirements of this Section III.

SECTION IV – SCHEDULE OF SERVICES

It is anticipated that the PROJECT as described in Section II will be completed and submitted to the CLIENT in accordance with the estimated schedule for major work items as shown on Exhibit "D".

The work items described shall be carried out as expeditiously as possible. The CONTRACTOR shall not be liable to the CLIENT, if delayed in, or prevented from performing the work as specified herein through any cause beyond the control of the CONTRACTOR, and not caused by his own fault or negligence including acts of nature or the public enemy, inclement weather conditions, acts, regulations, or decisions of the Government or regulatory authorities after the effective date of this Agreement, fires, floods, epidemics, strikes, jurisdictional disputes, lockouts, and freight embargoes.

SECTION V – FEES AND PAYMENTS

The CLIENT shall compensate the CONTRACTOR for the Scope of Services as described in Section II of this Agreement an amount not exceeding the total cost as shown on Exhibit "E". The maximum compensation shall not be exceeded without further authorization of Additional Services.

Labor costs, costs associated with subcontract work, bonding costs, and direct expenses such as shipping, printing, telephone and commercial computer software are included in the maximum compensation.

Payment to the CONTRACTOR shall be made in accordance with the estimated schedule of billings for work items as shown on Exhibit "E". Invoices will be submitted to the CLIENT by the 20th of the month will be paid on or around the 15th of the following month.

ATTACHMENT 2

SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

Once this Agreement expires, or final payment has been requested and made, the CONTRACTOR shall have no more than thirty (30) days to present or file claims against the CLIENT concerning this Agreement. After that period, the CLIENT shall consider the CONTRACTOR to have waived any right to claims against the CLIENT concerning this Agreement.

The Fees and Payment provisions for the PROJECT, applicable to the *Lucity* software program licenses, provided in this Section V supersede the License Fee payment provisions provided in Section 6(a) of Exhibit "A".

SECTION VI – TERMINATION

- A. The obligation to provide further services under this Agreement may be terminated by either party upon thirty (30) days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- B. In the event of termination by the CLIENT, the CONTRACTOR shall be paid for all services rendered up to and including the date of termination.
- C. In the event that the CLIENT, for any reason, decides not to proceed with the PROJECT, this Agreement shall then be considered terminated; the CONTRACTOR shall be entitled to payment as described herein for all services provided under this Agreement. In such event, the CLIENT shall promptly notify the CONTRACTOR in writing of its decision not to proceed with the PROJECT so that the CONTRACTOR can reassign his personnel and revise work schedules as may be required.

The Termination provisions for the PROJECT provided in this Section VI are applicable to the Scope of Services as described in Section II of this Agreement. The Term and Termination provisions provided in Section 12 of Exhibit "A" are applicable to the *Lucity*™ software program licenses.

SECTION VII – INDEMNIFICATION

The CONTRACTOR shall indemnify and hold the CLIENT harmless from any and all liability, loss or damage the CLIENT may suffer as a result of claims, demands, costs or judgments against it arising out of the CONTRACTOR'S negligence in the performance of this Agreement.

The Indemnification provisions for the PROJECT provided in this Section VII are applicable to the Scope of Services referenced in Section II. The Limitations of Liability provisions provided in Section 11 of Exhibit "A" are applicable to the *Lucity*™ software program licenses.

SECTION VIII – GENERAL CONSIDERATIONS

And, finally it is agreed that:

- A. All services shall be under the direction of qualified personnel.

SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

- B. The Scope of Services covered by this Agreement shall be subject to modification and supplementation upon the written agreement of the duly authorized representatives of the contracting parties. Modification of the terms of this Agreement may be made that would modify the maximum fees stated in the Agreement when mutually agreed by and between the CONTRACTOR and the CLIENT, and shall be incorporated in written amendments to this Agreement. The CONTRACTOR shall have no obligation to perform services in connection with a change in the Scope of Services unless the cost thereof shall be agreed to under this paragraph.
- C. The CONTRACTOR reserves the right to renegotiate this Agreement if this agreement is not signed by the CLIENT within ninety (90) days after submittal.
- D. The following Exhibits are attached to and made a part of this Agreement:
- Exhibit "A" - *Lucity™* Software License Agreement
 - Exhibit "B" - Schedule of Software
 - Exhibit "C" - Software Support and Maintenance Provisions
 - Exhibit "D" - Schedule of Services
 - Exhibit "E" - Schedule of Costs and Invoicing

IN WITNESS WHEREOF, the CLIENT and CONTRACTOR, by their authorized representatives, have hereunto subscribed their names this _____ day of _____, 2016.

Executed in duplicate with copies to the CLIENT and CONTRACTOR.

LUCITY, INC.

CITY OF NAPA, CA

By: 
James C. Graham, P.E.

By: SEE NEXT PAGE

Title: Vice President & Chief Operating Officer

Title: _____

Attest:

Attest:

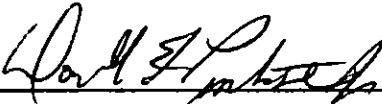
By: 

By: _____

Title: Client Services Mgr.

Title: _____

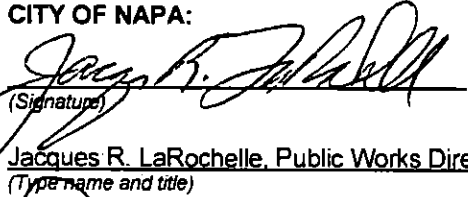
Attest:

By: 

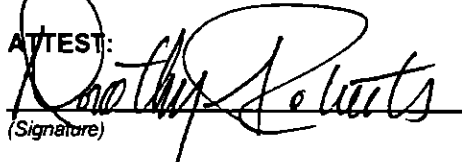
Title: PRESIDENT

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

CITY OF NAPA:


(Signature)
Jacques R. LaRochelle, Public Works Director
(Type name and title)

ATTEST:

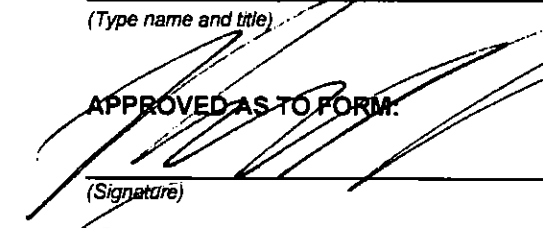

(Signature)
Dorothy Roberts, City Clerk
(Type name and title)

COUNTERSIGNED:


(Signature)

Desiree Brun, City Auditor
(Type name and title)

APPROVED AS TO FORM:


(Signature)

Michael W. Barrett, City Attorney
(Type name and title)

Budget Codes: 30101-57601-MS14PW01-57601
53010-57601-WA11PW01-57601
53010-57601-WA12PW01-57601

CONSULTANT:

Lucity, Inc., a Corporation
(Type name of Consultant/form of organization)

By: SEE PRIOR PAGE
(Signature)

James C. Graham, P.E., Vice President
(Type name and title)

By: _____
(Signature)

_____, Secretary
(Type name and title)

Address: 10561 Barkley, Suite 100
Overland Park, KS 66212

Telephone: (800) 492-2468

*Corporation, partnership, limited liability corporation, sole proprietorship, etc.
Unless corporate resolution delegates individual to sign contracts, this Agreement must be signed by the President or Vice President **and** the Secretary or Treasurer of a corporation. A general partner shall sign on behalf of a general partnership. The managing member, if authorized, may sign on behalf of a limited liability corporation.

Lucity™ Software License Agreement**IMPORTANT – READ CAREFULLY BEFORE INSTALLATION**

This software is subject to acceptance of the *Lucity™* Software License Agreement. Lucity, Inc. (Lucity) is willing to license this software to you only upon the condition that you accept all of the terms and conditions contained in the *Lucity™* Software License Agreement and any stated Special Provisions.

THIS AGREEMENT ("Agreement") is between Lucity, Inc., a Kansas corporation with its principal place of business at 10561 Barkley, Suite 100, Overland Park, KS 66212 ("*Lucity*"), and *Licensee* with its software programs accessing databases residing at *Licensed Site*.

RECITALS

WHEREAS, Lucity owns certain software programs that are licensed under individual product titles which are known collectively as "*Lucity™ software*";

WHEREAS, Licensee would like to use, and Lucity would like to grant Licensee the right to use, those software products, while protecting the copyrights, trade secrets, confidential information, and other valuable intellectual property they contain.

NOW, THEREFORE, Lucity and Licensee agree as follows:

1. DEFINITIONS.

"*Program(s)*" means the object code versions of the computer software products, databases, and related documentation.

"*Users*" means (i) specifically named persons in your organization permitted to access all Programs, regardless of whether the named person is actively using the Programs at any given time (i.e. Named Users), (ii) the specified maximum number of persons permitted to access a Program (i.e. Seats), or (iii) the specified number of computer hardware devices permitted to provide access to a Program (i.e. Installs).

"*Clients*" means the number of individual database setups that can be accessed by a Program.

"*Licensed Site*" means the location at which the Licensee will be permitted to store the databases used by the Program(s).

"*Effective Date*" means the date of receipt of Licensee's purchase order citing this Agreement.

2. LICENSE GRANT.

(a) License. Subject to the terms and conditions of this Agreement, Lucity grants Licensee a fee-bearing nonexclusive license to use the object code versions of the Program(s) for its internal purposes during the term of this Agreement; provided, however, that (i) the number of Users of each Program shall not exceed the permitted number of persons or devices for each such Program, (ii) the number of individual database setups that can be accessed by each Program shall not exceed the number of Clients for each such Program, and (iii) the location at which the databases accessed by the Program(s) reside shall be the Licensed Site designated herein.

(b) Copying. Licensee may make only as many copies of each Program as are necessary for Licensee to utilize the total Users for each such Program.

(c) Future Licenses. Lucity and Licensee may, by mutual agreement, include future licenses of the Program(s) under this Agreement by exchanging documents (i.e., a purchase order from Licensee and acknowledgment from Lucity) referencing this Agreement and the Program(s) to be licensed. Such future Program(s) shall be included as Program(s) under this Agreement. The parties agree that such purchase orders and acknowledgments shall have no effect on the terms and conditions of this Agreement, under which such Program(s) are licensed.

(d) Limited Grant. Except as expressly provided in this Section 2, Lucity grants and Licensee receives no right, title or interest in or to the Programs or any other deliverables provided by Lucity in connection with this Agreement and Lucity reserves and retains all such right, title, and interest.

(e) Disaster Recovery and Testing. The Licensee is permitted to install the Programs at its internal disaster recovery site and to store copies of the databases used by the Programs for the purposes of testing its disaster recovery plan. The Licensee is also permitted to install the Programs in a testing environment at its Licensed Site and to store copies of the databases used by the Programs for the purposes of testing future releases and training users.

3. LICENSE RESTRICTIONS.

(a) No Reverse Engineering. Licensee agrees not to disassemble, decompile, reverse analyze, or reverse engineer the Program(s).

(b) No Modification. Licensee agrees not to modify the Program(s) without the written consent of Lucity.

(c) No Copying. Licensee agrees not to copy the Program(s), in whole or in part, except for a reasonable number of back-up copies and copies for disaster recovery and testing purposes, and as may be necessary to utilize the total Users for a given Program.

(d) No Third Party Use. Licensee will not use the Program(s) in any manner to provide computer services to third parties.

(e) Training. Licensee will not use the Program(s) until its personnel have received sufficient training in the configuration and use of the Program(s) to generate accurate data from the operation of the Program(s).

(f) No Shared Logins. Each distinct person that will access the Programs must possess their own unique login. Logins may never be shared between one or more persons.

4. PROPRIETARY RIGHTS.

(a) Lucity's Property. The Program(s), in whole and in part and all copies thereof, are and will remain the sole and exclusive property of Lucity.

(b) Licensee's Property. Any and all information provided by Licensee, as well as any and all information generated by Licensee's use of the Programs (specifically excluding Program code), shall remain the sole and exclusive property of Licensee.

(c) Proprietary Notices. Licensee will not delete or alter any copyright, trademark, and other proprietary rights notices of Lucity and its licensors appearing on the Program(s). Licensee agrees to reproduce such notices on all copies it makes of the Program(s).

5. DELIVERY.

Lucity will deliver license codes for the Program(s), which provide for downloading of installation components by Licensee, to Licensee within a reasonable time of execution of this Agreement by both parties.

6. FEES AND TAXES.

(a) License Fee – Named Products Licensing. As consideration for the rights granted to Licensee under the Agreement set forth in Section 2 of this Agreement, Licensee shall remit payment to Lucity the License Fee within thirty (30) days of the delivery of license codes for the Program(s). Late payments will be subject to a late fee of one and one-half percent (1-1/2%) per month or the maximum rate permitted by applicable law, whichever is less. Lucity may publish revised fee schedules from time to time, and any fees for future licenses for the Program(s) included under this Agreement shall be determined by Lucity's then-current fee schedule.

(b) Annual Fee – Named Users Licensing. As consideration for the rights granted to Licensee under the Agreement set forth in Section 2 of this Agreement, Licensee shall remit payment to Lucity (i) the appropriate Annual Fee within thirty (30) days of the Effective Date, and (ii) the appropriate Annual Fee within thirty (30) days of anniversary of the Effective Date for each renewal period. Late payments will be subject to a late fee of one and one-half percent (1-1/2%) per month or the maximum rate permitted by applicable law, whichever is less. Lucity may publish revised fee schedules from time to time, and any fees for renewal periods for the Program(s) included under this Agreement shall be determined by Lucity's then-current fee schedule.

(c) Taxes. Fees due under this Agreement do not include any taxes. Licensee will be responsible for, and will promptly pay, all taxes of whatever nature (including but not limited to sales and use taxes) resulting from or otherwise associated with this Agreement or Licensee's receipt or use of the Program(s), except income taxes based on Lucity's income. In lieu of payment of such taxes, Licensee shall provide Lucity with proof of Licensee's tax exempt status.

7. WARRANTIES.

(a) Warranty. Lucity warrants that during the twelve (12) months following the delivery of the license codes for the Program(s):

(i) the Program(s) will be capable of performing in the manner described in all the documentation in all material respects; and

(ii) the installation components of the Program(s) will be free from defects in materials and workmanship.

(b) Exclusive Remedy. In the event that the Program(s) or installation components fail to conform to such warranty, as Licensee's sole and exclusive remedy for such failure Lucity will, at its option and without charge to Licensee, repair or replace the Program(s) or installation components or refund to Licensee the License Fee paid, provided that the nonconforming item is returned to Lucity within the 12-month warranty period.

(c) Disclaimer. The Warranties provided in this Section are in lieu of all other warranties, express and implied, including but not limited to any implied warranties of Merchantability, and Fitness for a Particular Purpose.

8. INDEMNITY.

(a) Duty to Indemnify and Defend.

(i) Lucity will defend or settle at Lucity's own expense, any action or other proceeding brought against Licensee to the extent that it is based on a claim that the use of the Program(s) as licensed in this Agreement infringes any U.S. copyright or that the Program(s) incorporates any misappropriated trade secrets.

(ii) Lucity will pay any and all costs, damages, and expenses (including but not limited to reasonable attorneys' fees) Licensee becomes obligated to pay in any such action or proceeding attributable to any such claim.

(iii) Lucity will have no obligation under this Section as to any action, proceeding, or claim unless: (A) Lucity is notified of it promptly; (B) Lucity has sole control of its defense and settlement; and (C) Licensee provides Lucity with reasonable assistance in its defense and settlement.

(b) Injunctions. If Licensee's use of any Program(s) under the terms of this Agreement is, in Lucity's opinion, likely to be enjoined due to the type of infringement or misappropriation specified in Section 8(a)(i), then Lucity may, at its sole option and expense, either:

- (i) procure for Licensee the right to continue using such Program(s) under the terms of this Agreement;
- (ii) replace or modify such Program(s) so that it is noninfringing and substantially equivalent in function to the enjoined Program(s); or
- (iii) if options (i) and (ii) above cannot be accomplished despite the reasonable efforts of Lucity, then Lucity may both:
 - (A) terminate Licensee's rights and Lucity's obligations under this Agreement with respect to such Program(s); and
 - (B) refund to Licensee the unamortized portion of the License Fee paid based upon a 5 year straight-line depreciation, such depreciation to be deemed to have commenced on the effective date of this Agreement.

(c) Exclusive Remedy. The foregoing are Lucity's sole and exclusive obligations, and Licensee's sole and exclusive remedies, with respect to infringement or misappropriation of intellectual property rights. Lucity makes no separate warranty of noninfringement under or in connection with this agreement.

(d) Exceptions. Lucity will have no obligations under this Section 8 with respect to infringement or misappropriation arising from: (i) modifications to the Program(s) that were not made by Lucity (whether or not authorized by Lucity); (ii) Program(s) specifications or modifications requested by Licensee; or (iii) the use of Program(s) with products (including but not limited to software) not provided by Lucity.

9. CONFIDENTIAL INFORMATION.

(a) Definition. "Confidential Information" refers to: (i) the Program(s), including but not limited to their software source code, and any related documentation or technical or design information related to the Program(s); (ii) the business or technical information of Lucity, including but not limited to any information relating to Lucity's product plans, designs, costs, product prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how; (iii) any information reasonably and appropriately designated by Lucity as "confidential" or "proprietary" or which, under the circumstances taken as a whole, would reasonably be deemed to be confidential under applicable law; and (iv) the terms and conditions and existence of this Agreement.

(b) "Confidential Information" will not include information that:

- (i) is in or enters the public domain without Licensee's breach of this Agreement;
- (ii) Licensee receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation; or
- (iii) Licensee party develops independently, which it can prove with clear and convincing written evidence.

(c) Confidentiality Obligations. Licensee agrees to take all measures reasonably required in order to maintain the confidentiality of all Confidential Information in its possession or control, which will in no event be less than the measures Licensee uses to maintain the confidentiality of its own information of equal importance.

(d) Employee Confidentiality Procedures. Licensee agrees to inform its employees of their confidentiality obligations regarding the Program(s) and other Lucity Confidential Information. Licensee further agrees to ensure that contract employees (including temporary employees) of Licensee agree to confidentiality obligations similar to those of this Agreement.

10. MAINTENANCE AND SUPPORT.

(a) Named Products Licensing. Lucity and Licensee may, by mutual agreement, include the maintenance and support services described in the software's online help for the Program(s) under this Agreement by exchanging documents (i.e., a purchase order from Licensee and acknowledgment from Lucity) referencing this Agreement and the Program(s) to be included under such services. The parties agree that such purchase orders and acknowledgments shall have no effect on the terms and conditions of this Agreement, under which such Program(s) are licensed. Maintenance and support services are provided at a rate and for a term as mutually determined by Lucity and Licensee for the scope of services to be provided by Lucity for the Program(s) to be included under such services.

(b) Named Users Licensing. The Annual Fee for the Program(s) included under this Agreement includes the maintenance and support services described in the software's online help.

11. LIMITATIONS OF LIABILITY.

Lucity's total liability under this Agreement will be limited to the License Fee. Licensee agrees that, as part of the material consideration for Lucity licensing the Programs to Licensee hereunder, in no event will Lucity be liable to Licensee under this Agreement for any Special, Incidental, or Consequential Damages, whether based on breach of contract, tort (including negligence), product liability, or otherwise, and whether or not Lucity has been advised of the possibility of such damage. Input and/or edits of data by means other than the Lucity standard Program(s) interface may result in loss of data, and/or improper operation of the Program(s). The Licensee agrees that in no event will Lucity be liable to Licensee under this Agreement for costs necessary to diagnose, recover data and/or restore proper operation of the Program(s) resulting from said actions.

12. TERM AND TERMINATION.

(a) Term - Named Products Licensing. Except as expressly provided in this Section 12, this Agreement will continue in full force and effect perpetually.

(b) Term - Named Users Licensing. Except as expressly provided in this Section 12, this Agreement will continue in full force and effect for five (5) years from the Effective Date of this Agreement, unless terminated earlier as set forth below.

(c) Termination. Either party will have the right to terminate this Agreement if other breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days of written notice. Either party may terminate the agreement at any time for any reason or no reason with 90 days written notice to the other party.

(d) Effect of Termination - Named Products Licensing. If this Agreement is terminated, Licensee will immediately return to Lucity, or Lucity's designated representative, or (at Lucity's request) destroy all copies of the Program(s) in its possession or control, and an officer of Licensee will certify in writing that it has done so.

(e) Effect of Termination - Named Users Licensing. If this Agreement is terminated, license codes for the Program(s) included under this Agreement will expire and the Program(s) included under this Agreement will be effectively disabled.

(f) Survival. The provisions of Sections 4 (Proprietary Rights), 6(b) (Taxes), 7(b) and (c) (Warranties Exclusive Remedy and Disclaimer), 8(c) and (d) (Infringement Exclusive Remedy and Exceptions), 9 (Confidential Information), and 11 (Limitations of Liability) will survive termination of this Agreement for any reason.

(f) Nonexclusive Remedy. The exercise by Lucity of any remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

13. GENERAL PROVISIONS.

(a) Audit Rights. Licensee agrees to allow Lucity, at Lucity's sole expense, upon reasonable written notice, and during Licensee's ordinary business hours, to visit the facilities in which Licensee uses the Program(s) and review Licensee's practices with regard to the Program(s).

(b) Assignment. This Agreement will bind and inure to the benefit of each party's successors and assigns, provided that either party may not assign this Agreement, in whole or in part, without written consent of both parties.

(c) Modifications. This Agreement may only be modified, or any rights under it waived, by a written document executed by both parties.

(d) Conflicting Terms. Purchase orders or similar documents relating to the Program(s) issued by Licensee will have no effect on the terms of this Agreement.

(e) Notices. All notices under this Agreement will be deemed given when delivered personally or upon receipt of by U.S. certified mail, return receipt requested, to the address shown below or as may otherwise be specified by either party to the other in accordance with this Section.

(f) Severability. If any provision of this Agreement is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this Agreement will not be affected.

(g) Waiver. No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights.

(h) Entire Agreement. This Agreement is the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter. No purchase orders, acknowledgments, invoices, or other documents exchanged in the ordinary course of business shall modify or add to the terms and conditions of this Agreement.

EXHIBIT "A"
***Lucity™* Software License Agreement**

ATTACHMENT 2

(i) Choice of Law. This Agreement will be governed by and construed in accordance with the laws of the state in which Licensee is located.

Copyright © 2016 Lucity, Inc. All rights reserved

EXHIBIT "B"
Schedule of Software

ATTACHMENT 2

For the Project Lucyty agrees to furnish licenses of the various *Lucity™* software programs listed in the table below, and grant the CLIENT such licenses to use these programs for the fees as indicated, in consideration of the mutual covenants and obligations expressed in the *Lucity™* Software License Agreement provided as Exhibit "A".

Software

LucityAM Product	Licenses	Annual Fee
Work	Site	\$ 50,000.00
Assets		
Mobile		
GIS Web		
Citizen Portal		
REST APIs		

Hosting Services for Software

LucityAM Users	Annual Fee
100 – 150	\$ 25,000.00

Notes

- The applicable licensing model is "Named Users".
- The license fee is an annual cost for both software licensing and the Constant Connection Program for technical support and software maintenance.
- A "Site" license provides for an unlimited number of users for each of the specified products.
- Resources and services provided with hosting fee include:
 - System provisioning (virtual resource creation, application installation and configuration)
 - Applying major upgrades
 - Applying service packs
 - Nightly backups
 - System restoration in the event of a failed upgrade or significant customer "event" (Note – Lucyty can only restore the entire system, not individual tables or records)
 - Availability monitoring
 - Performance monitoring
- The CLIENT will be billed annually for renewal of the Lucyty software programs licensing and hosting services. Unless otherwise noted, the fees will be at the then current rate.



Following is an outline of the provisions for LucityAM technical support and software maintenance with the Lucity Constant Connection Program.

HELP DESK

- Staffed by Lucity Support Specialists from 7:00 am – 7:00 pm CST, Monday – Friday
 - Accessible via toll-free telephone (800-492-2468) and email (support@lucity.com)
 - Response goals are immediate for issues received during regular Help Desk hours, and as soon as possible next business day for issues received after hours
 - Support Specialists remotely connect with clients, troubleshoot issues, and assist with system maintenance via Webex
- Lucity Support Center
 - Portal for 24/7 submittal of support issues, and tracking of resolution status
 - Lucity Blog posts
 - Lucity Community user forum

UPGRADES

- LucityAM version (i.e. major) releases are provided semi-annually (in February and August), with 1-2 service pack (i.e. minor) releases provided for each version
- LucityAM Mobile products (Android and iOS) are released on independent schedules, with several versions provided throughout the year
- Lucity Listens web site for clients to submit LucityAM software enhancement requests, vote on other submittals, and track development status

DOCUMENTATION

- Provided through the software itself (via LucityAM Install Media and on-line Help) and the Lucity Support Center
 - Policies
 - Data Collection, Data Recovery, FAQs on Lucity Support Center Use, Levels of Service for Lucity Support, Version Support Details
 - Downloads
 - Data Dictionary, Technical Specifications
 - Release Documents
 - Install Media, Release Notes, Checklists (Pre- and Post-upgrade), Install Manual
 - Knowledge Base
 - Guides (various Administration, General User, and Training)
 - Help Guides
 - System, Products, Tools, Security, Services
 - Videos
 - Product functions and features



EVENTS

- Lucity Annual Conference & Training (ACT; <http://act.lucity.com>)
 - Each fall at locations across the US (ACT 2015 was completed September 13-16 in Kansas City, MO; ACT 2016 is scheduled for September 11-14 in Orlando, FL)
 - Includes pre-conference training workshops, conference breakout training sessions, customer success stories, group discussions, Lucity presentations and more
- Lucity Regional User Group (RUG) meetings
 - Each spring at locations across the US (9 meetings in 2015, hosted by Lucity clients)
 - Single-day gatherings that typically include customer success stories and Lucity presentations (including in-depth reviews of most recent LucityAM releases)
- Lucity "Univercity" training workshops
 - Specialized topics

EXHIBIT "C"
Software Support and Maintenance Provisions

ATTACHMENT 2

For the various *Lucity*™ software programs listed in Exhibit "B", Lucity agrees to furnish to the Licensee resources and perform various professional services related to on-going software technical support and maintenance as outlined in this Exhibit "C".

LUCITY-HOSTED SOLUTION

Constant Connection Program Resources and Services

On-going software technical support and maintenance resources and services provided through the Lucity Constant Connection Program are summarized in the document at the end of this exhibit titled "Constant Connection Program".

Details about our technical support team levels of service can be found here - <https://lucity.zendesk.com/hc/en-us/articles/205096764>.

Details about our version support policy can be found here - <https://lucity.zendesk.com/hc/en-us/articles/202489370-Version-Support-Details>.

Database Hosting

Lucity utilizes secure internet-based database hosting with Amazon Web Services (AWS). Service Level Agreements for several of the main AWS products we utilize follow.

- EC2 (virtual machines that run Lucity software) – <https://aws.amazon.com/ec2/sla/>
- RDS (managed database service) - <https://aws.amazon.com/rds/sla/>
- S3 (file storage service) - <https://aws.amazon.com/s3/sla/>

Pertinent AWS security information is available for review at:

- AWS Security Center (<http://aws.amazon.com/security/>)
- "Overview of Security Processes" whitepaper (https://media.amazonwebservices.com/pdf/AWS_Security_Whitepaper.pdf)

Lucity has the ability to move between servers to assist with the prevention of downtime in the case of server failures.

Constant Connection Program Fees and Renewal

Named Users Licensing. Lucity Constant Connection Program fees are included in the Annual Fee (see Exhibit "A", Item 6.b) for the software programs listed in Exhibit "B".

EXHIBIT "D"
Schedule of Services

ATTACHMENT 2

The following "Work Plan" is considered the basic Scope of Services for the Project.



A.1 PROJECT PLANNING & MANAGEMENT

A.1.A INITIATION

A meeting will take place as soon as possible after issuance of the Notice to Proceed to introduce key Project Team members and initiate project activities. An outline of the expected agenda for the Initiation Meeting follows.

- Project Team
 - Review roles, responsibilities, and personnel assignments
 - Identify primary contacts and exchange contact information
- Software
 - Verify licensing details (products and users)
- Project Plan
 - Set dates for System Provisioning (i.e. virtual resource creation, LucityAM installation and configuration) and Kickoff tasks
- Action Items
 - Deliver "Welcome to the Lucity Family" information packet

Participants in the Initiation Meeting should include the following Project Team members:

- | | |
|------------------------|------------------------|
| • Lucity | • City |
| – Project Manager | – Project Manager |
| – Relationship Manager | – System Administrator |
| – IT Manager | – Project Sponsor |

A.1.B INSTALLATION

Software Install

We will deploy the EAM environment in the appropriate Amazon Web Services (AWS) region, and generate the City's master configuration profile. This configuration includes the various backend account information the EAM uses, accounts for the City to remote to the "Desktop Utilities Machine", and the LucityAM version to be used. This information is stored in a secure, client-specific storage "bucket" that only the LucityAM automated provisioning system can access.

We will execute an AWS Cloud-formation script that takes all configuration information and automates the creation of the City's entire environment (network, firewall rules, hosts, database, load balancers, etc.) to best optimize the hosting environment for the EAM. Once the environment is up, we will perform connectivity tests to ensure the environment is functioning properly.

Participants in the Installation activities should include the following Project Team members:

- | | |
|--------------|------------|
| • Lucity | • City |
| – IT Manager | – SME – IT |

A.1.C KICKOFF

An on-site trip will be made to transfer knowledge between Project Team members, gather information, and set the stage for subsequent Implementation tasks. An outline of the expected Kickoff Trip activities follows.

- **LucityAM Software Demonstration**
 - Present functional overview – typical user workflows for inspections, work orders, etc. and “out of the box” capabilities including reporting (standard templates and ad hoc), GIS integration, and data interfaces
 - Review default “Work Flow Setup” data, UI templates (dashboards and data forms/views), and default user groups/roles
- **Functional Groups**
 - Identify each Group’s place (Department, Division, etc.) within the organizational structure of the City
 - **Phase 1**
 - Water Distribution
 - Streets (including Signs and Electrical)
 - Stormwater
 - Facilities
 - Parks/Trees & Recreation
 - **Phase 2**
 - Water Treatment Plants and Water Facility Maintenance
 - Confirm with each Group Administrator those persons assigned to serve as Group SMEs for Configuration task
 - Examine current basic business processes of each Group with associated data, reporting, and integration requirements
 - Review with each Group their Work Flow Setup spreadsheet with default data – spreadsheet to be completed by the City
- **GIS and IT**
 - Discuss completed Installation task (Lucity Cloud) and related activities, and identify needed actions prior to initiation of Configuration – GIS task
- **Access**
 - Verify Implementation Lead has remote access into installed LucityAM
- **Project Plan**
 - Confirm Project Team and Functional Groups
 - Discuss what is expected of Project Team members throughout project
 - Review schedule, and discuss how LucityAM will “go-live”
 - Identify any needed revisions to Project Plan based on knowledge gained from Kickoff Trip activities
 - Set date for Configuration – Discovery Workshop task
- **Action Items**
 - Complete Work Flow Setup spreadsheets – these spreadsheets are used to record data required to define Categories, Problems, Causes, Tasks, and Resources (Employees, Crews, Equipment, Materials, Fluids, Contractors) for Functional Groups with LucityAM Work – Work Administrator

Participants in the Kickoff Trip activities should include the following Project Team members:

- Lucy
 - Project Manager
 - Relationship Manager
 - Project Coordinator
- City
 - Project Manager
 - System Administrator
 - Functional Group Administrators
 - SMEs – GIS and IT
 - Project Sponsor

A.1.D PROGRESS

An outline of the project management activities expected throughout the project follows.

- Meetings & Workshops
 - Convene bi-weekly Project Progress meetings to review Project Plan completion status
 - Provide agendas, "Follow-up Memorandum", and "Trip Report" documents
- Project Plan
 - Provide updates as needed based on approved revisions to scope and/or schedule
- Invoicing
 - Prepare billing summaries, and submit invoices to the City for approval and payment processing

Participants in the project management activities should include the following Project Team members:

- Lucy
 - Project Manager
 - Project Administrator
- City
 - Project Manager

A.2 CONFIGURATION

A.2.A DISCOVERY

Discovery Workshops will be completed – these workshops will consist of a series of on-site sessions that focus on refining the default LucyAM configuration to support the specific operational needs of the distinct Functional Groups. An outline of the expected Discovery Workshop activities follows.

- Functional Groups
 - Examine details (what, who, how, and why) of business processes of each Group, and identify potential revisions to improve results and best leverage capabilities of LucyAM
 - Review with each Group their completed Work Flow Setup spreadsheet, and identify any additional data revisions for initial LucyAM configuration
 - Identify revisions to dashboards, data forms/views, and default user groups/roles for each Group
 - Discuss available data from sources other than GIS to be incorporated (i.e. "loaded") into LucyAM – data to be gathered by the City
 - Identify any supplemental reporting and/or integration needs to be addressed with LucyAM implementation
- GIS
 - Discuss use of LucyAM Administration tool – Map Setup to define maps, and assign to user groups/roles
- IT
 - Download and install LucyAM Mobile and configure for use with Lucy Mobile Server

- Project Plan
 - Identify any needed revisions to Project Plan based on knowledge gained from Discovery activities
 - Set date for Configuration – Functional Group Meetings task
- Action Items
 - Apply initial configuration to installed LucyAM based on revised Work Flow Setup data and revised user dashboards, data forms/views, maps, and groups/roles
 - Deliver data from sources other than GIS to Implementation Lead for evaluation
 - Evaluate options for supplemental reporting and/or integration, and identify next steps
 - Install and test Mobile Server, and download and install LucyAM Mobile

Participants in the Configuration – Discovery Workshop activities should include:

- | | |
|--|---|
| <ul style="list-style-type: none"> • Lucy <ul style="list-style-type: none"> – Project Manager – Implementation Lead | <ul style="list-style-type: none"> • City <ul style="list-style-type: none"> – Project Manager – System Administrator – Functional Group Administrators – SMEs – GIS and IT |
|--|---|

A.2.B FUNCTIONAL GROUPS

Finalizing the LucyAM configuration will be an iterative process. The Implementation Lead will first make an on-site trip to meet with each Functional Group to review the initial configuration, and identify needed refinements. With subsequent refinements, additional meetings will be convened to review the latest LucyAM configuration – which will include GIS integration, loaded data and custom reporting as these become available. The process will continue until the LucyAM operational needs of the Groups are met.

Participants in the Configuration – Functional Group Meetings task should include:

- | | |
|--|--|
| <ul style="list-style-type: none"> • Lucy <ul style="list-style-type: none"> – Implementation Lead – Implementation Specialist | <ul style="list-style-type: none"> • City <ul style="list-style-type: none"> – System Administrator – Functional Group Administrators – SMEs – Groups |
|--|--|

Custom Reports

Although we expect the LucyAM reporting capabilities (standard templates and ad hoc) will meet most of the City's needs, some supplemental custom reports will likely be desired/required. Lucy will develop up to (10) ten custom Crystal Reports as part of the configuration process. Additional custom reports may be requested through negotiated additional services.

A.2.C GIS

The Implementation Lead will work with the System Administrator and GIS SME to configure and test the bi-directional LucyAM/GIS integration. Configuration of this integration involves the following activities:

- *GIS to LucyAM Integration*
 - Use GIS Config in Administration tool to link the organization's ArcGIS Online account to LucyAM

- Use GIS Config in Administration tool to link ArcGIS Online feature services and applicable feature layers to LucyAM
 - Use GIS Config in Administration tool to set up “GIS Task” that will do the initial loading of attributes from linked ArcGIS Online feature layers into LucyAM database tables
- *LucyAM to GIS Integration*
 - Use GIS Config in Administration tool to confirm applicable LucyAM modules have been configured to an editable ArcGIS Online feature service.
- *Lucy GIS Web to LucyAM Integration* - also applicable to integration of Collector for ArcGIS (and any other third-party mapping application) to LucyAM
 - Use GIS Config in Administration tool to set up “GIS Task” to check ArcGIS Online feature services at scheduled time interval, and push any updates to LucyAM
- *Lucy Spatial Generator Configuration*
 - Use Administration tool to enable the Lucy Spatial Indexer process, and set maximum number of days to process spatial history of information related to work order and service request locations (addresses, coordinates) and related assets
 - Use Administration tool to set up URL for Geocoding Service for processing locations
 - Use GIS Config in Administration tool to confirm applicable LucyAM modules have been configured to an ArcGIS Online feature service for processing assets
- *GIS Map Setup*
 - Use Administration tool to create maps (by layering map services) for LucyAM GIS Web and LucyAM Mobile
 - Use Map Setup In Administration tool to assign maps to user groups/roles
- *Show in Map Tool Configuration*
 - Use Show in Map Configuration tool in ArcCatalog to define settings for launching maps from LucyAM (Desktop, Web, and Mobile UIs)

GIS data available at the time of the Configuration – GIS task efforts will be loaded into LucyAM, and necessary training will be provided to the City to load additional GIS data that may become available later.

A.3 DATA CONVERSION/MIGRATION

GIS and Work Flow Setup

As described for the Configuration task:

- Data from the City’s GIS will be loaded into LucyAM as part of the GIS to LucyAM Integration
- Data from the City’s completed/refined Work Flow Setup data will be loaded into LucyAM as part of the LucyAM configuration

Methodology

The LucyAM Import & Update tool is used for loading data into LucyAM from ODBC, OLE, ASCII-delimited text, and XML sources. Data from sources other than GIS and Work Flow Setup gathered by the City and delivered to the Implementation Lead for loading should be in compatible formats.

Other Sources

Lucity recommends the City take advantage of valid and appropriate legacy data to the extent possible, and complete desired data conversion and subsequent migration before users are trained.

We understand the data sources to be reviewed and considered for migration includes the following:

- Cartegraph (Water Distribution)
 - Work Orders (300)
 - Tasks (6,000)
 - Resources (Equipment, Labor, Materials)
 - Libraries/Domains
- MP2 (Water Treatment Plant and Water Facility Management)
 - 3,000 equipment records
 - 6,000 inventory records
 - 30,000 work order records (expected to be greatly reduced through clean up by City staff prior to conversion).
- AS400
 - Streets (about 500 open paving Work Orders)
 - Inventory (6,000 records)
- CRM (Customer Request Module)
 - Parks/Trees
 - Streets (including Signs and Electrical)

Lucity will evaluate the existing legacy systems with City staff in order to make recommendations and determine what data will be included in the data migration effort.

Lucity will be responsible for converting the agreed upon legacy data using the Lucity Import & Update tool and the City will be responsible for providing all source data to Lucity for conversion in a clean format, ready for migration.

The Implementation Lead will provide the System Administrator training in use of the Import & Update tool. With this training, the City may determine that loading of data from other sources is an effort that can be completed by the System Administrator.

A.4 INTEGRATION

Data Interfaces

The Import & Update tool is also used to set up interfaces with external data collection systems (e.g. CCTV, SCADA) to routinely incorporate new data (e.g. inspections, readings) into LucityAM. The Implementation Lead will provide the System Administrator training in use of the Import & Update user interface to establish data mapping with the appropriate systems, name and save defined "imports", and complete the loading processes to verify proper operation of the interfaces.

Methodology

We provide LucyAM REST APIs for development of custom applications that integrate with LucyAM. This is the required approach for custom development for integration with any of the City's existing systems with Lucy Cloud.

We will determine requirements for any necessary supplemental integration using the LucyAM REST APIs, and provide expected effort and associated costs for the work to be completed through negotiated additional services. Custom development will likely require collaboration with the City, other software vendors and/or third-party developers.

A.5 TESTING

The Implementation Lead will work with the System Administrator to develop an Acceptance Test Plan to verify the configured LucyAM meets the stated functional requirements. This Plan will include user test scripts covering the various LucyAM functions.

Our assumption is the Implementation Lead will be responsible for functional and integration testing, and the System Administrator will perform acceptance testing. During the testing phase, we will:

- Collaborate with the System Administrator to maintain a log of issues, configuration problems, and software malfunctions identified during testing
- Resolve all such issues, problems and malfunctions to the City's satisfaction
- Prove through test procedures installed and configured LucyAM is functionally viable with all loaded data, reporting, and integration in place
- Demonstrate acceptance criteria items have been addressed, and certify LucyAM is ready for go-live transition from testing/development environment to production environment

A.6 TRAINING

We will provide a Training Plan detailing session descriptions and durations, methods and materials for each Functional Group, and the overall schedule. An outline of the expected on-site Training activities follows.

A.6.A ADMINISTRATION

Installation and Maintenance

- Review available software documentation
- Review technical support and software maintenance services and resources provided through Lucy Constant Connection Program

Security

- Complete procedures as outlined in Lucy Security for adding new users, and defining user group and individual permissions for LucyAM access and use

Configuration

- Use tools, parameters and settings available with LucyAM products to refine EAM system configuration

Documents

- Complete procedures for establishing links between LucyAM records and externally managed electronic documents
- Add custom content to on-line Help via hyperlinks to externally managed information

Integration

- Use LucyAM products for completing processes for configuring and refining the GIS integration

Reporting

- Add custom reports

Data Import/Export

- Import data using Import & Update tool, and export data using LucyAM reporting capabilities

The goal of the Training – Administration task is for the System Administrator to be reasonably self-sufficient in refining, expanding and sustaining the implemented LucyAM.

A.6.B PRODUCTION

Following is a limited list of items that will be addressed during Production Training sessions.

General

- *Dashboard*: Using assigned "Home" pages with personalized real-time LucyAM content
- *Filter*: Creating queries to produce specific record sets
- *Locate*: Quickly finding a specific record within the current "Filter"
- *Show in Map*: Opening assigned GIS maps and zooming to assets and locations (customer addresses, work sites, etc.)
- *Document Control*: Linking electronic documents (images, videos, as-built drawings, O&M manuals, Web site links, etc.) to records
- *Subset Manager*: Loading filtered data from one application into other applications
- *Browse*: Creating and exporting ad-hoc reports
- *Reports*: Using assigned report templates
- *Help*: Using the on-line, context-sensitive Help

Work Management

- Receiving/creating, routing and completing service requests, and work orders in response to service requests
- Establishing work order templates for recurring activities and PM schedules
- Creating, assigning, routing and completing work orders from templates and PM schedules
- Performing in-house and external billing of work order costs
- Viewing linked electronic documents
- Using GIS to locate customers and work locations
- Producing operational, management and regulatory reports

Asset Management

- Collecting and maintaining asset attributes
- Establishing appropriate relationships between assets
- Assessing the condition, and tracking the operating status, of assets
- Viewing linked electronic documents
- Using GIS to locate assets and display condition assessment data
- Validating and transferring data from external systems (i.e. SCADA and CCTV)
- Producing operational, management and regulatory reports

The goal of the Training – Production task is for users being enabled with the knowledge, skills and confidence to follow proper business processes and successfully complete their specific operational workflows with LucyAM.

Participants in the Production Training should include:

- Lucy
 - Implementation Lead
 - Implementation Specialist
- City
 - Functional Group Administrators
 - Group Users

The Production Training will be completed over multiple trips – Preliminary Training, Training & Launch, and Follow-up Training. Production Training sessions are generally 4 hours in duration, and should be limited to a maximum of ten (10) users. Remote time for Production Training may include web conferencing sessions for specialized topics (e.g. GIS), and recorded webinars for broader topics of interest to a large number of users.

A.7 LEVEL OF EFFORT AND COSTS

The level of effort and related costs for this scope of services are provided in Table 1 below:

Table 1

Item	Effort			Cost		
	On-site		Remote	Labor	Expenses	Total
	Trips	Hours	Hours			
PROJECT MANAGEMENT	1	16	164	\$ 23,500.00	\$ 1,150.00	\$ 24,650.00
Initiation			2			
Installation - Lucy Cloud			6			
Project Kickoff	1	16	4			
Progress			152			
CONFIGURATION, DATA LOADING & INTEGRATION	9	144	296	\$ 64,000.00	\$ 10,350.00	\$ 74,350.00
Discovery	2	32	8			
Functional Groups	7	112	76			
GIS			68			
Data Conversion/Migration (Cartegraph, MP2, AS400 and CRM)			120			
Reporting (10 custom Crystal Reports)			24			
TESTING			48	\$ 6,000.00	\$ -	\$ 6,000.00
TRAINING	8	128	80	\$ 34,000.00	\$ 9,200.00	\$ 43,200.00
Administration	1	16	4			
Production	7	112	76			
Subtotal	18	288	588	\$ 127,500.00	\$ 20,700.00	\$ 148,200.00
<i>Labor rates are \$187.50 per onsite hour and \$125.00 per remote hour.</i>						
<i>Travel expenses are estimated at \$550.00 per trip and \$300.00 per day and will be billed at actual.</i>						

EXHIBIT "E"
Schedule of Costs and Invoicing

The following table summarizes costs and invoicing for the software licenses and services to be provided by Lucy to the CLIENT for the Project.

Item	Total	Invoicing
Work Plan Services Costs (reference Exhibit "D")	\$148,200.00	Invoiced monthly based on project progress (i.e. % completion of each task)
TOTAL – WORK PLAN SERVICES COSTS	\$148,200.00	
Software Fees (reference Exhibit "B")	\$50,000.00	One hundred percent (100%) invoiced upon system provisioning and setup
Hosting Services Fees (reference Exhibit "B")	\$25,000.00	One hundred percent (100%) invoiced upon system provisioning and setup
Hosting Services Fees for Optional Testing Environment	\$12,000.00	One hundred percent (100%) invoiced upon system provisioning and setup. Annual fee for up to ten (10) users.
TOTAL – SOFTWARE FEES AND HOSTING SERVICES FEES (Expected 8/1/2016 – 7/31/2017)	\$87,000.00	
Software Fees – Renewal	\$50,000.00	Annual fee invoiced sixty (60) days prior to previous year's expiration date
Hosting Services Fees – Renewal	\$25,000.00	Annual fee invoiced sixty (60) days prior to previous year's expiration date
Hosting Services Fees - Renewal for Optional Testing Environment	\$12,000.00	Annual fee invoiced sixty (60) days prior to previous year's expiration date. Annual fee for up to ten (10) users.
TOTAL – SOFTWARE FEES AND HOSTING SERVICES FEES (Expected 8/1/2017 – 7/31/2018)	\$87,000.00	
TOTAL – PROJECT COSTS	\$322,200.00	

The cost basis for any Additional Services with prior authorization from the City will be:

- *Labor*
 - Rates (per person) are \$187.50 for on-site hours, and \$125.00 for remote hours
 - Travel time is not chargeable
- *Expenses*
 - Estimates (per person) are \$550.00 per on-site trip, and \$300.00 per on-site day
 - Expenses are charged at actual cost, without markup