

CITY CLERK ORIGINAL

C-9963
05/11/2015

LINKING AGREEMENT BETWEEN THE CITY OF GLENDALE, ARIZONA AND TIO NETWORKS CORP

THIS LINKING AGREEMENT (this "Agreement") is entered into as of this 11 day of May, 20 15, between the City of Glendale, an Arizona municipal corporation (the "City"), and TIO Networks Corp, a British Columbia corporation, (for and on behalf of itself and its wholly owned subsidiaries TIO Networks USA and affiliates), together hereinafter ("Contractor"), collectively, the "Parties."

RECITALS

- A. On February 13, 2015, the City of Mesa, Arizona entered into Contract No. 2014169 with Contractor to purchase the goods and services described in the **Payment Kiosk Services Solution aka Alternative Payment Solution Contract**, which is attached hereto as **Exhibit A**. The **Payment Kiosk Services Solution aka Alternative Payment Solution Contract** permits its cooperative use by other governmental agencies including the City. The **Payment Kiosk Services Solution aka Alternative Payment Solution Contract** is hereinafter referred at as the Cooperative Purchasing Agreement.
- B. Section 2-149 of the City's Procurement Code permits the Materials Manager to procure goods and services by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.
- C. Section 2-149 also provides that Materials Manager may enter into such cooperative agreements without meeting the formal or informal solicitation and bid requirements of Glendale City Code Sections 2-145 and 2-146.
- D. The City desires to contract with Contractor for supplies or services identical, or nearly identical, to the supplies or services Contractor is providing other units of government under the Cooperative Purchasing Agreement. Contractor consents to the City's utilization of the Cooperative Purchasing Agreement as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the supplies and services set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the covenants and promises contained in this Linking Agreement, the parties agree as follows:

1. Term of Agreement. The City is purchasing the supplies and/or services from Contractor pursuant to Cooperative Purchasing Agreement. According to the Cooperative Purchasing Agreement award and rate sheet, which are attached hereto as part of **Exhibit A**, purchases can be made by governmental entities from the date of award, which was **February 13, 2015**, until the date the contract expires on **February 12, 2018**, unless the term of the Cooperative Purchasing Agreement is extended by the mutual agreement of the original contracting

parties. The Cooperative Purchasing Agreement, however, may not extend the contract beyond **February 12, 2020**. The initial period of this Agreement therefore is the period from the Effective Date of this Agreement until **February 12, 2018**. The City, however, may renew the term of this Agreement for a maximum of **two (2) years** if the Cooperative Purchasing Agreement is renewed to expire on **February 12, 2020**. Renewals are not automatic and shall only occur if the City gives the Contractor notice of its intent to renew. The City may give the Contractor notice of its intent to renew this Agreement 30 days prior to the anniversary of the Effective Date to effectuate such a **two (2) year** renewal.

2. Scope of Work; Terms, Conditions, and Specifications.

- A. Contractor shall provide City the supplies and/or services identified in the Scope of Work attached hereto as **Exhibit A** except that Optional Mobile Payment Solutions, listed on page 23 of Exhibit A, shall not be part of the Scope of Work.
- B. Such terms, conditions and specifications are specifically incorporated into and are an enforceable part of this Agreement.

3. Compensation.

- A. City shall pay Contractor compensation at the same rate and on the same schedule as the Cooperative Purchasing Agreement, unless the City and Contractor agree otherwise, as provided in **Exhibit A** hereto with the following exceptions:
 - 1. TIO will not offer the electronic check payment modality listed in Schedule C, Form 1 of Exhibit A,
 - 2. The Convenience Fee paid by customers for cash transactions will be \$2.00 instead of \$2.50 and up to \$3.00 instead of \$2.50 for credit card transactions as defined in Schedule B of Exhibit A
 - 3. City shall not send SMS messages to its Customers as defined in the Marketing Program, page 43 in Exhibit A.

4. Cancellation. This Agreement may be cancelled pursuant to A.R.S. § 38-511.

5. Non-discrimination. Contractor must not discriminate against any employee or applicant for employment on the basis race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

6. E-verify. Contractor complies with A.R.S. § 23-214 and agrees to comply with the requirements of A.R.S. § 41-4401.

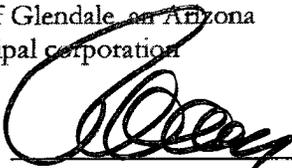
[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

"City"

City of Glendale, an Arizona
municipal corporation

By:


Richard A. Bowers
Acting City Manager

"Contractor"

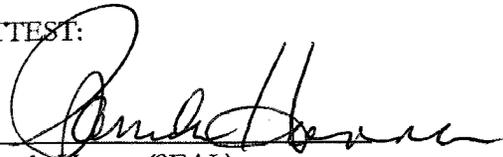
TIO Networks Corp.,
a British Columbia corporation

By:


Name: CHRIS TRICKETT

Title: CRO

ATTEST:


Pamela Hanna (SEAL)
City Clerk

APPROVED AS TO FORM:

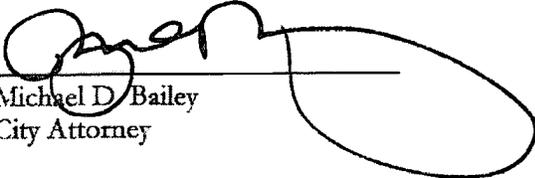
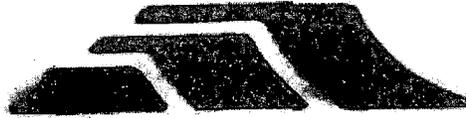

Michael D. Bailey
City Attorney

EXHIBIT A



mesa·az

AGREEMENT PURSUANT TO SOLICITATION

CITY OF MESA CONTRACT NO. 2014169

CITY OF MESA, an Arizona municipal corporation ("City")

Department Name	City of Mesa – Purchasing Department
USPS Address	P.O. Box 1466 Mesa, AZ 85211-1466
Delivery Address	55 N. Center Street Mesa, AZ 85201
Attention	Sharon Brause, Senior Procurement Officer
Telephone	(480) 644-2815
Facsimile	(480) 644-2655
Email	Sharon.Brause@MesaAZ.gov

AND

TIO NETWORKS CORP., a Canadian business entity/individual ("Contractor")

Company Name	TIO Networks Corp.
Address	1550 – 250 Howe Street Vancouver, British Columbia, Canada V6C 3R8
Delivery Address	same
Attention	Conal Campbell
Telephone	(604) 298-4636, Ext. 212
Facsimile	(604) 298-4216
Email:	Conal.Campbell@TioNetworks.com

CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This Agreement pursuant to solicitation ("Agreement") is made and entered into this 13th day of FEBRUARY, 2015, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and TIO Networks Corp, a British Columbia corporation, (for and on behalf of itself and its wholly owned subsidiaries TIO Networks USA and affiliates, together hereinafter ("Contractor"). The City and Contractor are each a "Party" or "party" to the Agreement or together are "Parties" or "parties" to the Agreement.

RECITALS

- A. The City issued solicitation number 2014169 ("Solicitation") on **May 21, 2014** for **Payment Kiosk Services Solution aka Alternative Payment Solution**, to which Contractor provided a response ("Response"); and
- B. The City selected Provider's Response as being in the best interest of the City and wishes to engage Contractor in providing the services/ materials described in the Solicitation and Response.

In consideration of the reciprocal promises contained in the Agreement, and for other valuable and good consideration, which the Parties acknowledge the receipt and sufficiency of, the Parties agree to the following Terms & Conditions.

DEFINITIONS

Definitions are as follows:

"ACH Transfer(s)" shall mean a transfer of money to the Designated Bank Account initiated by TIO pursuant to the automated clearinghouse rules.

"Affiliate" shall mean, an Affiliate of a person means any entity, directly or indirectly, controlling or controlled by or under direct or indirect common control with a person; and "control" means the power, directly or indirectly, to direct, or cause the direction of the management and policies of an entity through the ownership of voting securities, by contract or otherwise.

"Backend Fee(s)" shall mean, the fee paid by the City to TIO with respect to the processing of a Customer Payment made on certain Devices in certain Locations.

"Bill Payment Application" shall mean, the TIO developed method including but not limited to all hardware, software, data, information, source code, web based interfaces necessary to allow TIO the Customer and the City to process and complete a Customer Payment or perform such other transactions related to the City services as may be agreed by the parties.

"Business Day" shall mean, any day other than a Saturday, Sunday or a United States Federal holiday or day in which United States banks are closed.

"Change Order" shall have the meaning described in Appendix 1 to Schedule "D".

"Chargeback Handling Fee" shall have the meaning described in Schedule "C"

"City Location Kiosk" shall have the meaning described in Schedule "A".



"City Corporate Location" shall have the meaning described in Schedule "A".

"Customer" shall mean, a person who has an account with the City.

"Customer Payment" shall mean, any payment made by a Customer by way of a Device and the Bill Payment Application to be credited to the Customer's account held with the City.

"Customer Convenience Fee" shall mean, the fee paid by a Customer with respect to the usage of a Bill Payment Application made available via a Device to facilitate a Customer Payment.

"Designated Bank Account" shall mean, the account opened and maintained by the City at a federally chartered bank in the United States.

"Device" shall mean, any of the hardware and/or software systems developed by TIO from time to time on which the Bill Payment Application has been made available including but not limited to web based and hardware based approaches.

"Device Type" refers to different methods of deploying the Bill Payment Application.

"Gateway Processing Fee" shall have the meaning described in Schedule "C".

"Integration" shall mean, a technical integration that TIO and the City may cooperatively establish that enables real time posting of Customer Payments in all City Markets to those accounts that the Customer has with the City regardless of Device Type and Location.

"Location" refers to any place from which the Bill Payment Application can be accessed including retail stores and web browsers located on internet web browsers.

"Location Type" refers to the various types of Locations where the Bill Payment Application can be accessed.

"Market(s)" shall mean, the geographic region(s) or area(s) served by the City as defined in "Schedule A".

"MyTIO" shall have the meaning described in Schedule "A".

"Payment Modalities" shall mean, the various methods that can be used by a Customer to complete a Customer Payment including but not necessarily limited to cash, credit card, debit card, stored value card, check, or other agreed upon method.

"Processing Method" shall have the meaning described in Schedule "C".

"Real Time" shall mean, a method by which information pertinent to a Customer Payment is received and immediately responded to by the both the City and TIO without any time delay.

"Retailers" shall mean, collectively the Dealers and the retailer operating the TIO 3rd Party Retail Location.

"Store Kiosk" shall have the meaning described in Schedule "A".

"TIO 3rd Party Retail Location" shall have the meaning described in Schedule "A".

TERMS & CONDITIONS

1. **Term.** The term of this Agreement is **three (3) years** beginning on the date of activation of the Bill Payment Application(also referred to as "Launch Date" herein), which will be documented by way of an amendment to this Agreement. The use of the word "Term" in the Agreement includes the aforementioned period as well as any applicable extensions agreed upon by the Parties in accordance with this Section 1.
 - 1.1 **Renewal.** On the mutual written agreement of the Parties, the Term may be renewed up to a maximum extension period of **two (2) years**. Any extension will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
 - 1.2 **Extension for Procurement Processes.** Upon the expiration of the initial Term of this Agreement, including any extensions permitted herein, with mutual agreement this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City's procurement processes in the selection of a vendor to provide the services/materials provided under this Agreement.
2. **Scope of Work.** During the Term of the Agreement, Contractor will provide the necessary staff, services and associated resources to provide the City with the services, materials, and obligations attached to this Agreement as **Exhibit A ("Scope of Work")**. Contractor will be responsible for all costs and expenses incurred by Contractor that are incident to the performance of the Scope of Work unless otherwise stated in **Exhibit A**. Contractor will supply all equipment and instrumentalities necessary to perform the Scope of Work.
3. **Appointment.**
 - 3.1 The City hereby designates and appoints Contractor as its agent and authorized representative for purposes pertaining to bill payment processing under this Agreement, subject to the terms of the Agreement. Contractor hereby accepts such designation and appointment. Each party ratifies and confirms such designation and appointment effective as of the effective date of the Agreement.
 - 3.2 The City acknowledges that Contractor may from time to time contract with and/or appoint persons to act as subagents to assist Contractor in the performance of its obligations to City under the Agreement. Such subagents may include, among others, owners or operators of gas stations, ATM terminals, convenience stores or other retail locations at which payment processing services will be provided. Solely for regulatory purposes, and only to the extent that such subagents are deemed to receive funds to be transmitted to the City in connection with the Services, the City agrees that such subagents will be deemed to be acting on behalf of the City and as the City's authorized representative only for the purposes of the receipt of such funds. Notwithstanding, Contractor agrees that it will remain solely responsible for the selection of each subagent and for ensuring that all actions and omissions of each subagent are within the limitations of Contractor's authority as described above. Contractor agrees to indemnify the City from and against all Damages (as that term is defined in Section 3.3(b) below) incurred by the City to the extent that such Damages arise out of or relate to any actions or omissions of any subagent that are outside such limitations.

3.3 Except as otherwise provided in the Agreement, the scope of Contractor's authority as an agent and authorized representative under this Agreement is limited as set forth below:

- a. Contractor will have no authority to act in the City's name or on the City's behalf for any other purpose or in any other capacity, except as specifically provided in this Agreement. Contractor may not without the City's prior written consent: (i) bind or purport to bind the City to any agreement, document, contract or other obligation or liability, or (ii) represent or hold itself out as representing the City for any other purpose.
- b. The City will have no liability to any Customer or other third party that arises out of or relates to any acts or omissions of the Contractor where such acts or omissions are outside the scope of Contractor's authority under this Agreement. Contractor agrees to indemnify and hold the City harmless from and against all losses, costs and damages, including reasonable attorney fees ("Damages") incurred by the City to the extent that such Damages arise out of or relate to any actions or omissions of the Contractor or a subagent that are outside the scope of such authority.
- c. The designation and appointment described in Section 3.1 is not exclusive, and the City may enter into other relationships with other agents and authorized representatives without violating this Agreement.

4. **Payment Modalities and Convenience Fees.**

- 4.1 The Bill Payment Application may be developed by Contractor to facilitate Customer Payments using the Payment Modalities set out in the attached Schedule "C".
- 4.2 The City agrees that Contractor will offer the Payment Modalities provided that the City acknowledges and agrees that it is obligated to complete and execute the documentation required for Contractor to process payments on behalf of City customers, including that documentation described in the Schedules attached to this Agreement, and to assist Contractor in obtaining such approvals, authorizations, certificates, and notices as may be required to assist Contractor in implementing said Payment Modalities.
- 4.3 The Parties acknowledge and agree that Contractor shall be entitled to charge a Customer Convenience Fee at certain Location Types with respect to the use of the Bill Payment Application for each Customer Payment and provided that the amount of the fee and the Parties entitlement to its proportionate share shall be as set out in Schedule "B".

5. **Contractor Obligations.**

- 5.1 Contractor shall perform its obligations under this Agreement accurately and in a manner consistent with industry standards. All personnel utilized by Contractor shall maintain compliance with all technical and security standards and procedures hereunder.
- 5.2 Contractor will provide the services and complete the functions described below and on the Schedules and Exhibits attached to the Agreement in order to facilitate and support the Bill Payment Application.

- a. Transaction Processing: Contractor will process the Customer Payments made via the Bill Payment Application subject to this Agreement.
 - b. Transaction Report: The City will be provided with online access to various reporting functions ("Reporting Extranet") or another mutually agreed method of reporting, which will include daily transaction summaries. Daily transaction summaries will contain sufficient detail regarding Customer Payments and other related information in order to facilitate reconciliation between Contractor's and the City's systems. Each transaction must contain a unique identifier and timestamp. Each transaction, if applicable, must also breakout all applicable taxes by amount and type.
 - c. Disputes: In the event the City disagrees with the amount of any ACH Transfer, the City shall send Contractor a dispute note by email or fax, and Contractor will, within ten (10) Business Days, send the City the documentation supporting the Customer Payments during the period in dispute. Regardless of any dispute Contractor will continue to complete the daily ACH Transfers pursuant to the terms of this Agreement.
- 5.3 Contractor will use commercially reasonable efforts to ensure the continuous operation of the Bill Payment Application in accordance with the service levels as set out in **Schedule "F"**.
- 5.4 Contractor will use reasonable efforts to ensure that its business and operations are fully compliant with all applicable federal, state and local rules and regulations. Contractor will indemnify the City against all liabilities and causes of actions for any losses, costs, damages, expenses or other liabilities (including attorney fees and costs) incurred by the City for Contractor's failure to comply with applicable law in Contractor's performance under this Agreement. From time to time during the term of this Agreement, Contractor may provide to the City information in written form concerning compliance matters. The City agrees it will consult with its own legal counsel in connection with its compliance responsibilities that are the sole responsibility of the City. Notwithstanding any other provision of this Agreement, Contractor makes no representation or warranty with respect to the applicability, accuracy or completeness of any information related to compliance with applicable law that is the sole responsibility of the City, and Contractor will have no liability whatsoever for any losses, costs, damages, expenses or other liabilities (including attorney fees and costs) incurred by the City or any third party acting in reliance upon information related to compliance with applicable law that is the sole responsibility of the City.
- 5.5 Contractor will maintain and support the Bill Payment Application and respond to inquiries and/or concerns communicated by Customers of the City to the City in the manner described in **Schedule "F"**.
- 5.6 Contractor shall maintain accurate records of all Customer Payments that it collects and all payments that it transmits to the City in accordance with generally accepted accounting principles uniformly and consistently applied. Records of Customer Payments shall contain, at a minimum, the dollar amount received from the Customer, the date and time of the Customer Payment and the Customer information provided by the Customer. All records maintained pursuant to this

Section shall be made available by Contractor for review by the City or its agents/representatives at any time via reporting.

- 5.7 Contractor shall be liable and responsible for promptly delivering to the City's Designated Bank Account all bill payment monies collected from Customer Payments conducted using cash pursuant to this Agreement. Contractor shall bear all risk of loss for all cash payments received by Contractor from Customers that may be lost, stolen, destroyed or embezzled, or that may disappear for any reason prior to the time that such cash payments are deposited in the Designated Bank Account. All rights, title and interest in and to Customer Payments made with cash, not including any fees payable to Contractor hereunder, shall be vested solely in the City, and shall be held in trust by Contractor for the City. All such funds from Customer Payments made with cash in the possession of Contractor shall not be subject to retention, reduction, discount, or offset of any kind by Contractor for any reason or purpose unless mutually agreed upon.

6. **City Obligations.**

6.1 The City shall:

- a. be responsible for providing data in a mutually agreed upon electronic form such that Contractor can utilize it to operate and maintain the efficient operation of the Contractor's Bill Pay Application. The method used for providing data may include the use of an Application Programming Interface (API) or a mutually defined data exchange process.
- b. be responsible for its own costs associated with establishing, managing and maintaining the necessary interfaces between Contractor systems and its own systems.
- c. be responsible for development and implementation of the marketing program as set out in **Schedule "E"**.

- 6.2 Contractor acknowledges all right, title and interest in and to all, registered and unregistered trademarks, service marks and logos owned by the City remain the property of the City. The City may, at the City's sole and unfettered discretion, grant to Contractor the right to use the City's name, logo, trademarks, or trade names in a manner Contractor and the City deem appropriate in providing the Contractor's Bill Pay Application; however in any event in a matter consistent with the City's brand guidelines, as provided to Contractor. Any graphical or written use of the City's logo(s) or mark(s) will first need to be approved by the City in writing prior to use by Contractor, which approval will not be unreasonably withheld, by the City.

7. **Bill Payment Settlement Terms.**

- 7.1 For all Device Types, excluding any City Location Kiosk(s), Contractor shall cause the Customer Payments made with cash to be credited to the City's Designated Bank Account on the following terms and conditions:
- a. Contractor shall initiate a daily ACH Transfer to deposit the Customer Payments made with cash, minus the Convenience Fees and when applicable other fees into the City's Designated Bank Account two (2) Business Days in arrears and per the table below.

	Credit to City (applicable in all cases)	
Transaction Date Range (all times Eastern)	Contractor initiates ACH Deposit to City Account	Funds are ACH Deposited into City Account
Monday 3:00am to Tuesday 2:59:59am	Wednesday	Thursday
Tuesday 3:00am to Wednesday 2:59:59am	Thursday	Friday
Wednesday 3:00am to Thursday 2:59:59am	Friday	Monday
Thursday 3:00am to Friday 2:59:59am	Monday	Tuesday
Friday 3:00am to Saturday 2:59:59am	Tuesday	Wednesday
Saturday 3:00am to Sunday 2:59:59am	Tuesday	Wednesday
Sunday 3:00am to Monday 2:59:59am	Tuesday	Wednesday

b. The daily transaction cutoff time of day will be per the table above.

c. The ACH Transfer shall clearly identify the amount attributable to pertinent transaction types. Customer Payments made using non-cash based Payment Modalities will not be included in the ACH described herein. Instead said monies may be deposited by a processor into the City's merchant account on record with said processor.

7.2 Contractor shall retain all books and records regarding transactions performed under this Agreement during the term of this Agreement and for three (3) years after the termination of this Agreement and shall also make such invoices, books and records available for review by the City or its outside auditors/consultants, upon reasonable prior notice and during customary business hours, provided that the purpose of such audit shall be only for verification of Contractor's proper performance of its obligations hereunder and Contractor's compliance with applicable law; it being expressly understood that Contractor shall not be required to divulge salary and overhead data or other internal cost information unless such information is the only information that would demonstrate Contractor's compliance with this Agreement and applicable law. The costs associated with any such audit shall be borne by the City provided that, if on conclusion of the audit it is determined Contractor underpaid the City in any three month period by five (5%) or more then in such event Contractor shall immediately pay the City all fees owed and shall be responsible for all costs associated with the applicable audit.

7.3 Should the City reasonably and in good faith dispute all or any portion of the amount due to the City, the City shall notify Contractor in writing of the nature and basis of the dispute and the amount of the adjustment in a prompt manner after

discovery of the nature of the dispute. The parties shall use their commercially reasonable efforts to resolve the dispute as soon as possible.

7.4 Provided that the Customer has successfully completed a Customer Payment transaction using cash through the Bill Payment Application Contractor shall be responsible for ensuring that the full amount of the Customer Payment as recorded by the Contractor Bill Payment System is remitted to the City Designated Bank Account pursuant to the terms and conditions of this Agreement. If the Customer Payment was made using a non-cash Payment Modality then the parties will defer to the timing, method and other terms related to the receipt of payment by the City as identified in **Schedule "C"**.

8. **Intellectual Property Rights.** Except as otherwise set forth herein, all right, title and interest in and to all, (i) registered and unregistered trademarks, service marks and logos; (ii) patents, patent applications, and patentable ideas, inventions, and/or improvements; (iii) trade secrets, proprietary information, and know-how; (iv) all divisions, continuations, reissues, renewals, and extensions thereof now existing or hereafter filed, issued, or acquired; (v) registered and unregistered copyrights including, without limitation, any forms, images, audiovisual displays, text, software including source code and (vi) all other intellectual property, proprietary rights or other rights related to intangible property which are used, developed, comprising, embodied in, or practiced in connection with the Bill Payment Application and the services identified herein ("Contractor Intellectual Property Rights") are owned by Contractor or its licensors, and the City acknowledges that no title to the Contractor Intellectual Property Rights is transferred to the City. The City agrees not to make any claim of interest in or ownership of the Contractor Intellectual Property Rights now or in the future.

9. **Limitation of Liability and Indemnification.**

9.1 Contractor shall not be responsible for any sales or other taxes associated with the provision of the products or services by the City for which Customer Payments are received. Contractor is responsible for payment of any applicable taxes including federal, state, and local taxes related to or arising out of Contractor's services under this Agreement, including by way of illustration but not limitation, federal and state income tax, social security tax, unemployment insurance taxes, and any other taxes or business license fees as required.

9.2 Except as otherwise provided in this Agreement, the City acknowledges Contractor is responsible only for providing data transmission to effect or direct Customer Payments and that Contractor is not responsible for the availability or performance of the Internet.

9.3 IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY OR ANY OTHER PARTY FOR ANY LOST OPPORTUNITY OR PROFITS, OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES ARISING OUT OF THIS AGREEMENT UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY INCLUDING WITHOUT LIMITATION THE LOSS OF REVENUES, INCOME, PROFITS, OR GOODWILL. This limitation shall apply regardless of whether any action is brought in contract or in tort, including any claim of fundamental breach and shall survive the expiry, termination, avoidance or repudiation of this agreement and the limitations set forth above shall be enforceable to the maximum extent allowed by applicable law.

9.4 This section is subject to the terms of Section 7.2. Either party will defend, indemnify, save and hold harmless the other party and the officers, directors, agents, representatives, volunteers, and employees of the other party from and against any and all third party claims, losses, demands, liabilities, damages, costs and or expenses (including reasonable attorneys' fees), either arising out of or relating to the indemnifying party's material breach of any duty, representation or warranty of this Agreement (including loss to the City caused by a Customer's use of the Bill Payment Application) including, without limitation, losses resulting from any loss, theft, disappearance or destruction of a Customer's payments prior to the time that such payments are deposited in the City's Designated Bank Account. A party's right to indemnification under the Agreement ("indemnified party") is conditioned upon the following: prompt written notice to the party obligated to provide indemnification ("indemnifying party") of any claim, action or demand for which indemnity is sought; sole control, in consultation with the indemnified party, of the settlement, compromise, negotiation and defense of any such claim, action or demand by the indemnifying party when there is no real or perceived negative implications to the indemnified party and no potential risk for independent liability of the indemnified party that would not be covered by the indemnification obligations in this Agreement; and cooperation by the indemnified party, at the indemnifying party's request and expense, in the defense of the claim. The indemnified party shall have the right to participate in the defense of a claim by the indemnifying party with counsel of the indemnified party's choice at the indemnified party's expense. The indemnifying party shall not, without the prior written consent of the indemnified party, settle, compromise or consent to the entry of any judgment that makes any admissions in the indemnified party's name or imposes any liability upon the indemnified party. The indemnification obligations created by this Section shall survive the expiration or termination of this Agreement.

10. **Confidential Information, Confidentiality and Non-Disclosure.**

10.1 Confidentiality. The parties acknowledge and agree that all information relative to this Agreement, the Bill Payment Application, the City, Contractor, Customer accounts and the services related thereto is properly considered proprietary and confidential between the parties and shall be entitled to all protection given by law to proprietary and confidential information. "Confidential Information" shall apply to every form in which such information shall exist, whether written, oral, digital tape, electronic or other form of media.

10.2 Non-Disclosure and Use of Confidential Information. The parties covenant and agree that, both during the term of this Agreement and at all times thereafter, the parties, their officers, directors, employees, agents and any successor entities, shall not use or disclose to any person, firm, corporation or other business entity any Confidential Information, and shall not help anyone else to do any of these things, without first obtaining written authorization from the City. Contractor agrees to use the Confidential Information only as needed to perform their obligations under this Agreement. Upon termination of this Agreement, at the request of the City all Confidential Information (originals and all copies, whether stored electronically, magnetically or in hard copy) in the possession of Contractor shall be promptly returned to the City or destroyed as the City may request.

10.3 Protection of Confidential Information. Contractor acknowledges and agrees that any information, with respect to the customer and the City is proprietary and Confidential Information and that Contractor will protect such information as set

forth in this Agreement and will not use such information in any way, during and after the termination or expiration of this Agreement, without the express prior written consent of the City. Specifically and without limiting the generality of the foregoing Contractor agrees that all Customer information (e.g., name, address, billing information, credit card or other account numbers, PINs, social security numbers, driver's license number, etc.), is Confidential Information pursuant to this Agreement, and Contractor shall provide commercially reasonable protection of such data against disclosure both during transmission and following placement into data storage as required by law.

10.4 Confidentiality Obligations. Subject to any exceptions set forth in this Section 12, each party (i) shall not disclose to any third party or use any Confidential Information disclosed to it by the other except as expressly permitted in this Agreement or in accordance with applicable law, and for purposes of performing this Agreement, and (ii) shall take reasonable measures to maintain the confidentiality of all Confidential Information of the other party in its possession or control, which shall in no event be less than the measures it uses to maintain the confidentiality of its own proprietary information or Confidential Information of similar importance. Each party further agrees to use the other party's Confidential Information only for the purpose of its performance under this Agreement. In addition, the receiving party shall not reverse engineer, disassemble or decompile any prototypes, software or other intangible objects which embody Confidential Information and which are provided to the receiving party hereunder.

10.5 Limitation of Confidentiality. The Obligations set forth in Section 10.4 ("Confidentiality Obligations") above do not apply to information that (i) is in or enters the public domain without breach of this Agreement, (ii) the receiving party lawfully receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation, (iii) the receiving party knew prior to receiving such information from the disclosing party or develops independently without access or reference to the Confidential Information, (iv) is disclosed following expiration of this Agreement; and (v) any information that is a public record pursuant to applicable law (see Section 12.7 below).

10.6 Exceptions to Confidentiality. Notwithstanding the Confidentiality Obligations set forth in Section 12.4 above, each party may disclose Confidential Information of the other party: (i) to the extent required by a court of competent jurisdiction or other governmental authority or otherwise as required by law, but only after alerting the other party of such disclosure requirement and, prior to any such disclosure, allowing (where practicable to do so) the other party three Business Days within which to seek a protective order against the proposed disclosure, or (ii) under an obligation of confidentiality substantially similar in all material respects to those confidentiality obligations in this Section 12 to its legal counsel, accountants, contractors, consultants, banks and other financing sources.

10.7 Public Records. Contractor acknowledges that the City is a public entity, subject to Arizona's public records laws (A.R.S. § 39-121 et. seq.) and that any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial process.

11. Dispute Resolution. Any dispute or controversy between the parties with respect to the interpretation or application of any provision of this Agreement, the performance by Contractor or the City of their duties, obligations and responsibilities hereunder or the

breach, default or purported termination of this Agreement by either party ("Dispute"), which cannot be resolved by consultation between the parties within thirty (30) business days shall be submitted to mediation in Maricopa County, Arizona prior to the filing of any suit. Negotiations pursuant to a Dispute are confidential and privileged and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence or any arbitration proceeding between the parties.

12. **Cooperative Purchasing.** The City participates in cooperative purchasing with other governmental entities as set forth in the Mesa Standard Terms and Conditions S.38 that is attached to the Agreement as **Exhibit B**. ***If Contractor does not wish to allow access to the Solicitation and the Agreement by other governmental entities for a cooperative purchase, Contractor must have stated so in its Response.*** In the absence of a statement to the contrary in the Response, the Parties agree that it is assumed that Contractor wishes to grant other governmental agencies access to the Solicitation and the Agreement for cooperative purchasing.
13. **Reserved.**
14. **Insurance.** Contractor must obtain and maintain at its expense throughout the Term of the Agreement, at a minimum, the types and amounts of insurance set forth in this Section from insurance companies authorized to do business in the State of Arizona; the insurance must cover all operations and services performed by Contractor under the Agreement. For any insurance required under the Agreement, Contractor will name the City of Mesa, its agents, representatives, officials, volunteers, officers, elected officials, and employees as additional insureds, as evidenced by providing an additional insured endorsement.
 - 14.1 Nothing in this Section 14 limits Contractor's responsibility to the City. The insurance requirements herein are minimum requirements for the Agreement and in no way limit the indemnity promise(s) contained in the Agreement.
 - 14.2 City does not warrant that the minimum limits contained herein are sufficient to protect Contractor and subcontractor(s) from liabilities that might arise out of the performance of the Scope of Work under the Agreement by Contractor, its agents, representatives, employees, or subcontractor(s). Contractor is encouraged to purchase additional insurance as Contractor determines may be necessary.
 - 14.3 Each insurance policy required under the Agreement must be in effect at or prior to the execution of the Agreement and remain in effect for the Term of the Agreement including any warranty periods.
 - 14.4 Prior to the execution of the Agreement, Contractor will provide City with a Certificate of Insurance (using an appropriate ACORD certificate) signed by the issuer with applicable endorsements. The City reserves the right to request additional copies of any or all of the policies, endorsements, or notices relating thereto that are required under the Agreement.
 - 14.5 When the City requires a Certificate of Insurance to be furnished, Contractor's insurance is primary of all other sources available. When the City is a certificate holder, Contractor agrees that no policy will expire, be canceled, or be materially changed to affect the coverage available without advance written notice to the City.
 - 14.6 The policies required by the Agreement must contain a waiver of transfer rights of recovery (waiver of subrogation) against the City, its agents, representatives,

officials, volunteers, officers, elected officials, and employees for any claims arising out of the work of Contractor.

14.7 All insurance certificates and applicable endorsements are subject to review and approval by the City's Risk Manager.

14.8 Types and Amounts of Insurance. Contractor must obtain and retain throughout the term of the Agreement, at a minimum, the following:

a. Worker's compensation insurance in accordance with the provisions of Arizona law. IF CONTRACTOR OPERATES WITH NO EMPLOYEES, CONTRACTOR MUST PROVIDE WRITTEN PROOF TO THE CITY HE/SHE HAS NO EMPLOYEES. IF EMPLOYEES ARE HIRED DURING THE COURSE OF THIS AGREEMENT, CONTRACTOR MUST PROCURE WORKER'S COMPENSATION IN ACCORDANCE WITH THE PROVISIONS OF ARIZONA LAW.

b. Commercial general liability in amounts not less than \$1 million combined single limit per occurrence for bodily injury, personal injury, and property damage with endorsements to include broad form contractual, and broad form property damage.

15. **Notices.** All notices to be given pursuant to the Agreement will be delivered to the addresses listed on Page 1 of this Agreement. Notice will be delivered pursuant to the requirements set forth the Mesa Standard Terms and Conditions S.40 that is attached to the Agreement as **Exhibit B**.

16. **Representations of Contractor.** To the best of Contractor's knowledge, Contractor agrees that:

a. Contractor has no obligations, legal or otherwise, inconsistent with the terms of the Agreement or with Contractor's undertaking of the relationship with the City;

b. Performance of the services called for by the Agreement do not and will not violate any applicable law, rule, regulation, or any proprietary or other right of any third party;

c. Contractor will not use in the performance of Contractor's responsibilities under the Agreement any proprietary information or trade secret of a former employer of its employees (other than City, if applicable); and

d. Contractor has not entered into and will not enter into any agreement, whether oral or written, in conflict with the Agreement.

17. **Mesa Standard Terms and Conditions.** Exhibit B to this Agreement is the Mesa Standard Terms and Conditions as modified by the Parties, which are incorporated by reference into the Agreement as though fully set forth herein. In the event of any inconsistency between the terms of the Agreement and the Mesa Standard Terms and Conditions, the language of the Agreement will control. The Parties or a Party are referred to as a "party" or "parties" in the Mesa Standard Terms and Conditions. The Term is referred to as the "term" in the Mesa Standard Terms and Conditions.

18. **Counterparts and Facsimile or Electronic Signatures.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original and all of which, taken together, will constitute one agreement. A facsimile or other electronically

delivered signature to the Agreement will be deemed an original and binding upon the Party against whom enforcement is sought.

19. **Incorporation of Recitals and Exhibits.** All Recitals and Exhibits (including Schedules, Forms, and Appendixes) to the Agreement are hereby incorporated by reference into the Agreement as if written out and included herein. In the event of any inconsistency between the terms of the body of the Agreement and the Exhibits, the language of the Agreement will control.
20. **Attorneys' Fees.** The prevailing Party in any litigation arising out of the Agreement will be entitled to the recovery of its reasonable attorney's fees, court costs, and other litigation related costs and fees from the other Party.
21. **Additional Acts.** The Parties agree to execute promptly such other documents and to perform such other acts as may be reasonably necessary to carry out the purpose and intent of the Agreement.
22. **Headings.** The headings of the Agreement are for reference only and will not limit or define the meaning of any provision of the Agreement.
23. **Force Majeure.** Notwithstanding anything in this Agreement, neither Party shall be liable for any failure or delay in performing its obligations under this Agreement, other than payment obligations, due to causes outside its reasonable control, provided that a Party claiming the benefit of this section shall use its best efforts to mitigate the cause or causes beyond its control including, without limitation, obtaining materials from other sources or using services of other suppliers. Events of force majeure shall include, without limitation, failure or malfunction of computer equipment or software, interruption in telecommunication services, or the Internet, accidents, acts of God, strikes or other labor disputes, and legislation or regulations of any government or governmental agency. Should any event delay the performance by a Party for ninety (90) days or more, the other party may terminate this Agreement upon written notice to the delayed Party.
24. **General.**
 - 24.1 **Entire Agreement.** This Agreement, including any amendments and supplements attached hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes all prior or contemporaneous agreements, negotiations, representations, discussions and understandings, oral or written, relating to the subject matter hereof. This Agreement may be amended, supplemented or modified only by written instrument, signed by each of the Parties hereto.
 - 24.2 **Governing law:** This Agreement shall be construed and the legal relations between the parties determined in accordance with the laws of the state of Arizona, USA, without giving effect to any choice of law rules which may direct the application of the laws of any other jurisdiction. Any litigation filed pursuant to this Agreement must be filed in a court of competent jurisdiction in Maricopa County, Arizona.
 - 24.3 **Successors and Assignees.** This Agreement shall inure to the benefit of and are binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns. This Agreement shall not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld.



- 24.4** Currency: All references to currency in this Agreement are in United States' dollars.
- 24.5** Relationship of Parties. The relationship of the parties shall be that of independent contractors. Nothing in this Agreement shall be interpreted to create any partnership, joint venture, or similar relationship, or subject the parties to any implied duties or obligations respecting the conduct of their affairs that are not expressly stated herein. Each party shall be responsible for compliance with all laws, rules and regulations involving its respective employees or agents. Each party shall also be responsible, respectively, for payment of taxes with respect to its employees or agents.
- 24.6** Waiver. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the Party against whom it is sought to be enforced. The failure of either Party at any time to require performance of any provision shall not affect the right to require performance at any other time, nor shall the waiver by either Party of a breach of any provision be a waiver of any succeeding breach or a waiver of the provision itself.
- 24.7** Severability. If any provision of this Agreement is declared illegal, void or unenforceable for any reason, such provision shall be severed from the balance of this Agreement and the remaining provisions hereof shall continue in full force and effect.
- 24.8** Third Party Beneficiaries. This Agreement is entered into by and between, and may be enforced only by, the parties and any Affiliate of Contractor, and this Agreement shall not be deemed to create any rights in third parties (other than the parties' permitted successors and assigns and any persons entitled to indemnity hereunder), including suppliers and Customers of a party, or to create any obligations of a party to any such third parties.
- 24.9** Trademarks and Publicity. Neither party shall have any right to use any marks, names, slogans, logos or designations of the other party or an Affiliate of such party, unless otherwise agreed to in writing by such other Party. Nothing contained herein shall be deemed to grant either directly or by implication, estoppel, or otherwise, any license under any patents, copyrights, trademarks, service marks or other intellectual property rights of one party to the other party. Contractor shall do nothing inconsistent with the City's ownership of such marks. The City makes no warranties regarding its ownership of any rights in or the validity of any such mark. Contractor acknowledges the value of such marks to the City and the goodwill associated therewith and acknowledges that such goodwill is a property right belonging to the City. Upon termination of this Agreement, any permission or right to use such marks granted hereunder shall cease to exist, and Contractor shall immediately cease any use of such marks, and Contractor shall promptly return to City all materials in its possession or control displaying any such marks. In no event shall either Party issue a press release or make any public statement concerning the other without the prior written permission of the other, except as may be required by law.
- 24.10** Authorized Payment Agent. Contractor may refer to itself as an "Authorized Payment Agent", or such other similar term in the Markets.

- 24.11 Cumulative Remedies.** Except as otherwise expressly provided herein, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law or in equity.
- 24.12 Survival.** The provisions of this Agreement which by their nature are intended to survive the termination of this Agreement shall survive termination of this Agreement and any permitted assignment of this Agreement.
- 24.13** During the term of this Agreement and for a period of 6 months following termination of this Agreement, neither party shall directly or indirectly induce or solicit any person employed by the other Party with whom it has had contact in connection with performance hereunder to terminate his or her employment with said Party.
- 24.14** Each of the Parties represents and warrants to the other that it has the right and authority to enter into this Agreement.
- 24.15 Assignment:** This agreement may be assigned by the City with written notice provided to Contractor, and Contractor's written agreement which will not be unreasonably withheld.

Exhibit List

A. Scope of Work

- Schedule A: Device Types, Locations, Market Description
Schedule B: Customer Convenience Fees, Revenues from other products and services, Fee Allocation
Schedule C: Payment Modalities, Obligations, Fees
Form 1: Payment Modality Authorizations
Schedule D: Bill Payment Application Statement of Work
Appendix 1: Change Order Form
Schedule E: Marketing Program
Schedule F: Escalation and Support

B. Mesa Standard Terms & Conditions



By executing below, each Party acknowledges that it understands, approves, and accepts all of the terms of the Agreement and the attached exhibits.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CITY OF MESA, ARIZONA

By: Alex Deshuk

Alex Deshuk
Printed Name

Manager of Technology & Innovation
Title

TIO Networks Corp.

By: [Signature]

CHRIS OLICKSEN
Printed Name

CHIEF FINANCIAL OFFICER
Title

RECOMMENDED BY:

By: [Signature]

Edward Quedens
Printed Name

Business Services Director
Title

APPROVED AS TO FORM:

By: [Signature]

Kelly Grogan
Printed Name

Asst. City Attorney
Title

**EXHIBIT A
SCOPE OF WORK**

1. **PROJECT GOAL.** The City of Mesa (City) Customer Service Department is interested in providing another option for customers to pay their monthly utility bill at an off-site location, and with 24/7 access. Consequently the City has chosen Contractor to provide access to its 3rd party kiosk, over the counter (OTC), and TIO MobilePay payment channels.

2. **INTENT.** The City Customer Service Department handles approximately 15,000 walk-in customers per month, paying their utility bill. Currently, the Customer Service Department is open for walk-in customers between the hours of 7:00 am to 6:00 pm, Monday through Thursday. In addition to the main office located at 55 N. Center, there is a satellite office located in East Mesa. Payments are also accepted using credit/debit card via the internet and by call in. Historically, the majority of these customers pay in cash. The Customer Service Department's goal is to reduce the number of walk-in customers by converting approximately 1/3 of these walk-in customers to the Contractor Payment Network usage, while offering them a more convenient, 24/7 option of paying their bill. City customers will have access to all TIO payment network end points, which include self-service kiosks, over the counter payment locations, and TIO Mobile Pay application.

3. **MINIMUM REQUIREMENTS.**
 - a. Contractor shall work with the City Information Technology Department to ensure TIO Connect API as well as associated email or phone support to allow City staff to build the connection between the Contractor Payment Network and the City billing system. The Contractor maintains a retail payment network in Arizona and has in place all necessary hardware, software, consumables, physical security, data security, electronic connections, permits, licenses, communication and compatibility with CITY's systems (as applicable) and system interfaces to establish and fully implement payment services. Contractor is required to maintain upgrades to hardware/software in order to fully comply with all local, state, and federal compliance standards. The City's IT staff will be responsible for building the connection between the TIO payment network (our catalog of bills) and the City's billing system. Once the City's "bill" is added to that catalog, TIO will validate City customers, take payments, and post funds to City accounts.

 - b. The City and Contractor shall ensure that the proposed solution integrates with the City's existing computing environment.

 - c. Contractor, working with its retailer partners, will use commercially reasonable efforts to ensure payment kiosk locations are safe, clean, well-illuminated, and meet all requirements of the Americans with Disabilities Act (ADA) requirements. In addition, payment kiosks must be able to implement any future requirements proposed by legislation with regards to changes in the ADA.

 - d. Payment kiosks must be able to accept cash, and where mutually agreed, credit cards, and debit cards for payment to City customer accounts.

 - e. Contractor shall use its existing industry accepted payment screen templates to ensure payment kiosk screens are "user friendly", and in both English and Spanish. Contractor will work with the City and retailer partner to promote the payment locations to City customers, indicating acceptance of City utility payments at that location. All signage pertaining to City bill payment must be prior approved by CITY staff. Screens shall

- appear in the English language, with an option to view the same screens in Spanish.
- f. City customer must be able to manually input account information via touchscreen. Ability to scan a bar code from City customers' utility billing statement may be an additional option offered by Contractor at Contractor's sole and exclusive discretion.
 - g. Payment kiosks must provide City customers with a paper or electronic receipt reflecting, at minimum, the account number, payment amount, date and time paid, transaction ID, form of payment, and City identifying information.
 - h. Contractor may collect a reasonable fixed fee from City customers to cover the costs associated with accepting and processing payments. This fee may not increase without prior consent, in writing, from the City. Transaction fee is to be clearly posted, and City customer should be required to accept or decline such transaction fee prior to any payment being processed.
 - i. The City expects that payments will be transmitted to City's financial institution via Automated Clearing House (ACH) on a daily basis. In addition, the City expects Contractor to guarantee accuracy and integrity of such transmissions.

4. **Bill Payment Application and Integration.**

- a. The City will be responsible, for the design and development of the integration to connect the City billing systems with the Contractor's payment network, using the TIO Connect API and other Contractor requirements which may be provided.
- b. Contractor will be responsible for the development of the software and hardware necessary to enable the Bill Payment Application to operate in conjunction with the agreed Payment Modalities and Device Types.
- c. Contractor will be responsible for all necessary upgrades and enhancements to the Contractor's network and infrastructure supporting the integration using the TIO Connect API.
- d. Contractor and City will be responsible for all necessary implementation and testing of the integration using the TIO Connect API.
- e. Contractor will ensure the Bill Payment Application effectively addresses data collection, bill presentment, reporting and reconciliation requirements mutually agreed to by the parties. These requirements may include Customer account identification methods including, but not limited to, telephone number account verification, which will be mutually agreed upon by both Contractor and the City and provided that any change or modification to this Scope of Work, Exhibit A must be described in writing and agreed to by the parties pursuant to the change order procedure as defined in **Schedule "D" and Appendix 1 to Schedule "D"**.
- f. The City acknowledges that in the course of providing the services associated with the Bill Payment Application, Contractor will capture certain Customer information. Contractor agrees to use the Customer information only as necessary to complete Customer Payment and Contractor shall not disclose the Customer information to third parties or use the Customer information other than as necessary to perform the services associated with the Bill Payment Application. Contractor acknowledges that it is familiar with applicable federal, state and local laws and all rules and regulations promulgated thereunder restricting the use and dissemination of such Customer

information and that it will comply with such laws, rules and regulations. Contractor further acknowledges that its use and dissemination of Customer information may be subject to the privacy policies and security standards and practices of the City. Contractor will comply with such policies, standards and practices. Contractor shall store and transmit all Customer information in an encrypted manner and Contractor is responsible for indemnifying the City against any cause of action brought for any reason related to Contractor's failure to store and utilize Customer Information in accordance with this Agreement.

- g. The City acknowledges and agrees that Contractor may employ its Affiliates and it may engage subcontractors in order to assist Contractor in the performance of its duties and obligations of the services provided that any such Affiliate or subcontractor shall accept and agree to be bound by the terms of this Agreement. In such case, Contractor shall remain liable for its obligations under this Agreement, and Contractor shall indemnify the City against any breach of the terms of this Agreement by such Affiliate or subcontractor or failure of such Affiliate or subcontractor to perform the obligations under this Agreement.

5. **Authorized Locations.**

- 5.1 The City acknowledges and agrees that Contractor shall have the exclusive right, but not the obligation, in its discretion to install, operate and maintain from time to time the Bill Payment Application on the Devices listed in **Schedule "A"**. Depending on the Device Type, the Payment Modalities listed on **Schedule "C"** may not be made available at every Location.
- 5.2 The City agrees that throughout the term of this Agreement, Contractor has the right to offer the Bill Payment Application or a similar service to Customers via the Devices described in **Schedule "A"**. Any right given to Contractor under this Agreement does not include any services provided directly to Customers by the City that in any way resemble the services offered by Contractor under this Agreement including, but not limited, Customers ability to make payments online through a City website or mobile application.
- 5.3 Contractor will maintain the definitive list of the Locations offering the Bill Payment Application which list shall be modified by Contractor as locations are added or removed, provided that;
 - a. Contractor can at any time without notice discontinue the Bill Payment Application on a Device or relocate a Device. Contractor will use commercially reasonable efforts to provide the City with advance notice of any discontinuation or relocation of the Bill Payment Application or Device. In the event Contractor cannot provide advance notice, it will notify the City as soon as it is aware of any discontinuation of the Bill Payment Application or the relocation of a Device.
 - b. Contractor shall not be obligated to discontinue the Bill Payment Application on a Device or relocate a Device until the third anniversary of the activation of the Device at that Location, provided, however, that Contractor shall discontinue the Bill Payment Application on all Devices on termination of this Agreement.



6. **FUNCTIONALITY.** Contractor will work with City to ensure that payment kiosk screens are easy for CITY customers to understand and easy to navigate. Utilizing the TIO Connect API, the City will build the integration to ensure payment kiosks integrate with City's internal financial network, Customer Service utility billing application system, as well as any other system deemed necessary by CITY staff.
7. **REPORTING / AUDITING / SECURITY.** Contractor is required to satisfactorily provide the materials and services herein, as well as any other services deemed reasonably necessary to successfully implement the payment kiosk services requested.
- a. Contractor is expected to comply with all local, state, and federal laws to insure that all information supplied by City and/or City customers is gathered, maintained, and protected in a secure manner to protect consumer data privacy and all related financial transactions. Contractor agrees to not disclose said information to 3rd parties without the prior written consent of the City and/or City customers. These laws shall include, but not be limited to applicable laws including Red Flags Rules and agrees to not store CITY customer information or share with 3rd Parties outside of the customer validation, transaction, and settlement processes. In addition, Contractor must address what information, both from City and from the City customer, is retained, for how long, and how Contractor will ensure City and City customer data privacy.
 - b. Contractor certifies that it meets all Payment Card Industry (PCI) Data Security Standards (DSS) compliance, as applicable.
 - c. Contractor shall retain all books and records regarding transactions performed under this Agreement during the term of this Agreement and for three (3) years after the termination of this Agreement. and shall also make such invoices, books and records available for review by Service Provider or its outside auditors, upon reasonable prior notice and during customary business hours, provided that the purpose of such audit shall be only for verification of TIO's proper performance of its obligations hereunder it being expressly understood that TIO shall not be required to divulge salary and overhead data or other internal cost information. The costs associated with any such audit shall be borne by the City provided that if on conclusion of the audit it is determined that TIO has underpaid Service Provider in any three month period by five (5%) or more then in such event TIO shall immediately pay Service Provider all fees owed and shall be responsible for all costs associated with the applicable audit.
 - d. Reporting must support the production of system reports as well as have the ability to export data in a standard format for custom reporting through an electronic remote query.
 - e. Contractor acknowledges and agrees that all payments processed by a payment kiosk represent funds held by Contractor for and on behalf of the City, including providing armored carrier service. Contractor shall assume any loss to the City for funds received by Contractor from a City customer until all monies have been accounted for in the City's designated financial institution. Contractor shall guarantee payment to City, without the necessity of demand, of ALL funds collected by Contractor, less processing fees, in the amount displayed on printed receipts and in reports generated by the payment kiosks on behalf of City customers, regardless of the possible counterfeit nature of monies accepted, embezzlement, theft, misdirected, lost or mishandled funds.

- f. Contractor's payment kiosk services shall provide security controls and mechanisms to prevent unauthorized individuals from accessing, entering, or modifying system information.
- g. Contractor must provide a real-time method for City staff to verify details of payments made at payment kiosks. This includes, but may not be limited to, communicating transaction information through real-time or batch processing to City for posting to City customer's utility account either once daily or at specified intervals throughout the day as directed by City staff, remittance advice provided on a daily basis to City, and/or memo posting immediately of payment received. Information with regards to customer payments shall be transmitted to the City at intervals as agreed between Contractor and City staff.
- h. Contractor must maintain a disaster recovery plan detailing procedures relating to electronic payment data and files.

8. MAINTENANCE / SUPPORT / TRAINING / TESTING.

- a. Contractor will be responsible for maintaining the operation and appearance of the payment kiosks as well as providing and stocking consumables as needed.
- b. Contractor will supply a toll-free number for City customers to call if they experience difficulty using the payment kiosk, payment is rejected, or correct receipt is not provided. The toll-free number must be staffed 24x7 and assistance must be available in both English and Spanish, at a minimum.
- c. Contractor must have ability to research and resolve, or develop a mutually agreed to plan to resolve any errors regarding payment application within three (3) business days.

9. TIO'S RFP RESPONSE. Separate from the 3rd party kiosk, OTC, and mobile services chosen by the City, Contractor may be required to perform services as identified in their proposed solution to the City's RFP.

- a. **Third Party Payment Kiosk Locations.** TIO Networks will list the City "bills" in TIO's catalog of billers, which are and immediately available on TIO's collection of 304 self-service kiosks throughout Arizona, including 30 in Mesa itself. These kiosks are TIO branded and found in a variety of retail stores, ranging from national chains to individual convenience stores. These kiosks contain a catalogue of bills customers can pay, including APS, Cox, Cricket, and could easily accommodate the City's bills.

These kiosks are at no cost to the City as they are already in place, collecting payments, and maintained by TIO's field maintenance staff and armored car partners that are local to the greater Phoenix area.

- b. **Proposed Over-The-Counter (OTC) Payment Locations.** In conjunction with third party kiosks, TIO will make the City's bills available on TIO's over-the-counter (OTC) payment network. The OTC network is again a collection of retail locations, but in this case TIO has integrated its payment catalog directly into the retailer's point of sale (POS) system so customers can walk up to the counter and make a payment with the help of the retail staff.

Using the OTC payment locations, the City bills available for payment at an additional 763 retail locations in Arizona, including 80 locations in Mesa. Again, there is **no cost** for the City to have its bills available at these locations. TIO manages all aspects of the collection of funds from the individual retailer, as well as remittance and settlement to the City.

TIO has 65,000 locations throughout the United States where OTC payments can be made. TIO can seamlessly, and at no upfront or ongoing cost, will provide access to these payment locations without the need to occupy City IT resources or introduce additional processes for reporting, reconciliation and remittance.

TIO has secured partnership contracts with some of the largest retailers in the country. Currently, TIO offers payment services in ExxonMobil, Circle K, Speedway Super America, NOCO, Maveriks, Kum & Go, HEB, Walgreens, Mapco, Progresso, Best Buy and many independently owned store locations.

- c. **Optional Corporate Kiosk Solutions.** In the event the City elects to lease/purchase kiosks in the future, TIO offers its corporate kiosk solutions to alleviate counter pressure in the City's main lobby location and the East Mesa location. These Corporate Kiosks are the same model of kiosks found in our retail partner locations and therefore also take cash, debit cards, credit cards, and checks. They do not give change. And they require only a power and internet connection.

TIO sells 4 models of kiosks, including 2 indoor stand-alone models that would be best suited for indoor lobbies, and 2 through-wall models that could face the external street or in a drive-thru scenario. TIO does not construct vestibules, a drive-thru or other housing for its kiosks but would happily provide detailed guidance to prepare for the installation of a TIO kiosk.

If the City chooses to have kiosks in their own City Hall lobby and East Mesa location in the future, and the costs are deemed too high, TIO could place new kiosks at these locations at no cost, provided the City commits to a monthly minimum transaction volume.

In regards to cash collection from the kiosks and kiosk maintenance, again, the City bears no responsibility or cost. TIO is able to do both with its network of field staff and contracts with national armored car services. TIO will factor the kiosk maintenance and cash collection costs into a monthly minimum transaction volume commitment.

TIO's kiosk solutions are easy to use with work flows and receipt options that can be customizable to meet any billing-related requirements. All interfaces are in English and Spanish, and City customers have the ability to receive a paper receipt, email receipt, or SMS receipt upon completing their payment. All transactions are posted in real time to the City's billing system and/or customer information system.

- d. **Optional Mobile Payment Solutions.** By integrating once with TIO and listing the City's bills in our catalog, the City automatically has the option to list its bills in our TIO branded smartphone app, called www.tiomobilepay.com — all for **no additional cost**.

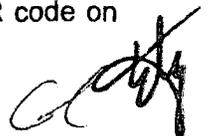
Users can search and add the City's bills to their account and add different payment methods like credit, debit, prepaid, and even bank accounts. This user interface is very similar to the kiosk interface but is little leaner to accommodate the smaller screen size.

Anyone can download the app for free right now or watch the demo on the above website. The app is available for Android and iPhone.

TIO will provide the City with its own branded payment application dedicated to just City payments. TIO has white-labelled its mobile app for a number of utilities, including PG&E, El Paso Electric, and Georgia Power.

To meet the City's requirements, TIO offers a multifaceted solution of 3rd party kiosk and over-the-counter community pay stations, as well as the use of the TIO Mobile Pay app and corporate kiosks in City-owned payment locations. Using all these payment solutions from TIO, the City will meet the following requirements:

- **Allow customers to pay onsite:** TIO currently operates 30 self-service kiosks and 80 OTC locations in the City of Mesa alone, with 1,067 across all Arizona.
- **24/7 payment options:** Many of the locations that house a self-service kiosk or have access to TIO's catalog of billers are open 24/7, as they are major convenience store retail chains like Circle K. Customers can also use the www.tiomobilepay.com app for IOS and Android devices.
- **Lease/purchase of additional kiosks:** The City is able purchase additional kiosks for its City Hall lobby and East Mesa location in the future if the City so desires. TIO would maintain these kiosks and manage cash collection. TIO does offer to place and maintain kiosks at no cost, provide the City commits to a monthly minimum transaction volume. There would be no minimum imposed if the City purchases the kiosks.
- **Supply all necessary hardware and software:** TIO already manages all aspects of the hardware and software for the existing 110 community payment locations in Mesa. Thus, no additional effort is required by the City to add its bills to the existing network.
- **Integrate with City's computing environment:** TIO has a large development team and API called TIO Connect that connects a client's customer information system (CIS) with the TIO network to add the "bill" to our catalog. TIO can do this work to connect the systems, or the City's IT team can lead or participate in that effort. All integration will be provided at no cost. TIO's default integration is real time, but the process could be reduced if the City prefers an intraday or end of day batch cycle of payment and settlement.
- **Kiosk and OTC locations are safe and ADA compliant:** TIO partners only with recognizable and professional national, regional, and local businesses. Thus, the TIO power payment locations are safe and treat customers well. TIO's kiosks are up to date with the ADA requirements. Third-party kiosks are secured by the partner retailer's security systems, cameras, and protocols. On board cameras are too easily thwarted by someone simply putting their hand over the camera lens. Thus, TIO recommends corporate kiosks at the City's locations be monitored by City protocols that include ceiling mounted cameras. All TIO kiosk software, 3rd party or Corporate, are monitored in real time 24/7 for any and errors, security related or otherwise.
- **Accept cash, credit cards, and debit cards:** All TIO kiosks accept cash, debit cards, credit cards, and electronic checks (customer enters the MICR code on



the check and TIO processes the payment as legal tender). TIO OTC locations all take cash, and many take other forms of payment including debit, credit, checks, and money orders, based on their own policies and risk profiles.

- **User friendly interfaces in English and Spanish:** All TIO kiosks are branded and have step-by-step payment instructions in English and Spanish. TIO's customer support network is also staffed with English and Spanish speakers.
- **Bar code scanners:** TIO kiosks can be equipped with bar code readers to scan bills. However, in TIO's 16 years of providing kiosks, it is our recommendation not to use scanners. Scanners are unreliable, due to varying bill format, condition of the paper, and use by the customer. As such, trying to use the scanner to avoid typing in the account number saves little time and leads to the higher risk of causing customer frustration.
- Consequently, TIO has constructed profile-based software on our kiosks that allow customers to create an account on the TIO network that can be accessed from any kiosk. The cloud-based profile stores all your bills and desired payment methods. Thus, when a customer visits any TIO kiosks, they don't have to type in their account number or even bring their wallet to make a payment. The profile is the same one used for payments made with the www.tiomobilepay.com app.
- **Receipts:** All TIO kiosks issue a paper receipt and can be customized to display account number, payment amount, date, time, transaction ID, form of payment, and any City specific information. Receipts can be also emailed or texted to the customer, directly from the kiosk.
- **Fixed fee:** TIO is a transaction based business and therefore charges a fee to process payments. The fee can be presented as a convenience fee for the customer to pay, or absorbed by the City and invoiced separately, or a hybrid of both. TIO will work with the City to create a fee structure that incents the desired behavior for your customers. In general, TIO's charges between \$2-3 per payment, regardless of tender type. TIO proposes a \$2 fee for cash and e-check payments, and a \$3 fee for card payments (max \$250).
- **Payment settlement and timeframe:** TIO manages all aspects of funds collection, as well remittance and settlement to the City. Funds are settled daily via ACH into an account designated by the City.

10. PROGRAM DESCRIPTION & METHOD OF APPROACH. TIO's approach is to utilize the TIO Connect API to integrate with the City's CIS and add the City's "bills" to the TIO catalog. Once integrated, TIO proposes to make the City's bills available on its 3rd party kiosk, OTC, and mobile networks – all at no cost. If the City would like dedicated kiosks in the City Hall and East Mesa location, TIO would be happy to sell those kiosks to the City or place them at no cost, provided a minimum transaction volume is achieved.

Our work with Arizona Power Service, Cox Communications, and Cricket Communications in the state of Arizona have demonstrated there is a vibrant community of walk-in payment customers seeking to pay their bills on their own time in their own communities with their own preferred payment methods. Thus, the City can leverage the work and payment infrastructure already in place in Arizona and Mesa itself, add its bill to the TIO network, and make these payment channels available to their customers immediately.

11. **CAPACITY & PROVEN TECHNOLOGY.** All of TIO's payment processing is done through Cloud infrastructure located in Vancouver, BC and Denver, CO. All kiosk, mobile, and over-the-counter (OTC) payment channels connect through that same cloud infrastructure and processes.

- a. TIO will support a wide variety of interface protocols, including SOAP 1.1, 1.2, and RESTful service over HTTPS. TIO's own APIs expose both SOAP 1.1, 1.2, and JSON services. Apple IOS development is in Objective C, the Android in Java, and the Web apps in C#, .net, and some JAVA.
- b. **Integration.** To add the City's bills to the TIO network, a connection will be created between the City's Customer Information System (CIS) and TIO's software. TIO has an application programming interface (API) called TIO Connect to map the relevant customer account fields in the City's system to TIO so they can be presented on the kiosk, OTC, or mobile software. The City is in complete control of how it wants to validate customers who want to make payments, and what information to share on the respective payment solution (i.e., customer name, account balance, last payment, minimum payment, etc.). As long as the information is in an online City system, TIO's API can capture that information and present it to the customer, and in turn, update the system with new transaction information. If the City's CIS system also has an API, TIO can use it in conjunction with TIO Connect to integrate our respective systems.

To accelerate delivery times, City staff can lead the integration task using the TIO Connect API, or let TIO do the work and simply provide system access, test accounts, and a resource for Q&A.

- c. **TIO Processing.** TIO's default processing and payment processing speed is real time. Thus, TIO's systems can move as fast as our client's CIS and payments processes – real time, intraday batch, end of day batch, next day, etc. The data describing the transaction is sent based on the client's capabilities. The funds are sent in 1-2 days, based on the settlement process agreed to by TIO and the City. Our standard schedule is below:

Transaction Range (all times Eastern)	Date	TIO initiates ACH Deposit to Service Provide Account	Funds are ACH Deposited into City Account
Monday 3:00am to Tuesday 2:59:59am		Wednesday	Thursday
Tuesday 3:00am to Wednesday 2:59:59am		Thursday	Friday
Wednesday 3:00am to Thursday 2:59:59am		Friday	Monday
Thursday 3:00am to Friday 2:59:59am		Monday	Tuesday
Friday 3:00am to Saturday 2:59:59am		Tuesday	Wednesday
Saturday 3:00am to Sunday 2:59:59am		Tuesday	Wednesday
Sunday 3:00am to Monday 2:59:59am		Tuesday	Wednesday

TIO "sweeps" funds from all its payment channels on a daily basis. Cash deposited into kiosks is considered on deposit by TIO's bank. All payments from all channels (kiosk, OTC, and mobile) are captured and settled with each respective biller in 1-2 days via ACH.

- d. **Design and Development.** TIO Networks utilizes the very effective Scrum Agile Software Development management principles. TIO Scrum is an agile, lightweight project management process that is used to manage and control software and product development using iterative, incremental practices to ensure we are always closely aligned to customer needs why very closely managing delivery cost. In comparison, traditional software development management strategies have been slowed down by issues identified as impediments during the daily meetings or planning and review meetings. TIO's use of Scrum ensures that these obstacles are prioritized and systematically purged, increasing effectiveness and quality.

The simple rules of TIO Scrum allow for continual inspection, adaptation, self-organization, and emergence of innovation. The process ensures TIO produces an exciting product for our customers, foster great team spirit, engaging work, and yields high productivity and customer satisfaction. It is also important to note that similar Scrum Agile strategies have been adopted worldwide in companies large and small, localized or distributed, open source or proprietary, for virtually all types or sizes of projects.

TIO Scrum is founded upon three basic principles:

- **Iterative Development:** The product management deliverables are built over several iterative development cycles, each adding additional features, and each resulting in clear results: working code, written documentation, viewable designs, etc.
- **Team Empowerment:** The project team is divided into self-managing multi-function units called Sprint Teams consisting of up to no more than 9 people. The team is empowered to use whatever development methods or tools they think best to prepare their deliverables to the highest quality possible.
- **Change Alignment:** TIO Scrum looks forward to change, as it means the end result will be a product which more closely meets our customer's needs at the end of development. TIO Scrum itself provides the structure and control mechanisms that ensures complete alignment with frequent change while meeting product feature and quality requirements.

In practice, TIO Scrum delivers projects and product features in Sprints. A Sprint is a fixed period to develop a deliverable project or product increment. It is strictly time boxed. The Sprint includes design, coding, testing, and documentation. Within a Sprint, the Sprint team will meet daily in the Daily Scrum Meeting to ensure all team members are aligned with the business and product goals to be delivered and to ensure predictable and controlled deliver costs, no Sprint time box can exceed a span of 4 weeks.

Due to the modular design of the TIO Payment Gateway and its related system (including our Web, Mobile and Kiosk architectures) application maintenance and updates are managed with SFP (small foot print) implementations. If a processing, business rule, or screen design change is made only the specific modules that are

affected are updated in the system ensuring TIO is able to provide timely functional, operational and security updates. TIO maintains all system components for the full life of the biller agreements.

12. **REPORTING, AUDITING & SECURITY TECHNOLOGY.** TIO provides a daily reconciliation file by tender type. Funding would occur in 1-2 days depending on payment modality. TIO will not only be taking on the merchant processing role on behalf of the CITY but also the all downstream customer-facing payment channels. This allows TIO to dramatically reduce and abstract the complexity of processing payment modalities, performing reconciliation and conducting remittance for all funds. TIO will provide a holistic full service, comprehensive reporting and reconciliation process in which you have as few as one vendor and one single point contact for remittance and all of its associated activity.

Every TIO client is given an account in the TIO Customer Portal, which includes standard reports for transaction summary, daily reconciliation, kiosk cash income summary, and ACH remittance. Ad-hoc reporting for payment research purposes can be done via the TIO Portal where a user can search for individual transactions based on receipt ID, account number, date of transaction etc. TIO is responsible for maintaining these reports and the underlying data for the duration of the project. If the City requires assistance with additional reporting needs, our team will be following established processes for adjustments, inquiries, and change requests.

13. **TESTING & IMPLEMENTATION TIMELINE.** The implementation process is actually quite simple, with the most time consuming project being the CIS integration (4 weeks) and kiosk delivery (4-6 weeks). Once the integration is complete, the City's "bills" are available on all three of TIO's payment channels: kiosk, OTC, and mobile.

For kiosk and mobile, screen designs are created, sent for client approval, and then added to the software that powers each platform. This phase is dependent on the City's ability to provide the appropriate branding components and reviews in a timely fashion.

Since the 3rd party kiosk network is already in place and operational, no additional work is required, other than testing.

If the City desires corporate kiosks, they are shipped, site preparation completed, and onsite resources positioned for installation and configuration. The actual onsite kiosk installation and configuration takes just 1 day. UAT can be just as short but is generally agreed upon by both parties and lasts 1-2 weeks until the client is comfortable to go live.

For OTC payments, retail partners are contacted prior to contract signing to ensure locations are available and enough time is given to prepare staff for training. Once TIO software is ready for installation, OTC partners train staff to take payments. In all cases, these partners already take TIO payments, so they just need to familiarize themselves with the new biller name they will be supporting.

Typical implementation timelines are 8-12 weeks from contract signing and dependent on resource availability and client review cycles. However, TIO just completed an OTC project with a major telecommunications firm in just 4 weeks. The number of locations brought online for payment was in the hundreds. The following is TIO's standard project timeline for kiosk based project:



TASKS	EFFORT
Requirement Phase	10 days
• Requirements Gathering	
• Kiosk Application Flow	
• Wireframes	
• Requirements Signoff	
Kiosk Client	10 days
• Kiosk Flow Update	5 days
• Onboard City as Biller	4 days
• Catalog Config/Product Grouping	1 day
Middle Tier Framework	21 days
• City API	
• Flow support on server side	
• RTM / Settlement Support	
• Receipts	
Settlement & Reporting	5 days
• RTM File (if any)	
• Settlement files (if any)	
• City/TIO Reporting Portal	1 day
DB Config	2 days
• Terminal Configuration (fees, locations)	
QA & UT	10 days
• Planning/Scripting	
• Client Unit Testing	
• MT Unit Testing	
• E2E Testing & Debug	
Production UAT & Rollout	15 days
• Deploy to Production (Test Location)	
• Production UAT (Test Location)	
• Begin Production Rollout on 3 rd Party Kiosks	
TOTAL	58 days

- a. **Marketing.** TIO has its own internal Marketing and Art department, and works closely with clients to determine the best approach to deliver programs that will engage their customers. The benefit of working with TIO in Arizona is that we have a well-established relationship with leading Arizona retailers, including Circle K and ACE Cash Express. Thus, the City can easily communicate to its customer the availability of these new TIO-powered locations where payments can be made.

Due to the size and brand strength of the retail partners that TIO has contracted with, TIO has been able to offer its biller partners meaningful marketing opportunities designed to further strengthen their payment programs. A sample of some TIO driven marketing initiatives are as follows:

- b. **Location mapping tools.** TIO can provide web and mobile plugins that you can add to your website or mobile apps to display the payment locations in a customer's particular area. One just has to enter a portion of the address, and up pops a Google Map of the available payment locations in that area.
- c. **In-store Point of Presence (POP) signage.** TIO and its retail partners have developed and produced in-store promotional materials. In-store promotional support at the point of purchase offers prominent biller partners branding within large retail store chains.
- d. **In-Store POP Materials.** The corporate store kits may contain Standees, Window Signage, Employee Promotional Buttons, and Counter Signage promoting convenience bill-pay for your customers.

TIO actively participates in Public Relations activities with community newspapers regarding convenient ways to pay bills. TIO engages the local community media with press releases surrounding bill payment accessibility.

14. **SUPPORT & TRAINING.** Every TIO client receives a dedicated Account Manager who is a direct contact and liaison between our organizations. Fred Bantados is TIO's Operations Manager for the West Region and will be your dedicated resource for executive questions and concerns following launch.

- a. **Staff in Phoenix Arizona.** In addition, TIO has field staff throughout the US to service our network of 65,000 kiosks and OTC locations, including a dedicated kiosk Field Manager in Phoenix (Marlon Martinez). TIO also has 24/7 customer and partner support via phone and email in English and Spanish.

For customers, email and phone support is available from the kiosk, OTC, or mobile payment solution. Customers can type in questions or phone concerns directly from the kiosk, OTC, or mobile channel. TIO Networks' support system logs issues by creating unique case numbers to responsibly research and resolve inquiries.

- To ensure a swift resolution to an inquiry, TIO support staff will require certain supporting data communicated to them on the initial communication.
- Depending on the type of issue encountered, TIO support will require a different initial contact point.

- b. **Support for Transaction and Payment Research Inquiries.** Any request for information on the status of a transaction, or general payment research inquiries can be communicated to TIO's Partner Support team.

Supporting data to include:

- Transaction ID (or if not available – copy of receipt)
- Name on customer account
- Account number and / or account phone number
- Date/time of transaction
- Specific problem with the payment and relevant details of the issue
- Email transaction and payment research inquiries to:
partnersupport@tionetworks.com



Following a support request, one will immediately be provided a unique case number by automated response which logs your specific inquiry with all TIO Operations Support staff. Any further response to this email will be automatically added to the case.

- c. **Support for IT and Associated Technical Issues.** Any request for information on the IT technical issues (hardware, software, connectivity, data quality etc.) can be communicated to TIO's IT support team directly.

Supporting information to include:

- Nature of problem (e.g. connectivity issues or data quality etc.)
- Date/time of start of problem if known
- Specific problem with the relevant details of the issue with any log details etc.
- Contact details where you can be reached by email and/or phone, *if not the same as the sender's email address*
- Email IT and technical inquiries to:
ecc@tionetworks.com

d. **Kiosk Technical Support**

E-mail: **support@tionetworks.com**

Phone: 1-866-737-8914

Operating Hours: 6am – 7pm (PST) 7 days/week

Kiosk technical issues include but are not limited to: bill acceptor, printer, connectivity, software issues, and cash collection.

TIO Customer Contact Center:

E-Mail: **customersupport@tionetworks.com**

Phone: 1-866-710-0846 (1-866-7100-TIO)

Operating Hours: 24 x 7 (365 days/year)

TIO's Corporate Account Managers:

A.J. Jonasson (Director of Customer Care – Operations and Support)

E-Mail: **aj.jonasson@tionetworks.com**

Phone: 604.298.4636 ext. 236

Fred Bantados (Operations Manager)

E-Mail: **fred.bantados@tionetworks.com**

Phone: 604.298.4636 ext. 258

- e. **Training Documentation.** The City will require virtually no training, as TIO proposes to use our existing kiosk, OTC, and mobile payment channels to host the City's bills. Thus, your assigned account manager (Fred Bantados, Operations Manager) will walk the relevant personnel through the TIO Customer Portal to outline the features available for payment research and reporting.

Should the City wish to have corporate kiosks in their two locations in the future, again the City has requested that TIO manage the cash collection and kiosks maintenance. Thus, no training is required. Support for those kiosks would be done by our local Phoenix Field Manager, Marlon Martinez.

If interested, TIO's training documentation is hosted on our corporate Wiki and contains pages with topics that range from support processes, technical solutions, brand guidelines, user interface examples, and more. Programs are launched with initial write-ups and are improved over time with best practices. Pages are constantly

improved and reviewed before and after each new program launch to ensure content is current.

15. **WARRANTY INFORMATION.** TIO shall perform its obligations under this Agreement accurately and in a manner consistent with industry standards. All personnel utilized by TIO shall maintain compliance with all technical and security standards and procedures hereunder.

TIO will provide the services and complete the functions described below and on the Schedules attached to the Agreement in order to facilitate and support the Bill Payment Application;

- a. **Transaction Processing:** TIO will process the Customer Payments made via the Bill Payment Application subject to this Agreement.
- b. **Transaction Report:** The City will be provided with online access to various reporting functions ("Reporting Extranet") including, daily transaction summaries. Daily transaction summaries will contain sufficient detail in order to facilitate reconciliation between TIO and City systems. Each transaction must contain a unique identifier and timestamp. Each transaction must also breakout all applicable taxes by amount and type.
- c. **Disputes:** In the event the City disagrees with the amount of any ACH Transfer then the City shall send TIO a dispute note by email or fax, and TIO will within 10 business days send the City the documentation supporting the Customer Payments during the period in dispute. Regardless of any dispute TIO will continue to complete the daily ACH Transfers pursuant to the terms of this Agreement.

TIO will use its commercially reasonable efforts to ensure the continuous operation of the Bill Payment Application in accordance with the service levels as agreed.

TIO will use reasonable efforts to ensure that its business and operations are fully compliant with all applicable federal, state and local rules and regulations. From time to time during the term of this Agreement, TIO may provide to the City information in written form concerning compliance matters. The City acknowledges that TIO is under no obligation to provide any compliance advice or information, even if it has done so in the past, and the City agrees that it will consult with its own legal counsel in connection with its compliance responsibilities. Notwithstanding any other provision of this Agreement, TIO makes no representation or warranty with respect to the applicability, accuracy or completeness of any such information, and TIO will have no liability whatsoever for any losses, costs, damages, expenses or other liabilities (including attorney's fees and costs) incurred by the City or any third party acting in reliance upon such information.

TIO will maintain and support the Bill Payment Application and respond to inquiries and/or concerns communicated by Customers of the City to the City in the manner agreed.

TIO shall maintain accurate records of all Customer Payments that it collects and all payments that it transmits to the City in accordance with generally accepted accounting principles uniformly and consistently applied. Records of Customer Payments shall contain, at a minimum, the dollar amount received from the Customer, the date and time of the Customer Payment and the Customer information provided by the Customer. All records maintained pursuant to this Section shall be made available by TIO for review by the City or its accountants at any time via the reporting extranet.

TIO shall be liable and responsible for promptly delivering to the City a bank account all bill payment monies collected from Customer Payments conducted using cash pursuant to this Agreement. TIO shall bear all risk of loss for all cash payments received by TIO from Customers that may be lost, stolen, destroyed or embezzled, or that may disappear for any reason prior to the time that such cash payments are deposited in the Designated Bank Account. All rights, title and interest in and to Customer Payments made with cash, not including any fees payable to TIO hereunder, shall be vested solely in the City, and shall be held in trust by TIO for the City. All such funds from Customer Payments made with cash in the possession of TIO shall not be subject to retention, reduction, discount, or offset of any kind by TIO for any reason or purpose unless mutually agreed upon.

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SCHEDULE A

DEVICES TYPES / LOCATIONS / MARKET DESCRIPTION. The City hereby authorizes Contractor to act as its payment agent for those Device Types identified below and at the Device Locations and Markets also identified below (all described below) or in the Agreement as the case may be.

1. DEVICE TYPES:

Authorized	Device Type	Description
<input checked="" type="checkbox"/>	TIO Express	Over the counter, clerk assisted, payments leveraging a PC with an internet connection or other device either owned by Contractor or a Contractor partner (i.e., Retailer).
<input checked="" type="checkbox"/>	Store Kiosk	Self-service automated payment device that includes a touch screen, a graphical user interface and other peripherals that enable payments using cash and other mutually agreed upon payment modalities. These Kiosks are found in retail locations provided by Contractor and/or its partners (i.e., Retailer).
<input type="checkbox"/>	City Location Kiosk	Self-service automated payment device that includes a touch screen, a graphical user interface and other peripherals that enable payments using cash and other mutually agreed upon payment modalities. These Kiosks are found in City locations (i.e., Corporate Kiosk).
<input checked="" type="checkbox"/>	MyTIO	Web based payments and other services offered via Contractor's own consumer facing website and complimentary applications made available via Store Kiosks and other Devices (i.e., Contractor web-based software).
<input checked="" type="checkbox"/>	Mobile Phones	Any and all type of mobile phone technology including but not limited to Apple IOS devices (i.e. iPhone, iPod Touch, iPad), Blackberry, Android operating system enabled devices, and Windows mobile operating system enabled devices (i.e., TIO Mobile Pay or white labelled Mesa App).

2. DEVICE LOCATIONS. Lists of actual physical addresses can be provided to the City by Contractor upon request by the City

Authorized	Device Type	Description
<input checked="" type="checkbox"/>	Contractor 3rd Party Retail Location	Any Contractor 3rd Party Retail Location regardless of what Device Type may be located at said Contractor 3rd Party Retail Location
<input type="checkbox"/>	City Corporate Location	Any City owned or operated Location
<input checked="" type="checkbox"/>	Mobile Application Optimized Browser or	Native mobile applications developed by Contractor or powered by Contractor's payment platform for various mobile platforms or payment experiences made available via other mobile technology like mobile web browsers.

3. MARKET DESCRIPTION. The City of Mesa's "bills" will be made available on all Contractor end points, 3rd party kiosk and over the counter (OTC) retail locations throughout the State of Arizona.

SCHEDULE B

CUSTOMER CONVENIENCE FEES / REVENUES FROM OTHER PRODUCTS AND SERVICES / FEE ALLOCATION

B1 Customer Convenience Fee: Customer Convenience Fees and Transaction Fees shall be established by agreement between the City and Contractor from time to time and may not be changed or altered without the written consent of both City and Contractor.

B1-1 City Locations regardless of Device Type

For Bill Payments made with Cash, echeck, ACH or card payments in City Corporate Locations on City Location Kiosk(s) (Payment Modality Fee to be added for card payments)

Customer Convenience Fee (Paid by Customer from first day of program launch)	Backend Transaction Fee (Paid to Contractor)
Up to \$2.50	\$0.00

B1-2 Contractor 3rd Party Retail Location Store Kiosks or Over the Counter (OTC)

For Bill Payments made with Cash, echeck, ACH or card payments in Contractor 3rd Party Retail Locations (Payment Modality Fee to be added for card payments)

Customer Convenience Fee (Paid by Customer)	Transaction Fee (Paid to Contractor)	Minimum number of transactions per month ("Monthly Minimum")
Up to \$2.50	\$0.00	0

B1-3 Mobile Phones

For Bill Payments made with echeck, ACH or card payments via Contractor's mobile applications (Payment Modality Fee to be added for card payments)

Customer Convenience Fee (Paid by Customer)	Transaction Fee (Paid to Contractor)	Minimum number of transactions per month ("Monthly Minimum")
\$2.50	\$0.00	0

**SCHEDULE C
PAYMENT MODALITIES / OBLIGATIONS / FEES**

Contractor and the City agree that any and all non-cash based Payment Modalities will be processed utilizing Contractor's processor and that any and all fees including but not limited to, one time, recurring, charge-back, dispute, transactional, and/or other fees including, but not limited to, setup fees, penalty fees, maintenance fees and/or transactional fees are the sole and exclusive responsibility of the City.

The specific Payment Modalities, City Obligations and Acknowledgements, Fees and other terms are identified in this Schedule C as well as Form 1 of this Schedule C.

C-1 Definitions:

C1-1 Definitions are as follows:

"Payment Modality Fee" shall mean, the fee paid by a Customer or the City specifically with respect to the usage of certain non-cash based Payment Modalities by a Customer within the Bill Payment Application made available via a Device. When the Payment Modality Fee is payable by the Customer it is incremental to the Customer Convenience Fee. When the Payment Modality Fee is payable by the City it is charged as a Backend Fee.

"Gateway Processing Fee" shall mean an incremental fee that may be charged by Contractor to City, for facilitating the processing of certain non-cash based Customer Payments.

"Processing Method" refers to the various methodologies for processing certain types of Payment Modalities. For example, one Processing Method for processing credit card transactions is the TIO Concentration Method. The different Processing Methods are described in Section C3-1 of this Schedule C. The Processing Methods used per Payment Modality are described in Form 1 of this Schedule C.

"Chargeback Handling Fee" shall mean a fee charged by Contractor or the processor to the City for reversing transactions associated with certain Payment Modalities.

C-2 Processing Methods by Payment Modality: Both the City and Contractor agree that during the term of the Agreement the method used for processing certain Payment Modalities may at Contractor's sole discretion change. The City authorizes Contractor to utilize any of the Processing Methods defined below and/or defined in Form 1 of this Schedule C. The City will work cooperatively and in good faith with Contractor to implement the mutually agreed upon Processing Method(s) within 30 days from execution of this Agreement. Regardless of Processing Method being used both parties will work cooperatively to develop processes for managing various tasks associated with the Payment Modalities including, but not limited to, reversals of Customer Payments in the event of disputes or reversals.

C-2-1 Processing Methods Descriptions:

(a) TIO Concentration Method: Key characteristic of this method is the credit, debit, or check merchant account that funds are deposited into by the processor, belongs to Contractor. This method involves Contractor concentrating Customer Payments and then remitting the appropriate amounts to a City Designated Bank Account. Other fees may still apply subject to notification and mutual agreement.



C-3 Additional Terms:

C-3-1 At the time of the City's execution of this Agreement or soon thereafter, the City may be required to execute and return additional documentation related to certain Payment Modalities and Processing Methods.

Example: Contractor's ability to process certain Payment Modalities using certain Processing Methods is contingent upon the approval of the Merchant Application by the processor in question. Contractor's ability to continue processing these Customer Payments shall terminate immediately if the associated merchant application is rejected or the merchant transaction processing agreement is terminated and Contractor and the City are unable to identify an alternative Processing Method to use.

C-3-2 Cooperation: The City will work cooperatively and in good faith with Contractor to implement the agreed upon Payment Modalities and Processing Methods within 60 days from execution of this Agreement.

C-3-3 Refusals of Payment: Contractor will not be liable for charge-backs or other refusals of payment initiated by any Customer. Both parties will work cooperatively to develop processes for managing reversals of payments in the event of disputes or reversals, including an RTM (Return to Maker) file which Contractor sends to the City with the customer details for any payments identified to be in default by the credit card and debit card system. Contractor would initiate an ACH debit from a designated account for the fund's total as per the RTM.

C-3-4 Errors and Omissions: Contractor will not be liable for any errors or omissions in data provided by the City or Customers. When applicable the City or the processor will be responsible for the accuracy of data provided to Contractor for use in providing the Payment Modalities.

C-3-5 Merchant of Record; Bank Actions: When the City maintains the merchant account with the processor then the City shall act as the merchant of record for Customer Payment transactions made with the applicable Payment Modalities (i.e. credit, debit and check). Contractor will not be liable for any errors, omissions or delays attributable to the acts or omissions of any bank or other third party involved in the processing of any Customer Payment.

C-4 Modifications. Modifications to Form 1 of this Schedule C may be done via completion of a new Form 1 which is subsequently signed by an authorized representative of the City. Any costs or fees associated with modifications will be payable by the City per the process identified in the Agreement.



**FORM 1
Payment Modality Authorizations**

Authorizations: Besides cash City hereby authorizes Contractor to facilitate Payments using those Payment Modalities below marked as such. The various fees and other terms associated with each Payment Modality are also identified below.

C-1 CREDIT CARD and SIGNATURE DEBIT ON ALL DEVICE TYPES

Payment Modality		Device Type	
<input checked="" type="checkbox"/>	VISA	<input checked="" type="checkbox"/>	TIO Express
<input checked="" type="checkbox"/>	MasterCard	<input checked="" type="checkbox"/>	Store Kiosk
<input type="checkbox"/>	American Express	<input checked="" type="checkbox"/>	City Location Kiosk
<input type="checkbox"/>	Discover	<input checked="" type="checkbox"/>	Mobile Device
		<input checked="" type="checkbox"/>	Banking Websites

Fee	Paid By	Amount
Payment Modality Fee	<input type="checkbox"/> City <input checked="" type="checkbox"/> Customer	\$2.50 (includes Customer Convenience Fee, maximum payment \$250 or mutually agreed depending on City payment modality trends)
Gateway Fee	City	N/A
Chargeback Handling Fee	City	To be mutually agreed

Processing Method	
<input checked="" type="checkbox"/>	TIO Concentration Method
<input type="checkbox"/>	Existing City Merchant Account Method
<input type="checkbox"/>	New City Merchant Account Method

C-2 ACH ON ALL DEVICE TYPES

Payment Modality Sub-Type		Device Type	
<input checked="" type="checkbox"/>	Electronic Check	<input checked="" type="checkbox"/>	TIO Express
<input type="checkbox"/>	Drop Box	<input checked="" type="checkbox"/>	Store Kiosk
<input type="checkbox"/>	Other	<input checked="" type="checkbox"/>	City Location Kiosk
		<input checked="" type="checkbox"/>	Mobile Device

Fee	Paid By	Amount
Payment Modality Fee	Customer	\$2.50
Chargeback Handling Fee	City	To be mutually agreed

Processing Method	
<input checked="" type="checkbox"/>	TIO Concentration Method
<input type="checkbox"/>	New City Merchant Account Method

SCHEDULE D

BILL PAYMENT APPLICATION STATEMENT OF WORK (SOW)

Bill Payment Application Development and Specifications

The City and Contractor will work cooperatively towards defining the requirements associated with the real time Bill Payment Application. The City will be responsible for the development of the integration between the Contractor's payment network and the City's billing systems. Contractor will provide the City with the TIO (Contractor's) Connect API as well as email and phone support to assist with the development of the integration. Contractor and the City will be responsible for testing the integration, while Contractor will be responsible for the remaining screen design and development to list the City's "bill" on the Contractor end points.

DESCRIPTION OF WORK

D1 SOFTWARE. Working with the City's integration, Contractor shall design, develop and deploy the Bill Pay Application and will ensure that it effectively addresses data collection, bill presentment, reporting and reconciliation requirements that will be mutually defined and agreed to by the parties in advance of commencing development. Should the City request functionality that is outside of anything that Contractor has deployed, or plans to deploy, at other service providers, such a request will constitute a Change Order.

The Bill Payment Application shall allow the City's Customers to look up their account balance by identifying themselves with their phone number. Once the account information has been confirmed by the Customer they will be able to make a Customer Payment. Customer will be able to make a Customer Payment using Payment Modalities mutually agreed upon by the parties.

D2 HIGH LEVEL DEVELOPMENT DESCRIPTION. Both the City and Contractor agree that given the constrained timeline for development that a detailed requirements document will not be developed prior to commencing with development. The City and Contractor both agree that the Bill Payment Application and supporting tools and services will utilize the most commonly utilized functionality inherent to the majority of the bill payment systems developed for other Contractor clients. The Contractor software will integrate with only one of the City's CIS systems to validate the Customer, gather and provide bill information on the Contractor Devices, and post payments back to the Customer's account. Additional integrations to other City systems that may contain relevant information will be considered outside the scope of this Agreement and subject to separate project scoping and subsequent additional costs.

D3 COSTS.

D3.1 The responsibility for the payment of all of the costs and charges associated with the Bill Payment Application's development shall be the responsibility of the City; the fee is the amount set forth below. The City agrees to work with Contractor to ensure the Bill Payment Application integration is able to be used by City Customers by June 30, 2015 or another mutually agreed upon date ("Launch Date").

ITEM	Responsible Party	Amount (\$)
Bill Payment Application Development Fee	City	\$0.00

D3.2 The Bill Payment Application functionality, which may be delivered via more than one product release, will include but not be limited to the following:

- (a) in the case of certain Device Types including mobile Devices, the ability for Customers to index multiple accounts that have been validated by Contractor via the method currently being used to conduct Customer account look-ups on kiosks, on their Device within the Bill Payment Application.
- (b) in the case of certain Device Types including mobile Devices, the ability for Customers to index various payment methods agreed to by the Parties such as credit cards, checks, and PayPal.
- (c) the ability for Customers to make payments towards their accounts held with the City.
- (d) the ability for the City to create and send alert messages to defined groups of Customers ("Customer Alerts").

D3.3 Contractor will ensure that the Device application effectively addresses all known data collection, bill presentment, PCI compliance, reporting and reconciliation requirements.

D3.4 The City may request that Contractor implement other functionality not included in Contractor's scope of work ("Customization").

- (a) Any and all Customization will be defined and mutually agreed upon in writing and will make use of the Change Order Modification Procedure described in Section D5 of this Schedule D.
- (b) The City will be solely responsible for Customization costs per the rate table below. 50% of the costs will be payable upon the execution of the appropriate documentation. 25% will be due upon completion of the Customization and the final 25% will be due upon City's acceptance of the Customization which shall not be unreasonably withheld. Acceptance will be based upon whether the Customization meets the requirements described in writing or as mutually agreed upon by both parties.

ITEM	Responsible Party	Amount (\$)
Customization Rate	City	\$180.00 per hour

D3.5 All other material future development work shall only be undertaken with the agreement of Contractor in writing and will make use of the Change Order Modification Procedure described in Section D5.

D4 APPLICATION DEVELOPMENT TIMELINES AND PENALTIES (PROJECT PLAN).

D4.1 As described in Section D2 a finalized project plan will not be documented and mutually agreed upon by the parties in advance of commencing with development. However the City and Contractor will cooperatively outline by way of recurring and ongoing verbal and electronic communication, a project plan which describes tasks, owners, and timing associated with the various tasks. For completing the integration to the City's CIS system, at no cost Contractor will include up to 60 hours of support to complete the design, development, and delivery of the payment software for UAT. If the City systems are not responsive or any changes in process or resources cause Contractor to expend more hours to complete the software, the City will be charged for that additional time at the above Customization Rate.

D5 CHANGE ORDER MODIFICATION PROCEDURE. Should City require a modification or addition to the software Bill Payment Application the City will utilize the "TIO Change Order" (See Appendix 1 to this Schedule D) request form provided by Contractor from time to time to request any changes or modifications to the developed application and submit to Contractor for

consideration. Contractor will review the change request, and then provide a summary of costs for review by the City. Both parties will mutually agree upon any changes to the application.

CC 

**APPENDIX 1 to Schedule D
Change Order Form**

SOW # (For TIO Use): _____

DATE: _____

SHORT NAME OF FUNCTIONALITY DESIRED: _____

IT IS AGREED THAT:

TIO is hereby requested to provide the hardware and/or software modifications set forth below ("Services") subject to the terms and conditions set forth herein and in accordance with the provisions of that certain Service Provider Bill Payment Agreement, dated effective _____, by and between the parties hereto (the "Agreement") according to the following additional terms:

1. **Scope of Services:** TIO shall perform the Services and specific tasks as described in Attachment I hereto, which contains a detailed description of the modifications or additional functionality required by the Service Provider.
2. **Normal Course of Business:** The parties acknowledge and agree that the Services are in the normal course of business for TIO and Service Provider.
3. **Fees; Collection of Fees:** Service Provider shall compensate TIO a fixed fee of _____ N/A Dollars (\$ -0-) for the Services.
4. **Invoicing Schedule:** TIO shall invoice Service Provider for the fees 50% in advance of commencing with the Services described here and the remaining 50% upon completion of the Services.
5. **Commencement of Services:** TIO shall commence the Services on _____ and shall conclude the Services to Service Provider's satisfaction on or before _____.
6. **Service Provider Bill Payment Agreement:** This SOW shall be appended to the Service Provider Bill Payment Agreement and is incorporated therein by reference. All of the terms and conditions of the Service Provider Bill Payment Agreement shall apply to the provision of Services hereunder; however, in case of conflict, the terms of this SOW shall govern.

"Service Provider"

By: _____

Print Name: _____

Title: _____

TIO NETWORKS CORP.

"TIO"

By: _____

Print Name: _____

Title: _____



SCHEDULE E

MARKETING PROGRAM

The City shall be responsible for the planning and implementation of all marketing programs with respect to the services offered by Contractor pursuant to this Agreement. For the avoidance of doubt, such marketing programs will contain the following elements, and such elements shall be updated from time to time by the City:

1. **SMS Messages** – The City shall send Customers SMS messages identifying the need and availability of Locations available to make Customer Payments. Content of such SMS messages shall be at the City's sole discretion. The City will attempt to send the SMS messages at minimum each calendar quarter.
2. **Point of Purchase Materials** – The City shall be responsible for providing point of purchase materials at City owned Locations, as appropriate, identifying 3rd Party Retail Locations are available to receive Customer Payments.
3. **Website** – The City agrees to provide Location information on its website to instruct Customers where to make Customer Payments. A site locator tool will be provided by Contractor. The City will also consider publishing promotional messages on its Utility Customer Service webpage(s) for 12 months following program launch.
4. **Call Center** – The City shall require call center customer service representatives to make available, as appropriate, information regarding Locations able to receive Customer Payments to all Customers contacting the call center.
5. **Press Release** – The City authorizes Contractor to produce a joint press release announcing the payments program subject to the City's approval of the language in the press release.
6. **Marketing Contact** – The City shall designate a marketing representative responsible for implementation of this marketing program.
7. **Logo and messages** – the City allows Contractor to add an approved logo and bill pay message to all Contractor 3rd Party Retail Locations, mobile applications, or optimized browser where City customers can make payments.
8. **Timing** – City will work cooperatively with Contractor to ensure marketing activities and materials are deployed at program launch.

**SCHEDULE F
ESCALATION AND SUPPORT**

1. Escalations

- 1.1 Escalation path for issues pertaining to the health of the network, reported to Contractor's call center can be escalated by either:
Phone: 1-866-710-0846
Email: customersupport@tionetworks.com

2. Network Management

- 2.1 Using Contractor's Online Messaging System (OMS), Contractor monitors the kiosk network to maintain the highest level of uptime.
- 2.2 Contractor regularly performs pro-active visits on its Kiosk Network.
- 2.3 Contractor uses electronic remote support tools to isolate problems and resolve or facilitate resolution.
- 2.4 In cases where an onsite visit is required, either a Contractor Field Manager or a Third party tech is dispatched.
- 2.4.1 Time is subject to location, availability of tech, availability of parts and accessibility.
Parts and parts replacements are managed by Contractor for the Kiosk Network Store Kiosks

For Store Kiosks, the function of the cash collection and management is performed by Armored Carriers partnered with Contractor and a corresponding bank. All cash acceptor problems are addressed by the Armored Carrier upon a dispatch confirmation by Contractor. The City has no liability for the actions of Armored Carrier, or any other entity hired by Contractor to transport cash, collected by Contractor pursuant to this Agreement and Contractor shall indemnify the City from any such claims of liability made by third parties.

3. Customer Care

- 3.1 **First Line *** The City will provide First Line Customer Care. Contractor will provide a feedback option on Store Kiosks that is received by Contractor Customer Care email address. Customer Care Representatives have the ability to address most customer related concerns associated with making a payment or other matters related to Store Kiosks (i.e. – error message). In instances where the issue is irresolvable the case will be escalated to second line. Contractor Call Center hours of operation are 24/7, 365.
** Contractor reserves the right to modify its call center operating hours as it deems necessary to best service its customers, however such modification of hours shall be commercially reasonable.*
- 3.2 **Second Line** Contractor second line payment research is accessible via email at customersupport@tionetworks.com. The support email is to be utilized by the City when needed. These cases include but are not limited to payment research, misapplied payments and/or refunds.

EXHIBIT B
MESA STANDARD TERMS AND CONDITIONS

These Standard Terms and Conditions are incorporated into the Agreement as set forth in Section 17 of the Agreement. In the event of any inconsistency between the terms of the Agreement and the Mesa Standard Terms and Conditions, the language of the Agreement will control.

- S.1 INDEPENDENT CONTRACTOR.** It is expressly understood that the relationship of Contractor to the City shall be that of an independent contractor.
- S.2 SUBCONTRACTING.** Contractor may not subcontract work without the express written permission of the City. If Contractor has received authorization to subcontract work, it is agreed that all subcontractors performing work under the Agreement shall comply with its provisions. Further, all agreements between Contractor and its subcontractors shall provide that the terms and conditions of this Agreement be incorporated therein.
- S.3 ASSIGNMENT.** This Agreement may not be assigned either in whole or in part without first receiving the City's written consent. Any attempted assignment, either in whole or in part, without such consent shall be null and void and in such event the City shall have the right at its option to terminate the Agreement. No granting of consent to any assignment shall relieve Contractor from any of its obligations and liabilities under the Agreement.
- S.4 SUCCESSORS AND ASSIGNS, BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.
- S.5 NO THIRD PARTY BENEFICIARIES.** This Agreement is intended for the exclusive benefit of the parties. Nothing set forth in this Agreement is intended to create, or shall create, any benefits, rights, or responsibilities in any third parties.
- S.6 NON-EXCLUSIVITY.** The City, in its sole discretion, reserves the right to request the Materials or Services set forth herein from other sources when deemed necessary and appropriate. No exclusive rights are encompassed through the solicitation.
- S.7 AMENDMENTS.** There shall be no oral changes to this Agreement. This Agreement shall only be modified in a writing signed by both parties. No charge for extra work or material will be allowed unless approved in writing, in advance, by the City and Contractor.
- S.8 TIME OF THE ESSENCE.** Time is of the essence to the performance of the parties' obligations under this Agreement.
- S.9 COMPLIANCE WITH APPLICABLE LAWS.**
- a. **General.** Contractor shall procure all permits and licenses, and pay all charges and fees necessary and incidental to the lawful conduct of business. Contractor must stay fully informed of existing and future Federal, State and local laws, ordinances, and regulations that in any manner affect the fulfillment of this Agreement and shall comply with the same at its own expense. Contractor bears full responsibility for training, safety, and providing necessary equipment for all Contractor Personnel to achieve compliance prior to the Effective Date. Upon request, Contractor shall demonstrate to the City's satisfaction any programs, procedures, and other activities used to ensure compliance.
 - b. **Drug-Free Workplace.** Contractor is hereby advised that the City has adopted a policy establishing a drug-free workplace for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor shall require a drug-free workplace for all Contractor Personnel working under this Agreement. Specifically, all Contractor Personnel who are working under this Agreement shall be notified in writing by Contractor that they are prohibited from the manufacture, distribution, dispensation, possession, or unlawful use of a controlled substance in the workplace. Contractor agrees to prohibit the use of intoxicating substances by all Contractor Personnel and shall ensure that Contractor Personnel do not use or possess illegal drugs while in the course of performing their duties.
 - c. **Federal and State Immigration Laws.** Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City or its agents to inspect applicable personnel records to verify such compliance. Contractor

shall ensure and keep appropriate records to demonstrate that all Contractor Personnel have a legal right to live and work in the United States.

- (i) Under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty").
 - (ii) A breach of the Contractor Immigration Warranty shall constitute a material breach of this Agreement and shall subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.
 - (iii) The City retains the right to inspect the papers of all Contractor Personnel who provides Services under this Agreement to ensure that Contractor or its subcontractors are complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.
 - (iv) The City may, at its sole discretion, conduct random verification of the employment records of Contractor and any subcontractor to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.
 - (v) Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214 (A).
- d. **Nondiscrimination.** Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and represents and warrants that it complies with all applicable Federal, State and local laws and executive orders regarding employment. Contractor and Contractor Personnel will comply with applicable provisions of Title VII of the U.S. Civil Rights Act of 1964, as amended, section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and applicable rules in performance under this Agreement.
- e. **State Sponsors of Terrorism Prohibition.** Per A.R.S. §35-392, the Contractor shall not be in violation of section 6(j) of the Federal Export Administration Act and subsequently prohibited by the State of Arizona from selling goods or services to the City.

S.10 SALES/USE TAX, OTHER TAXES.

- a. Contractor shall be responsible for payment of all taxes including Federal, State, and local taxes related to or arising out of Contractor's Services under this Agreement, including by way of illustration but not limitation, Federal and State income tax, social security tax, unemployment insurance taxes, and any other taxes or business license fees as required.
- b. The City is exempt from paying certain Federal Excise Taxes and will furnish an exemption certificate upon request. The City is not exempt from State and local sales/use taxes.

S.11 AMOUNTS DUE THE CITY. Contractor must be current and remain current in all obligations due to the City during the performance of Services under the Agreement. Payments to Contractor may be offset by any delinquent amounts due the City or fees and charges owed to the City.

S.12 PUBLIC RECORDS. Contractor acknowledges that the City is a public entity, subject to Arizona's public records laws (A.R.S. § 39-121 et. seq.) and that any documents related to this solicitation may be subject to disclosure pursuant to State law in response to a public records request or to subpoena or other judicial process.

S.13 AUDITS AND RECORDS. Contractor shall preserve the records related to this Agreement for five (5) years after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect any and all payroll, billing or other relevant records kept by Contractor in relation to the Agreement. Contractor shall permit such inspections and audits during normal business hours and

upon reasonable notice by the City. The audit of records may occur at Contractor's place of business or at City offices, as determined by the City.

S.14 BACKGROUND CHECK. The City may conduct criminal, driver history, and all other requested background checks of Contractor Personnel who would perform Services under the Agreement or who will have access to the City's information, data, or facilities in accordance with the City's current background check policies. Any officer, employee, or agent that fails the background check must be replaced immediately.

S.15 SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL. The City shall have final authority, based on security reasons: (i) to determine when security clearance of Contractor Personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Contractor Personnel; and (iii) to determine whether or not any individual or entity may provide Services under this Agreement. If the City objects to any Contractor Personnel for any reasonable cause, then Contractor shall, upon notice from the City, remove any such individual from performance of Services.

S.16 DEFAULT.

a. A party shall be in default if that party:

- (i) Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement;
- (ii) Is the subject of a petition for involuntary bankruptcy not removed within 60 Days;
- (iii) Conducts business in an unethical or illegal manner; or
- (iv) Fails to carry out any term, promise, or condition of the Agreement.

b. Whenever the City in good faith has reason to question Contractor's intent to perform, the former party may demand that the other party give a written assurance of its intent to perform. In the event that the demand is made and no written assurance is given within 5 Days, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

S.17 REMEDIES. The remedies set forth in this Agreement are not exclusive. Election of one remedy shall not preclude the use of other remedies. In the event of default:

- a. The non-defaulting party may terminate the Agreement, and the termination shall be effective immediately or at such other date as specified by the terminating party.
- b. The City may purchase the services required under the Agreement from the open market or complete required work itself.
- c. The non-defaulting party shall have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.
- d. Neither party shall be liable for incidental, special, or consequential damages.

S.18 CONTINUATION DURING DISPUTES. Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.

S.19 TERMINATION FOR CONVENIENCE. The City reserves the right to terminate this Agreement for convenience in part or in whole following the one year anniversary of the first City transaction processed by TIO provided the decision to terminate for convenience is made by the Mesa City Manager and TIO has had the opportunity to respond to the City staff recommendation in an effort to reverse said decision. Both Parties, acting reasonably, will use good faith efforts to resolve any and all Mesa concerns in an effort to ensure TIO's continued provisioning of the Services described in this Agreement. If acting reasonably and good faith both Parties are unable to effectively address the City's concerns and upon the Mesa City Manager's final decision, either Party may terminate this Agreement upon ninety (90) days prior written notice to the other.

If the reason to terminate pertains to any law, regulatory body, and/or other government agency ("Regulatory Matter") that materially alters the ability of TIO to provide the Services in whole or in part, the parties will renegotiate, in good faith, the effected terms and conditions of this Agreement in order to ensure TIO's continued provisioning of the Services described in this Agreement. If acting reasonably and good faith both Parties are unable to renegotiate terms amenable to both Parties, either Party may terminate this Agreement upon ninety (90) days prior written notice to the other.

S.20 TERMINATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511). Pursuant to A.R.S. § 38-511, the City may cancel this Agreement within 3 years after its execution, without penalty or further obligation, if any person significantly involved in initiating, securing, drafting, or creating the Agreement for the City becomes an employee or agent of Contractor.

S.21 RESERVED.

S.22 PAYMENT TO CONTRACTOR UPON TERMINATION. Upon termination of this Agreement, Contractor shall be entitled only to payment for those Services performed up to the date of termination, and any authorized expenses already incurred up to such date of termination. The City shall make final payment within thirty (30) Days after the City has both completed its appraisal of the Materials and Services provided and received Contractor's properly prepared invoice.

S.23 NON-WAIVER OF RIGHTS. There shall be no waiver of any provision of this agreement unless approved in writing and signed by the waiving party. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of, or payment for, any Services hereunder, shall not release the other party of any of the warranties or other obligations of the Agreement and shall not be deemed a waiver of any such rights or remedies.

S.24 INDEMNIFICATION/LIABILITY.

- a. Indemnification, General. To the fullest extent permitted by Law, Contractor agrees to defend, indemnify, and hold the City, its officers, agents, and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys', witnesses', and expert witnesses' fees, and expenses incident thereto, relating to, arising out of, or resulting from: (i) the Services provided by Contractor Personnel under this Agreement; (ii) any negligent acts, errors, mistakes or omissions by Contractor or Contractor Personnel; and (iii) Contractor or Contractor Personnel's failure to comply with or fulfill the obligations established by this Agreement.
- b. Contractor shall update the City during the course of the litigation to timely notify the City of any issues that may involve the independent negligence of the City that is not covered by this indemnification.
- c. The City assumes no liability for actions of Contractor and shall not indemnify or hold Contractor or any third-party harmless for claims based on this Agreement or use of Contractor-provided supplies or services.

S.25 WARRANTY. Contractor warrants that all Services will be performed in a good, workman-like and professional manner. If any Materials or Services are of a substandard or unsatisfactory manner as determined by the City, Contractor, at no additional charge to the City, will provide Materials or redo such Services until in accordance with this solicitation and to the City's reasonable satisfaction.

Unless otherwise agreed, the Contractor warrants that Materials shall be new, unused, of most current manufacture and not discontinued, shall be free of defects in materials and workmanship, shall be provided in accordance with manufacturer's standard warranty for at least one (1) year unless otherwise specified, and shall perform in accordance with manufacturer's published specifications.

S.26 THE CITY'S RIGHT TO RECOVER AGAINST THIRD PARTIES. Contractor shall do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property, and shall at the City's request and expense, furnish to the City reasonable assistance and cooperation, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City in obtaining recovery.

S.27 NO GUARANTEE OF WORK. Contractor acknowledges and agrees that it is not entitled to deliver any specific amount of Materials or Services or any Materials or Services at all under this solicitation

and acknowledges and agrees that the Materials or Services will be requested by the City on an as needed basis at the sole discretion of the City. References to quantities or performance frequencies represent the City's best estimate of current requirements, but shall not bind it to contract for, accept, or pay for Materials or Services which exceed its actual needs.

- S.28 OWNERSHIP.** Other than Contractor's proprietary software code, applications, kiosks, templates, tools, and processes, all deliverables, Services, and information provided by Contractor or the City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, and survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of the City and shall not be used or released by Contractor or any other person except with prior written permission by the City.
- S.29 USE OF NAME.** Contractor shall not use the name of the City of Mesa in any advertising or publicity without obtaining the prior written consent of the City.
- S.30 CONFLICT OF INTEREST.** Pursuant to A.R.S. § 38-504, a current or former public officer or employee within the last twelve (12) months shall not represent another organization before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment or over which they had a substantial or material administrative discretion. Further, while employed by the City and for two (2) years thereafter, public officers or employees are prohibited from disclosing or using, without appropriate authorization, any confidential information acquired by such personnel in the course of his or her official duties at the City.
- S.31 FOB POINT.** All deliveries shall be FOB destination unless otherwise agreed. Freight charged/terms shall be as agreed.
- S.32 RISK OF LOSS.** Contractor agrees to bear all risks of loss, injury, or destruction of goods or equipment incidental to providing these Services and such loss, injury, or destruction shall not release Contractor from any obligation hereunder.
- S.33 SAFEGUARDING CITY PROPERTY.** The Contractor will be responsible for any damage to City Real property or damage or loss of City Personal Property when such property is the responsibility of or in the custody of the Contractor or its employees.
- S.34 WARRANTY OF RIGHTS.** The Contractor warrants it has title to, or the right to allow the City to use, the Materials and Services being provided and that the City may use same without suit, trouble or hindrance from the Contractor or third parties.
- S.35 PROPRIETARY RIGHTS INDEMNIFICATION.** Without limiting the foregoing, Contractor shall, without limitation, at its expense defend the City against all claims asserted by any person that anything provided by Contractor infringes a patent, copyright, trade secret or other intellectual property right and shall, without limitation, pay the costs, damages and attorneys' fees awarded against the City in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment shall be obtained against the City's use or operation of the items provided by Contractor hereunder or any part thereof by reason of any alleged infringement, Contractor shall, at its expense and without limitation, either (a) modify the item so that it becomes non-infringing; or (b) procure for the City the right to continue to use the item; or (c) substitute for the infringing item other item(s) having at least equivalent capability; or (d) refund to the City an amount equal to the price paid, less reasonable usage, from the time of installation acceptance through cessation of use, which amount shall be calculated on a useful life not less than five (5) years, and plus any additional costs the City may incur to acquire substitute supplies or services.
- S.36 CONTRACT ADMINISTRATION.** The contract shall be administered by the Purchasing Administrator and/or an authorized representative from the using department. All questions regarding the contract shall be referred to an administrator for resolution. Supplements may be written to the contract for the addition or deletion of services. Payment will be negotiated and determined by the Contract Administrator(s).
- S.37 FORCE MAJEURE.** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected shall within five (5) Days notify the other party of all pertinent facts and

identify the force majeure event. The party whose performance is so affected shall also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. The delivery or performance date shall be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances shall delays caused by a force majeure extend beyond one hundred-twenty (120) Days from the scheduled delivery or completion date of a task.

- S.38 COOPERATIVE USE OF CONTRACT.** The City has entered into various cooperative purchasing agreements with other Arizona government agencies, including the Strategic Alliance for Volume Expenditures (SAVE) cooperative. Any contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the prior written approval of the Contractor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.

If required to provide services on a school district property at least five (5) times during a month, Contractor shall submit a full set of fingerprints to the school district in accordance with A.R.S. 15-512 of each person or employee who may provide such service. The district shall conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public law 92-544 of all contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the District. Additionally, the Contractor shall comply with the governing body fingerprinting policies of each individual school district/public entity. Contractor, subcontractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City shall not be responsible for any disputes arising out of transactions made by others.

- S.39 FUEL CHARGES AND PRICE INCREASES.** No fuel surcharges will be accepted. No price increases will be accepted without proper request by Contractor and response by the City's Purchasing Division.
- S.40 NOTICES.** All notices to be given pursuant to this Agreement shall be delivered to the parties at their respective addresses. Notices may be (i) personally delivered; (ii) sent via certified or registered mail, postage prepaid; (iii) sent via overnight courier; or sent via facsimile. If provided by personal delivery, receipt shall be deemed effective upon delivery. If sent via certified or registered mail, receipt shall be deemed effective three (3) days after being deposited in the United States mail. If sent via overnight courier or facsimile, receipt shall be deemed effective two (2) days after the sending thereof.
- S.41 GOVERNING LAW, FORUM.** This Agreement shall be governed by the laws of the State of Arizona. The exclusive forum selected for any proceeding or suit in law or equity arising from or incident to this Agreement shall be Maricopa County, Arizona.
- S.42 INTEGRATION CLAUSE.** This Agreement, including all attachments and exhibits hereto, shall supersede all prior oral or written agreements, if any, between the parties, and shall constitute the entire agreement between the parties with respect to the work to be performed.
- S.43 PROVISIONS REQUIRED BY LAW.** Any provision required by law to be in this Agreement is a part of this Agreement as if fully stated in it.
- S.44 SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.
- S.45 SURVIVING PROVISIONS.** Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, shall survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, Termination, or other expiration of this Agreement shall not release any party from any liability or obligation arising prior to the date of termination.