

A G R E E M E N T

THIS AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **WESTOVER CORPORATION**, a Colorado corporation, whose address is 6580 North Federal boulevard, Denver, CO 80221 (“Contractor”), jointly “the parties.”

RECITALS

WHEREAS, the Library requires support in its access control and CCTV equipment at various library locations throughout the City, in addition to software updates and equipment maintenance and Contractor has agreed to provide those services to the Library.

IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

The recitals set forth above are incorporated herein as set forth in their entirety.

1. SOFTWARE LICENSE, SUPPORT, HARDWARE AND MAINTENANCE TO BE PROVIDED AND SERVICES TO BE PERFORMED:

A. Contractor, under the general direction of, and in coordination with, the City Librarian or other designated supervisory personnel (the “Manager”) agrees to provide any third party software licenses for hardware and equipment which may be supplied under this Agreement and perform the services described on attached **Exhibit A**.

B. As the Manager directs, the Contractor shall diligently undertake, perform, and complete all of the services and produce all the deliverables set forth on to the City’s satisfaction.

C. The Contractor is ready, willing, and able to provide the services required by this Agreement.

D. The Contractor shall faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.

2. DELIVERY AND ACCEPTANCE:

A. Upon installation and configuration of the software, the City will test and evaluate same to ensure that it performs, in the City’s reasonable judgment. If the Software does not perform, the City will so notify Contractor in writing within sixty (60) days. Contractor will, at its expense, repair or replace the nonconforming product within fifteen (15) days after receipt of the City’s notice of deficiency. The foregoing procedure will be repeated until the City accepts or finally rejects the product, in whole or part, in its sole discretion. In the event that the software contains a defect or nonconformity not apparent on examination, the City reserves the right to repudiate acceptance. In the event that the City finally rejects the Software, or repudiates

acceptance of it, Contractor will refund to the City all fees paid, if any, by the City with respect to the rejected product.

B. If the City is not satisfied with the Contractor's performance of the services described in Exhibit A, the City will so notify Contractor within thirty (30) days after Contractor's performance thereof. Contractor will, at its own expense, re-perform the service within fifteen (15) days after receipt of City's notice of deficiency. The foregoing procedure will be repeated until City accepts or finally rejects the service in its sole discretion. In the event that City finally rejects any service, Contractor will refund to City all fees paid by City with respect to such service.

C. The Contractor shall warrant the hardware for a period of one year from the date of delivery to the City, unless a longer period is provided by the Contractor.

4. TERM: The term of the Agreement is from January 1, 2019 through December 31, 2023.

5. COMPENSATION AND PAYMENT:

A. Fee: The fee is described in Exhibit A (the "Fee"). The Fee shall be paid pursuant to the City's Prompt Payment Ordinance and in accordance with Exhibit A.

B. Reimbursement Expenses: The fees specified above include all expenses, and no other expenses shall be separately reimbursed hereunder.

C. Invoicing: Contractor must submit an invoice which shall include the City contract number, clear identification of the deliverable that has been completed, and other information reasonably requested by the City. Payment on all uncontested amounts shall be made in accordance with the City's Prompt Payment Ordinance.

D. Maximum Contract Liability:

(i) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **SIX HUNDRED THOUSAND DOLLARS** (\$600,000.00) (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in **Exhibit A**. Any services performed beyond those in Exhibit A are performed at Contractor's risk and without authorization under the Agreement.

(ii) The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

6. **STATUS OF CONTRACTOR:** The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

7. **TERMINATION:**

A. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to the Contractor. However, nothing gives the Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Manager.

B. Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Contractor or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

C. Upon termination of the Agreement, with or without cause, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement and shall refund to the City any prepaid cost or expenses.

8. **EXAMINATION OF RECORDS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the Contractor, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

9. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any action by either Party hereunder constitute or be construed to be a waiver by the other Party of any breach of covenant or default which may then exist on the part of the Party alleged to be in breach, and the non-breaching Party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to that Party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

10. **INSURANCE:**

A. **General Conditions:** Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in

force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies is canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

B. Proof of Insurance: Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Contractor certifies that the certificate of insurance attached as Exhibit B, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

C. Additional Insureds: For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

D. Waiver of Subrogation: For all coverages required under this Agreement, Contractor's insurer shall waive subrogation rights against the City.

E. Subcontractors and Subconsultants: All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers'

Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

F. Workers' Compensation/Employer's Liability Insurance: Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.

G. Commercial General Liability: Contractor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

H. Business Automobile Liability: Contractor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement

I. Technology Errors & Omissions with Cyber-Liability: Contractor shall maintain Technology Errors and Omissions insurance including cyber liability, network security, privacy liability and product failure coverage with limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate.

J. Additional Provisions:

- (a) For Commercial General Liability, the policy must provide the following:
 - (i) That this Agreement is an Insured Contract under the policy;
 - (ii) Defense costs are outside the limits of liability;
 - (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
 - (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
- (b) For claims-made coverage:
 - (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.
 - (ii) Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general

aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

11. REPRESENTATION AND WARRANTY: Contractor represents and warrants that:

A. the Software will conform to applicable specifications, operate in substantial compliance with applicable documentation, and will be free from deficiencies and defects in materials, workmanship, design and/or performance;

B. all services will be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards;

C. all services will conform to applicable specifications and the Exhibits attached hereto;

D. it has the requisite ownership, rights and licenses to perform its obligations under this Agreement fully as contemplated hereby and to grant to the City all rights with respect to the software and services free and clear from any and all liens, adverse claims, encumbrances and interests of any third party;

E. there are no pending or threatened lawsuits, claims, disputes or actions: (i) alleging that any software or service infringes, violates or misappropriates any third party rights; or (ii) adversely affecting any software, service or supplier's ability to perform its obligations hereunder;

F. the Software will not violate, infringe, or misappropriate any patent, copyright, trademark, trade secret, or other intellectual property or proprietary right of any third party;

G. the Software will contain no malicious or disabling code that is intended to damage, destroy or destructively alter software, hardware, systems or data; and

H. the media on which all Software is furnished are and will be, under normal use, free from defects in materials and workmanship.

12. DEFENSE AND INDEMNIFICATION:

A. Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its subcontractors either passive or

active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

B. Contractor's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Contractor's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

C. Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

E. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

F. Contractor will, at Contractor's expense, indemnify, defend and hold harmless the City, its officers, agents and employees from and against any loss, cost, expense or liability (including but not limited to attorney's fees and awarded damages) arising out of a claim that the Software, services, or their use by the City, infringe, violate or misappropriate a patent, copyright, trademark, trade secret or other intellectual property or proprietary right of any third party. The City will promptly notify Contractor in writing of any claim and cooperate with Contractor and its legal counsel in the defense thereof. Contractor may in its discretion (i) contest, (ii) settle, (iii) procure for the City the right to continue using the Software, or (iv) modify or replace the infringing Software so that it no longer infringes (as long as the functionality and performance are not degraded as reasonably determined by the City). The City may participate in the defense of such action at its own expense. If Contractor concludes in its reasonable judgment that none of the foregoing options are commercially reasonable, then Contractor will refund a pro rata portion (based on a 5 year straight line depreciation running from City's final acceptance of the Software) of the Software license fee(s) paid by the City under this Agreement and reimburse the City for all reasonable expenses for removal and replacement of the Software.

13. COLORADO GOVERNMENTAL IMMUNITY ACT: The parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, et seq., C.R.S. (2003).

14. TAXES, CHARGES AND PENALTIES: The City shall not be liable for the payment of taxes, late charges or penalties of any nature other than the compensation stated herein, except for any additional amounts which the City may be required to pay under D.R.M.C. § 20-107 to § 20-115.

15. ASSIGNMENT; SUBCONTRACTING: The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Manager's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and shall be cause for termination of this Agreement by the City. The Manager has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

16. NO THIRD PARTY BENEFICIARY: Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

17. NO AUTHORITY TO BIND CITY TO CONTRACTS: The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

18. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

19. SEVERABILITY: Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

20. CONFLICT OF INTEREST:

A. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. The Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

B. The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

21. NOTICES: All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:

City Librarian
C/O Director of Community Relations
Denver Public Library
10 W. 14th Avenue Parkway
Denver CO 80204-2731

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

22. DISPUTES: All disputes between the City and Contractor arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Manager as defined in this Agreement.

23. GOVERNING LAW; VENUE: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District.

24. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under this contract, the Contractor may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. The Contractor shall insert the foregoing provision in all subcontracts.

25. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: Contractor shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring Contractor from City facilities or participating in City operations.

26. CONFIDENTIAL INFORMATION; OPEN RECORDS:

A. City Information: “Proprietary Data” shall mean any materials or information which may be designated or marked “Proprietary” or “Confidential”, or which would not be documents subject to disclosure pursuant to the Colorado Open Records Act or City ordinance, and provided or made available to Contractor by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format. Contractor acknowledges and accepts that, in performance of all work under the terms of this Agreement, Contractor may have access to Proprietary data or Confidential Information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or Confidential Information may be damaging to the City or third parties. Contractor agrees that all Proprietary Data, Confidential Information or any other data or information provided or otherwise disclosed by the City to Contractor shall be held in confidence and used only in the performance of its obligations under this Agreement. Contractor shall exercise the same standard of care to protect such Proprietary Data and Confidential Information as a reasonably prudent contractor would to protect its own proprietary or confidential data.

B. Use and Protection of Proprietary Data or Confidential Information:

(a) Except as expressly provided by the terms of this Agreement, Contractor agrees that it shall not disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available any data, including Proprietary Data or Confidential Information or any part thereof to any other person, party or entity in any form of media for any purpose other than performing its obligations under this Agreement. Contractor further acknowledges that by providing data, Proprietary Data or Confidential Information, the City is not granting to Contractor any right or license to use such data except as provided in this Agreement. Contractor further agrees not to disclose or distribute to any other party, in whole or in part, the data, Proprietary Data or Confidential Information without written authorization from the Manager and will immediately notify the City if any information of the City is requested from the Contractor from a third party.

(b) Contractor agrees, with respect to the Proprietary Data and Confidential Information, that: (1) Contractor shall not copy, recreate, reverse engineer or decompile such data, in whole or in part, unless authorized in writing by the Manager; (2) Contractor shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; and (3) Contractor shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the City.

(c) Contractor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted data received from, or on behalf of City. It is the responsibility of the Contractor to ensure that all possible measures have been taken to secure the computers or any other storage devices used for City data. This includes industry accepted firewalls, up-to-date anti-virus software, controlled access to the physical location of the hardware itself.

C. Employees and Sub-Contractor: Contractor will inform its employees and officers of the obligations under this Agreement, and all requirements and obligations of Contractor under this Agreement shall survive the expiration or earlier termination of this Agreement. Contractor shall not disclose Proprietary Data or Confidential Information to subcontractors unless such subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement.

D. Disclaimer: Notwithstanding any other provision of this Agreement, the City is furnishing Proprietary Data and Confidential Information on an “as is” basis, without any support whatsoever, and without representation, warranty or guarantee, including but not in any manner limited to, fitness, merchantability or the accuracy and completeness of the Proprietary Data or Confidential Information. Contractor is hereby advised to verify its work. The City assumes no liability for any errors or omissions herein. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs. If discrepancies are found, Contractor agrees to contact the City immediately.

E. Contractor’s Information: To the extent applicable in this Agreement, the City understands and agrees that the Contractor’s software and documentation including, but not limited to, source code, object code, the interface requirements document(s), acceptance test procedures, the Statement of Work, the software design, structure and organization, software screens, the user interface and the engineering know-how implemented in the software (collectively “Contractor Confidential Information”) may constitute the valuable properties and trade secrets of Contractor, embodying substantial creative efforts which are secret, confidential, and not generally known by the public, and which secure to Contractor a competitive advantage. The City agrees during the term of this Agreement and any license granted hereunder, and thereafter, to hold the Contractor Confidential Information including any copies thereof and any documentation related thereto, in strict confidence and to not permit any person or entity to obtain access to it except as required for the City’s exercise of the license rights granted hereunder, and except as required by the

parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act., § 24-72-201, et seq., C.R.S. In the event of a request to the City for disclosure of such information, the City shall advise Contractor of such request in order to give Contractor the opportunity to object to the disclosure of any of its Contractor Confidential Information and take necessary legal recourse. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. Contractor further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of Contractor's intervention to protect and assert its claim of privilege against disclosure under this Article including but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

27. LEGAL AUTHORITY: Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement.

28. NO CONSTRUCTION AGAINST DRAFTING PARTY: The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

29. ORDER OF PRECEDENCE: In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

30. SURVIVAL OF CERTAIN PROVISIONS: The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

31. INUREMENT: The rights and obligations of the parties herein set forth shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns permitted under this Agreement.

32. TIME IS OF THE ESSENCE: The parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.

33. FORCE MAJEURE: Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of war, fire, strike, riot or insurrection, natural disaster, unreasonable delay of carriers, governmental order or regulation, complete or partial shutdown of plant, unreasonable unavailability of equipment or software from suppliers, default of a subcontractor or vendor (if such default arises out of causes beyond their reasonable control), the actions or omissions of the other party or its officers, directors, employees, agents, vendors or elected officials and/or other substantially similar occurrences beyond the party's reasonable control ("Excusable Delay") herein. In the event of any such Excusable Delay, time for performance shall be extended for a period of time as may be reasonably necessary to compensate for such delay.

34. PARAGRAPH HEADINGS: The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

35. CITY EXECUTION OF AGREEMENT: This Agreement is expressly subject to and shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.

36. COUNTERPARTS OF THIS AGREEMENT: This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

37. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

38. ADVERTISING AND PUBLIC DISCLOSURE: The Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Contractor's advertising or public relations materials without first obtaining the written approval of the Manager. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the Manager in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

39. PREVAILING WAGE REQUIREMENTS

Contractor shall comply with, and agrees to be bound by, all requirements, conditions and City determinations regarding the Payment of Prevailing Wages Ordinance, Sections 20-76

through 20-79, D.R.M.C. including, but not limited to, the requirement that every covered worker working on a City owned or leased building or on City-owned land shall be paid no less than the prevailing wages and fringe benefits in effect on the date the bid or request for proposal was advertised. In the event a request for bids, or a request for proposal, was not advertised, Contractor shall pay every covered worker no less than the prevailing wages and fringe benefits in effect on the date funds for the contract were encumbered.

If contract opportunity was not advertised, date of written encumbrance-January 1, 2019.

Prevailing wage and fringe rates will adjust on, and only on, the anniversary of the date the Contract was fully executed. Unless expressly provided for in this Agreement, Contractor will receive no additional compensation for increases in prevailing wages or fringe benefits.

Contractor shall provide the Auditor with a list of all subcontractors providing any services under the contract.

Contractor shall provide the Auditor with electronically-certified payroll records for all covered workers employed under the contract.

Contractor shall prominently post at the work site the current prevailing wage and fringe benefit rates. The posting must inform workers that any complaints regarding the payment of prevailing wages or fringe benefits may be submitted to the Denver Auditor by calling 720-913-5000 or emailing auditor@denvergov.org.

If Contractor fails to pay workers as required by the Prevailing Wage Ordinance, Contractor will not be paid until documentation of payment satisfactory to the Auditor has been provided. The City may, by written notice, suspend or terminate work if Contractor fails to pay required wages and fringe benefits.

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: BOOKS-201845898-00

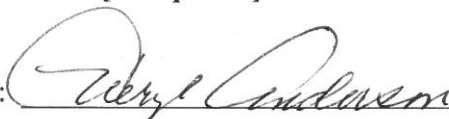
Contractor Name: WESTOVER CORPORATION

By: 

Name: DAVID BRAND
(please print)

Title: V. P. SALES
(please print)

ATTEST: [if required]

By: 

Name: CHERYL ANDERSON
(please print)

Title: Controller
(please print)





DENVER
6580 North Federal
Denver, CO 80221
P: (303) 429-3600
F: (303) 429-0113

LOS ANGELES, CA
2627 N. Ontario St.
Burbank, CA 91504
P: (818) 565-0033
F: (818) 565-0039
License #874739

PHOENIX, AZ
2121 S. Priest Dr.
#123
Tempe, AZ 85282
P: (602) 626-5000
F: (602) 626-5860
License #: 275087

**2019-2023
WESTOVER CORPORATION SERVICE AGREEMENT
FOR
THE DENVER PUBLIC LIBRARY**

Locations Covered Under This Agreement

The Andover Continuum Automation system, card access system and security CCTV (Closed Circuit Television) system at the Denver Central Public Library to include all recently performed access control/DDC (Direct Digital Control) projects. The Schlessman, Bear Valley, Blair Caldwell, Cherry Creek, Green Valley, Hadley, University Hills, Woodbury, Hampden, Montbello, Sam Gary, Virginia Village, Eugene Field, Park Hill, and Rudolfo “Corky” Gonzales Branch Libraries. Any future Library additions shall be negotiated on a site by site basis.

SERVICES PROVIDED

Database Backups

The Andover Continuum database for card access/building automation systems will be backed up quarterly and stored at Westover’s Denver office.

Technical Support by Telephone

Includes (4) hours a month of telephone technical support during business hours 8am – 5pm Mountain Time. This does not include programming changes or after hours support. All telephone support provided during non-business hours will be billed at the discounted rate of time and half based on \$75/hr.

Hardware Repair Services

There is no charge for the parts to replace any failed field peripheral that is part of the covered systems. Andover Controls controllers, Integral CCTV head end equipment, and Cameras at the Central Library are not covered under this agreement. The labor required to replace any failed field peripheral is included in the agreement as stipulated in the onsite maintenance section. Any other additional labor will be billed at the discounted rate of \$75/hr. during regular business hours, all other at time and half, based on \$75/hr., with no additional charge for mileage or travel time. A copy of all service invoices will be left on site. All emergency calls will be responded to with (24) hours of the call being received by our office. A purchase order is required prior to any work being performed that is not covered under this agreement.

Software Revisions

Any software revision to existing points and controllers as of the start date of this agreement will be programmed by a Westover software specialist at the reduced rate of \$75/hr. during regular business hours, all other at time and half based on \$75/hr. with no additional charge for mileage or travel time. This rate also applies to programming changes performed via modem. Included in the agreement is providing and installing upgrades to the Continuum software and associated firmware, as released by Andover and supplied to Westover. The upgrade provision includes Andover revisions upgrades only and does not include third party software. Siemens/Powers front-end upgrades are not included in the coverage.

Training / On Site Maintenance

Included is (32) hours of onsite training per year to be scheduled with D.P.L. personnel. Additional training is available on site for \$350. Per 4-hour block of instruction. Training includes all printed materials. The customer for onsite training will supply training aids such as overheads and computers.

The information contained herein in its entirety is a confidential, proprietary trade secret as defined in Colorado revised statutes 7-74-102(4), and is intended for the use of the designated recipient only. Any misappropriation of the information contained herein as defined by Colorado Revised Statutes 7-74-102(2) shall subject any person responsible for said misappropriation to liability as is specifically set forth in Colorado Revised Statutes 7-74-101 through 7-74-110. This information may not be distributed to any third party. Pricing is valid for a period of thirty days and will automatically expire after thirty days if not accepted. Copyright 2004. Westover Corporation

The onsite maintenance time includes:

- A) (500) hours of service/programming time per year on all covered building automation systems.
- B) (250) hours of service/programming time per year on the security closed circuit television and card access systems at the Denver Central Library
- C) The backup power batteries on all Andover master controllers, ACX access controllers and field level controllers will be replaced as required.
- D) The annual testing of the Denver Central Library building smoke management system.

All use of onsite time is to be scheduled with D.P.L personnel. All time used outside of regular business hours will be deducted at (1½) hours per (1) hour of service, to compensate for overtime service rate and additional hours above the included (750) will be billed as stipulated in hardware repair services section. A service invoice will be filled out and left on site for all use of the included (750) hour of onsite time.

GENERAL TERMS AND CONDITIONS

1. Exclusions

- A. All damage by acts of God i.e. lightning strikes or lightning storms, earthquakes tornadoes, windstorms, flooding, or like natural disasters are excluded from the service agreement.
- B. Any equipment problems preexisting to the contract or those caused by abuse or improper maintenance / operation.
- C. Any equipment not included in the scope of the agreement.
- D. Vandalism or Theft.

2. Payment

- A. Payment for service contract is due in monthly payments. Westover will invoice within ten days (10) after the start of the contract, and monthly thereafter. IF payment is not received within thirty days (30) from the invoice date, the contract will become void and the customer will be liable for the cost of all services rendered to date at our standard rates.
- B. Terms for any service not free under this service contract are net 30 days.

3. Terms

- A. All contracts are for a **one-year period (365 days)** from start date.
- B. Not valid unless signed by Westover President, Larry Brand, and sealed with corporate seal.
- C. As used in this contract regular business hours shall be between the hours of 8am and 5pm Mountain Time
- D. All billable labor is in the quarter hour increments, with (1) quarter hour being the minimum.
- E. General terms and conditions described herein are applicable to any and all service agreements.
- F. By the customer authorized representatives signature below the customer is agreeing to the coverage for the stated location/s being provided at the stated price. Further the customer is agreeing the general terms and conditions described herein.

Start Date: 1/1/2019 End Date: 12/31/2023

Total Price 2019: <u>\$112,342.00</u>	(BAS Price: <u>\$61,202.00</u>	Card Access Price: <u>\$51,140.00</u>
Total Price 2020: <u>\$115,712.00</u>	(BAS Price: <u>\$63,038.00</u>	Card Access Price: <u>\$52,674.00</u>
Total Price 2021: <u>\$119,183.00</u>	(BAS Price: <u>\$64,929.00</u>	Card Access Price: <u>\$54,254.00</u>
Total Price 2022: <u>TBD</u>	(BAS Price: <u>TBD</u>	Card Access Price: <u>TBD</u>
Total Price 2023: <u>TBD</u>	(BAS Price: <u>TBD</u>	Card Access Price: <u>TBD</u>

The above pricing is at 3% increase per year for services provided to the libraries listed for years 1 & 2.
Future added services will be negotiated as libraries come online. The increase for years 3, 4, and 5 will be between 0.5-3percent negotiated on an annual basis.

Customer Name: Denver Public Libraries
Customer Address: 10 West Fourteenth Street
Denver, Colorado 80204

Customer Signature

Mark Karnuth, V.P of Operations
WESTOVER CORPORATION

Corporate Seal



TO: All Users of the City and County of Denver Prevailing Wage Schedules
FROM: Susan Keller, HR Technician II, Classification & Compensation
DATE: January 7, 2019
SUBJECT: Latest Change to Prevailing Wage Schedules

Please be advised prevailing wage rates for some building, heavy, highway, and residential construction trades have not been updated by the United States Department of Labor (DOL) since March 1, 2002. The Career Service Board, in their meeting held on April 21, 2011, approved the use of the attached supplemental wage rates until prevailing wage rates for these classifications of work are again published by the United States Department of Labor in accordance with the Davis-Bacon Act.

The effective date for this publication will be **Friday, January 4, 2019** and applies to the City and County of Denver for **BUILDING CONSTRUCTION PROJECTS** (does not include residential construction consisting of single family homes and apartments up to and including 4 stories) in accordance with the Denver Revised Municipal Code, Section 20-76(c).

General Wage Decision No. CO190020
Superseded General Decision No. CO20180030
Modification No. 0
Publication Date: 01/04/2019
(6 pages)

Unless otherwise specified in this document, apprentices shall be permitted only if they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor (DOL). The employer and the individual apprentice must be registered in a program which has received prior approval by the DOL. Any employer who employs an apprentice and is found to be in violation of this provision shall be required to pay said apprentice the full journeyman scale.

Attachments as listed above.

Office of Human Resources
201 W. Colfax Ave. Dept. 412 | Denver, CO 80202
p: 720.913.5751 | f: 720.913.5720
www.denvergov.org/humanresources

General Decision Number: CO190020 01/04/2019 CO20

Superseded General Decision Number: CO20180030

State: Colorado

Construction Type: Building

County: Denver County in Colorado.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.60 for calendar year 2019 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.60 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2019. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/04/2019

ASBE0028-002 07/01/2018

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation).....	\$ 31.73	14.23

* CARP0055-002 11/01/2018

Rates	Fringes
-------	---------

CARPENTER (Drywall Hanging
Only).....\$ 29.45 9.64

CARP1607-001 06/01/2018

	Rates	Fringes
MILLWRIGHT.....	\$ 31.38	15.63

ELEC0068-012 06/01/2018

	Rates	Fringes
ELECTRICIAN (Includes Low Voltage Wiring).....	\$ 35.80	15.45

ELEV0025-001 01/01/2018

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 43.66	32.645

FOOTNOTE:

a. Vacation: 6%/under 5 years based on regular hourly rate for all hours worked. 8%/over 5 years based on regular hourly rate for all hours worked.

b. PAID HOLIDAYS: New Year's Day; Memorial Day; Independence Day; Labor Day; Veterans' Day; Thanksgiving Day; the Friday after Thanksgiving Day; and Christmas Day.

ENGI0009-017 05/01/2017

	Rates	Fringes
POWER EQUIPMENT OPERATOR (Crane)		
141 tons and over.....	\$ 29.82	10.10
50 tons and under.....	\$ 27.75	10.10
51 to 90 tons.....	\$ 27.92	10.10
91 to 140 tons.....	\$ 28.55	10.10

IRON0024-009 06/01/2018

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 27.45	12.34

IRON0024-010 06/01/2018

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 27.45	12.34

PAIN0079-006 08/01/2017

	Rates	Fringes
--	-------	---------

PAINTER (Brush, Roller and Spray; Excludes Drywall Finishing/Taping).....	\$ 20.50	8.41

PAIN0079-007 08/01/2017		
	Rates	Fringes
DRYWALL FINISHER/TAPER.....	\$ 21.20	8.41

PAIN0419-001 07/01/2016		
	Rates	Fringes
SOFT FLOOR LAYER (Vinyl and Carpet).....	\$ 20.00	10.83

PAIN0930-002 07/01/2018		
	Rates	Fringes
GLAZIER.....	\$ 31.52	10.13

PLUM0003-009 06/01/2018		
	Rates	Fringes
PLUMBER (Excludes HVAC Duct, Pipe and Unit Installation).....	\$ 35.48	15.94

PLUM0208-008 06/01/2018		
	Rates	Fringes
PIPEFITTER (Includes HVAC Pipe and Unit Installation; Excludes HVAC Duct Installation).....	\$ 37.55	14.95

SFCO0669-002 04/01/2017		
	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 36.73	20.47

SHEE0009-004 07/01/2018		
	Rates	Fringes
SHEET METAL WORKER (Includes HVAC Duct Installation; Excludes HVAC Pipe and Unit Installation).....	\$ 34.02	17.49

SUCO2013-006 07/31/2015		

	Rates	Fringes
BRICKLAYER.....	\$ 21.96	0.00
CARPENTER (Acoustical Ceiling Installation Only).....	\$ 22.40	4.85
CARPENTER (Metal Stud Installation Only).....	\$ 17.68	0.00
CARPENTER, Excludes Acoustical Ceiling Installation, Drywall Hanging, and Metal Stud Installation.....	\$ 21.09	6.31
CEMENT MASON/CONCRETE FINISHER....	\$ 20.09	7.03
LABORER: Common or General.....	\$ 14.49	5.22
LABORER: Mason Tender - Brick....	\$ 15.99	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 16.00	0.00
LABORER: Pipelayer.....	\$ 16.96	3.68
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 20.78	5.78
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 19.10	3.89
OPERATOR: Grader/Blade.....	\$ 21.50	0.00
ROOFER.....	\$ 16.56	0.00
TRUCK DRIVER: Dump Truck.....	\$ 17.34	0.00
WATERPROOFER.....	\$ 12.71	0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

**Office of Human Resources
Supplemental Rates
(Specific to the Denver projects)
Revision Date: 11-28-2016**

Classification		Base	Fringe
Boilermaker		\$30.97	\$21.45
Iron Worker, Reinforcing		\$18.49	\$3.87
Laborer: Concrete Saw		\$13.89	-
Paper Hanger		\$20.15	\$6.91
Plasterer		\$24.60	\$12.11
Plaster Tender		\$10.79	-
Power Equipment Operator	Concrete Mixer - Less than 1 yd	\$23.67	\$10.67
	Concrete Mixer - 1 yd and over	\$23.82	\$10.68
	Drillers	\$23.97	\$10.70
	Loader - up to and incl 6 cu yd	\$23.67	\$10.67
	Loaders - over 6 cu yd	\$23.82	\$10.68
	Mechanic	\$18.48	-
	Motor Grader	\$23.97	\$10.70
	Oilers	\$22.97	\$10.70
	Roller	\$23.67	\$10.67
	Tile Finisher		\$20.87
Tile Setter		\$26.83	\$8.48
Truck Driver	Flatbed	\$19.14	\$10.07
	Semi	\$19.48	\$10.11

Go to www.denvergov.org/Auditor to view the Prevailing Wage Clarification Document for a list of complete classifications used.