



STAFF REPORT

SAUSALITO CITY COUNCIL

AGENDA TITLE:

Consultant Hosted Service Level Agreement – ICOMMM, Inc ICOM3
Infrastructure Program Management Software Service

RECOMMENDED MOTION:

Authorize City Manager to execute contract with ICOMMM, Inc.

SUMMARY

ICOM3 is a computer based sewer management program. It is a complex program that requires vendor support. Vendor support is provided by ICOMMM, Inc. The current vendor support agreement has expired and a new service level agreement is needed to assure that the program works effectively for the City. ICOMMM, Inc of San Ramon has been providing these services to the City of Sausalito since 2003. ICOMMM, Inc has proposed a new Professional/Consulting Services Agreement to cover the period from July 1, 2008 through June 30, 2010.

The City Purchasing Policy requires City Council approval of agreements greater than \$15,000. The proposed two year agreement is for \$38,000 or \$19,000 per year and is identified in the adopted budget. This is the same rate used for the period July 1, 2006 to June 30, 2008. Staff seeks authorization to continue to use ICOMMM, Inc's services.

BACKGROUND

The City Staff maintains approximately 25 miles of pipe that is the main part of the Sanitary Sewer Wastewater Collection System. Since 2003 ICOMMM, Inc's ICOM3 Sewer System Management Program has enabled City staff to maintain, track, monitor, update and evaluate all City owned Wastewater Collection System Assets.

In April of 2008, the EPA issued a Findings of Violation and Order for Compliance (EPA Order) to the City of Sausalito, Tamalpais Community Services District (TCSD) and the Sausalito Marin City Sanitary District (SMCSD). The EPA Order prescribes actions that are partially satisfied through continued operation of ICOM3. If the agreement is not authorized, problems may arise in documenting sewer system management efforts. With ICOM3 in place the City of Sausalito will be able to continue demonstrating compliance with the EPA Order and future inquiry. ICOM3 is also very useful in

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responding to inquiries from: Local, Regional, State and Federal regulators and clean water advocates requests.

ISSUES

The City's purchasing policy requires evaluating proposals from at least three firms if not a proprietary service. There is an exception, however, for products or services that are provided from only one source. The ICOM3, Software Platform being used by the City is proprietary; therefore staff was unable to obtain three proposals but the services fall within the exception to this requirement.

FISCAL IMPACT

Costs associated with ICOMMM, Inc services are as follows:

Payment Terms

Annual Billing (paid in advance)

Setup Fee	Annual	Service Period	5% Two Year Discount	Annual Payment Amount	Total Agreement Amount
Annual	\$21,000	24 mos	(\$2,000)	\$19,000	\$38,000

The proposed work will have no impact on the General Fund. The work is proposed to be funded from the Sewer Fund which comes from sewer charges added to property tax assessments.

The estimate for the work is \$38,000. The Sewer Fund Budgeted \$20,000.00 annually for said services. This amount is unchanged from the previous 2 year agreement. Staff believes the proposed estimate is reasonable.

A purchase order requisition is attached. \$20,000.00 per year is budgeted.

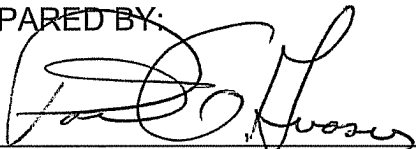
STAFF RECOMMENDATIONS

Adopt a motion authorizing the City Manager to execute a professional services agreement with ICOMMM, Inc. The authorized amount shall not to exceed \$38,000 without further authorization.

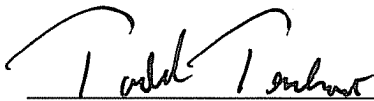
ATTACHMENTS

- A. ICOMMM, Inc Fiscal 2008 – Fiscal 2010 Professional Services Agreement with the City of Sausalito
- B. City of Sausalito Purchase Requisition No. 532 for Fiscal 2008 – Fiscal 2010 Professional Services Agreement with the City of Sausalito
- C. ICOMM, Inc Invoice No. 567-A for Fiscal 2008 – Fiscal 2010 Professional Services Agreement with the City of Sausalito

PREPARED BY:


Patrick A. Guasco, Sewer System Coordinator

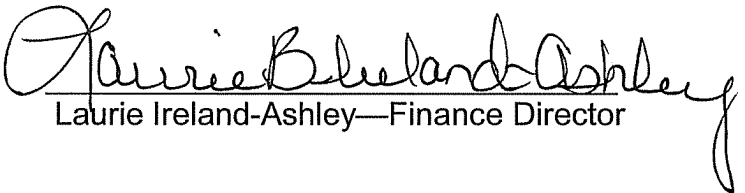
REVIEWED BY:


Todd Teachout, City Engineer

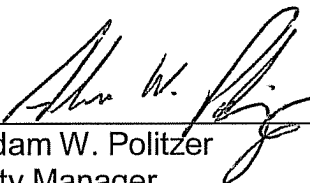
REVIEWED BY (City Attorney):


Mary Wagner, City Attorney

REVIEWED BY:


Laurie Ireland-Ashley—Finance Director

SUBMITTED BY:


Adam W. Politzer
City Manager

Requisitions Proof List

<u>Req No</u>	<u>Req Date</u>	<u>Item Name</u>	<u>Vendor No</u>	<u>Appr Status</u>	<u>Account No</u>	<u>PM Task and Type</u>	<u>Quantity</u>	<u>Price</u>	<u>Amount</u>
Dept: 550									
Employee No: GUASP									
0000532	09/26/2008		ICOMMM	Undecided	110-550-3000-320	-	1.00	19,000.00	19,000.00
							Employee Total:		19,000.00
							Dept Total:		19,000.00
							Grand Total:		19,000.00

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ICOMMM, Inc.
 2603 Camino Ramon, Suite 170
 Bishop Ranch 3
 San Ramon, CA 94583

(925)824-3200
 sales@icom3.com

Invoice

DATE	INVOICE #
06/30/2008	567 - A
TERMS	DUE DATE
Net 30	07/30/2008

BILL TO
Pat Guasco City of Sausalito 420 Litho Street Sausalito, CA 94965

Item	Quantity	Unit Price	Amount
• ICOM3 Software Subscrption - July 2008-June 2009	1	19,000.00	19,000.00
• ICOM3 District Module Add-on Subscription - July 2008-June 2009 (Paid by Marin City Sanitary District)			
SUBTOTAL			\$19,000.00
TAX (8.25%)			\$0.00
TOTAL			\$19,000.00

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**CITY OF SAUSALITO
PROFESSIONAL/CONSULTING SERVICES AGREEMENT**

This **PROFESSIONAL/CONSULTING SERVICES AGREEMENT**, (this "Agreement") is made and entered into this 1st day of July, 2008, by and between the **CITY OF SAUSALITO**, a municipal corporation (hereinafter "City") and **ICOMMM, Inc.**, 2603 Camino Ramon, Suite 170, San Ramon, CA 94583, (hereinafter "Consultant").

In consideration of the mutual promises contained herein, the parties hereto agree as follows:

I. Section 1. Scope of Work

Consultant shall provide City with the services described in Exhibit A which is attached hereto and incorporated herein by this reference as though set forth in full.

The duties and services required of Consultant under this Agreement and pursuant to this Section 1 are referred to throughout the remainder of this Agreement as "the Work."

Section 2. Responsible Individual. The individual directly responsible for the performance of the duties of Consultant is Steven S. Line. Consultant represents and warrants that the execution of this Agreement has been approved by Consultant and that person executing this Agreement on behalf of Consultant has the full authority to do so.

Section 3. Work Schedule.

Consultant shall be available to work as many hours as required to complete the Work immediately upon receipt of the signed Agreement from the City and shall complete each task in a timely manner as specified. Consultant shall not be held responsible for delays caused beyond its reasonable control.

Section 4. Compensation.

In consideration of the performance of the Work described in Section 1 pursuant to the schedule set forth in Section 3, Consultant shall be compensated at the rate set forth in Exhibit B which is attached hereto and incorporated herein as though set forth in full. Consultant shall not charge City for any administrative expenses or overhead, including without limitation, facsimile, mileage and other/or any other expenses incurred by Consultant in connection with Consultant's provision of the Work. Consultant acknowledges and agrees that the compensation to be paid to Consultant under this Section 4 represents the full amount due and owing to Consultant in connection with performance of the Work.

Section 5. Amendments.

In the event City desires to retain Consultant for the performance of additional services, or wishes to delete any services in connection with this Agreement,

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specifications of such changes and adjustments to compensation due Consultant therefore shall be made only by written and signed amendment to this Agreement.

Section 6. Independent Contractor - Subcontractors.

It is specifically understood and agreed that in the making and performance of this Agreement, Consultant is an independent contractor and is not and shall not be construed to be an employee, common law employee, agent or servant of City. The consultant shall be solely liable and responsible to pay all required taxes and other obligations, including, but not limited to, withholding and Social Security. Consultant acknowledges and agrees that he/she is not entitled to the benefits of civil service status and/or the rights and privileges enjoyed by civil service employees and Consultant hereby waives any and all claims to such rights and/or privileges.

Section 7. Consultant's Responsibility.

It is understood and agreed that Consultant has the professional skills necessary to perform the Work, and that City relies upon the professional skills of the Consultant to do and perform the Work in a skillful and professional manner in accordance with the standards of the profession. Consultant thus agrees to so perform the Work.

Acceptance by City of the Work, or any of it, does not operate as a release of the Consultant from such professional responsibility. It is further understood and agreed that Consultant has reviewed in detail the scope of the work to be performed under this Agreement and agrees that in his professional judgment, the Work can and shall be completed for a fee within the amounts set forth in Section 3 of this Agreement.

Section 8. Hold Harmless and Indemnification.

Consultant shall indemnify, defend and save City, its officers, elected and appointed officials, employees, contractors and agents harmless from and against any and all liability, claims, suits, actions, damages and/or causes of action of any kind arising out of any bodily injury, personal injury, property damage or in violation of any federal, state or municipal law or ordinance or other cause in connection with the activities of Consultant, or on account of the performance or character of the Work or otherwise related to its performance of this Agreement to the extent that any such liability, claims, suits, actions, damages and/or causes of action arises out of the intentional, negligent or willful misconduct of the Consultant.

Section 9. Insurance.

Consultant shall take out and maintain during the life of the Contract: (a) Comprehensive General Liability and Automobile Liability insurance in an amount not less than \$ 1,000,000 combined single limit applying to bodily injury, personal injury and property damage; (b) professional liability insurance in the amount of \$1,000,000 per claim and \$ 1,000,000 aggregate.]

The liability policy(ies) are to contain, or be endorsed to contain, the following provisions:

The City, its officers, elected and appointed officials, employees, contractors and agents must be named as a Named Insured under the coverage afforded with respect to the work being performed under the Agreement.

Section 10. Nondiscrimination.

There shall be no discrimination against any employee who is employed in the Work, or against any applicant for such employment because of race, religion, color, sex or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Section 11. City Personnel Conflict of Interest.

No officers, member, or employee of City and no member of the governing body of City who exercises any functions or responsibilities in the review, approval of the undertaking or carrying out of the project, shall participate in any decision relating to this Agreement which affects his personal interest or the interest of any corporation, partnership, or association in which she is, directly or indirectly interested; nor shall any such officer, member or employee of City have any interest, direct or indirect, in this Agreement or the proceeds thereof.

Section 12. Consultant Conflict of Interest.

Consultant covenants that she presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services hereunder. Consultant further covenants that in the performance of this Agreement, no persons having any such interest shall be employed.

Section 13. Assignment.

Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of City.

Section 14. Ownership of Documents.

Consultant agrees that all documents produced in the performance of this Agreement shall be the sole property of the City including all rights therein of whatever kind and whether arising from common or civil law or equity. The Work shall be used solely for the project for which it was originally intended.

Section 15. Termination.

City may terminate this Agreement at any time without reason stated or required by giving written notice of the same and specifying the effective date thereof, at least seven calendar days before the effective date of such termination. If the Agreement is terminated by City as provided herein, Consultant shall be paid for all effort and material expended on behalf of the Work under the terms of this Agreement, less any charges against Consultant as otherwise provided herein, up to the effective date of termination, except that upon notification of such termination, Consultant shall immediately cease to undertake any duties under the Agreement not yet underway, and shall limit its further activities up to the effective date of termination to those duties necessary to wind up work then underway.

In Witness Whereof, City and Consultant have executed this Agreement as of the date first written above.

City of Sausalito

Consultant



By: _____
Its: _____

By: _Steven S. Line
Its: _President

approved as to form:

Mary Anne Wagner
City Attorney

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Exhibit A - ICOMMM Annual Hosted Service Agreement

This Hosted Services Agreement is between ICOMMM, Inc., ("Provider") whose principal place of business is 2603 Camino Ramon , Suite 170, San Ramon, CA 94583 and The City of Sausalito, 420 Litho Street Sausalito, CA 94965 (Customer).

This Hosted Services Agreement gives each party certain rights and responsibilities. Please read this Agreement carefully.

1. Definitions

Agreement – the terms and conditions in this ICOMMM Hosted Service Level Agreement.

Service-means the ICOMMM ICOM3 infrastructure program management software service

Subscriptions means units of the Service purchased by Customer for use by its Users, typically on an annual basis.

Hosted Service–ICOMMM hosted service provided to Customer and consisting of software license, database, and user documentation, made available to customer over the internet.

Hosting Server - the server(s) on which the Hosted Service and ICOMMM Project is located;

Proprietary Information – the proprietary data of Provider that is made available as part of the Hosted Service;

Customer Data - all data created or submitted by Customer and/or Customer's Users and held in Customer's Project;

User – any person who has express or implied authorization from Customer to access the Service and has been assigned a valid user ID and Password. **IDs AND PASSWORDS ARE NOT TO BE SHARED OR REASSIGNED;**

Project - the ICOMMM knowledgebase and associated data, tables, and login pages that are created for customer's use as part of the Hosted Service.

Professional Services

Exhibit B – the attachment to this agreement which describes the payment and fees for the service to which Customer is subscribing;

1. License Grant and Use Restrictions

Subject to the terms and conditions of this Agreement, Provider grants Customer and each user a limited, non-exclusive, non-sublicensable, non-transferable license to use and to electronically access the proprietary software that is a part of the Hosted Service, only in conjunction with

the Hosted Service and in accordance with this Agreement and any specific additional agreement, which we may require you to accept prior to granting access to specific portions of the Hosted Service. Customer is prohibited from and shall not condone or assist any User in modifying, translating, decompiling, disassembling or reverse engineering or otherwise attempting to determine the source code for the operation of the Hosted Service, or creating derivative works based on the Hosted Service or any part of the Hosted Service or Proprietary Information. For purposes of this Agreement, "reverse engineering" shall mean the examination or analysis of the Hosted Service or Proprietary Information to determine its source code, sequence, structure, organization, internal design, algorithms or encryption devices, and, "Proprietary Information" shall mean all data, material, text, photographs, music, video, software, sound, graphics, other Information or materials or portions thereof..

The number of simultaneous Users who may access the Hosted Service under individual logins is specified in Exhibit B. If Customer exceeds granted usage limits, Provider will notify Customer of such excess and will advise Customer to make necessary adjustment to the Exhibit B fees and number of Users permitted, in lieu of termination of Service.

3. Access and Storage Limitations

The Hosted Service availability set forth shall not apply to any services other than the Hosted Service supplied by ICOMMM, and, shall not apply to performance issues (i) caused by factors outside of ICOMMM's reasonable control; (ii) that resulted from any actions or inactions of Customer or any third parties; or (iii) that resulted from Customer's equipment and/or third party equipment (not within the sole control of ICOMMM). Specifically, ICOMMM does not and cannot control the flow of data to or from ICOMMM's network or other portions of the Internet. Such flow depends in large part on the performance of the Internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Customer's connections to the Internet (or portions thereof).

Although ICOMMM will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, ICOMMM cannot guarantee that such events will not occur. Accordingly, ICOMMM disclaims any and all liability resulting from or relating to such events.

Subject to the purchase of additional storage set forth on an Order Form, the Customer Data for each Project is limited to a maximum of 20GB of storage space.

4. Customer Data

As between ICOMMM and Customer, all Customer Data is owned exclusively by Customer. Customer Data shall be considered Confidential Information subject to the terms of this Agreement. ICOMMM may access Customer's User accounts, including Customer Data, to respond to service or technical problems or at Customer's request.

5. Customer Responsibilities

Customer is responsible for all activities that occur under Customer's User accounts. Customer shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify ICOMMM promptly of any such unauthorized use; (iii) obtain and maintain any equipment and ancillary services needed to connect to, access or otherwise use the Services; and (iv) comply with all applicable local, state, federal, and foreign laws in using the Service and, if using the Service outside of the United States, not use the Service in a manner that would violate any federal or state laws of the United States if conducted therein.

Use Guidelines. Customer and its Users shall use the Service solely for Customer's internal business purposes in connection with the Projects as contemplated by this Agreement and shall not (and shall not allow any User to): (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service available to any third party; (ii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws or ICOMMM policies; (iii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (iv) send or store material

containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (vi) attempt to gain unauthorized access to the Service or its related systems or networks.

6. Term & Termination.

Term of Agreement. This Agreement commences on the Effective Date and continues until all User Subscriptions granted in accordance with this Agreement have expired or been terminated.

Term of User Subscriptions. Subscriptions commence on the start date specified in the relevant Order Form and continue for the Subscription term specified therein, whether or not such Subscriptions are used. Subscriptions shall automatically renew for additional periods equal to the initial term specified on the applicable Order Form at the price in effect at the time of renewal unless Customer gives ICOMMM notice of termination at least 30 days prior to the end of the relevant Subscription term. In the event of a price increase, ICOMMM will notify Customer in writing at least 30 days prior to the end of the relevant Subscription term.

Termination for Cause. A party may terminate this Agreement for cause: (i) upon 30 days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Upon any termination for cause by Customer, ICOMMM shall refund Customer any prepaid fees for the remainder of the Subscription term after the date of termination.

Outstanding Fees. Termination of this Agreement shall not relieve Customer of the obligation to pay any fees accrued or payable to ICOMMM prior to the effective date of termination.

Return of Customer Data. Once ICOMMM has been notified of Customer's intent to terminate this Agreement, Customer will have the capability to convert their data from its representation within the ICOMMM system repository into a file-based format such as Excel or SQL. Customer must complete any conversion of data prior to the

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effective date of such termination. Customer, at its option, may engage ICOMMM's professional services team under a separate Statement of Work and price quote to extract data into a transportable media format such as DVD or CD-ROM.

7. Fees & Payment.

Subscription, Hosting and Professional Services Fees.

Customer shall pay all fees specified in all executed Order Forms hereunder. Except as otherwise provided, fees are non-refundable, and the number of Subscriptions purchased cannot be decreased during the relevant Subscription term stated on the Order Form.

Invoicing & Payment. Fees for the Service will be invoiced annually in advance as set forth in the relevant Order Form. Fees for Professional Services will be invoiced on a monthly basis per the relevant Statement of Work (SOW).

Overdue Payments. Any payment not received from Customer by the due date shall accrue (except with respect to charges then under reasonable and good faith dispute) late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

Suspension of Service. If Customer's account is 60 days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of its other rights or remedies, ICOMMM reserves the right to suspend the Service provided to Customer, without liability to Customer, until such amounts are paid in full.

8. Satisfaction Guarantee

If Customer is not fully satisfied with the Hosted Service, Customer may cancel service within the first 30 days and receive reimbursement for any monthly service charges paid. Any setup, data integration or customization fees paid are non-refundable.

9. Limited Warranty

(a) Provider warrants that it has the right to license Customer to use the Hosted Service and Proprietary Information.

(b) THE SERVICE AND APPLICABLE USE INSTRUCTIONS ARE PROVIDED TO CUSTOMER "AS IS" AND WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PROVIDER AND ITS

SUPPLIERS DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO THE SOFTWARE PRODUCT, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHERS, WHICH VARY FROM STATE/JURISDICTION TO STATE/JURISDICTION.

Indemnification. Customer shall defend, indemnify and hold ICOMMM harmless against any loss or damage (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("Claims") (i) made or brought against ICOMMM by a third party alleging that the Customer Configuration or Customer Data infringes the intellectual property rights of a third party; provided, that ICOMMM (a) promptly gives written notice of the Claim to Customer; (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases ICOMMM of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance and (ii) arising out of (a) unauthorized user of the Service by Customer and/or (b) breach of Customer's obligations under Sections 5 and 6 of the Software Subscription Terms and Conditions.

10. Limitation of Liability.

Limitation of Liability. EXCEPT FOR THE OBLIGATIONS UNDER ARTICLE 8 (INDEMNIFICATION) OR BODILY INJURY OF A PERSON, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS PAID OR PAYABLE BY CUSTOMER HEREUNDER DURING THE 6 MONTHS PRIOR TO THE ACT GIVING RISE TO SUCH LIABILITY.

Exclusion of Consequential and Related Damages. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOSS OF PROFITS, LOSS OF USE, ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA, COSTS OF PROCUREMENT

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OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

11. Protection of Confidential or Proprietary Software and Information

Customer acknowledges that the Hosted Service made available to Customer by Provider constitutes copyrighted or proprietary property of substantial value to Provider. Customer agrees to take reasonable security measures to prevent the unauthorized duplication, distribution, or use of the software and Proprietary Information, and in no event shall such measures be less than Customer uses to protect its own proprietary information. In addition, Customer agrees to honor and comply with reasonable requests submitted by Provider in order to protect their respective rights in the Hosted Service.

12. Obligations of Provider

ICOMMM Responsibilities. ICOMMM shall: (i) not use, edit or disclose to any party other than Customer the Customer Data; (ii) use industry standard methods and technology to maintain the security and integrity of the Service and the Customer Data; (iii) provide online, e-mail and telephone support to Customer as set forth on the applicable Order Form; and (iv) use commercially reasonable efforts to make the Hosted Service generally available at least 99.5%, calculated on a monthly basis, 24 hours a day, 7 days a week, 365 days per year, except for: (a) planned downtime (of which ICOMMM shall give at least 8 hours notice via the Hosted Service and which ICOMMM shall schedule to the extent reasonably practicable during non-business hours in ICOMMM's discretion); or (b) downtime caused by circumstances beyond ICOMMM's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems not involving ICOMMM employees, computer or telecommunications failures or delays involving hardware or software not within ICOMMM's possession or reasonable control, and network intrusions or denial of service attacks, but only to the extent unavailability of the Hosting Service results, notwithstanding the exercise by ICOMMM of reasonable care and due diligence to avoid or

mitigate the same in anticipation of or in response to such causes.

13. Customer Support

Provider shall provide product support to Customer consistent with its standard support policy. Provider will respond to Customer's telephone inquiries regarding the Hosted Service during normal business hours, 7:45am to 5:30pm PST. (Note: hours may vary in countries outside the US, where Provider or its authorized designee may provide local telephone support).

Customer may request access to an emergency response pager number solely for reporting server or project outages 24 hours a day, 7 days a week. Any calls made to the pager after business hours when an actual server or project outage did not occur will be billed to the Customer at a rate of \$200 per incident in the next billing period.

Should Customer require a higher level of service, an Extended Service Contract may be purchased at additional cost.

15. General

(a) Customer may assign the Agreement only with the written consent of Provider.

(b) All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the third business day after mailing; or (iii) the second business day after sending by confirmed facsimile. Notices to ICOMMM shall be addressed to the attention of its Chief Financial Officer. Notices to Customer are to be addressed as set forth on the Order Form.

1.1 Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

1.2 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

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Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other party. Notwithstanding the foregoing, ICOMMM may assign this Agreement together with all rights and obligations hereunder, without consent of Customer, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

Dispute Resolution. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. The arbitrator shall be mutually agreed upon by the parties and the arbitration shall take place in San Francisco, California at a time and a place selected by the arbitrator.

Export Control Laws. Each party shall comply with all United States and foreign export control laws or regulations applicable to its performance under this Agreement.

Entire Agreement. This Agreement, including all attachments, exhibits and addenda hereto and all Order Forms executed hereunder, constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. In the event of any conflict between the provisions in this Agreement and any exhibit or addendum hereto, or Order Form executed hereunder, the terms of such exhibit, addendum or Order Form shall prevail to the extent of any inconsistency. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in

any other Customer order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

Neither Provider nor its suppliers shall be responsible for delays or performance failures caused from acts beyond their reasonable control.

The Agreement, all intellectual property issues, and rights and obligations shall be governed by the laws of the United States of America and the State of California governing contracts wholly entered into and which are intended to be wholly performed within the State of California, and shall be subject to the exclusive jurisdiction of the courts located in the State of California.

Terms and conditions of the Agreement are severable. If any provision is deemed illegal or unenforceable, all other provisions shall remain in effect.

The Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Government Users. The Service is "commercial software" and any use, duplication, or disclosure of the Service by the U.S government, or any unit or agency thereof, is subject to restrictions as set forth in this Agreement and as provided in DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013(c)(1)(ii) (OCT 1988), FAR 12.212(a) (1995), FAR 52.227-19, or FAR 52.227-14 (ALT III), as applicable.

EACH PARTY RECOGNIZES AND AGREES THAT THE WARRANTY DISCLAIMERS AND LIABILITY AND REMEDY LIMITATIONS IN THIS AGREEMENT ARE MATERIAL BARGAINED FOR BASES OF THIS AGREEMENT AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER SUCH AGREEMENT AND IN THE DECISION TO ENTER INTO SUCH AGREEMENT.

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The City of Sausalito

ICOMMM

Signature: _____

Signature: Steven S. Line

Name:

Name: Steven S. Line

Title:

Title President

Date: _____

Date: _____

IN WITNESS WHEREOF THE CITY and ICOMMM have executed this Agreement as of the effective date. The parties that sign this agreement hereby confirm that they have the authority on behalf of ICOMMM and THE CITY to execute this agreement.

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No

Exhibit B

**Order Form for
ICOMMM Hosted Service**

Customer	THE CITY of Sausalito	Start Date of Service	July 1, 2008
Billing Address	420 Litho Street Sausalito, CA 94965	Software Services	ICOM3 Framework including Collection System Maintenance Management
Phone Fax URL	415-289-4192	Payment Terms	Annual, Two year term July 2008 – June 2010
Technical Contact	Pat Guasco	Number of Users	Up to 12 concurrent 20 named

Payment Terms

Annual Billing (paid in advance)

Setup Fee	Annual Fee	Service Period	5% Two Year Discount	Annual Payment Amount	Total Agreement Amount
Annual	\$21,000	24 mos.	(-\$2,000)	\$19,000	\$38,000

Initial: _____

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IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

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