SOLE SOURCE STATEMENT OF COMPLIANCE

ByWater Solutions LLC is the sole source for the following item(s), and no other company or firm in the United States of America sells or distributes the services listed: (use an additional page, if necessary)

ByWater Solutions support package for the Koha ILS, which includes all items listed on Attachment A: "ByWater Solutions Support Package and Interfaces"

Competition, in providing the above named item(s) or product, is precluded by the existence of a patent, copyright, secret process, or monopoly.

There is no other like item(s) or services available for purchase that would serve the same purpose or function and there is only one price for the above named item(s) or product(s) because of exclusive distribution, offer or marketing rights.

Authorized Signature: [Signature]

Date: 12/8/2020

Printed Name: Nathan Curulla

E-mail address: nate@bywatersolutions.com

Title: Owner, CRO

Address: PO Box 1346

City, State, Zip Code: Santa Barbara, CA 93102

Phone Number/Extension: 888-900-8944 Ext 2 Fax: 888-900-8944
Attachment A:

ByWater Solutions Support Package and Interfaces

The ByWater Solutions support package includes, but is not limited to:

- Technical consulting and problem solving
- Training questions
- Consultation with network configuration
- Customizations and "tweaking" to the OPAC and staff side interfaces
- Report generation
- Bug-fixes and the application of community released bug fix enhancements as they become available
- Management and updating of community or customer sponsored enhancements.
- Training for all major updates to Koha's functionality via webinar to your team at no additional cost.
- 24/7 emergency support via toll free number
- Regular updates to your Koha system as new functionality becomes available to you, as well as the application of new releases to your system as they are made available (usually every 4-6 months)

Methods of interface for our support include:

- 24/7 toll free calling
- Ticketing system with report generation
- Staff email
- Live chat during business hours via Koha Community IRC
- Access to administrative contact information for escalation of support issues
<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
<th>Timeline</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complete Koha Install and OPAC Customization</td>
<td>$27,600.00</td>
<td>4-6 Months for Completion</td>
</tr>
<tr>
<td>Unlimited Support &amp; Annual Hosting</td>
<td>$19,500.00 Per Year</td>
<td>24 Hour Support Triple Redundancy Nightly Backups</td>
</tr>
<tr>
<td>On-site Training</td>
<td>$3,600.00</td>
<td>3 Days of Onsite Training</td>
</tr>
</tbody>
</table>

Total Year One Cost = $50,700.00
CONTRACT FOR SERVICES

This Contract for Services ("Contract") is made effective as of 01/01/2021, by and between the City of Santa Fe Public Library of Santa Fe, NM 87501 ("Client"), and ByWater Solutions LLC, of Santa Barbara, California 93102 ("ByWater").

1. TERM. The service term shall be effective from 01/01/2021 to 07/01/2022. Upon completion of this initial term, the Client will have the option to renew for additional two-year terms. Either party must notify the other in writing sixty (60) days prior to the end of the then-current Term of their intention to modify the Contract. Renewal Contract may fall under different terms and conditions. Payments will signify the Clients wish to renew the Contract into a new two-year term. This contract will expire if not executed within 60 days of the effective date listed above. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination.

2. DESCRIPTION OF SERVICES. ByWater will provide the Client the following services (collectively, the "Services"):

(a) Installation and Implementation of Koha Integrated Library System ("Koha"), including the initial migration of no more than 375,000 Bibliographic Records to Koha. Records delivered that total more than the referenced Bibliographic record count will result in higher initial and ongoing fees.

   (1) Data extraction from current legacy system is the responsibility of the Client.
   (2) Testing of initial migration is the responsibility of the Client.
   (3) OPAC customization will include application of Client logos, preferred fonts and colors to ByWater template.
   (4) Database size increases by more than 50% throughout the life of this Contract will result in pricing increases.

(b) Terms regarding technical support for the Client are as follows:
   (1) Critical support will be available (24) hours per day, 7 days per week. Critical support includes system failure or complete loss of access to the Koha system. Other support calls during hours in which the Client’s facility is closed will be addressed by level of importance; i.e. system failure dictates immediate response time, training questions will be addressed within 24 hours;
   (2) The support package will also cover software updates and Koha enhancements that may be applicable to the Client.

(c) Hosting for the Client’s data will be located in a remote cloud, and Service
providers may change at any time, at the absolute and sole discretion of ByWater. ByWater will not be responsible for force majeure events including natural disasters and communication line failures that may cause data corruption.

(d) Training is required and will be provided for a minimum of three days onsite or via webinar to be determined at the discretion of ByWater. Additional training will be provided upon request of Client. Clients not previously using Koha as the library’s primary ILS must receive training.

3. PAYMENT FOR SERVICES. In exchange for the Services the Client will pay $50,700.00 (Including GRT) to ByWater according to the following schedule:

(a) Installation/Data Migration: $27,600.00 payment due on or before 1/25/2021.

(b) Annual support and hosting fee: $19,500.00, due on or before 7/12 of each year, beginning on 7/12, 2021.

(c) Training: $3,600.00 for the first 3 days (24 hours) payment due on or before 1/25/2021

Payments not received within 60 days of the due date will result in termination of support services until receipt of payment. Payment not received within 90 days of due date shall result in termination of hosting services until receipt of payment. Payments may be made via check and direct deposits (ACII). Alternate payment methods will result in a convenience fee based on a sliding scale. For avoidance of doubt, any delay in implementation of the Software requested or caused by the Client shall not be grounds for the Client to likewise delay payment of any fees then due and owing.

4. WORK PRODUCT OWNERSHIP. Any copyrightable works, ideas, discoveries, inventions, patents, products, or other information (collectively the "Work Product") developed in whole or in part by ByWater solely in connection with the Services will be the exclusive property of the Client. Upon request, ByWater will execute all documents necessary to confirm or perfect the ownership of the Client to the Work Product. All such Work Product developed on behalf of the Client will be made available under the terms of the open source license in effect for Koha at the time the code is written (currently GPL v3). A copy of the code will be given to the Client even though the code may be hosted. A good faith effort will be made both by the Client, and by ByWater at the coding stage, to integrate all code into the public, koha community.org code base, or wherever the public code base may subsequently be located. Upon expiration or termination of this Contract, ByWater will: (a) return to the Client all records, notes, documentation and other items owned by the Client that were used, created, or controlled by ByWater during the term of this Contract; and (b) assist Client in exporting data from ByWater’s data cloud to Client, at no additional charge.

5. CONFIDENTIALITY. ByWater, and its employees, agents, or representatives will not at any time or in any manner, either directly or indirectly, use for the personal benefit of ByWater, or divulge, disclose, or communicate in any manner, any information that is proprietary to the Client, except (a) if and to the extent the information is already a matter of public knowledge; (b) such
disclosures as may be necessary to ByWater’s attorney or accountant (collectively, “Permitted Confidants”); or (c) such disclosures as are required by law or by any litigation between the parties hereof with respect to this Contract. ByWater shall also timely require each of its Permitted Confidants to keep that information confidential. Before making any disclosure required by law, ByWater, or the Permitted Confidant, as the case may be, shall give Client as much notice thereof as is legally permitted, along with a copy of the proposed disclosure. The foregoing duties of confidentiality shall survive the termination of this Contract.

6. RELATIONSHIP OF PARTIES. Client and ByWater agree that the status of ByWater is that of independent contractor, and not that of employee, principal, agent or joint venture partner of Client. Neither party has authority to enter into contracts or assume any obligations for or on behalf of the other party or to make any warranties or representations for or on behalf of the other party.

7. WARRANTY. ByWater shall provide the Services and meet its obligations under this Contract in a timely and workmanlike manner, using knowledge and recommendations for performing the Services which meet generally accepted standards in ByWater’s industry. Aside from the express warranties stated in this Contract, ByWater hereby disclaims any and all other warranties related to the products and services offered under this Contract, including but not limited to warranties of non-infringement, merchantability or fitness for a particular purpose, and whether such warranties are oral or written, express or implied. ByWater does not in any way warrant that Koha will operate without interruption or be error free. ByWater shall have no liability for damages resulting from the following, including, but not limited to: hosting inoperability, interruption due to product or delivered software malfunction (provided that regular daily backups are conducted by ByWater), loss of profits, goodwill, damage or loss of data, or any other indirect, special or consequential damages suffered by Client.

8. REMEDIES. If Client or ByWater fails to perform its obligations under this Contract, the non-breaching party shall have the right to terminate the Contract and to seek whatever remedy may be available to it, either in law or in equity. In the event that a claim or cause of action arises out of the interpretation, performance, or breach of this Contract, the prevailing party shall be entitled to a reasonable attorney’s fee in addition to costs of suit. The parties hereto hereby consent to the personal jurisdiction and venue of the State of New Mexico with respect to any claim or cause of action arising from this Contract, and hereby waive any objection to such venue based upon the doctrine of forum non conveniens.

9. LIMITATION OF LIABILITY. BYWATER WILL HAVE NO LIABILITY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES FOR ANY MATTER ARISING FROM OR RELATING TO THIS CONTRACT OR THE PRODUCTS AND SERVICES, INCLUDING BUT NOT LIMITED TO ANY UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT, LOSS, INACCURACY, OR DESTRUCTION OF INFORMATION OR DATA COLLECTED, STORED, DISTRIBUTED,
OR MADE AVAILABLE VIA THE PRODUCTS AND SERVICES, CLIENT'S USE OR INABILITY TO USE THE PRODUCTS AND SERVICES, ANY CHANGES TO OR INACCESSIBILITY OF THE PRODUCTS AND SERVICES, ANY DELAY OR FAILURE OF THE SERVICES, OR FOR LOST PROFITS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, EVEN IF BYWATER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, BYWATER'S LIABILITY TO CLIENT FOR ANY REASON AND UPON ANY CAUSE OF ACTION WILL BE LIMITED TO THE AMOUNT CLIENT ACTUALLY PAID BYWATER FOR THE INDIVIDUAL BYWATER PRODUCTS OR SERVICES COVERED UNDER THIS CONTRACT OVER THE 12 MONTHS PRIOR TO WHICH SUCH CLAIM AROSE. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. FEES UNDER THIS CONTRACT ARE BASED UPON THIS ALLOCATION OF RISK. THIS SECTION WILL NOT APPLY TO DAMAGES THAT CANNOT BE LIMITED OR EXCLUDED BY LAW (IN WHICH EVENT THE LIABILITY SHALL BE LIMITED TO THE FULLIEST EXTENT PERMITTED).

10. ENTIRE AGREEMENT. This Contract contains the entire agreement of the parties, and there are no other promises or conditions in any other Contract whether oral or written concerning the subject matter of this Contract. This Contract supersedes any prior written or oral Contracts between the parties.

11. SEVERABILITY. If any provision of this Contract will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable, provided that no party is, as a result thereof, deprived of its substantial benefits under this Contract. If a court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

12. AMENDMENT. This Contract may only be changed, modified, amended or discharged by a Contract in writing executed by the parties hereto.

13. GOVERNING LAW. This Contract shall be construed in accordance with the laws of the State of New Mexico.

14. NOTICE. Any notice or communication required or permitted under this Contract shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such other address as one party may have furnished to the other in writing.

15. ASSIGNMENT. The Client may not assign or transfer this Contract without the prior written consent of ByWater.

16. BINDING EFFECT. This Contract shall inure to the benefit of and be binding upon the
parties named herein and their respective heirs, successors and assigns.

17. EXECUTION. This Contract may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a "pdf" format data file, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or "pdf" signature page were an original hereof.

18. INDEMNIFICATION. ByWater shall defend, indemnify and hold harmless the Client from all actions, proceeding, claims, demands, costs, damages, attorneys’ fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of ByWater, its officers, employees, servants, subcontractor or agents, or if caused by the actions of any client of ByWater resulting in injury or damage to persons or property during the time when ByWater or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by ByWater or any officer, agent, employee, servant or subcontractor under this Agreement is brought against ByWater, ByWater shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Client.

19. NEW MEXICO TORT CLAIMS ACT. Any liability incurred by the Client in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et seq NMSA 1978, as amended. The Client and its “public employees” as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

20. APPROPRIATIONS. The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City Council, this Agreement shall terminate immediately upon written notice being given by the City to the ByWater. The Client’s decision as to whether sufficient appropriations are available shall be accepted by the ByWater and shall be final. If the Client proposes an amendment to the Agreement to unilaterally reduce funding, ByWater shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

21. RELEASE. ByWater, upon acceptance of final payment of the amount due under this Agreement, releases the Client, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. ByWater agrees not to purport to bind the Client to any obligation not assumed herein by the Client unless ByWater has express written authority to do so, and then only within the strict limits of that authority.

22. INSURANCE. ByWater shall maintain professional liability insurance throughout the term
of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. ByWater shall furnish the Client with proof of insurance of ByWater's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

CITY OF SANTA FE (CLIENT):

JAREL LAPAN HILL, CITY MANAGER

BYWATER SOLUTIONS LLC

By: Brendan Gallagher
Title: Chief Executive Officer

ATTEST:

YOLANDA VIGIL, CITY CLERK

CITY ATTORNEYS OFFICE:

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

MARY T. MCCOY, FINANCE DIRECTOR

1000101.530700/2510101.530710