



## **Service Level Agreement & Software Subscription**

### **Service Level (SLA):**

The purpose of this Service Level Agreement (SLA) is to define expectations for software support provided by ITpipes (VENDOR) to **City of Albany, CA** (CLIENT). This is the governing Agreement between VENDOR and CLIENT dated \_\_\_\_\_.

### **VENDOR Level of Service - Requirements**

The VENDOR does require remote access for any software application troubleshooting.

- The VENDOR uses Zoho Assist for remote access, generate a unique remote session id, allows login to the client system at admin user level. Our remote sessions do not provide remote access user control, this is an assistance type application that must be initiated and accessed by the user.
- The VENDOR does have Gotomeeting as a backup solution for remote access.
- The VENDOR does require the CLIENT to keep a trained user to help with service or support on the CLIENT side.

### **Software Application - Technical Issue Severity**

The VENDOR defines technical issues as Severity 1 to 3, with a description of each severity below.

- Severity 1-This is a critical, urgent request and is prohibiting field inspections from being performed. Remote access is required to work on this severe issue.
- Severity 2-This is an important request and is affecting performance of ITpipes and or impacting usage for field or office users. Remote access is required to work on this severe issue.
- Severity 3-This is a request that would improve usability. Remote access may be required to work on this severe issue.

### **Service Level Responsiveness**

Timeliness for a response varies based on the technical issue's level of severity, as follows:

Severity 1: The VENDOR will provide a response by a qualified staff member to begin to diagnose and to correct a Severity 1 problem as soon as reasonably possible, but in any event a response via telephone will be provided within eight (8) hours. The VENDOR will continue to provide best efforts to resolve Severity 1 problems in less than 3 business days. The resolution may be delivered to Client as a work-around or as an interim software release. If ITpipes delivers an acceptable work-around, the severity classification will drop to a Severity 2.

Severity 2: The VENDOR will provide a response by a qualified staff member to begin to diagnose and to correct a Severity 2 problem as soon as reasonably possible, but in any event a response via telephone will be provided within twelve (12) hours. The VENDOR will exercise best efforts to resolve Severity 2 problems within five (5) days. The resolution will be delivered to the Client in the same format as Severity 1 problems. If The VENDOR delivers an acceptable work-around for a Severity 2 problem, the severity classification will drop to a Severity 3.

Severity 3: Produces an inconvenient situation in which the Covered Software is usable, but does not provide a function in the most convenient or expeditious manner, and the user suffers little or no significant impact. The VENDOR will exercise best efforts to resolve Severity 3 problems in the next maintenance release.

### **Software Subscription (SSA):**

This Agreement permits CLIENT to receive and use VENDOR services and platforms that VENDOR makes available for a fee and sets forth the terms and conditions under which they will be delivered and paid for. This Agreement will govern CLIENT's services on the Effective Date as well as any future orders placed by CLIENT that reference this Agreement.

### **Definitions:**

- "Availability" means, with respect to a particular Subscription, the periods when the Customer, which for the sole purposes of the SLA shall include Consultant of Customer, can access all material portions of such Subscription outside of (a) Scheduled Maintenance or
- "Business Hours" means 7 am to 5 pm (Mountain Time), Monday through Friday. This excludes major holidays, and if a holiday falls on a weekend, the preceding Friday.
- "Order Form" is a product list with pricing identifying specific subscription products that are part of the CLIENT Software Subscription Agreement.
- "Scheduled Maintenance" means a period during which VENDOR performs maintenance activities of the Subscription, during which availability of all or part of the Subscription is suspended. Scheduled Maintenance includes, without limitation, database index rebuilding, hardware upgrades, software upgrades, and network upgrades, as applicable.
- "Special Maintenance" means a period during which VENDOR may suspend availability of the Subscription, in whole or in part, in order to address a Severity 1 Error.
- "Severity 1 Error" means a security or other performance issue which may impact one or more client's use of or access to the Subscription and ultimately may impact the availability of the Subscription.

**Software Support Services:**

VENDOR and CLIENT agree that VENDOR will provide telephone software support during Business Hours, by CLIENT calling (505) 341.0109 or 877-itpipes. This includes support for software technical issues, access to download updates via the VENDOR website. Only CLIENT employees that have been through and received software training from VENDOR are able to call in for support using this AGREEMENT. CLIENT employees that are not trained from VENDOR will have a maximum of 2 calls available before the untrained person will be referred back to CLIENT trained personnel for support and CLIENT will be notified in writing when/if this occurs.

**Effective Dates:**

Service Level Agreement (AGREEMENT) begins upon term outlined in Attachment A. This AGREEMENT will expire at the end of the term defined in Addendum A. The AGREEMENT does automatically renew until the defined expiration date in Addendum A.

**Fees & Terms:**

AGREEMENT includes software service and support for the term of agreement, with a maximum of 16 hours live telephone support per month, provided in minimum 15 minute increments, for the annual period as defined in the invoice. Any other hardware, software and/or other products requested by CLIENT will be charged to CLIENT by VENDOR as specified in separately quoted fees and terms. Future AGREEMENTS may be subject to different fees and terms. The fee for annual support is shown on the ORDER FORM.

**Optional Services:**

With this Agreement, CLIENT has the option to purchase or add-on services. These are included on Attachment A.

**Cancellation:**

Either party may cancel the SERVICE AGREEMENT by written notice to the other at the above addresses. The unused portion of the SERVICE AGREEMENT, if any, is non-refundable. Should the vendor cancel the SERVICE AGREEMENT, the unused portion, if any, is refundable upon request. VENDOR and/or CLIENT shall provide a minimum of 60 days written notice prior to the effective date of cancellation.

**Technology:**

CLIENT may access and use the VENDOR platform and related software described on Attachment B (the "Enterprise License Agreement") for the term as described on Attachment A (the "Software Subscription Terms & Payment Schedule"). VENDOR retains all right, title, and interest in and to the Platform, including without limitation all software incorporated into or used by the Platform, and this Agreement does not grant CLIENT any intellectual property rights in the Platform or any of its components.

**License:**

VENDOR hereby grants CLIENT a nonexclusive license to use the Licensed Product, provided: (a) CLIENT may give no more concurrent users access to the Licensed Product than defined in Attachment A; (b) CLIENT uses the license solely for the CLIENT's internal business operations; and (c) CLIENT complies with the other restrictions set forth in this agreement.

**Standard End User Restrictions:**

Copies of the Software created or transferred pursuant to this Agreement are licensed, not sold, and CLIENT receives no title to or ownership of any copy or of the Software itself. Furthermore, CLIENT receives no rights to the Software other than those specifically granted in this Agreement. Without limiting the generality of the foregoing, CLIENT shall not: (a) modify, create derivative works from, distribute, publicly display, publicly perform, or sublicense the Software; (b) use the Software for service bureau or time-sharing purposes or in any other way allow third parties to exploit the Software; or (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive any of the Software's source code.

**Data:**

CLIENT does own their data and can export or download that data at any time into a Microsoft Access ODBC database. This includes any data files such as database, related media files, related PDF reports, etc.

**Cloud Services:**

Subscriptions. VENDOR retains all right, title, and interest in and to the System, including without limitation, all computers, other hardware, and software incorporated into or used by the System, and this Agreement does not grant CLIENT any intellectual property rights in the System or any of its components.

**Warranty:**

VENDOR represents and warrants that, during the Subscription period, the Platform will perform materially according to its documentation issued by VENDOR. This warranty does not apply if the Subscription is not administered by CLIENT in accordance with this Agreement or any applicable instructions and training provided by VENDOR. If the Subscription fails to operate as warranted in this Section and CLIENT notifies VENDOR in writing of the nature of the non-conformance ("Notice"), VENDOR will use commercially reasonable efforts to promptly repair or replace the non-conforming Subscription without charge. If, after a reasonable opportunity to cure, VENDOR does not remedy the non-conformance, CLIENT may, no later than sixty (60) days after giving the Notice, terminate the Subscription portion and receive, upon CLIENT request and VENDOR approval, a refund of the prepaid Subscription fees for the period following the date of Notice. The foregoing provides CLIENT's sole remedy for breach of the exclusive warranty.

**Independent Contractor:**

VENDOR is an independent contractor and nothing in this Agreement will be deemed to make VENDOR an agent, employee, partner, or joint venture of CLIENT. VENDOR will have no authority to bind, commit, or otherwise obligate CLIENT in any manner whatsoever.

**Liability:**

Liability Cap. In no event will VENDOR, VENDOR's Licensors, or Consultants be liable under any theory of liability, for damages which, in the aggregate, exceed the amount of fees paid by CLIENT for the subscription and services giving rise to such damages in the one (1) year period prior to the claim.

**Disclaimer of Damages:**

In no event will VENDOR, VENDOR's licensors, or consultants be liable for any special, incidental, indirect, exemplary, punitive, or consequential damages including, but not limited to, business interruption or lost profits, even if notified of the possibility of such damage, and notwithstanding the failure of essential purpose of any remedy.

**Force Majeure:**

Except for CLIENT's payment to VENDOR for this agreement, neither party will be liable to the other party for any delay or failure of VENDOR to perform its obligations hereunder if such delay or failure arises from any cause or causes beyond the reasonable control of such other party. Such causes include, but are not limited to, acts of God, floods, fires, loss of electricity or other utilities, or delays by CLIENT in providing required resources or support or performing any other requirements hereunder.

**Severability and Reformation:**

Each provision of this Agreement is a separately enforceable provision. If any provision of this Agreement is determined to be or becomes unenforceable or illegal, such provision will be reformed to the minimum extent necessary in order for this Agreement to remain in effect in accordance with its terms as modified by such reformation.

**Assignment:**

In the event of CLIENT's acquisition of, or merger with, a third party CLIENT may continue to use the VENDOR Technology and the obligations and rights of CLIENT under this Agreement will apply to, and may be exercised only in connection with, the operations of CLIENT as they existed on the date prior to the acquisition or merger. CLIENT may not otherwise assign this Agreement or otherwise transfer any rights hereunder whether by operation of law, change of control, or in any other manner, without the prior written consent of VENDOR. Any assignment or transfer in violation of this Section will be null and void.

**Dispute Resolution:**

Any dispute between the parties arising out of this Agreement will be first submitted to senior management of both parties for a good faith attempt at amicable resolution. If the parties cannot settle the dispute within thirty (30) days after such meeting of senior management, the dispute will be mediated in confidential mediation proceedings by a mutually acceptable mediator to be chosen by VENDOR within thirty (30) days after written notice by either party demanding mediation. VENDOR and CLIENT will equally share costs of the mediation. The use of any of the above-mentioned procedures will not be construed under the doctrines of laches, waiver, or estoppel to affect the rights of either party adversely. Nothing in this Section will prevent VENDOR from collecting fees due under Section 3, nor will it prevent either party from resorting to judicial proceedings, if (a) good faith efforts to resolve the dispute under these procedures have been unsuccessful; (b) the claim or dispute involves intellectual property rights; or (c) interim relief from a court is necessary to prevent serious and irreparable injury to that party or to others.

**Entire Agreement.**

This Agreement, with Attachment A contains the entire agreement of the parties on the subject matter hereof, and may be amended only by execution of an additional written and signed agreement.

CLIENT Name: \_\_\_\_\_

VENDOR: Infrastructure Technologies, LLC.  
Dba ITpipes

Printed Name: \_\_\_\_\_

Printed Name: Cori J. Criss

Contact Title: \_\_\_\_\_

Contact Title: President

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Dated Effective: \_\_\_\_\_

## **Attachment A: Software Subscription Terms & Payment Schedule**

**Payment and Term:** This is a 5 year minimum commitment. CLIENT shall pay VENDOR the following G minimum total amount **\$91,050** for use of the Platform.

**Subscription:** This includes licensing for the following:

- ITpipes Web - **1** users
- ITpipes Sync - **2** units
- ITpipes Mobile - **1** units
- ITpipes Inspection View - unlimited users
- Service Level Agreement
- Integration to Tyler Munis
- Cloud - up to **1** tb

### **Software Subscription Term & Payment Schedule:**

Due Date	Payment Amount*	Subscription cost with 5% discount for 5 year contract	Fee Schedule
Initial Implementation	\$26,250		Due upon implementation completion.
Year 1	\$13,500		Due upon licensing activation.
Year 2	\$13,500	\$12,825	Due annually one year past licensing activation.
Year 3	\$13,500	\$12,825	Due one year past year 2 activation.
Year 4	\$13,500	\$12,825	Due one year past year 3 activation.
Year 5	\$13,500	\$12,825	Due one year past year 4 activation.
<b>Total</b>	<b>\$96,750</b>	<b>\$91,050</b>	

\*If there is no committed/confirmed contract for 3 years or more, the price increases annually based on the consumer price index increase or 5%, whichever is higher. ITpipes, upon annual renewal, emails record of current pricing and upon renewal approval, provides an invoice.

## Optional Services:

CLIENT shall pay VENDOR for additional products or services purchased outside the quote at the agreed upon rates shown below.

Services and/or Add-on Items (purchased as needed)	Payment Amount*	Term
Hourly Rate, 4 hour block Consulting Tier 1	Hourly Rate for Services outside standard Service Level Agreement Scope, but performed online by technical support: to be used in minimum one hour increments	\$600 per 1, 4 hour block
Hourly Rate, 4 hour block Consulting Tier 2	Hourly Rate for online Project Management or Advanced Services: to be used in minimum one hour increments	\$600 per 1, 4 hour block
Hourly Rate, 4 hour block Consulting Tier 3	Hourly Rate for web development and/or programming, i.e. Sausalito Lateral Web Review Page	\$1,120 per 1, 4 hour block
On-site	Per day rate with advance scheduling/flexibility required, 2 days minimum and travel costs may be associated if under 3 days minimum.	\$3,300 (2 days required minimum)
Upgrade from ITpipes Desktop to ITpipes Mobile Setup	This is a per truck rate for initial setup of upgrading an existing desktop user license. This does require an annual subscription including for year 1 a subscription is needed.	\$3,500 per setup
ITpipes Mobile Setup - per license	This is a per truck rate for initial setup of a new license. This does require an annual subscription including for year 1 a subscription is needed.	\$5,000 per setup



ITpipes Mobile Subscription - per unit	This is a flat annual subscription rate per CCTV unit.	\$2,250 annually
ITpipes Web Initial Setup	This is an initial setup cost for ITpipes Web and requires a subscription.	\$3,500 per setup
ITpipes Web User Subscription	This is a flat annual subscription rate for an ITpipes Web concurrent user.	\$2,250 annually
ITpipes Cloud Hosting Subscription	This includes up to 1 TB cloud hosting per terabyte. (There is no setup cost for this.)	\$3,000 annually
ITpipes Sync Setup	This is a per instance sync setup for system to system. For example from ITpipes to Cityworks or from ITpipes Mobile to ITpipes Web.	\$2,500 per instance
ITpipes Sync Instance Subscription	This is a flat annual subscription rate for an ITpipes Sync instance.	\$500 annually
ITpipes integration to Asset Management System	This is a per instance setup cost for integration between ITpipes and an AMS, such as Cityworks.	\$3,500 per instance
ITpipes integration to Asset Management Subscription	This is a flat annual subscription rate for ITpipes integration to an AMS, such as Cityworks.	\$3,500 annually

-The End-