

DATE: _____

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
DATAPROSE, INC.**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and DataProse, Inc. ("Consultant") as of August 21, 2007.

AGREEMENT

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work of RFP 1112 for Utility Bill Printing, Mailing, E-Presentment and E-Payment Services at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and RFP 1112, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on June 30, 2010 with three one year options to renew through June 30, 2013, based on satisfactory performance by the Consultant. Consultant shall complete all the work described in the Scope of Work prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Scope of Consultant's Duties and Services.** The scope of Consultant's duties and service is set out in EXHIBIT A, which is attached and incorporated by reference. There duties and service shall be completed according to the time schedule contained in EXHIBIT A.
- 1.4 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Consultant shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

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- 1.5 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a guaranteed maximum price not to exceed \$ 81,000 annually for all services to be performed and reimbursable costs incurred under this Agreement. The first year the contract is fixed per Exhibit B. Rate increase will be adjusted not to exceed Bay Area CPI annually. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- The Consultant's signature.

- 2.2 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

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- 2.3 **Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in RFP 1112 that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

- 2.4 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.

- 2.5 **Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

- 2.6 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.

- 2.7 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

- 2.8 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

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Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

- 4.2 **Commercial General and Automobile Liability Insurance.**

4.2.1 **General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and

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personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3 **Requirements for All Policies.**

4.3.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

4.3.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

4.3.3 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.3.4 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

4.3.5 **Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.4 **Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

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- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

4.5 **Waiver.** The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

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- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.

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- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not

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subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.

8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:

8.6.1 Immediate cancellation of the Agreement;

8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and

8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in RFP 1112 not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

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- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by Jane Corpus Takahashi who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 **Notices.** Any written notice to Consultant shall be sent to:

DataProse, Inc.
John Garcia
Account Executive
1451 N. Rice Avenue, Suite A
Oxnard, California 93030

Any written notice to City shall be sent to:
Jane Corpus Takahashi
Accounting Service Manager
455 East Calaveras Boulevard
Milpitas, California 95035

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- 10.11 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.13 **Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.

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CITY OF MILPITAS

CONSULTANT

Thomas C. Williams, City Manager

Glenn Carter, President

ATTEST:

Mary Lavelle, City Clerk

Taxpayer Identification Number

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

APPROVED AS TO CONTENT:

Department/Division Head

APPROVED:

Finance Director/Risk Manager

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EXHIBIT A
SCOPE OF SERVICES

B. Questionnaire

a. Company and General Information

1. Company name and address

DataProse, Inc.

Corporate Headquarters: 1451 N. Rice Avenue, Oxnard, CA 93030
(805) 278-7431-Phone
(805) 278-7421- Fax
www.DataProse.com

West Coast Production Facility: 1451 N. Rice Avenue, Oxnard, CA 93030
(805) 278-7431-Phone
(805) 278-7421- Fax

Southwest Production Facility: 6012 W. Campus Circle Drive, Irving, TX 75063
(972)-871-4430
(972)-550-8907

2. RFP contact/phone/fax/email

John Garcia - Account Executive
(707) 746-1905 -Phone
(707) 746-1724 – Fax
jgarcia@dataprose.com

b. Qualifications and Experience of the Company

1. Describe your firm's history and the organizational structure of the department or division that will provide the proposed services.

Co-founded in 1990 by Xerox veteran Glenn Carter and Kinko's founder Paul Orfalea, DataProse helps companies market more effectively through improved invoices, statements and personalized direct mail.

With core competencies in the effective use of data, database management and cost effective print technology; DataProse provides integrated turnkey solutions from planning through full-scale implementation. The Company delivers highly flexible, cost-effective solutions from state-of-the-art high-speed, color laser production facilities in Ventura, California and Dallas, Texas. Your statements will be processed out of our Oxnard, CA facility.

Management Team	President:	Glenn Carter
	VP, Sales:	William Murray
	VP, Operations:	Fred Fleet
	Director of Marketing:	Alan Denton
	VP & GM, Oxnard:	John Ray
	VP & GM, Dallas:	Curtis Nelson

2. Describe your firm's experience with document designing, printing and mailing services that are provided to utility companies or other high volume clients.

Since 1990 DataProse has worked with over five-hundred cities, counties, utility companies, telecommunication companies, financial institutions, health care companies, colleges and universities and non-profit organizations in the design, printing and mailing of statements, invoices, business licenses, parking notice violations, reports, letters, notices and more. From cities doing a few thousand statements per day, week or month to large utility companies doing over a

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million statements per month, DataProse meets the needs of its clients large and small. Currently DataProse produces over 50 million statements each year for mostly cities, counties and utility districts.

With all of its services being offered under one roof, DataProse works with its clients on an individual need basis. From utilizing our in-house art department for form and insert designs, to programming to printing, folding, inserting and mailing, DataProse is your one stop service center.

3. Provide the total number of statements mailed monthly by your firm.

This year DataProse will mail over 5,000,000 statements per month. Our average capacity runs between 35-40%. This is part of disaster recovery planning.

4. Provide the volume of your top two customers.

Hawaiian Telecom does approximately 1,000,000 statements per month.
Christian Children's Fund does approximately 275,000 statements per month

5. Describe your firm's experience with remittance processing services that are provided to utility companies or other high volume clients.

DataProse works with many third party processors- DataProse does not do remittance processing. This is a specialized field so we work with client's banks, remit companies and even in-house processing equipment to test scan lines for the remit process to work seamlessly.

6. Comment on other areas that make your firm different from your competitors.

Unlike typical mass mailers, DataProse specializes in highly personalized documents that attract attention and are clear, streamlined, and easy to act upon. DataProse's proven one-to-one methodology has been highly successful in billing statements, transaction-marketing statements, and commercial and non-profit direct mail.

Because the company emphasizes quality planning – including targeted audience profiling, in-depth database segmentation, recipients' preferences, cross-selling and information-content integration – and through the creative use of its database-forms printers, DataProse has the unique ability to deliver print-mail programs with exceptionally high results. Each recipient receives a personalized look-and-feel, a highly tailored marketing message and relevant information content, which maps to his or her profile.

For statement presentment and customer communications, DataProse's database printing services can be tailored to group preferences – including content, formatting, graphical charts, color, personalized summaries and/or full disclosure details.

In April of 2006 DataProse successfully achieved its SAS 70 (the Statement on Auditing Standards No. 70) Type II certification for its development and execution of operational controls. The SAS 70 examination, conducted by the independent firm Porter, Keadle & Moore, LLP, included DataProse operations, software, hardware, internal controls and quality assurance measures.

A SAS 70 Type II audit addresses the internal controls of service organizations, similar to DataProse, by testing relevant internal processes, controls and operations. The Type II certification is more rigorous and demanding than a Type I report, as it audits a company's control activities and operations over a minimum six month period of time, rather than at a single point in time. This Type II report, as achieved by DataProse, requires the service organization to show controls are not only in place, but working effectively over an extended period of time.

The SEC's Sarbanes-Oxley Act of 2002 requires publicly held companies to provide proof that service companies have measures in place to ensure a secure and stable environment for their data. A SAS 70 Type II report issued through guidance established by the American Institute of Certified Public Accountants (AICPA) provides the necessary proof.

Our SAS 70 certification will further distinguish and differentiate us from our competition and solidifies our commitment to providing world-class services while adhering to stringent quality procedures and standards. An unqualified SAS 70 Type II opinion is a necessity for both DataProse and our clients as it enables us to provide outstanding security, accuracy and service time and again. SAS 70 certification is an acknowledgement of the exceptional quality of processes that DataProse employs.

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c. Qualifications and Experience of Team and Relationship Services

1. Describe your firm's philosophy regarding account or relationship management.

DataProse let's you keep the control but removes the hassle. We are your print and mailing department that just happens to be off-site. If you think about the process in this manner, the team works together well. Numerous people will be involved in the completion of your program (both at DataProse and your organization) – In order to minimize any possible confusion, you will be assigned a Project Manager to coordinate the entire process. Your Project Manager will facilitate the interaction with these individuals and the experts in your organization. Your assigned project manager will work with you on a daily basis to make sure the process works smoothly. They are your nucleus to all aspects of your DataProse team.

2. Identify and provide the resume of the person (account executive) who will be assigned as the service coordinator to the City.

Once you become a client a permanent project manager will be assigned. Up until that point and even afterwards, your Account Executive will be John Garcia.

John Garcia – Account Executive. 10 years of experience in direct mail and statement processing and information management. John's knowledge of customer communications has helped clients improve their billing process and communicate with their customers more efficiently. John graduated with a Bachelor's of Arts degree from U.C. Davis.

3. Identify the members of the proposed service team including their tenure with your firm, background, education, location of their office, and the role they will play in managing the City's account.

John Ray – Vice President and General Manager, West Coast Production Facility. With a Bachelor's degree in Business Management, John has brought 17 years of management experience to the DataProse team, including stints at Kinko's Headquarters, the Department of the Navy, Northrop Corporation, and the US Army. Since 1996, John has held management positions at DataProse with responsibility of the Project Management, Creative, Technical and Production Teams.

Scott Menke – Software Development Manager. Scott put his Bachelor's degree in business to work as a regional manager for a large health insurer. After years of seeing inefficiencies in how technology was being leveraged, he moved into application development for customer-oriented systems. Scott brings his expertise in technology and customer relations to every new statement development project at DataProse.

Curtis Nelson – Vice President and General Manager, Southwest Production Facility. With a Bachelor's degree from California Lutheran University, Curtis Nelson has managed multiple people and locations for over 20 years. Since 1993, Nelson has applied his experience to the improvement of systems, processes, quality, and teamwork at DataProse. For the past 10+ years with DataProse, Nelson has been a key figure in the development of specialized products like DPNetBill, DPCityBill and other online applications including DPSearch&ViewBill and DPMessage Manager.

4. If you plan to use any subcontractors for the services included in this proposal, describe your relationship with the subcontractor, the subcontractor's history and experience in providing similar services and the experience of the subcontractor's employees that will provide services to the City.

We will be working with First American SMS for the remit processing of payments. First American SMS has been in existence for 32 years as providers of data and services in the Title and escrow business and in the remittance processing business for 20 years. The Remit Services Manager is Jim LaDue who has 28 years of experience in the Banking and accounts receivable field. Below you will find a list of some of their references.

d. Document Design

1. Describe your document design capability including front and back of the statements, scanable pay stubs that enable payment by check, and bar coding for postal mailing and payment processing.

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DataProse works with each of its clients on a one-on-one basis for the design of their bill, as each client has unique requirements. We will be happy to share with you a variety of samples of clients bills so that you may better see examples that may meet your needs or we will work with you in designing that special statement with highlighted color, printing on one or both sides, graphs, message areas, etc. Nearly all of our statement clients have some type of bar coding for remit processing, postal discounts, etc. DataProse employs automated finishing and inserting equipment that uses various OMR technologies, such as 3 of 9 and 2-D bar-coding.

2. Provide sample statements from other clients that are designed by you. The sample statements should include single account statement and multiple accounts consolidated statement.

We customize the statement to meet the clients needs, not ours. We will be able to customize a statement to meet your specific needs. See Enclosed

3. Describe your turn around time to implement design changes.

Obviously the turn around time for implementing design changes depends on the magnitude of the change. Most simple changes like word changes takes less than an hour and can be made before the next cycle. More all-encompassing changes may take complete reprogramming but we usually are able to make even significant changes in a time frame to meet the clients' needs. Here is were working closely with your assigned project manager can be of great benefit. If we know a change is coming and when you would like it completed by, our team will work together to meet your needs.

e. Document Printing

1. Describe your printing capability including printing in multiple colors and preprinted forms.

We can print in what is called highlighted printing, where the perforated paper goes in blank and the statement, boxes, 2-colors such as blue and black are printed at one time, one or two sides. This ensures that information is never out of register and allows for quick and easy changes to be made to a statement without having to first use up existing stock, it also reduces upfront cost for offset printing, storage, and it requires less individual handling which equates to less potential for human error. We can do either 1 or 2 color laser imaging or offset printing but over 98% of our clients have seen the advantages that laser printing offers over that of offset printing.

2. Describe your printing quality control and how you assure that the billing data will fall correctly into appropriate locations consistently.

By highlight laser printing instead of using offset printed forms, your billing data always falls on the paper exactly where it is suppose to, never out of register. Thus one of the benefits over using offset printed stock, which because of the high speed equipment used can mispull from time to time and then data falls outside its predetermined area.

3. Describe your capability of printing bar coding for postal mailing and payment processing.

All of our statements have some type of bar-coding on them, either for our in-house operations and monitoring or for taking advantage of the best postal discounts available or for remit processing services. This is never a problem.

4. Describe your capability of printing single account statement and multiple accounts consolidated statements.

Again this is never a problem and we can and do both. By combining multiple accounts we are able to reduce waste and the need to send multiple statements in individual envelopes. Thus saving our clients postage and the customer the frustration of receiving multiple individual statements.

5. Describe the type and size of paper and envelope that you can handle.

For statements our normal size for the majority of our clients is 8.5"x11" however we have some individual clients that prefer an 8.5" x 14" size statement, these are usually counties for tax bills. As for other types of mailings we can process nearly any size, including 11"x17" and have done so for special direct mailings.

6. Describe your preprinted stock reserve policy.

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DataProse has a complete automated inventory system that is monitored by a sophisticated bar-coding system that monitors pulled and used levels as they move from storage to printer. Usually, depending on client volume, we order offset pre-printed stock in 3, 4 or 6 months increments. We usually order about 10% over the estimated usage for backup.

7. Describe your turn around time to implement format changes.

Enhancements or modifications from the original format may take days to weeks depending on the scope and complexity of the changes; simple format and typestyle changes typically take only a few hours to 2 days, but adding/deleting sections of data, or adding complex options may take longer. For special programming requests after start-up, we will provide you with an estimate and timeline after we understand the scope of the changes.

8. Describe your capability to provide notification to the City of all bills and reminder notices printed and mailed. The notification must be provided to the City immediately following completion of the mailing.

Upon receiving your data you first receive confirmation of your data reaching DataProse. Upon completion of each job, the client is notified, per means of their preference, of how many bills were mailed, how many were one or two pages, total amount of bills processed and we can customize the report to assist you with additional management tools that would be helpful.

In addition our Jobtrax system allows the client to monitor the progress of their job on-line. DataProse's online job tracking system allows our provides our clients with access to job status information 24 hours a day, 7 days a week and 365 days a year, directly over the Internet. This information is updated in real time to provide the best method for tracking the production run from the start of the job to the finish. DataProse clients are assigned unique ID's and passwords and will be authorized to monitor only their job.

f. Mailing Services

1. Describe your capability of formatting address data in order to obtain the best postal presort discount rates.

To optimize postal savings, DataProse uses CASS-certified software for address verification, correction, postal sorting, and reporting. As a part of our service, we can automate delivery of mail to the USPS and provide clients with the address correction information as a report or data file. This service allows our customers to maintain the most up to date addresses in their customer database.

An optional mail forwarding service called NCOALink is also available. This process allows addresses to be updated during the processing stage and provides an efficient method of forwarding mail at less the cost of traditional mail forwarding services. We actually notify you of changes before your mail is sent, so that you can update your records of the change and then we mail your statement directly to the new address, reducing return mail by over 98%.

2. Describe your capability to handle billing and mailing on the same day that you received the billing file from the City.

We work with our clients to process their mail in a timely manner. If your data is received prior to 10:00 am, your statements will be processed and mailed the same day and no later than the next business day. The advantage DataProse has over many of its competitors is that the USPS Bulk Postal Processing Facility is located directly across the street and they process our mail from late afternoon throughout the night so that your customers will receive their bills in a timely fashion.

3. Describe your ability to stay update of United State Postal Services equipment and processing requirements.

A few of our worker's, including our VP/Oxnard General Manager, regularly attend USPS classes and are trained and receive Mailpiece Quality Control Specialist certification. See Enclosed Certificate.

4. Describe your process in handling international addresses.

International address are processed separately and appropriate postage applied. Reports will also reflect those pieces that were internationally mailed.

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5. Provide the location of the facility where the bills will be printed and mailed.

6.

DataProse, Inc.
1451 N. Rice Ave.
Oxnard, CA 93030

You may also go to our website at www.dataprose.com and in the Company drop down menu do a virtual tour of the facility. In addition, we invite you to tour our facility as part of your evaluation process. We will be happy to arrange for your visit.

6. Describe your mailing capability to accommodate one page statement and multiple page statement simultaneously.

Our pre-programmed system breaks these out separately, usually printing the individual and multiple pages separately. This is again never a problem and most of our telecommunication clients require both individual and multiple pages, sometime hundreds of multiple pages.

7. Describe your coordination procedures and capability for inserts.

Working with your assigned project manager for special insert needs helps avoid any last minute frustrations. Our in-house art department can assist you with the design of the insert or you are able to supply us the artwork and we can print or you can have the inserts drop shipped directly to us. Our variety of options gives you the ability to get the lowest cost for your insert and meet those last minute deadlines. Depending on your needs, DataProse will work with you on the entire or just a portion of your insert needs- you decide. With DataProse you get to keep the control but get rid of the hassle.

8. Describe your capability for certain inserts to be included with selected bills – for example residential related inserts to be included with residential bills only.

DataProse employs automated finishing and inserting equipment that uses various OMR technologies, such as 3 of 9 and 2-D bar-coding. These technologies provide production integrity and flexibility. Each finishing line has at a minimum, 6 intelligent insertion stations that can be optionally triggered based on specific requirements.

9. Describe your capability of not including return envelopes in the Automatic Payment Service (APS) customer's bills.

Again using OMR technologies our equipment is able to distinguish which statements get a return envelope and which do not. This is very common.

10. Describe how you account for the postage used for City's mailing.

As part of our internal designed automation, we are able to track each individual piece and run each file separately, thus being able to produce the appropriate postage for each individual piece produced. This and the appropriate records are processed with the USPS for verification and mailing.

11. Describe or provide a sample of the monthly report that is provided regarding postage information.

The report will show how many mail pieces were produced, how many pages per mailing, how many went out 1 oz. or less and the rate, how many went out over 1 oz. and at what rate, how many were foreign mail and the total amount of postage for that file run.

g. Remittance Processing (Section G does not apply to this contract)

1. Describe your remittance processing services including reporting and same day deposit.

Payments are opened, removed from their envelopes and orientated by our clerks on our Agissar two station tri-cut opening machine. They are run and captured on our Unisys Quantum 200 processing track. Scanning corrections and verifications are made and all payments are balanced by an assigned our account rep and run through a second pass on

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the processing track for power encoding. The data is extracted from our processing software then imported to our Lockbox software. We run deposit reports and wrap up the checks and paperwork for courier pickup by the designated deadline.

2. Describe your mail pickup frequency for inbound payments.

Mail is currently picked at 6:00am and 8:30am at the Santa Ana Post Office by one of our in-house couriers and delivered to our Irvine location. Additional pick-ups can be made if necessary.

3. Describe the location of your lockbox address and schedule for mail/payment collection. If your lockbox address is not located in or near your office, describe how you will be able to reduce the float time of payment credit.

The Santa Ana Post office that houses our P.O. boxes and Caller services is the main office in Orange County and is about 8 miles from our office. We are confident that we get all payments same day from that office. All payments we pick up from the Post Office are processed the same day.

4. Describe your plan to deposit payments into the City's bank account for same day credit, including ability to transmit deposits electronically.

We have relationships with several couriers that specialize in bank runs that have hourly shuttles going to all of the major bank processing centers in the greater Los Angeles area. We also have the ability to create a check 21 file that can be transmitted or posted to an FTP site if the processing center can receive it.

5. Describe your daily payment file transfer method including the deadline.

We can send your payment file via encrypted e-mail or post it to an FTP site of your choice or we offer a secured FTP site we currently use for some of our other customers.

6. Describe your daily communication method to the City including payment exceptions.

We like to have a detailed conversation with our new customers before start live processing to determine all of our reporting and posting procedures including exception processing. It can be a variety of methods including e-mail, fax, telephone and US mail or overnight shipping.

7. Define the daily control and reconciliation reports for remittances payments processed.

The assigned representative for your account will be responsible for the daily processing of your payments including deposit, payment reporting, return of all deposit and non deposit media and any other communication that is needed.

h. System and Software

1. List the operating system and platforms you will be using to provide proposed services.

Our computing network is a hybrid Windows NT/Windows 2000 model. Our web, PDF and database servers are Compaq Dual processor systems running at or above 1GHz. Our computing network is protected by hardware and software firewalls to prevent unauthorized access. We currently have a T-1 hi-speed data connection in place and a redundant T-1 as back up.

Design Software- Exstream Dialogue 4.0

Print & Mailing Services- Postal Soft and Print Director

2. Describe technical capabilities for receiving and verifying accurate receipt of files.

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FTP (File Transfer Protocol) has become the 'internet standard' for transferring data. DataProse employs similar technology, masked by your Web Browser, in order to simplify the process of sending data files.

Put very simply – DP/FT is the "DataProse way" to securely transmit data.

Utilizing DP/FT provides three key benefits:

Ease of use in transferring data files

Comfort & Security of SSL

Automated processing – Files will be deposited directly to a secure location designated specifically for your company.

Utilizing DP/FT to transmit data files is a simple process consisting of the following 4 steps:

1. Open DP/FT (After logging in to DP Auto/Connect)
2. Browse to and select file(s) to transmit
3. Fill in required processing verification information (# of statements and bill date)
4. Confirm files and begin file transmission
5. Wait for file transfer to complete and confirm file transmission

3. Describe security procedures for data transfer (e.g. FTP).

See Response above.

4. Describe routine backup and recovery procedures for your system.

Our computing network is a hybrid Windows NT/Windows 2000 model. Our web, PDF and database servers are Compaq Dual processor systems running at or above 1GHz. Our computing network is protected by hardware and software firewalls to prevent unauthorized access. We currently have a T-1 hi-speed data connection in place and a redundant T-1 as back up.

5. Describe your contingency plan for equipment failure or unexpected equipment outages. Please provide detail of the plan.

Every year, hundreds of disasters, natural and man-made, affect businesses across the United States. Based on this fact, a well thought out disaster recovery plan is essential, especially for companies that process, print, and mail invoices, statements or other critical documents as a means of income or communication. Most companies that rely on print-to-mail services protect their electronic data by backing it up on a daily basis. Unfortunately, that is no longer enough. In order for your business to successfully survive a disaster, your company must have a comprehensive contingency. Not only in planning for, but also the execution of your recovery plan.

Because timely, uninterrupted service is essential, we've instituted 24-hour electronic security controls, extensive backup procedures and formalized disaster recovery plans. In addition, our experienced staff can smoothly manage unanticipated developments such as volume spikes or time-sensitive application changes.

- Our disaster recovery strategy is founded primarily on having two geographically separated and linked locations, with excess capacity and redundant systems at each.
- Your raw data is accessible from either location, and processing is done via a uniform platform. Print and mail services can be done at either location. Processed files and PDFs can also be stored at both facilities.
- Our critical systems are backed up regularly and copies of these back-ups are kept offsite. These copies can be sent to our CA or TX location, or used to reconfigure new machines at either facility.

With our redundant T-1 in place, each production server is accessible through either/both connections, thus reducing the impact of an ISP failure.

6. List and describe all software products that will be used to provide proposed services including bill design software, mailing discount software, document print software, address validation software, payment processing software, electronic transmission of deposit software, etc.

Exstream Dialogue 4.0/ Postal Soft/ Print Director/ NCOALink

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7. Describe how your software can provide bill print service which can accommodate both XML file and fixed length file.

Internal proprietary information. Please know that we have been able to do this for many years for all of our clients.

8. Describe how your software can provide remittance file which can accommodate fixed length file.

Internal proprietary information. Please know that we have been able to do this for many years for our clients.

9. List all products, hardware and software, that will be remarketed, and service that will be subcontracted as part of the proposed solution.

As stated earlier, only the remit processing service is planned on be subcontracted.

10. Describe any software upgrade methods, policies, and procedures that can potentially affect the City.

On our side none. Your software supplier may make changes to your software that could effect the layout of data on your forms, thus open communications about any foreseen software changes on your end need to be expressed early.

11. Describe how your software can provide the exact copy of the bills and reminder notices in a nonproprietary format (like PDF, tiff, or jpg formats) to the City staff and external customers. Please submit sample printout.

Once documents are generated through our processing routine, an electronic archive of each document can be created. This archive view is available before recipients receive their documents and displays in an exact view of the document. DataProse offers customers an Internet retrieval service that uses the Web and servers located in our production facilities. Through this service, authorized users can retrieve documents and view them in an electronic version, via the Internet and using a standard browser.

To run a demonstration of the DataProse Auto/Connect service offering please follow the directions below. This demonstration includes Electronic Bill Presentment and Payment and Search & View Bill.

1. Go to www.dataprose.com/billing
2. Click on [client login](#) at the top
3. Enter demo for user name and none for the password
4. On the left column click on [EBPP Demo](#)
5. Enter your information as requested
6. Click [send](#) to continue
7. Click on [City Bill Demo](#) and again enter demo for the user and none for the password. You should be in and free to look at a demo. Go to left of the page and click on the different headings to see more. Also click on an invoice number to see an exact copy of the invoice the customer was sent.

For [Search and View Demo](#), enter 1 for the account number [begins with](#) and on the left side press view for either invoice. You will be able to search by a number of different criteria such as account number, name, address, etc.

i. Electronic Bill Presentment and Bill Payment

1. Describe your electronic bill presentment services in detail including email delivery of the bills.

Easier than describing, if you follow the directions above, you can perform an on-line demo. Once the bills are ready for viewing and payment an email notification is automatically sent to those who have registered to receive their bills over the internet. **Please also see below.**

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2. Describe the integration technologies to support electronic bill presentment. – **see below**
3. Describe your electronic bill payment services.- **see below**
4. Describe the integration technologies to support bill payment. – **see below**
5. Describe your electronic bill payment processing flow, including any thirdparty partnerships. Describe the processes of banking transactions, customer payment files and data ownership. – **see below**

Standard Functionality

- Customer Login – This will allow enrolled customers to login or obtain their password if lost. Users who have not yet enrolled may sign up from this page.
- CSR/Admin Login – This will allow your CSRs or Admin users to login to the CSR or Admin Sites respectively.
- List Invoices – This page will display the current invoice and 2 previous invoices. These invoices can be selected and viewed at any time.
- Pay Online – Customers will have the capability to pay via credit card or ACH
- How to Read Your Bill – A help page that shows an example of a printed bill and explains each section. (No customization)
- Customized Information – This page will allow the Admin user to add, edit and delete content for the end users to see. (On the demo site, this is the "Tax Information" page)
- Customer Care – This page will reference how the end user will contact the client for Customer service needs
- View Logs – This will give the CSRs the ability to view historical information about where and how a customer has navigated through the NetBill application. This is very useful and gives the CSRs the ability to troubleshoot problems with the end user. This button is only visible to CSR users.

In addition, the client will have the ability to select the color of the graphics (the demo graphics are 'blue'), and add their logo to the site.

DataProse acts as the facilitator of information between the 'Bill-Payer', the payment processor and ultimately, the client. Below is a high-level overview of the process functionality:

- DataProse gathers information from a Bill-payer about how they intend to make their payment
- DataProse performs a cursory validation of the information
- DataProse submits the information to the payment gateway for acceptance or denial
- The payment gateway accepts or denies the information
- If accepted, the payment is processed and the clients Bank account is funded
- If denied, the gateway sends information back to DataProse as to why the transaction was denied.
- DataProse gathers information regarding the payments processed each day and prepares a reconciliation file containing the information for that day's transactions.

Credit Card transactions are 'Real-time' transactions that are approved or denied instantaneously. Funding usually occurs within 24 hours of the transaction.

ACH transaction are batched and transmitted for settlement on a daily basis. Funding usually occurs in 3-6 business days.

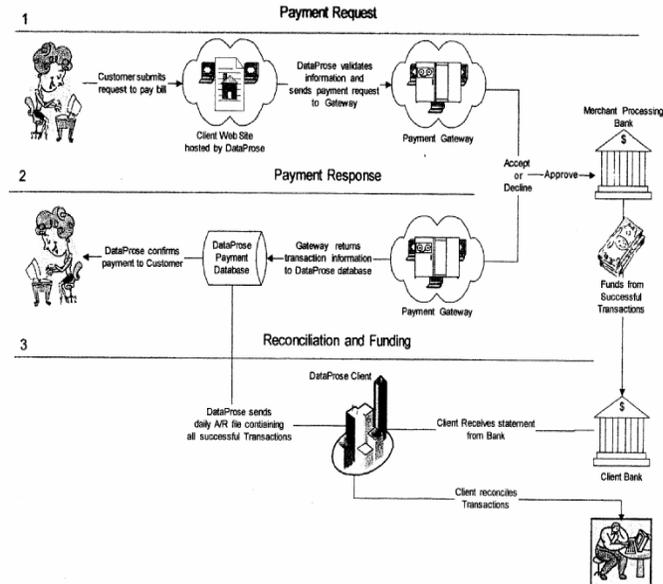
While DataProse currently has an established relationship with MerchantPartners.com. We currently have the capability to offer our clients the ability to process both credit card and ACH payments.

DataProse has implementations and established relationships with the following gateways / payment processors:

- Verisign
- CheckFree
- EDSPay

- Merchant Partners
- Bank of America

Online Payment Process



Payment Request:

A user goes to the Client's NetBill website (hosted by DataProse), views the current invoice and decides to pay the bill. The website collects the appropriate payment information for a credit card - the user then presses the "Pay" button. The web server at DataProse contacts the payment gateway server and passes the payment information to it. The payment gateway then determines which payment services to contact based on the credit card number and other required information. Eventually the secure transaction reaches the user's bank or financial institution. This entity either approves the transaction or returns an error or decline message. The transaction result is returned to the payment gateway and then in turn back to the web server at DataProse, where the transaction is recorded in a database. The results are also returned to the user and displayed on the user's browser. The total time for step 1 to complete varies. It can take as long as 2 or 3 minutes, but in most cases it takes about 10-15 seconds.

Payment Response:

As transactions clear the various user's banks and financial institutions, funds are sent to the payment gateway and forwarded to your financial institution. (This is called settlement) While credit card transactions usually settle the same business day, individual transactions may take up to 3 business days to settle. An A/R reconciliation file and/or report will be transmitted to the client on a daily basis listing all of the transactions for the preceding day. (It may be possible to work directly with the clients software provider to develop and implement an automated process to transmit a file that is acceptable directly to the clients software application)

Reconciliation:

The client will need to reconcile the transactions in this reconciliation file against the actual funds deposited to the client's bank. This is usually accomplished by comparing this information to the client's bank statements and/or online account access information.

j. Quality Assurance and Customer Support

1. Describe your quality assurance program including designing, printing, mailing and payment processing.

The entire program is very involved and we would be happy to show you how the process works but the summary of it is that as part of our SAS 70 type II certification, every aspect of our quality assurance and customer support services was evaluated and was reviewed and approved. No one person is responsible for the quality and customer support. It is a combination of automated fail-safe systems we have incorporated in our production and S.O.P. that our team must follow on every project run. Our team checks and then another team member is responsible for double checking and signing off that the project was completed as intended.

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A SAS 70 Type II audit addresses the internal controls of service organizations, similar to DataProse, by testing relevant internal processes, controls and operations. The Type II certification is more rigorous and demanding than a Type I report, as it audits a company's control activities and operations over a minimum six month period of time, rather than at a single point in time. This Type II report, as achieved by DataProse, requires the service organization to show controls are not only in place, but working effectively over an extended period of time.

The SEC's Sarbanes-Oxley Act of 2002 requires publicly held companies to provide proof that service companies have measures in place to ensure a secure and stable environment for their data. A SAS 70 Type II report issued through guidance established by the American Institute of Certified Public Accountants (AICPA) provides the necessary proof.

2. Explain what happens when a quality issue is recognized and the followup actions are required.

Once a quality issue is recognized and DataProse has been made aware of it, either internally or externally, a "CASE" is made in our internal system that notifies all team members of the situation and required action. Should action not be taken in a timely manner, usually within 24 hours- the CASE is escalated up to management for action.

3. Describe the hours and days available for product and technical support.

Normal business days, Monday thru Friday 8:00 to 5:00

4. Define support escalation process.

DataProse has an internal automated escalation process that we input and requires timely responses and if that does not take place, the request or situation is automatically escalated to the next level for handling. Besides your assigned project manager you will always have access to your account executive, John Garcia and the facility General Manager/VP- John Ray. Should you need to speak with the VP of Operations or President they are available to you as well.

k. Fees

1. Provide your fees for the proposed services. Fee quotes should list designing, printing, mailing and payment processing separately. The fee listed should also separate flat fee, per transaction fee, onetime set up fee and ongoing maintenance fee.
2. Describe cost of hourly programming services.
3. Describe in detail any surrender, withdrawal, deferred, or other charges.

See Following

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EXHIBIT B

COMPENSATION SCHEDULE



k. Fees

City of Milpitas

Date: 4-01-2007

Print & Mailing Services Overview	This pricing has been developed per the requirements stated in the RFP for the City of Milpitas. This proposal is valid for 120 days from receipt.	
Paper Bill	<p>Data processing <u>Duplex (2-sided)</u>, <u>2-color</u> Laser Imaging 8.5x11 white paper with perforation, #10 double window security envelope, #9 single window security reply envelope, fold, insert, bar-coding, presort and deliver to USPS. Freight and/or overnight delivery if applicable not included.</p> <p>PaperBill (Set-up, design, programming, proofs and testing)</p>	<p>Approximate Monthly Volume = 6,000 - 11,000 service bills =1,200 -2,000 delinquents</p> <p>\$0.1175 each</p> <p>No Charge</p>
Options DP Search & ViewBill	Data processing – PDF File Creation – 90 days of file storage – Unlimited viewing	\$0.015 / Record per Month
Additional Charges (if applicable)	<p>Additional Impressions- 2nd, 3rd, 4th pages Additional Inserts – supplied (foiled) marketing inserts, etc. – cost to insert</p> <p>Additional programming – client requested after set-up JobTrax</p> <p>NCOALink (Address Updates)</p> <p>Inserts : 1/3 page printed/cut/inserted by DP 1 sided 8.5"x11" one color insert printed/folded/inserted by DP 2 sided 8.5"x11" two sided/one color insert printed/folded/inserted by DP</p> <p>Postage estimate (per one ounce)- Actual Postage will apply</p>	<p>\$0.05 / Impression \$0.01 / Insert</p> <p>\$185.00 / HR No Charge</p> <p>\$0.50 / Reported Change</p> <p>\$0.04 each \$0.07 each</p> <p>\$0.12 each</p> <p>\$0.293 - \$0.326</p>

CITY COUNCIL APPROVAL

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NETBILL - PRODUCT OVERVIEW

NetBill (Subscribed users only) Includes:

Internet bill presentment (24x7 access to customer bills hosted on DataProse servers posting of invoices, email notification of bill availability to customer & Payment Facilitation

NetBill Initial Set up and Development Fee -	\$3,000	One Time
Credit Card Processing Set up Fee -	\$1,000	One Time
ACH Processing Set up Fee -	\$1,000	One Time
NetBill Monthly Maintenance Fee	\$400	Per Month
	\$0.60	
	or 1.25%	
ACH Transaction Fee	(which ever is greater)	Per Payment
		Per
Credit Card Transaction Fee	\$0.35	Payment

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
SAN JOSE WATER COMPANY**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and San Jose Water Company ("Consultant") as of August 21, 2007.

AGREEMENT

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work of RFP 1112 for Utility Bill Remittance Processing Services at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and RFP 1112, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on June 30, 2010 with three one year options to renew through June 30, 2013, based on satisfactory performance by the Consultant. Consultant shall complete all the work described in the Scope of Work prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Scope of Consultant's Duties and Services.** The scope of Consultant's duties and service is set out in EXHIBIT A, which is attached and incorporated by reference. These duties and service shall be completed according to the time schedule contained in Exhibit A.
- 1.4 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Consultant shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

CITY COUNCIL APPROVAL

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- 1.5 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a guaranteed maximum price not to exceed \$ 14,000 annually for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- The Consultant's signature.

- 2.2 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

- 2.3 **Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense

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or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in RFP 1112 that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

- 2.4 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.
- 2.5 **Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.
- 2.6 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.
- 2.7 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.
- 2.8 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the

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work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

- 4.2 **Commercial General and Automobile Liability Insurance.**

- 4.2.1 **General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

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4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

DATE: _____

4.3 Requirements for All Policies.

4.3.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

4.3.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

4.3.3 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.3.4 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

4.3.5 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.4 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

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- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

4.5 Waiver. The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

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- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.

- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.

- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or

DATE: _____

mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

8.1 **Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein,

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other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.

8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:

8.6.1 Immediate cancellation of the Agreement;

8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and

8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in RFP 1112 not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

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- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by Jane Corpus Takahashi who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 **Notices.** Any written notice to Consultant shall be sent to:
San Jose Water Company
Sandra L. Freeman
Information Services Supervisor
374 West Santa Clara Street
San Jose, CA 95196

Any written notice to City shall be sent to:
Jane Corpus Takahashi
Accounting Service Manager
455 East Calaveras Boulevard
Milpitas, California 95035

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- 10.11 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

- 10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

- 10.13 **Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.

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CITY OF MILPITAS

CONSULTANT

Thomas C. Williams, City Manager

Dana Drysdale, Vice President of
Information Systems

ATTEST:

Mary Lavelle, City Clerk

Taxpayer Identification Number

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

APPROVED AS TO CONTENT:

Department/Division Head

APPROVED:

Finance Director/Risk Manager

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EXHIBIT A

SCOPE OF SERVICES

Same day deposit. All courier pickups and file transmission are based upon same day deposit.

Reporting. The City can have Consultant create a variety of reports from the remittance system, but, most customers find the Host File Batch Summary Report, Deposit Report , Deposit Ticket and Cash Letter meet their needs.

Mail pick-up frequency for inbound payments. The City's mail will be picked up twice per day to match the best times for pickup and processing for same day deposit – early morning and mid morning.

Lockbox. Consultant will use the Lundy post office. The City has its own address and PO Box at this USPS facility, which is physically located at 1750 Lundy Ave., San Jose, CA 95131. Mail pickup is described above, and service includes same day deposit to the City's bank, Wells Fargo. Because Consultant uses both the Lundy facility and Wells Fargo there is no additional charge for courier service.

Deposit. Consultant will deposit payments to Wells Fargo by 6:00 pm for same day credit.

File transfer. Consultant will transfer daily payment file on secure FTP or other secure method chosen by City by 2:00 pm. The City can also select other file transfer methods and deadlines. Consultant has to insist on methods generally considered secure due to California privacy laws.

Daily communication. The City should receive and review and Email from Consultant confirming the days' transaction count and total amounts. This email will be set at the same time the City's remittance file is placed on Consultant's secure FTP server for City pickup, or when the file is placed on the City's secure FTP server by Consultant.

Exceptions (no stub and no account number), the Host File Batch Summary Report, Deposit Report (compared to actual batch tickets for accuracy), Deposit Ticket and Cash Letter are mailed and will be delivered to the City the next morning.

When there are check exceptions with the City's bank, the City can request copies of the check image and processing trail information. Consultant will retrieve the image from the processing archive and fax the image to the City.

Daily Control and Reconciliation Reports. The most important daily control and reconciliation reports are usually the Host File Batch Summary Report, Deposit Report (compared to actual batch tickets for accuracy), Deposit Ticket and Cash Letter. The City receives copies of these reports every day. If the City would like additional reports, Consultant can create them, but these basic reports should be sufficient.

CITY COUNCIL APPROVAL

DATE: _____

EXHIBIT B

COMPENSATION SCHEDULE

Remittance Processing, services described, including pickup and delivery, based on average 8,200 document (stubs and checks) per month: **\$0.14 ea**

CPI-U Adjustment: San Jose Water is a union company and employee wages are adjusted annually using collective bargaining based upon the Bay Area CPI-U. San Jose Water requests that prices quoted adjust by such index annually.

Maintenance Fee: NONE

Service does not include: Banking supplies such as bank bags, slips, tickets and other fees from City's bank, rental fees for Post Office Box (approx. \$200 per year); San Jose Water service include administering the Post Office Box for the City.

Programming Services: Hourly programming is minimized through the use of configurable software. The fees described above are adequate to start and implement the City's project. If subsequent changes are required that are beyond the scope of software configuration, all changes will be estimated and approved by the City prior to starting work. Hourly programming service range from \$99 to \$200 per hour.