



CONTRACT FOR SERVICES

This Contract for Services ("Contract") is made effective as of 10/24/2025, by and between the City of League City of 300 West Walker St., League City, TX 77573 ("Client"), and ByWater Solutions LLC, of PO Box 1346, Santa Barbara, California 93102 ("ByWater").

1. TERM. The service term shall be effective from 9/23, 2026 to 9/23 2029. 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 or renew the Contract. In the absence of notification from Client, payment of annual fees will signal their wish to renew into an additional two-year term. Renewal Contract will reflect no more than a 3% increase to annual support and hosting costs. This contract will expire if not executed within 60 days of the effective date listed above.

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 200,000 Bibliographic Records and all associated data 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. Data must be provided to ByWater no later than 5/4/2026
- (2) Data received after 5/4/2026 will be subject to data mapping according to ByWater best practices.
- (3) Testing of initial migration is the responsibility of the Client.
- (4) OPAC customization will include application of Client logos, preferred fonts and colors to ByWater template.
- (5) Database size increases by more than 50% throughout the life of this Contract will result in pricing increases.

- (b) Installation and Implementation of the Aspen Discovery System ("Aspen"), including the customization and configuration of the public interface to meet the Client's style guidelines.

- (1) Implementation will include the integration with existing API connections for third-party systems free of charge
- (2) Data extraction (if applicable) from current system is the responsibility of the Client.
- (3) Testing of initial installation is the responsibility of the Client.

- (4) Aspen enables the application of Client logos, preferred fonts and colors interface.
- (c) 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/Aspen 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/Aspen enhancements that may be applicable to the Client.
- (d) 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. Client acknowledges that upgrades and updates are required and will follow all published upgrade schedules. ByWater will not be responsible for force majeure events including natural disasters and communication line failures that may cause data corruption.
- (e) Hosting will also include a server for the purposes of testing and development of Koha and Aspen. Test systems will be updated by ByWater in conjunction with any upgrades applied to Koha/Aspen. ByWater will sync test server with the Client's production data on a schedule according to the Client's request but not more frequently than on a monthly basis.
- (f) Training is required and will be provided for a minimum of three (3) days onsite and via webinar. Onsite training will include one educator for up to 40 participants per session. Additional training will be provided upon request of Client. Clients not previously using Koha as the library's primary ILS must receive training.

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3. PAYMENT FOR SERVICES. In exchange for the Services the Client will pay ByWater according to the following schedule:

Installation, Migration, Scoping	
Due on or before 11/17/2025	
Koha installation/data migration	\$16,000.00
Aspen installation/configuration	\$7,500.00
Koha/Aspen onsite/webinar training	\$7,200.00
TOTAL invoiced upon signing	\$30,700.00
Annual Support, Hosting and Training	
Due on or before 9/23 of each year beginning 9/23/2026	
Koha annual support and hosting fee	\$10,700.00
Aspen annual support and hosting fee	\$8,110.00
Koha/Aspen test server annual support and hosting	\$4,000.00
TOTAL due on or before 9/23 of each year	\$22,810.00

The Client is responsible for providing any tax exempt documentation to ByWater upon signing. Failure to do so may result in tax fees being applied to all invoices. 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 (ACH). 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/Aspen 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 hereto 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 competent 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 or Aspen 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. ByWater will not be responsible for interruptions in third party connections that are not caused by Aspen or ByWater.

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 Galveston County of the State of Texas 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.

- (a) EXCEPT AS OTHERWISE PROVIDED IN SECTION 9(b), 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. IN ANY EVENT, EXCEPT AS OTHERWISE PROVIDED IN SECTION 9(b), 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. 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 FULLEST EXTENT PERMITTED).
- (b) THE LIMITATIONS SET FORTH IN THIS SECTION 9 SHALL NOT APPLY TO:
- (i) DAMAGES OR LIABILITIES ARISING FROM MATERIAL BREACH UNDER SECTION 4, SECTION 5, OR SECTION 7; OR
 - (ii) DAMAGES OR LIABILITIES ARISING FROM THE GROSSLY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF BYWATER IN PERFORMING ITS OBLIGATIONS UNDER THIS CONTRACT.

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 Texas.

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.** To the extent allowed by Texas law, the parties hereto shall fully indemnify, hold harmless and defend one another from and against all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to reasonable attorney’s fees and costs) (collectively, “Claims”) which arise out of or relate to (1) any breach of any representation or warranty of a party hereto contained in this Contract, (2) any breach or violation of any covenant or other obligation or duty of a party hereto under this Contract or under applicable law, in each case whether or not caused by the negligence of a party hereto and whether or not the relevant Claim has merit. Neither ByWater nor Client shall be liable to the other for loss, damage, or delay in the work caused by war, riot, the act or order of any competent civil or military authority, strikes, unauthorized work stoppage or by rain, fire, flood, act of God, epidemic, and CDC recognized pandemic or by any cause which is unavoidable and beyond its reasonable control. In addition, ByWater is not liable for loss or damage suffered by the Client or any third party not caused by the employees, agents or equipment of ByWater.

19. **FORCE MAJEURE.** Neither ByWater nor Client shall be liable to the other for loss, damage, or delay in the work caused by war, riot, the act or order of any competent civil or military authority, strikes, unauthorized work stoppage or by rain, fire, flood, act of God, epidemic, and CDC recognized pandemic or by any similarly unpredictable and superseding cause which is unavoidable and beyond its reasonable control. In addition, ByWater is not liable for loss or damage suffered by the Client or any third party not caused by the employees, agents or equipment of ByWater.

20. Prohibitions Pursuant to Texas Government Code: By executing this Agreement ByWater verifies that ByWater (1) does not boycott Israel and will not during the term of this Contract per Section 2271.002; (2) is not engaged in business with Iran, Sudan, or any company on the list referenced in Section 2252.152; (3) does not boycott energy companies and will not during the term of this Contract per 2274.002; and (4) does not have a practice, policy, guidance, or directive of this Contract against a firearm entity or firearm trade association and will not during the term of this Contract per 2274.002.

21. SIGNATURES

CITY OF LEAGUE CITY

By: _____

Name: _____

Title: _____

Date: _____

BYWATER SOLUTIONS LLC

By:  _____

Name: Brendan Gallagher

Title: Chief Executive Officer

Duly Authorized

Date: 9/22/2025