

MEMORANDUM**TO:** Board of Trustees**THROUGH:** Bobby Magee, District General Manager**FROM:** Kate Nelson, Director of Public Works**SUBJECT:** Review, Discuss and Approve an Agreement for the Public Works Billing Software Replacement; FY 2023/24 Capital Improvement Project #2097CO2101; Utilities: Public Works Shared; Vendor: Harris Computer Corporation dba DataWest; in the Amount of \$9,600. (Requesting Staff Member: Director of Public Works Kate Nelson)**RELATED FY 2025
STRATEGIC PLAN****BUDGET INITIATIVE(S):****LONG RANGE PRINCIPLE #1 - SERVICE**

The District will provide superior quality service through responsible stewardship of District resources and assets with an emphasis on the parcel owner and customer experience.

**RELATED DISTRICT
POLICIES, PRACTICES,
RESOLUTIONS OR
ORDINANCES**

Purchasing Policy for Goods and Services 21.1.0; Capital Planning Capital Project Budgeting Policy 13.1.0.

DATE: August 28, 2024**I. RECOMMENDATION**

That the Board of Trustees make a motion to:

1. Approve the Purchase Order Agreement with Harris Computer Corporation dba DataWest for the Amount of \$9,600 and,
2. Direct the General Manager to Sign and Execute the Agreement.

II. BACKGROUND

The fiscal year 2023/24 Capital Improvement Project 2097CO2101 initially allocated \$20,000 to begin the utility billing software conversion process, with a projected \$200,000 earmarked for FY 2024/25 to complete the replacement of the software. However, FY 2024/25 budget adjustments aimed at cost reduction necessitated reevaluating this expenditure. Nevertheless, during the evaluation of potential billing software solutions through various demonstrations, it became

apparent that our current system's customer self-service portal requires enhancement to meet contemporary standards. This portal, critical for customer interaction, was found to lag behind industry norms and customer expectations.

Rather than proceeding with a full software replacement at this time, upgrading the Customer Self Service Portal through an agreement with Harris Computer Corporation dba DataWest for \$9,600 is a strategic investment. This targeted enhancement will elevate customer service, align our system with modern standards, and maintain fiscal responsibility by optimizing existing infrastructure and addressing current needs without the expense of a full-scale software replacement.

III. BID RESULTS

The proposed Purchase Order Agreement for Services complies with the District's Purchasing Policy for Public Works Contracts, Policy 21.1.0.2.2.3 and did not require more than one bid.

IV. FINANCIAL IMPACT AND BUDGET

The proposed agreement with Harris Computer Corporation dba DataWest for the upgrade of the Customer Self Service Portal totals \$9,600. This amount was originally part of the \$20,000 allocated for FY 2023/24. The request is now to carry forward \$9,600 into FY 2024/25 to complete this project.

V. ALTERNATIVES

There are no alternatives presented.

VI. COMMENTS

The Agreement between the District and Harris Computer Corporation dba DataWest has been reviewed and approved by District Legal Counsel. The applicable Nevada Revised Statute (NRS) Statute is 318.199: Rates, tolls and charges for sewerage or water services or products: Schedules; public hearings; adoption of resolution; action to set aside resolution.

VII. BUSINESS IMPACT/BENEFIT

This item is not a "rule" within the meaning of Nevada Revised Statutes, Chapter 237, and does not require a Business Impact Statement.

VIII. ATTACHMENTS

1. PURCHASE ORDER

IX. DECISION POINTS NEEDED FROM THE BOARD OF TRUSTEES

CIP No. 2097CO2101	Purchase Order No.
CONTRACTOR Harris Computer 62133 Collections Center Drive Chicago, IL 60693-0621	INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT Public Works Department 1220 Sweetwater Road Incline Village, NV 89451 Attn: Diana Robb Phone / Email 775-832-1337 / dcr@ivgid.org

This Purchase Order is subject to the attached terms and conditions, in the following order of precedence. In the event of any conflict between these provisions, the terms and conditions of the lower numbered Exhibit shall prevail.

Exhibit "1": Statement of Work for the Incline Village Self Service Portal Upgrade

Exhibit "2": The License Agreement for Proprietary Information originally executed on March 31, 1993.

Exhibit "3": The Incline Village Standard Terms and Conditions for Purchase Orders

Price: \$9,600

Exhibit "1"
Statement of Work for Customer Portal Upgrade



To: Teri Fitzpatrick
Organization: Incline Village General Improvement District
Email: tsf@ivgid.org
Phone: 775-832-1215

From: Caitlin Freemark
Email: cfreemark@harriscomputer.com
Phone: 343-291-8544

Date: June 13, 2024
Subject: Customer Self Service Portal Upgrade
Price: \$9,600

Service Description: This quote defines the work to be performed by DataWest, an incorporated division of N. Harris Computer Corporation, to perform the services to upgrade the Customer Self Service Portal for Incline Village General Improvement District.

Scope Of Work:

- DataWest will oversee the Project to Upgrade the Customer Self Service Portal that Incline Village currently uses.
- This new upgrade will add the following features:
 - Detailed Transaction History + download
 - Historical Consumption Data Presentment + download
 - Digital forms – Start service, stop service, transfer service, ACH payment
- Promote the changes to Test environment.
- Provide User Acceptance Testing (UAT) support.
- Upon Incline Village’s approval, promote to Live environment.

Assumptions:

- All project activities to be performed remotely.
- Incline Village will provide the appropriate remote access to its network, facilities, and systems as maybe required to perform activities from one of DataWest’s locations. DataWest shall abide by all rules and directions of Incline Village when accessing the district’s network, facilities or systems.
- Upon deployment of the upgrade into the Customer Portal Test environment, **Incline Village will have fifteen (15) business days for acceptance testing**, during which time, issues reported within the 15 days will be resolved at no charge provided they are part of the original scope of work. At that time the upgraded Customer Portal will be promoted to the Live environment on agreement from Incline Village. All changes or issues reported after 5 days will be considered billable, unless a prior arrangement or extension to the acceptance period is made.



- If a project delay is encountered due to external factors outside of DataWest's control, and the above described User Acceptance Testing (UAT) period needs to extend beyond the 5-day period for remediation, DataWest and Incline Village will analyze the results of this external factor on the project timeline to determine if there is a need for a change order to reflect an impact on the project cost or schedule.
- Incline Village resources will be available as required for UAT. It is expected that the human resources will have experience in the day-to-day operations and will work closely with DataWest to resolve issues as required for quick and consistent response to any issues.

Delivery:

Delivery in test environment can take up to 90 days from receipt of signed quote by DataWest. Upon receiving a signed quote, DataWest strives to coordinate and commence all work at the earliest period. Your project manager will contact you within 3 weeks of receipt of signed order and go over the anticipated project schedule during the Discovery/Kick Off Call. You will be given a sign off form that will layout the schedule with start and end dates. Please speak to your Account Manager to confirm the anticipated project start date.

Once the project schedule is reviewed and signed any delays to the schedule could result in additional fees pursuant to change order and delay of predetermined project delivery timeline. Should additional time be required to complete this project at any time, you will be notified and asked for your approval in advance of DataWest completing the incremental work.

Once the upgraded Customer Portal is ready for testing, you will be contacted to test the modification.

Price: \$9,600 for Project Management

This is a fixed price quote based on the scope described above.

If there are material changes to the scope or our understanding of the scope, the price is subject to change. To accept the SOW, sign/initial where indicated and either fax or email a copy to the details noted above.

Price excludes any applicable taxes.

Quote is valid for 60 days from date of delivery. After 60 days the quote will be considered expired and would need to be reassessed and re-quoted if still required.

Payment Terms:

This quotation will require a 100% payment upon receipt of signed order by Harris.

Invoices are payable withing 30 days of receipt



Acceptance Terms:

The work contained within this document is deemed completed and accepted if one of these criteria is met:

- The Upgraded Customer Portal is moved to the Live environment upon Incline Village’s approval.
- 30 days has elapsed from delivery of the Upgraded Customer Portal into the Incline Village Test environment.

Note: Any items requiring support following acceptance of this work is to be logged in TeamSupport via a ticket.

Termination:

Unless DataWest and/or Incline Village exercises its right to terminate this quote due to material breach or default, DataWest must provide, and Incline Village must purchase, services from DataWest for the items defined within this quote.

If Incline Village and/or DataWest exercises its right to terminate this quote due to material breach or default, or Incline Village and/or DataWest terminates this quote without cause,

Incline Village’s obligation includes the following:

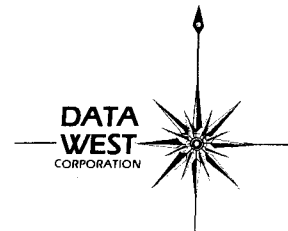
1. If this project is cancelled pursuant to the terms of the governing agreement, return the Software to DataWest and certify, under the hand of a duly authorized officer of the Organization, that all copies of the software or any part thereof, in any form, within the possession or control of the Organization have been returned to DataWest (if applicable).
2. Complete payment for services performed and expenses incurred prior to termination including:
 - a. Any amounts previously invoiced but unpaid;
 - b. Fees for services performed through the termination date which has not been invoiced; and
 - c. Any approved travel and living costs.

DataWest’s obligation includes the following:

1. Provide notice of 10 calendar days for termination without cause. Under no circumstances shall DataWest be liable for any special, indirect, consequential, punitive or incidental damages of any kind and shall not be liable for loss of profits, works stoppage, system failure or malfunction, loss of data or any other damages or losses in connection with this statement of work, even if DataWest has been advised of the possibility of such damages. In any event, DataWest shall not be liable to pay any amount, in the aggregate, that is greater than the fees received by DataWest under this quote.

Exhibit "2"
License Agreement

**LICENSING AGREEMENT
FOR
PROPRIETARY INFORMATION**



This agreement is made this 31st Day of March 1993,
between DATA WEST CORPORATION (DATA WEST), a Colorado
corporation; and

LICENSEE: INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT

ADDRESS: 893 Southwood Boulevard
Incline Village, NV 89451

on the terms and conditions set forth herein:

Whereas DATA WEST has developed, created and generated certain computer software programs or is authorized to market programs developed by others, together with operating instructions contained in Users Manuals, which software is physically recorded upon magnetic tapes and/or disks, and certain operating techniques and drawings, all of the foregoing, together with any improvements thereon, being retained by DATA WEST and/or its associate software vendors as secret and confidential information and hereinafter referred to as "Proprietary Information" or "Software", and whereas LICENSEE desires a paid-up license from DATA WEST to use said Proprietary Information and DATA WEST desires that LICENSEE retain such Proprietary Information in confidence;

Now, therefore, in consideration of the premises and the covenants and undertakings hereinafter set forth, the parties agree as follows:

1. LICENSE

DATA WEST agrees to grant to LICENSEE a paid-up license to the said Proprietary Information in perpetuity, and LICENSEE agrees to accept said license and to pay to DATA WEST the license fee set out herein in accordance with the terms and conditions hereof.

2. LICENSE FEE, PAYMENT AND TAXES; TIME AND PLACE OF DELIVERY

A. LICENSEE shall pay to DATA WEST as full consideration for the Proprietary Information set forth in EXHIBIT "A", amounts as scheduled in EXHIBIT "B". To this total license fee shall be added all applicable federal, state, municipal or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future payable by the LICENSEE unless LICENSEE provides DATA WEST a certificate of exemption or similar document

or proceeding that exempts the LICENSEE from the applicable taxes. In the absence of such an exemption, LICENSEE also agrees to pay all applicable taxes on any future software, products or services obtained from DATA WEST.

B. DATA WEST shall deliver the Proprietary Information and LICENSEE shall accept such delivery at the LICENSEE's address as set forth herein.

3. HARDWARE CONFIGURATION

The hardware configuration on which the software will operate will consist of the equipment per EXHIBIT "C" attached.

4. LICENSE AGREEMENT

DATA WEST hereby grants to the LICENSEE the perpetual nonexclusive right to use the software delivered pursuant to this contract, subject to compliance by LICENSEE with all its agreements with DATA WEST. DATA WEST and/or its associate software vendors shall retain full ownership rights to the software, and LICENSEE shall have no rights to the software, or any changes made therein by DATA WEST, except as specifically provided for in writing. DATA WEST hereby agrees that the LICENSEE's use of the software may involve the preparation of data and reports for the LICENSEE, and this use by the LICENSEE is authorized hereby, provided that the processing is done by the LICENSEE's personnel on the LICENSEE's computers or temporary substitute computers. The software may not be used by third parties. DATA WEST hereby agrees to permit the LICENSEE to make copies of the software for backup purposes. The LICENSEE further agrees to take such other reasonable steps as DATA WEST may request from time to time in order to protect DATA WEST's rights and the LICENSEE's rights in the software. The LICENSEE may not sell, lease, transfer, assign, or license the software to a third party without prior written permission from DATA WEST. LICENSEE hereby acknowledges that similar software may be licensed by DATA WEST (or its associate software vendors) to other users.

5. CONTACT PERSON

LICENSEE agrees to designate one person, acceptable to DATA WEST, to represent LICENSEE and help coordinate LICENSEE's personnel during the design, development, installation, and on-going use of LICENSEE's computer system. DATA WEST agrees to designate one person, acceptable to LICENSEE, to represent DATA WEST and help coordinate DATA WEST's personnel during the design, development, installation, and on-going use of LICENSEE's computer system.

6. SOFTWARE INSTALLATION

- A. A certain amount of professional support time is included with the licensed software, as itemized under EXHIBIT "A". It is contemplated that this time will be used substantially for software installation and tailoring. Any time which remains unused following installation of the software may be applied towards training or other support. Any time expended in excess of the allocated time shall be paid for by LICENSEE at the then-current rates set out in the DATA WEST Fee schedule.
- B. LICENSEE will provide to DATA WEST information requested, regarding various aspects of LICENSEE's record storage and processing requirements.
- C. DATA WEST will provide to LICENSEE appropriate Software Specifications and/or Operator Guides for LICENSEE's review.
- D. DATA WEST will install LICENSEE's software on whatever media is mutually agreed upon, and forward this to LICENSEE.
- E. LICENSEE will then be responsible for taking the necessary steps to complete the installation of the software on LICENSEE's equipment, as directed by the Operator Guides and/or DATA WEST staff via telephone.
- F. Conversion of LICENSEE data for use with the licensed software is not included under this agreement, unless specified in EXHIBIT "A" attached.
- G. If, at any time, DATA WEST concludes that LICENSEE's requirements exceed the reasonable capabilities of the software, and if no satisfactory resolution can be reached, then DATA WEST reserves the option to withdraw from this agreement, retaining compensation, at the then current rates for all costs incurred for professional time and out-of-pocket expenses. All other monies paid by LICENSEE to DATA WEST shall be returned. LICENSEE shall return to DATA WEST all software in LICENSEE's possession, along with all specifications, operator guides, and other materials relating to the software.
- H. Provisions in Section 9 of this agreement, relating to proprietary data shall survive this agreement.

7. TRAINING

LICENSEE understands that the software is very sophisticated. While no programming expertise is required to operate the software, it may not be possible for LICENSEE personnel to completely learn proper operation of the software without some training. Training is available by phone or on-site, at LICENSEE's expense in accordance with the then-current DATA WEST Fee Schedule. Operator training time included under this agreement, IF ANY, is itemized as such under EXHIBIT "A". Any time remaining after installation of the software may be applied toward training.

8. WORKING SPACE

In the event that LICENSEE opts for one or more site visits by DATA WEST, LICENSEE agrees to provide DATA WEST staff sufficient working space and sufficient access to the computer system during normal business hours so that DATA WEST may install the software, provide training, or perform such other services as are required.

9. WARRANTY AND LIMITATION OF LIABILITY

DATA WEST warrants that the standard base computer programs and systems will perform as specified in the system specifications and/or Operator Guide(s), for 90 days following the installation of the software, so long as it is operated in accordance with the written instructions of DATA WEST. This warranty shall immediately terminate if such computer programs or systems or associated specifications and manuals are modified in any manner whatsoever. DATA WEST's sole obligation and liability under this warranty shall be to correct computer program software, or manuals so that the software performs as specified in the detail specifications or Operator Guide(s). Training or operational support which may be required to get the software fully implemented are not provided under this warranty. In no event shall DATA WEST be liable for any incidental or consequential damages with regard to this warranty. LICENSEE is responsible to exercise good business practices, procedures, and controls to monitor the software performance, and to notify DATA WEST immediately upon verifying any system "bug".

EXCEPT AS SPECIFICALLY SET FORTH HEREIN, DATA WEST MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL DATA WEST HAVE ANY OBLIGATION OR LIABILITY ARISING FROM TORT, OR FOR LOSS OF REVENUE OR PROFIT, OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.

10. CONTINUING SUPPORT

DATA WEST agrees to provide, subject to the terms and conditions of this agreement, all of the expertise and/or resources at its disposal to assist LICENSEE in restoring the computer software to full operation as quickly as practical after any system failure. DATA WEST's SystemCare software support plan shall automatically commence immediately upon final completion of training of LICENSEE personnel by an authorized DATA WEST representative. In consideration for SystemCare, LICENSEE will pay a fee in accordance with the then-current DATA WEST rates for this service, plus any applicable taxes. The periodic SystemCare fee for the licensed software, as of the date of this agreement, is set forth in EXHIBIT "A". SystemCare coverage may be cancelled by LICENSEE on any anniversary date of this agreement upon at least 30-days advance written notice to DATA WEST. In the event of cancellation of SystemCare coverage by LICENSEE, or in the absence of appropriate training, or prior to completion of training, support will be provided on a "time and materials" basis at the rates set forth in the then-current DATA WEST Fee Schedule.

BENEFITS AND CONDITIONS OF SYSTEMCARE SUPPORT PLAN

The services and materials to be provided by DATA WEST to LICENSEE enrolled for SystemCare are subject to the following terms and conditions:

A. System supported

The system supported will consist of software licensed by LICENSEE from DATA WEST, such software to be in the form as originally obtained or as modified by DATA WEST.

B. Services

1. Priority Services

All services and supplies provided under SystemCare will be so provided as expeditiously as possible and in priority over any other party's system support requirements which are not covered by SystemCare.

2. Limited Liability

DATA WEST's sole obligation and liability under SystemCare shall be to provide its expertise to assist LICENSEE to identify any system failure, and correct programs, software or manuals so that the system performs as specified in the system documentation. In no event shall DATA WEST be liable for any incidental or consequential damages.

3. System Failure

DATA WEST agrees to assist LICENSEE to the best of its ability, in the isolation and resolution of any and all system failures, including but not limited to programming errors, operator errors, procedural errors, and power failures. DATA WEST will assist LICENSEE verbally, via telecommunications link (if available), or on-site, if mutually deemed necessary, in an attempt to restore LICENSEE's system to full operation. While DATA WEST will make every reasonable effort to recover any data lost due to the system failure, DATA WEST does not guarantee that its efforts will be successful. Restoration of any destroyed or defective data is the sole responsibility of LICENSEE.

4. Program Corrections

From time to time, program corrections may be issued which may be applicable to LICENSEE software.

- a. Under SystemCare, DATA WEST will notify LICENSEE if it believes program corrections are likely to be required. DATA WEST will implement program corrections on LICENSEE software either at LICENSEE site, via telecommunications link, or by program diskette, as may be agreed upon.
- b. DATA WEST will make its best efforts to ensure program corrections will rectify the identified system error; however, DATA WEST's sole obligation in the event the program correction is itself in error, is to issue a revised program correction.

5. System Application Enhancements

From time to time, DATA WEST will release System Application Enhancements, which are designed to improve the application functions of the system. System Application Enhancements will be provided free of charge to clients who have kept their SystemCare coverage continuously in force, and are current in their account with DATA WEST. Other clients may obtain Enhancement releases by paying a designated fee, to be announced for each enhancement as it is released.

6. Other System Support Activities:

All other system support activities will be charged at the rates set forth in the then-current DATA WEST Fee Schedule.

C. Exclusions from SystemCare Support Plan

The services provided and fees assessed for such services rendered by DATA WEST under the SystemCare Support Plan are limited to the above. Services not covered by the Plan include but are not limited to:

1. Any support activities necessitated by a change in LICENSEE's computer hardware configuration.
2. Major upgrades of any application software, at the discretion of DATA WEST.
3. Custom programming and/or the modification of standard base programs or data bases.
4. Any expenses, including travel and lodging costs, incurred during any on-site visit, whether or not the visit was caused by a problem covered by SystemCare.
5. Any support activities necessitated by LICENSEE's failure to follow adequate back-up and/or recovery procedures.
6. The support of any software, program, or data base, not obtained from DATA WEST.
7. Any support effort deemed by DATA WEST to substantially comprise training activity. It is understood that the intent of the SystemCare Support Plan is to provide for resolution of problems, not training of LICENSEE personnel. Training will be provided as requested, at rates quoted on the prevailing DATA WEST Fee Schedule.

8. Expenses incurred by DATA WEST for supplies, data media, shipping charges, etc., in the support of LICENSEE software as identified in this agreement.

9. Long-distance telephone expenses incurred during remote support activities.

D. Fee Payment

Payment to DATA WEST for services to be rendered under the terms of SystemCare shall be made quarterly in advance, or as may otherwise be arranged.

11. GENERAL

A. NOTICE - All notices which LICENSEE or DATA WEST may have cause to give to the other shall be addressed to the party at the address provided herein.

B. APPLICABLE LAW - This agreement shall be interpreted and enforced pursuant to the laws of the State of Colorado, United States of America, and any action relating to this agreement may at the option of DATA WEST be brought in Durango, La Plata County, Colorado, United States of America. It is agreed by and between the parties that this agreement was executed in the State of Colorado, United States of America.

C. RISK OF LOSS - After delivery of the system to the LICENSEE, LICENSEE shall be responsible for protecting the system from risk of loss, damage or destruction. In the event of such loss, damage or destruction, the items of the system so lost, damaged or destroyed will be replaced by DATA WEST, so far as is possible and practical, at the request and expense of the LICENSEE.

D. NO JOINT VENTURE - Nothing contained in this agreement shall be construed to imply that a joint venture or partnership is created by and between the parties hereto.

E. SOLICITATION OF EMPLOYEES - Neither DATA WEST nor LICENSEE shall directly or indirectly induce any officer, agent or employee to leave the employ of the other party without that other party's written consent.

F. ATTORNEY'S FEES - In the event that DATA WEST retains an attorney to enforce this agreement, DATA WEST shall be entitled to recover, in addition to any other relief available at law or equity, its expenses, court costs, and reasonable attorney's fees.

- G. FORCE MAJEURE - DATA WEST shall not be liable for failure to perform any obligation under this contract where such failure arises from causes beyond DATA WEST's exclusive control, including (but not limited to) such causes as war; civil commotion; force majeure; acts of a public enemy; sabotage; vandalism; accident; statute; ordinances; embargoes; government regulations; priorities or allocations; interruption or delay in transportation; inadequacy, shortage or failure of supply of materials, equipment, fuel or electrical power; labor controversies (whether at DATA WEST's office or elsewhere); shut-downs for repairs; natural phenomena; whether such cause exists on the effective day hereof, or arises thereafter, or from compliance with any order or request of the United States Government or any officer, department, agency, committee or instrumentality or thereof.
- H. This agreement is subject to approval by any associate software vendors of DATA WEST who produced and own proprietary information incorporated in the system set forth in EXHIBIT "A". Said associate vendors may have special conditions relating to their proprietary information. These conditions are set out in EXHIBIT "D" which, if applicable, is attached hereto and by reference made a part hereof.
- I. ENTIRE AGREEMENT - This agreement constitutes the entire agreement between LICENSEE and DATA WEST and supersedes and cancels any and all prior agreements or proposals, written or oral, between the parties relating to the subject matter hereof. Any amendments, addenda, alterations or modifications to the terms or conditions of this Agreement shall be in writing and signed by both parties.
- J. ASSIGNMENT - Neither this agreement, nor any interest herein may be assigned by LICENSEE without DATA WEST's prior written consent.
- K. ARBITRATION - Any controversy, dispute or question arising out of, in connection with, or in relation to this agreement or its interpretation, performance, or nonperformance, or any breach thereof may at the option of DATA WEST, be determined by arbitration in accordance with the rules of the American Arbitration Association. The cost and expenses of such arbitration, including the compensation of the arbitrators and the stenographer employed by them, shall be paid by the party against whom the arbitrator renders a decision. The decision of the arbitrator shall be final and binding upon the parties hereto and may be entered as a final decree or judgment in

any court of competent jurisdiction. After the making of the award, which may include an award of damages, by the arbitrator as herein provided, either of the parties to this agreement shall have the right to commence an action in any court of competent jurisdiction to enforce the award rendered hereunder. The party against whom judgment is rendered agrees to pay reasonable attorney's fees and costs, as well as any other damages sought.

- L. CURRENCY - All money terms referenced shall be in United States funds at face value.
- M. The parties agree to the payment schedule set out in EXHIBIT "B". LICENSEE acknowledges that ongoing use of the software without payment in full will constitute a material breach of this agreement. LICENSEE understands that the software contains an expiration date, following which the software will not be operable. Upon payment in full by LICENSEE, the software expiration date will be removed by DATA WEST, allowing perpetual ongoing use of the software by LICENSEE.
- N. In the event of default by the LICENSEE in payment of any sum to DATA WEST when due, or in the performance of any of its obligations under this agreement, DATA WEST shall have the option to terminate all software support to LICENSEE, until such time as the default(s) be cured.
- O. In the event of any finding that any provision of this agreement is void, illegal, or unenforceable, the remainder of the provisions shall remain in force.

12. PROPRIETARY DATA

DATA WEST acknowledges that during discussions with the LICENSEE leading up to this agreement and during and following the period of installation, certain proprietary data of the LICENSEE may become known to DATA WEST. DATA WEST agrees to safeguard this proprietary information with the same degree of care that it accords to DATA WEST's own proprietary data. In particular:

- A. DATA WEST or any of DATA WEST's employees or agents shall not divulge, transfer, assign, sell, license, franchise, sublease, or otherwise convey the identified LICENSEE proprietary data in any form to a third party, person or organization except as may be specifically agreed to in writing by LICENSEE.
- B. In the event DATA WEST shall attempt to use or convey any portion of the identified LICENSEE proprietary data in a manner contrary to the terms of this agreement, LICENSEE shall have the right, in addition to any other remedies

available to it, to injunctive relief enjoining such acts, it being acknowledged that other remedies are inadequate.

LICENSEE acknowledges that the computer programs, manuals and related data incorporated herein are proprietary information of DATA WEST and/or its associate vendors, who retain full ownership rights thereto. LICENSEE agrees to safeguard this proprietary information with the same degree of care that it accords to LICENSEE's own proprietary data. In particular:

- A. LICENSEE's employees or agents shall not divulge, transfer, assign, sell, license, franchise, sublease, or otherwise convey the proprietary information or any portion thereof whether in printed, magnetic or any other form to any third party, person, or organization except as may be specifically agreed to in writing by DATA WEST.
- B. In the event LICENSEE shall attempt to use or convey the proprietary information or any duplication or modification thereof in a manner contrary to the terms of this agreement, DATA WEST and/or its associate vendors shall have the right, in addition to any other remedies available to it, to injunctive relief enjoining such acts, it being acknowledged that other remedies are inadequate.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and date of the year first set forth above.

DATA WEST CORPORATION
1061 East Second Avenue
P.O. Box 2064
Durango, CO 81302

INCLINE VILLAGE GENERAL
IMPROVEMENT DISTRICT
893 Southwood Boulevard
Incline Village, NV 89451

Reviewed and approved as to form:

BY: R.K. Ptolemy
TITLE: PRESIDENT

Patrick L. Finnigan
PATRICK L. FINNIGAN
Director of Administrative Services

ATTEST: Richard Lyndell Brown

Noel E. Manoukian, Ltd.
NOEL E. MANOUKIAN, LTD.
General Counsel

Agreed by:

Bennie Ferrari
BENNIE FERRARI
Chairman

Cliff McGough
CLIFF MCGOUGH
Secretary

DATE: 3-30-93

DATE: 3-31-93

DATA WEST CONTACT PERSON:
MARK DALSASS

LICENSEE CONTACT PERSON:
NANCY MATTE

TELEPHONE #: (303) 259-2330

TELEPHONE #: (702) 832-1203
or 832-1209

DATA WEST CORPORATION & INCLINE VILLAGE GENERAL IMPROVEMENT DIST.

EXHIBIT A

Proprietary Computer Programs, Products and Services

1. BILLMASTER Billing/Information System (Version 4.0)
2. RADIX AUTOMATIC METER READER Interface To BILLMASTER
3. Niakwa Run Time Package - (4-user NOVELL Version 3.2)
4. Support Services Included:
 - Installation/Customization time: 32 Hours
 - Training (on site, 1 visit): 16 Hours
(Travel expenses not included)
 - Complete set of Operator guides
 - Complete warranty coverage during warranty period
(i.e. correction of any software errors).
 - Copy of Licensee's software kept at Data West facilities
for back up purposes.
 - SystemCare Software Support coverage from April 20 through
June 30, 1993.
5. Automatic Data Conversion of billing customer master files.

TOTAL SYSTEM LICENSE & CONVERSION FEE: \$ 13,436.

On-going SystemCare Support Coverage: \$ 110./monthly

(Travel Expenses, if any, Not Included)

DATA WEST

Initials RKP

Date 3-30-93

LICENSEE

Initials BJH

Date 3/31/93

DATA WEST CORPORATION & INCLINE VILLAGE GENERAL IMPROVEMENT DIST.

EXHIBIT B

System Installation & Payment Schedule:

<u>PAYMENT SCHEDULE</u>	<u>PERCENTAGE</u>	<u>AMOUNT</u>
Down payment (upon contract signing)	60%	\$ 8,061.60
Upon Installation	40%	\$ 5,374.40
TOTAL LICENSE FEE		<u>\$13,436.00</u>

EXHIBIT C

Computer System:

Software will Operate on the following equipment:

Computer(s)/Terminal(s) with adequate memory and disk storage capacity acting as workstation(s)/server, approved by Novell Inc. for Novell NetWare v3.11 or later.

Note: Installation and on-going support will require a 2400 Baud Modem and PCAnywhere Telecommunications package, version 4.5.

Billmaster: 4 users (Max)

Software License Fees are based in part on usage (i.e. number of concurrent users). More users may be added at any time upon payment of nominal additional License Fees.

DATA WEST

Initials RKP

Date 3-30-93

LICENSEE

Initials BT

Date 3/31/93

ADDENDUM

This is an Addendum to the Licensing Agreement for Proprietary Information between DATA WEST CORPORATION (DATA WEST) and Incline Village General Improvement District (LICENSEE), to which this is attached. Said Agreement is hereby amended as follows:

1. DATA WEST agrees to defend, at its expense, any suits against LICENSEE based upon a claim that any products furnished hereunder directly infringes a U.S. patent or copyright, and to pay costs and damages finally awarded in any such suit, provided that LICENSEE promptly notifies DATA WEST in writing and at LICENSEE's request and expense is given control of said suit and all requested assistance for defense of same. If the use or sale of any such product furnished hereunder is enjoined as a result of such suit, DATA WEST, at its option, and at no cost to LICENSEE shall obtain for DATA WEST the right to use or sell or substitute an equivalent product to make it non-infringing or substitute an equivalent product reasonably acceptable to LICENSEE and extend this indemnity thereto or, if none of the forgoing remedies are reasonably available to DATA WEST, accept return of the product and reimburse LICENSEE the full purchase price therefor less a reasonable charge for reasonable wear and tear. This indemnity does not extend to any suit based upon any infringement or alleged infringement of any patent or copyright by the combination of any product(s) furnished by DATA WEST and other elements nor does it extend to any product(s) of LICENSEE's design or formula.
2. DATA WEST shall deliver a substantially complete installation of BILLMASTER 4.0 within 120 days after complete execution of this Agreement.
3. Failure by DATA WEST to substantially complete installation of BILLMASTER 4.0 will allow LICENSEE the option to terminate this agreement and receive a full refund of all monies paid to DATA WEST. This option must be exercised within 60 days following software installation. Thereafter, the installation shall be considered to have been fully accepted by LICENSEE.
4. The Anniversary date of LICENSEE'S SystemCare Software Support plan shall be considered to be July 1 of each year.

5. Paragraph 4, second to the last sentence, is modified to read as follows: "The LICENSEE may not sell, lease, transfer, assign or license the software to a third party without prior written permission from DATA WEST, which permission shall not be unreasonably withheld.
6. Paragraph 5. Add: "Either party may change their official contact person at any time, as staffing changes may require."
7. Paragraph 9, second sentence, is modified to read as follows: "This warranty shall immediately terminate if any such computer programs or systems or associated specifications and manuals are modified in any manner whatsoever by anyone other than Data West."
8. Paragraph 11.B is modified such that this agreement shall be interpreted and enforced pursuant to the laws of the state of Nevada, and any action relating to this agreement shall be brought in Reno, Nevada.
9. Paragraph 11.F is modified to read as follows: "ATTORNEY'S FEES - In the event that either party retains an attorney to enforce this agreement, the prevailing party shall be entitled to recover, in addition to any other relief available at law or equity, its expenses, court costs, and reasonable attorney's fees."
10. Paragraph 11.K is modified to provide for arbitration at the option of either party.

DATA WEST

Initials RKP

Date 3-30-93

LICENSEE

Initials BJA

Date 3/31/93

Exhibit "3"

PURCHASE ORDER TERMS AND CONDITIONS FOR SERVICES

1. Acceptance; Entire Agreement. This purchase order for services issued by the INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT ("DISTRICT") to the Contractor designated in the purchase order must be promptly accepted.

2. Compensation. Contractor shall be paid on a time and materials or firm fixed fee basis, as may be agreed upon by the parties as described in this Purchase Order, or in documents attached hereto and hereby made a part hereof, within 30 days of receipt of invoice. If the work is performed on a time and materials basis, the invoice shall include a detailed description of the work performed, labor hours and materials.

3. Compliance with Law. Contractor shall comply with all applicable laws and regulations of the federal, state and local government. DISTRICT shall assist Contractor, as requested, in obtaining and maintaining all permits required of Contractor by Federal, State and local regulatory agencies. Contractor is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of his or her work.

4. Standard of Care. The Contractor shall perform the work in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession practicing under similar conditions. Contractor shall also comply with State and Federal environmental and safety regulations as they apply to the scope of work.

5. Insurance. Contractor shall take out and maintain: A. Commercial General Liability Insurance, of at least \$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury and property damage, naming DISTRICT as an Additional Insured; B. Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, of at least \$1,000,000 per occurrence for bodily injury and property damage; C. Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage of at least \$1,000,000 per occurrence; and D. Contractors providing professional services shall provide Professional Liability (Errors and Omissions) Insurance of at least \$1,000,000. Insurance carriers shall be licensed or authorized to do business in Nevada.

6. Indemnification. The Contractor shall indemnify and hold harmless DISTRICT, its officials, officers, agents and employees from and against any and all claims, liabilities, expenses or damages, including reasonable attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, or patent infringement or fees for use of patented items, or any claim of the Contractor or a subcontractor for wages or benefits which arise in connection with the performance of the Contract, except to the extent caused or resulting from the active or sole negligence or willful misconduct of DISTRICT. The foregoing indemnity includes, but is not limited to, the cost of prosecuting or defending such action with legal counsel acceptable to DISTRICT and DISTRICT's attorneys' fees incurred in such an action. If Contractor's obligation to defend, indemnify,

and/or hold harmless arises out of Contractor's performance

of "design professional" services subject to NRS 338.155, then, and only to the extent required by NRS 338.155, which is fully incorporated herein, Contractor's indemnification obligation shall be limited to the extent that such liabilities, damages, losses, claims, actions or proceedings are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the Contractor or its employees and agents. Moreover, while Contractor shall not be required to initially defend the District, Contractor, if adjudicated to be liable by a trier of fact, the Contractor shall be reimburse the District or the attorney's fees and costs incurred by the District defending the action in an amount which is proportionate to the liability of the Contractor. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the District, its officials, employees, agents and authorized volunteers for losses arising from the work performed by the Contractor for the District.

7. Contract Terms. Nothing herein shall be construed to give any rights or benefits to anyone other than DISTRICT and the Contractor. The unenforceability, invalidity or illegality of any provision(s) of this Contract shall not render the other provisions unenforceable, invalid or illegal. Notice may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to the parties to the addresses set forth in the purchase order. Contractor shall not assign, sublet, or transfer this Contract or any rights under or interest in this Contract without the written consent of DISTRICT, which may be withheld for any reason. Contractor is retained as an independent contractor and is not an employee of DISTRICT. No employee or agent of Contractor shall become an employee of DISTRICT. This Contract may not be modified or altered except in writing signed by both parties hereto. This Purchase Order is not intended to and will not preclude Contractor's employees from exercising available rights under the DISTRICT's Whistleblower Policy and associated procedures for reporting suspected misconduct, as that term is defined in the Whistleblower Policy. All reports of suspected misconduct will be handled by the DISTRICT in accordance with the Whistleblower Policy.

8. Notice of Labor Dispute. Whenever Contractor has knowledge that an actual or potential labor dispute may delay performance under this purchase order, Contractor shall immediately notify and submit all relevant information to DISTRICT.

9. Changes. By written notice, DISTRICT may from time to time, direct work suspension or make changes in quantities, drawings, designs, specifications, place of delivery or delivery schedules, methods of shipment and packaging, and property and services furnished to DISTRICT by Contractor. If such change causes an increase or decrease in the price of this purchase order or in the time required for performance, Contractor or DISTRICT shall promptly notify the other party thereof and assert its claim for adjustment within thirty (30) days after the change is ordered, and an equitable adjustment shall be made. However, nothing in this clause shall excuse the Contractor from proceeding immediately with the purchase order as changed.

10. Obligations. Contractor shall be solely responsible for providing all materials, labor, tools, equipment, water, light, power, transportation, superintendence, and temporary

construction of every nature and all other services and all facilities necessary to execute, complete, and deliver the work within the specified time.

11. Damage to District Facilities. Damage to DISTRICT or public facilities or private property caused by the Contractor or by its subcontractors during performance of services shall be repaired and/or replaced in kind at no cost to the DISTRICT.

12. Site Safety and Cleanup. The project site shall be kept clean and free of hazards at all times during performance of services. After and installation is completed at the site, as applicable, Contractor shall clean the surrounding area to the condition prior to delivery and installation.

13. Installation. If the Contractor is responsible for providing installation services, finished installation work and/or equipment shall be subject to final inspection and acceptance or rejection by the DISTRICT.

SIGNATURE PAGE – PURCHASE ORDER

[SIGNATURE PAGE FOLLOWS]

OWNER:
INCLINE VILLAGE G. I. D.
Agreed to:

By: _____
Bobby Magee
General Manager

Date

Reviewed as to Form:

Sergio Rudin
District General Counsel

Date

CONTRACTOR:

Agreed to:

By:  _____
Signature of Authorized Agent
Andrew Jordan Executive Vice President

Print or Type Name and Title

8/20/2024

Date