

**THIRD AMENDMENT
TO
INFORMATION TECHNOLOGY SERVICES AGREEMENT**

THIS THIRD AMENDMENT TO INFORMATION TECHNOLOGY SERVICES AGREEMENT (the "Third Amendment") is made and entered into as of _____, 2022 ("Effective Date") by and between the CITY OF ORANGE, a municipal corporation ("City"), and INTRATEK COMPUTER, INC., a California corporation ("Contractor"), with reference to the following.

A. City and Contractor entered into an Information Technology Services Agreement (Agreement No. 6828) dated August 13, 2019, which is incorporated herein by this reference (the "Original Agreement"); and

B. City and Contractor amended the Original Agreement to revise the scope of services and increase the compensation by a First Amendment to Information Technology Services Agreement (Agreement No. 6828.1) dated October 7, 2021, which is incorporated herein by this reference (the "First Amendment"); and

C. City and Contractor amended the Original Agreement to revise the scope of services and increase the compensation by a Second Amendment to Information Technology Services Agreement (Agreement No. 6828.2) dated December 14, 2021, which is incorporated herein by this reference (the "Second Amendment"); and

D. City and the Contractor desire to further amend the Original Agreement to modify, amend and supplement certain portions of the Original Agreement to extend the term and set the compensation, and define a further extended term.

NOW, THEREFORE, the parties hereby agree as follows:

Section 1. Defined Terms. Except as otherwise defined herein, all capitalized terms used herein shall have the meanings set forth for such terms in the Original Contract.

Section 2. Cross-References. City and Contractor agree that all references in this Third Amendment are deemed and construed to refer to the Original Contract, as implemented by this Third Amendment.

Section 3. Extended Terms. Pursuant to Section 1.1 of the Additional Terms and Conditions in Exhibit "A" of the Original Agreement:

a. City elects to extend the term of this Agreement to reflect the First Extended Term, commencing on July 1, 2022, and terminating on June 30, 2023 ("First Extended Term").

b. No later than thirty (30) days prior to the expiration of the First Extended Term, City may elect to further extend the term of this Agreement from July 1, 2023, and terminating on June 30, 2024 ("Second Extended Term") at the compensation set forth in Section 4.b, below.

(1) The City Manager is hereby authorized on behalf of City to give written notice to Contractor of City's intention to exercise the Second Extended Term; provided, however, that City's notice of its intention to extend the term of this Agreement for the Extension shall be expressly conditioned upon and subject to the approval by the City Council, in its sole and absolute discretion, of an amount sufficient to pay the compensation set forth herein for the Extension as part of its annual budget approval process prior to the beginning of the Extension. While the parties acknowledge that City is required to give its notice of intention to extend the term of this Agreement not later than thirty (30) days prior to the Expiration Date of First Extended Term, it is possible that the City Council's approval of its annual budget and appropriation of funds for the Second Extended Term may occur thereafter. Accordingly, if the City Council fails to approve and appropriate funds sufficient to pay the amount of compensation set forth herein for the Extension, this Agreement shall terminate and be of no further force and effect as of the expiration of the Second Extended Term. Notwithstanding anything in this provision to the contrary, in the event City gives Contractor written notice exercising the Extension and City receives notice that appropriation of funds for the Extension are not available after Contractor has performed services under the Extension, City agrees that Contractor will be equitably compensated for all services performed under any portion of the Extension through the date of termination of the Agreement.

(2) The Second Extended Term shall be memorialized in the form of an amendment to this Agreement. The City Manager is hereby authorized to approve and execute amendments to this Agreement reflecting the exercise of the Extension and the amount of compensation (including the amount of funds to be made available for additional work or services) payable to Contractor for the Extension.

c. Except as specifically set forth herein, the terms and conditions of each Extension will be the same as the Initial Agreement.

Section 4. Compensation.

a. The total not-to-exceed compensation for the services to be rendered in the First Extended Term shall not exceed THREE HUNDRED NINE THOUSAND SIX HUNDRED THIRTEEN DOLLARS and 06/100 (\$309,613.06) without the prior written authorization of City.

b. If City elects to exercise the Second Extended Term, the total not to exceed compensation for the services to be rendered in the Second Extended Term shall not exceed THREE HUNDRED EIGHTEEN THOUSAND NINE HUNDRED ONE DOLLARS and 45/100 (\$318,901.45) without the prior written authorization of City.

Section 5. Integration. This Third Amendment amends, as set forth herein, the Original Agreement and, except as specifically amended hereby, the Original Agreement shall remain in full force and effect. To the extent that there is any conflict or inconsistency between the terms and provisions of this Third Amendment and the terms and provisions of the Original Agreement, the

terms and provisions of this Third Amendment shall control and govern the rights and obligations of the parties.

[Remainder of page intentionally left blank; signatures on next page]

IN WITNESS of this Contract, the parties enter into this Contract on the year and day first above written.

“CONTRACTOR”

INTRATEK COMPUTER, INC., a California corporation

*By: _____

Printed Name: _____

Title: _____

*By: _____

Printed Name: _____

Title: _____

“CITY”

CITY OF ORANGE, a municipal corporation

By: _____

Mark A. Murphy, Mayor

ATTEST:

Pamela Coleman, City Clerk

APPROVED AS TO FORM:

Mary E. Binning
Senior Assistant City Attorney

***NOTE:** *If CONTRACTOR is a corporation, the City requires the following signature(s):*
-- *(1) the Chairman of the Board, the President or a Vice-President, AND (2) the Secretary, the Chief Financial Officer, the Treasurer, an Assistant Secretary or an Assistant Treasurer. If only one corporate officer exists or one corporate officer holds more than one corporate office, please so indicate. OR*
-- *The corporate officer named in a corporate resolution as authorized to enter into this Agreement. A copy of the corporate resolution, certified by the Secretary close in time to the execution of the Agreement, must be provided to the City.*

EXHIBIT "A"

**SCOPE OF SERVICES, ADDITIONAL TERMS AND CONDITIONS, AND INTRATEK
PRICE PROPOSAL**

[Beneath this sheet.]

SCOPE OF WORK

BACKGROUND

The City:

The City of Orange, with a population of 138,640 is situated in Central Orange County, approximately 32 miles southeast of Los Angeles. The City's land area is 27 square miles. The City's planning area is 38 square miles, with a "Sphere of Influence" area of 55 square miles. Included in the City's Sphere of Influence is 18,500 acres of undeveloped land owned by The Irvine Company.

Under a council-manager form of government, a mayor is elected every two years and four council members are elected to four-year terms alternating on a two-year basis. The City Manager, who is the administrative official of the City, is appointed by the City Council.

The City provides a full range of services for its citizens. These services include:

- Emergency transportation
- Fire
- General administration
- Library
- Paramedic
- Planning and development
- Police
- Recreation and park
- Street improvements and lighting
- Water utility
- Refuse collection and sanitation

City Facility Locations:

FACILITY	ADDRESS
City Hall	300 E. Chapman Avenue
Community Services and Economic Development	230 E. Chapman Avenue
El Camino Park	400 N. Main Street
Fire Headquarters	176 S. Grand Street
Fire Station # 2	2900 E. Collins Avenue
Fire Station # 3	1910 N. Shaffer Street
Fire Station # 4	210 S. Esplanade
Fire Station # 5	1345 W. Maple Street
Fire Station # 6	345 City Drive South
Fire Station # 7	7401 Fort Road
Fire Station # 8	5725 E. Carver Lane
Grijalva Park @ Santiago Creek	368 N. Prospect Street

FACILITY	ADDRESS
Handy Park	2143 E. Oakmont Avenue
Hart Park	701 S. Glassell Street
Killefer Park	615 N. Lemon Street
Library - Main	407 E. Chapman Avenue
Library - El Modena Branch	380 S. Hewes Street
Library - Taft Branch	740 E. Taft Avenue
Olive Park	2841 N. Glassell Street
Orange Senior Center	170 S. Olive Street
Police Headquarters	1107 N. Batavia Street
Police Sub-Station	8525 E. Fort Road
Public Works Corporation Yard	637 W. Struck Ave.
Shaffer Park	1930 N. Shaffer Street
The Block at Orange Police Substation	20 City Blvd.
Water Plant	189 S. Water Street
Yorba Park	190 S. Yorba Street

Help Desk (As of July 2019)

- IT Service Desk hours are Monday - Thursday from 7:30 am to 5:30 pm and every other Friday from 7:30 am to 5:30 pm.
- Averaging 280 IT Service Desk tickets per month through the central IT Help Desk and 70 per month at the Police Department.
- Approximately 850 users within the City.
- Desktops have been standardized on Windows 10 and are a mix of both HP Elitedesk and Dell Optiplex.
- The City uses Quest KACE Systems Management Appliance (SMA) for tracking tickets, collecting hardware and software inventory, asset management, and software deployment. (Vendor is expected to use this product).
- The City uses SolarWinds Dameware for remote support of PCs. (Vendor is expected to use this product).

Infrastructure:

- 128 servers (most running under VMware 6.5)
- 292 printers
- 770 desktops/laptops/MDC (Windows 10, Office Professional 2016 – will be migrating to Office 365 in late 2019)
- Environmentally controlled and secure server room that houses the vast majority of the City's servers
- Satellite data center located in the Police Department

Core Business Applications:

- Enterprise financial management software suite (Tyler EDEN)
- Utility billing (Northstar CIS)
- City Internet services (Civic Plus)
- Recreation management software (Civic Rec)
- Building permits & project tracking (Central Square - TrakiT)
- Maintenance management software (MaintStar)
- Business License system (Progressive Solutions)
- Document management (Laserfiche)
- CAD/RMS for Police (Central Square - Inform)
- RMS for Fire (Firehouse)
- Library Catalog System (Sirsi)
- Streaming City meetings (Granicus)
- Geographic Information System (ESRI-ArcGIS)
- Applicant Tracking (NEOGov)

Telephone System:

- ShoreTel VoIP Phone System (Version 14.2)
- 740 Sets IP485G, IP480G
- 5 Servers, 41 Switches
- ShoreTel Communicator Client on Desktop PCs

IT HELP DESK SERVICES

Contractor shall perform the services based on the guidelines set forth in this Scope of Work for the City of Orange. Contractor shall perform all services in a professional and workmanlike manner, in accordance with industry standards by persons qualified by training and experience to perform such services.

IT Help Desk Services and Tier 1 support are the activities required to coordinate and respond to incidents and service requests made by City end-users and technical staff. The Help Desk shall act as the single-point-of-contact for resolution and escalation of all incidents and service requests related to all City technical requests.

Contractor's on-site staff will work in a cohesive, hybrid environment to assist the City in meeting service level agreement (SLA) requirements detailed below. Contractor staff will provide primary Tier 1 support. City staff may perform identical duties as some of Contractor's staff to provide supplemental support, when needed.

Per the City's request, the Contractor shall provide three (3) on-site personnel to augment City IT technical support staff and perform the activities and functions delineated in the sections below. Contractor's on-site personnel are only responsible for documentation and updates associated with their activities.

During contract performance, Contractor and City will meet on a regular basis to discuss performance against SLA targets. If an alternate LOE is needed to meet SLAs, the parties will work together to adjust the LOE and price accordingly.

Help Desk:

- Provide Help Desk services Monday through Thursday from 7:30am to 5:30pm and every other Friday from 7:30am to 5:30pm.
- Staff Help Desk personnel resource(s), during business hours, within the Police Department.
- Facilitate the receipt and processing of valid service requests.
- Diagnose the problem, and when possible, implement corrective actions to resolve the problem. If resolution is not possible, re-assign to appropriate City IT staff.
- Assist with establishing procedures for problem management to identify and resolve chronic problems (root cause analysis).
- Take control of all workstations remotely upon request to speed service response (City uses SolarWinds Dameware).
- Accept and respond to trouble requests that relate to City issued computer/IT devices.
- Perform password resets for active directory and key business applications.
- Update help desk support activities in the central database that contains pertinent information on users such as name, extension location, department, and equipment tag number (City uses Quest KACE Systems Management Appliance).
- Document desktop system configuration, network configuration, and inventory of software to be supported.
- Log, track, resolve, dispatch, and reroute calls through to resolution approved procedures/ticketing system.
- Apply software updates and patches as required (City uses Quest KACE Systems Management Appliance).
- Update and maintain the City-owned ticket management system (City uses Quest KACE Systems Management Appliance).
- Properly document detailed notes on the status and resolution of issues.
- Initiate the change process to apply a resolution to a problem if required.
- Provide a satisfaction survey to customers when each call for service is closed.
- Collect and report on performance data per SLA requirements.

On-Site Systems Support:

- Perform on-site systems support for all city hardware devices.
- Coordinate required service delivery with City departments so that there is minimal disruption of ongoing production operations at City location.
- Be primary point of contact for end-to-end management of issues, including coordination with third party vendors.
- Diagnose and resolve software problems and conflicts.
- Coordinate the resolution of printer problems with City contracted printer maintenance vendor.
- Coordinate requests for audio/visual equipment installation within City departments and conference rooms.
- Resolve network connectivity issues consisting of log-in, file access, and printing.

- After resolution of problem, test for full functionality, connectivity, and access to servers and printers.
- Backup and restore user data on desktops and laptops before repairs, to the greatest extent possible.
- Conduct ongoing analysis of equipment maintenance and call history to track service trends.
- Collect and report on performance data per SLA requirements.

Install, Move, Add, Change (IMAC):

- Coordinate with the user the date and time of arrival for IMAC services.
- Unpack, assemble, and install; test system connectivity, functionality, and operability, and provide high-level orientation to users.
- Move and reinstall user data files in accordance with IMAC policy.
- De-install old equipment if designated by City.
- Update the asset management system.
- Inform users of service activities performed.
- Disconnect a system at one location, reconnect it at another location, and test connectivity and proper operation, or move disconnected system to a specified storage area.
- Re-configure moved system, for example, IP address, subnet mask, proxy settings, WINS primary and secondary server address, server name/address, and default gateway address, map standard drive configurations, load network printer drivers, and map network printers.
- Test hardware and software configuration, connections to standard mapped drives, and print a test page to a local network printer, if applicable.
- At completion of IMAC, provide brief overview/training on new or modified hardware and software.
- Conduct asset validation, consisting of user profile updates, device asset tag check, and model and serial number check.
- Maintain process for disposal of equipment and/or return of leased equipment.
- Coordinate with other IT technical support groups (Applications, Server, Network) for IMAC activities.
- Confirm that user data is backed up before proceeding with IMAC, to the greatest extent possible.
- Ensure device is fully operation for user.
- Collect and report on performance data per SLA requirements.

Asset Management Services:

- Update and maintain the City's asset tracking system (City uses Quest KACE Systems Management Appliance).
- Maintain the inventory database with descriptions, characteristics, logistics, and warranty information for all City-owned hardware.
- Track and maintain the inventory of all hardware and software licensing including any additions or deletions that occur. Tag hardware assets.
- Assist the City with regular audits and reconciliations to maintain accuracy of the central asset repository.
- Maintain management responsibility for loaner units and spare equipment used as a temporary replacement while corrective maintenance service is performed.
- Install or replace desktops and laptops according to the City's approved replacement/refresh

schedule.

- Process equipment shipping and delivery requirements, relocation and disposal of retired equipment, and or return of leased equipment.
- Retain a copy of all equipment and maintenance contracts and equipment orders (invoicing, payment statuses and requisitions) when assisting with the procurement of hardware and software assets as required by City.
- Assist City with bids for hardware procurement to request a cost quote from the suppliers that best meet the defined requirements.
- Provide quarterly inventory reports to the City.
- Collect and report on performance data per SLA requirements.

Telephone Network, VoIP Services:

- Respond to alerts by conducting initial trouble shooting and working with Third Party vendors such as Packet Fusion.
- Perform handset Install/Move/Add/Change (IMAC) to support day-to-day operations.
- Perform Voicemail password resets.

Service Level Requirements:

Contractor shall perform services based on the guidelines set forth in the following Service Level Agreements (SLAs). Each SLA identifies key performance measures that shall be used to evaluate Contractor's delivery of services during business hours. SLA credits will not apply during the first 90 days of contract performance.

HELP DESK	
Objective	By utilizing knowledge databases and best practices in the areas of reporting, logging, tracking, resolving and reporting of IT problems and Work Requests, the Help Desk will continually incorporate lessons learned, best practices, and technical solutions to improve service delivery and technical performance.
Priorities	<p>Critical: A problem that affects the entire City or entire department. Response Time: Within 1 business hour Completion Time: Within 4 business hours</p> <p>High: A problem with no known workaround that affects a single user. Response Time: Within 2 business hours Completion Time: Within 1 business day</p> <p>Medium: A general service request or problem with a workaround solution. Response Time: Within 8 business hours Completion Time: Within 2 business days</p> <p>Low: A service request that does not require immediate attention or involves planning/coordination. Response Time: Within 3 business days Completion Time: Within 5 business days</p>
Call Waiting	The length of time for a caller to reach a live human voice.
Hours of Availability	7:30 am to 5:30 pm, Monday - Thursday and every other Friday from 7:30 am to 5:30 pm.
Measurement Period	Monthly

Target	90% within 90 seconds
SLA Credit	\$0
Time to Resolve	Total elapsed time from opening a Help Desk call to completion (resolution). Applies only to Tier 1 calls.
Hours of Availability	7:30 am to 5:30 pm, Monday - Thursday and every other Friday from 7:30 am to 5:30 pm.
Measurement Period	Monthly
Target	Critical - 95% completed within 4 business hours High - 90% completed within 1 business day Medium - 85% completed within 2 business days. Low - 85% completed within 5 business days.
SLA Credit	\$500
Password Resets	Length of time between password reset request and completion.
Hours of Availability	7:30 am to 5:30 pm, Monday - Thursday and every other Friday from 7:30 am to 5:30 pm.
Measurement Period	Monthly
Target	95% within 30 minutes
SLA Credit	\$500
Satisfaction Survey	Measure the level of customer satisfaction with Help Desk services.
Hours of Availability	7:30 am to 5:30 pm, Monday - Thursday and every other Friday from 7:30 to 5:30.
Measurement Period	Survey provided for every closed call. Measured monthly.
Target	Will only be measured when survey response(s) exceed 30 responses of total closed calls for tier 1 tickets. Survey will rate satisfaction level from 1 (Very Unsatisfied) to 5 (Very Satisfied). Total of all survey scores/number of surveys counted. Average score must be greater than 4.
SLA Credit	\$500

ASSET MANAGEMENT	
Objective	Monitor, track, and update the City's technology asset inventory, including software licenses, to ensure an accurate and well-maintained inventory. Provide reports including software license compliance, application and infrastructure inventories and all other technology assets.
Asset Inventory	The availability of current data concerning hardware assets and software licenses. The City's technology asset database will be updated and maintained 365 days per year.
Hours of Availability	N/A
Measurement Period	Quarterly
Target	100% of the City's technology assets are recorded and maintained.
SLA Credit	\$0

Reconciliation	Quarterly the City will conduct a physical audit of selected technology assets and match that data against the technology asset management database. Inconsistencies will be evaluated, and a negotiated reconciliation will be conducted, and changes made to data as appropriate.
Hours of Availability	N/A
Measurement Period	Quarterly
Target	100% accuracy of selected audit sample
SLA Credit	\$0

IMACs	
Objective	Desktop support staff are expected to resolve City generated trouble calls in a professional and efficient manner. They will setup and configure new PCs, maintain current version levels of desktop software, install, upgrade or troubleshoot software, conduct hardware and software inventories, do minor hardware installations and modifications on existing PCs, and other related tasks as may be requested or required.
New Device Install	Time elapsed between the receipt of a single new device and the completion of the order. Includes initial hook up, diagnostic testing, delivery, staging and configuration.
Hours of Availability	7:30 am to 5:30 pm, Monday - Thursday and every other Friday from 7:30 am to 5:30 pm.
Measurement Period	Monthly
Target	95% within 3 business days, up to eight (8) per month (Exception: For equipment refreshment devices, the Equipment Refreshment SLA will take precedence. Equipment Refreshment SLA applies when the number of new device installs exceed eight (8) per month).
SLA Credit	\$500
Move Existing Device	Time elapsed between the receipt of the request and the relocation of the device. Includes disconnection, moving, re-hook up, and diagnostic testing.
Hours of Availability	7:30 am to 5:30 pm, Monday - Thursday and every other Friday from 7:30 am to 5:30 pm.
Measurement Period	Monthly
Target	95% within 5 business days, when number of moved devices is eight (8) or less during the reporting period.
SLA Credit	\$500
Alter Existing Device	Time to apply changes to existing device from time of request to completion of service.
Hours of Availability	7:30 am to 5:30 pm, Monday - Thursday and every other Friday from 7:30 am to 5:30 pm.
Measurement Period	Monthly
Target	95% within 3 business days, when number of altered devices is eight (8) or less during the reporting period.

SLA Credit	\$500
Remove Existing Device	Time to physically remove device from time of request to completion of service. Includes unhooking, decommissioning device, destroying images, and submitting to surplus.
Hours of Availability	7:30 am to 5:30 pm, Monday - Thursday and every other Friday from 7:30 am to 5:30 pm.
Measurement Period	Monthly
Target	95% within 10 business days, when number of removed devices is eight (8) or less during the reporting period.
SLA Credit	\$500
Equipment Refreshment	The deployment of new technology equipment throughout City facilities. On a periodic basis, the City purchases technology devices as part of an equipment refresh process. These purchases vary in number and type based on urgency and budget.
Hours of Availability	7:30 am to 5:30 pm, Monday - Thursday and every other Friday from 7:30 am to 5:30 pm.
Measurement Period	As determined by City's deployment schedule.
Target	4 devices per day minimum average per desktop technician. If the desktop technician is assigned only to equipment refreshes, the target will be six (6) devices per day minimum average in those days that they are so assigned.
SLA Credit	\$0

ADDITIONAL TERMS AND CONDITIONS

1.0 Term

The Initial Term of this Agreement shall commence at 12:00 a.m., Pacific Time, on September 1, 2019 ("Commencement Date") and shall continue in effect until 11:59:59 p.m., Pacific Time, on June 30, 2022 ("Expiration Date"), unless earlier terminated as provided herein. The period from the Commencement Date to the Expiration Date is the "Initial Term." The City may, at its option, extend by means of an amendment the Initial Term of this Agreement for additional period(s) of time, with the total contract Initial Term and Extended Terms not to exceed five (5) years.

1.1 Extended Term. At the City's request, the Parties shall meet within thirty (30) days of Vendor's receipt of City's notice to renew this Agreement to negotiate modifications to the terms and conditions of this Agreement. If such negotiations are not requested or if the negotiations do not result in an agreement on different terms and conditions by sixty (60) days prior to the expiration of the Initial Term, City may elect to extend the term of this Agreement for up to two (2) additional consecutive terms, each of which, at the City's sole discretion, may range in length from ninety (90) days to twelve (12) months (each, an "Extended Term") and the then-existing terms and conditions of this Agreement shall remain unchanged and in full force and effect during each such Extended Term. The Initial Term and any Extended Term(s) shall be referred to as the "Term." The City shall exercise its extension option(s) by providing Vendor written notice no later than thirty (30) days prior to the expiration of the Initial Term or any Extended Term. Such notice shall include the length of the relevant Extended Term.

1.2 Service Levels and Liquidated Damage Penalties. Beginning 90 days after the Effective Date, Vendor shall meet or exceed each of the service levels set forth in the Scope of Work.

1.2.1 Vendor agrees to pay City, or have withheld as liquidated damages, those amounts set forth in Exhibit A hereto, for delay in performance of the Services or non-compliance with the specified service levels within the time and metrics specified, including any written extensions which may be granted, in writing, in accordance with this Agreement.

1.2.2 Notwithstanding any provision to the contrary, the total monthly at risk amount for any and all liquidated damages paid or to be paid by the Vendor pursuant to this Agreement shall not exceed ten percent (10%) of the monthly invoiced amount.

1.2.3 Vendor shall report all service level failures (with reference to the Service Level Agreements (each, an "SLA") set forth in Exhibit A hereto) on a monthly basis and for each failure Vendor shall either (i) demonstrate that the failure was due to an Excused Event (defined in 1.2.4), or (ii) provide the City with a corrective action plan to ensure that the failure is cured. If, during the monthly period immediately following the month when the failure occurs, Vendor misses the same service level, Vendor will forfeit the performance level credit for the two monthly periods during which the failure occurred. If the failure is corrected during the next monthly cycle following the month when the failure occurred, Vendor will not be assessed any liquidated damages; provided, however, that in the event Vendor misses the same SLA for three (3) months in a rolling 12-month period, the next occurrence of failure for the same SLA shall result in the imposition of the appropriate SLA Credit.

- 1.2.4 Excused Event. Service level failures shall be excused in the following circumstances: (i) when significant changes in scope and/or workload occur that impact Vendor's ability to perform in accordance with the service levels; (ii) when force majeure events occur; (iii) when program processes are changed at the request of the City, and such changes impact Vendor's ability to perform in accordance with the service levels; or (iv) when a failure is due to the acts, direction, task assignments and/or omissions of the City or third parties outside of Vendor's reasonable control.
- 1.2.5 City's IT Manager can negotiate minor modifications to the SOW and SLAs without a formal amendment, to the extent such minor modifications do not impact fees or unduly prejudice the rights of either Party.

1.3 Supplemental Services. Any information technology services or other services, beyond the Services specified in Exhibit A hereto ("Supplemental Services"), shall be performed by Vendor only pursuant to a duly executed amendment hereto. In the absence of a duly executed amendment, Vendor is not obligated to perform, nor is City obligated to remit payment for, any Supplemental Service(s).

1.4 Amendment by City Manager. The City Manager is hereby authorized to approve and execute on behalf of City any subsequent amendments to this Agreement which do not either individually or cumulatively in the aggregate exceed ten percent (10%) of the annual Service Fee, as set forth in this Agreement, in each fiscal year during the Term of this Agreement.

2.0 City Facilities and Supplies

2.1 City Provision. City shall, at its sole cost and expense, furnish Vendor and its staff with reasonable amounts of such office space, office furniture, and other facilities (including utilities and telephone service), which are appropriate to meet the needs of Vendor and its staff for the provision of Services pursuant to this Agreement and are similar in size, type and specifications to those furnished by the City to or for its own employees. It is understood and agreed that, as of the Effective Date of this Agreement, City has provided an adequate amount of furniture and equipment commensurate with existing staffing levels. It is further understood and agreed that for any upgrades in office furniture desired by Vendor or, in the event an Vendor employee requires special furniture to accommodate a disability, the cost of such special furniture (including the responsibility for making reasonable accommodations for its employees under the Americans with Disabilities Act) will be borne by Vendor

2.2 Return to City. Upon expiration or termination of this Agreement, or any extension or renewals thereof, all office furniture, equipment, documents, records, books, tapes, disks and files provided by the City or Vendor shall be returned to the City or Vendor in substantially the same condition as received, ordinary wear and tear excepted. Neither the City nor Vendor shall dispose of the other Party's property without the prior consent of the other Party.

3.0 Confidentiality

3.1 Confidential Information. Parties agree that:

- 3.1.1 Neither Party shall disclose any Confidential Information of the other Party to any third party without obtaining prior written consent of the other Party.
- 3.1.2 Each Party shall limit dissemination of the other Party's Confidential Information only to those employees, contractors and agents who require access thereto to perform their functions under this Agreement.
- 3.1.3 Each Party agrees to return the Confidential Information to the disclosing Party upon receipt of written request therefor.
- 3.1.4 Each Party agrees that the standard of care to be applied in the performance of the obligations set forth above shall be the standard of care applied by the receiving Party in treating its own Confidential Information, but at least reasonable care to prevent unauthorized copying, use, publication or disclosure.
- 3.1.5 The term of the provisions of this Section shall survive termination of the Agreement or any determination that this Agreement or any portion hereof or Exhibit hereto is void or voidable.

3.2 Exceptions to Confidentiality. The obligation of confidentiality set forth shall not apply to any data or information that the receiving Party proves:

- 3.2.1 Was already rightfully in the possession of the receiving Party or any of its related companies prior to disclosure.
- 3.2.2 Was independently developed by employees having no access to Confidential Information.
- 3.2.3 Was publicly disclosed by a person other than the receiving Party or its employees or agents without restrictions.
- 3.2.4 Was rightfully received from a third party without restrictions on disclosure or use.
- 3.2.5 Was approved for unrestricted release or unrestricted disclosure by the disclosing Party.
- 3.2.6 Was available by inspection of products or services marketed without restrictions, offered for sale or leased in the ordinary course of business by either Party hereto or others.
- 3.2.7 Was required to be produced or disclosed pursuant to applicable laws, regulations or court order, provided the receiving Party has given the disclosing Party the opportunity to defend, limit or protect such production or disclosure.
- 3.2.8 The obligation of confidentiality shall not apply to City to the extent that disclosure is necessary in connection with compliance with any law, court order or formal governmental directive. If disclosure is required (despite Vendor's request for confidentiality), the City shall not in any way be liable or responsible for the disclosure of any such Confidential Information or part thereof.

4.0 Vendor Personnel

- 4.1 Selection of Personnel. The City shall be provided the opportunity to participate in the Vendor's selection of any Personnel providing Services under this Agreement. Vendor shall consider all reasonable City directives in the selection process, to the extent such directives do not cause Vendor to contravene any applicable legal requirements.
- 4.2 Succession Plans and Cross Staffing Required. Vendor shall maintain active succession plans for Vendor positions, including plans to effectively transfer knowledge from Vendor Personnel in the event that it becomes necessary to replace such Vendor Personnel. Upon termination or resignation of any Vendor Key Personnel, Vendor shall promptly provide written notice to City of such termination or resignation and identify potential suitable replacements in writing.
- 4.3 Remote Services. Vendor shall obtain the written consent of City prior to the use of any remote (i.e., off-site) resources to perform Services under this Agreement.

5.0 Removal and Replacement of Vendor Personnel

- 5.1 Removal of Vendor Personnel by City. Notwithstanding anything contained herein to the contrary, if City believes that the performance or conduct of any Vendor Personnel employed or retained by Vendor to perform Vendor's obligations under this Agreement is unsatisfactory or is not in compliance with the provisions of this Agreement, City shall so notify Vendor in writing and Vendor shall, at Vendor's cost, either promptly address the performance or conduct of such Vendor Personnel, or, at City's request, immediately replace such Vendor Personnel with another Vendor Personnel acceptable to City and with sufficient knowledge and expertise to perform the Services in accordance with this Agreement.
- 5.2 Reassignment/Replacement of Vendor Personnel. If: (1) Vendor is obligated to replace any Vendor Personnel; or (2) Vendor wants to replace Personnel, and City consents to such replacement, then: (1) the terms of Removal of Vendor Personnel by City with respect to City's right to participate in the selection of replacement personnel for any Vendor Personnel shall apply; (2) the proposed replacement personnel shall be "qualified," meaning that the proposed replacement personnel shall possess comparable experience and training as the Vendor Personnel to be replaced; and (3) as Vendor deems warranted, the replacement Vendor Personnel shall work with the Vendor personnel during a mutually agreed transition period, and all costs and expenses associated with educating and training the replacement personnel shall be borne by Vendor.

6.0 Minimum On-Site Staffing Levels

Beginning on the Commencement Date, Vendor will provide three (3) on-site FTE personnel.

7.0 SLA Credits

The Monthly At-Risk Amount for each month of each Contract Year for failure to meet agreed SLAs is 10% of the applicable month's Monthly Invoiced Amount (excluding pass through charges), which Monthly Invoiced Amount, solely for the purposes of the Monthly At-Risk Amount, shall be at least one twelfth (1/12th) of that year's Annual Service Fees. The non-attainment of SLAs by Vendor shall result in the imposition of a Fee Reduction (i.e., SLA Credit) for each affected SLA. It is understood however, that a single event or failure shall only result in the imposition of one Fee Reduction (with City having discretion to select which Fee Reduction shall apply). In the absence of any modifications to the SLA tables, SLA Credits therein shall apply to all Contract Years. Any modifications to the SLA tables, the Performance Targets, SLAs and Credits shall be by mutual consent of the parties, and shall be embodied in the form of a contract amendment.

Vendor shall report on the status of all service levels on a monthly basis and for each failure Vendor shall either (i) demonstrate that the failure was due to an Excused Event, or (ii) provide the City with a corrective action plan to ensure that the failure is cured. If, during the monthly period immediately following the month when the failure occurs, Vendor misses the same service level, Vendor shall forfeit the performance level credit for the two monthly periods during which the failure occurred. If the failure is corrected during the next monthly cycle following the month when the failure occurred, Vendor shall not be assessed any liquidated damages. In the event Vendor misses the same monthly SLA for three (3) months in a rolling 12-month period, the next occurrence of failure for the same SLA shall result in the imposition of the appropriate SLA Credit.

In the event the Vendor does not meet a service level for which the SLA is measured annually, Vendor shall have one (1) month from the filing of the applicable, annual report (to occur on the fifth (5th) business day following conclusion of the annual service period) in which to undertake corrective measures with respect to the failure. No SLA credits shall be imposed during this period, unless the corrective measures do not remedy the failure within the one (1) month period.

8.0 Annual, Quarterly and/or Monthly Reports

Vendor shall measure its performance against the SLAs providing a detailed, comprehensive report of its performance no later than the fifth (5th) Business Day following the end of the applicable reporting period. The format for such SLA Reports shall be determined by the City, with input from Vendor. Vendor shall report all service level failures and for each failure Vendor shall either (i) demonstrate that the failure was due to an Excused Event (as defined below), or (ii) provide the City with a corrective action plan to ensure that the failure is cured.

Vendor and City shall mutually agree on the final format of the SLA report within thirty (30) days following the Commencement Date of the Agreement.