

Introduced by _____ Council Bill No. R 170-13

A RESOLUTION

authorizing Amendment No. 1 to the agreement with Tele-Works Incorporated to allow Automated Clearing House (ACH) processing of electronic checks for customer utility bill payments.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute Amendment No. 1 to the agreement with Tele-Works Incorporated to allow Automated Clearing House (ACH) processing of electronic checks for customer utility bill payments. The form and content of the amendment shall be substantially as set forth in "Exhibit A" attached hereto and made a part hereof as fully as if set forth herein verbatim.

ADOPTED this _____ day of _____, 2013.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

AMENDATORY AGREEMENT NUMBER ONE TO THE AGREEMENT FOR A
SUMMATION 360 SOLUTION FROM TELEWORKS

THIS AMENDATORY AGREEMENT NUMBER ONE, made and entered into this ____ day of ____, 2013, by and between the City of Columbia Missouri (hereinafter called "CITY") and Tele-Works Incorporated (hereinafter called "TWI"). The CITY and TWI each may be referred to as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the City Council of the City of Columbia, Missouri, authorized the City to enter into an Agreement for the Summation360 Solution from TWI to allow city utility customers to pay their utility bills via credit card and echecks;

WHEREAS, the Parties executed the Agreement on October 5, 2012, with a commencement date of November 1, 2012, for these services (hereinafter called "Agreement");

WHEREAS, TWI maintains the October 5, 2012 Agreement adequately addressed all terms of the agreement related to credit card payments, but did not contain all necessary terms to allow TWI to conduct Automated Clearing House (hereinafter "ACH") processing of electronic checks (hereinafter "echecks");

WHEREAS, TWI will not provide the ACH processing of echecks unless the CITY agrees to these amendments;

NOW THEREFORE, in consideration of the above premises and the mutual promises contained herein, the Parties hereto agree that the October 5, 2012 Agreement is hereby amended as follows.

1. The following Section 32 shall be added to the Agreement.

32. Special Provisions Related Only to the ACH Processing of echecks. This section only applies to the ACH processing of electronic checks (echecks). This section does not apply to the processing of payments by credit card or debit card or any other service provided by TWI to City.

A. Definitions: The following terms used in this Section shall have the meaning specified below:

- (1) "ACH Transaction": An electronic payment transaction originated by Customer and processed through the ACH Network in the Federal Reserve System.

(2) "Administrator": The CITY's employee who has been designated as CITY's primary contact with TWI for the ACH Services and has been appointed by CITY to manage the administration of ACH Services access, including passwords, and communicate authorizations to TWI.

(3) "Customer": CITY's customer who receives utility service from the City and initiates an ACH Transaction.

(4) "Effective Date": the date CITY signs the Addendum.

(5) "Entry": A transaction submitted by Customer to TWI for processing by the Services and further defined in the NACHA Rules.

(6) "CITY ACH Account": A commercial demand deposit bank account which CITY has set up for TWI's access to settle financial payment transactions under this Addendum.

(7) "NACHA Rules": The then-current rules, regulations and procedural Guidelines published by the National Automated Clearing House Association ("NACHA").

(8) "Originating Depository Financial Institution" or "ODFI": The financial institution which receives the Entry from TWI and transmits the Entry to its ACH Operator for transmittal to a Receiving Depository Financial Institution for debit or credit to the Customer's account and or CITY ACH Account, as these terms are further defined in the NACHA Rules.

(9) "Services": The ACH services provided to the CITY by TWI.

B. TWI Provision of Services. TWI or its designated third party ACH third party processing agent ("Third Party ACH Processor") shall provide the Services to CITY. CITY shall utilize and access the Services in accordance with the terms of the Agreement and this Addendum.

(1) Set-Up of and CITY Access to CITY ACH Account. As part of the CITY set-up and boarding process:

(a) a City ACH Account will be established by CITY at US BANK. The CITY ACH Account is a custodial account in CITY's name but under shared access and control by TWI and CITY. TWI has authority to credit and debit amounts due TWI based upon of the terms of the Agreement. CITY has the right to audit the account and require statements or reports on account activity.

(b) TWI will provide CITY with an administrative and gateway user name and password ("Password") to access the Services that are hosted on TWI's processing system. CITY will designate an Administrator who shall be the sole individual vested with the authority to determine which CITY employees will be authorized to access TWI's processing system; establish separate passwords for each designated CITY employees; and establish limits on each CITY employee's authority to access TWI's processing system. CITY is responsible for the actions of its Administrator, the authority the Administrator gives others to act on CITY'S behalf and the actions of the persons designated by the Administrator to use the Services. CITY shall take reasonable security procedures and practices to safeguard the confidentiality of the passwords; limit access to its passwords solely to persons who have a need to know such information; closely and regularly monitor the activities of employees who access the Services; and prohibit its

employees and agents from initiating entries for the Services without proper authorization and supervision and adequate security controls.

(c) CITY and TWI acknowledge that US Bank pledges collateral for any amount in excess of the FDIC insured amount, as required by Missouri Law should the balance of the CITY ACH Account exceed the amount insured by FDIC coverage.

(2) Delivery of Services; Delivery Sequence. TWI will provide processing Services for the Entry type(s) indicated in the CITY set-up and boarding documentation in the Agreement, which CITY wishes to utilize. TWI reserves the right to withdraw the processing Services provided generally to its customers including Client for individual Entry types from general market availability and coverage under this Section upon ninety (90) days prior written notice to Client. In the event of the withdrawal of ACH Services, CITY has the right to terminate any or all of the underlying Agreement without penalty.

(3) Entry Processing Deadlines. CITY acknowledges that TWI has specific processing deadlines imposed by its ODFI and its third party ACH processing provider for ACH Transactions. Files received by the deadline will be transmitted that day to the Federal Reserve Bank for settlement on the effective entry day. Files received after the deadline will be processed the next Banking Day as defined in the NACHA Rules.

C. CITY ACH Account and Reserve Account.

(1) Reimbursement of Shortfalls. CITY shall immediately reimburse TWI for any shortfalls that occur due to non-sufficient funds in the CITY ACH Account. TWI reserves the right to delay the availability of funds for deposit without prior written notices to Client if in its sole discretion TWI deems itself at financial or relative risk for any and all Services.

(2) TWI Right to Establish ACH Reserve Account. If TWI believes that its financial exposure and risk in delivering the Services to CITY is significant or has increased materially, as an express condition for providing the Services to CITY, TWI may at any time require CITY to maintain a separate account ("ACH Reserve Account") of an amount to be determined by TWI in a commercially reasonable manner. In the event that a Reserve Account is established, then CITY may terminate the Agreement without penalty. For purposes of the this section, the CITY ACH Account and its depository proceeds shall be a separate account from the Reserve Account as defined and provided under the Agreement.

D. NACHA Rules. Each Party shall comply with the then-current NACHA Rules which apply to ACH Transactions processed under the Agreement.

E. Confidential Information And Security Procedures.

(1) Duty to Maintain. To the extent allowed by Law including but not limited to the Missouri Sunshine Law, CITY shall protect and maintain the confidentiality of all Confidential Information disclosed by TWI to CITY related to the ACH Services and comply with the security procedures.

(2) Password Disclosure. CITY understands that the password provided by TWI is confidential and agrees to assume all risks of accidental disclosure of inadvertent or wrongful use by a city employee or agent of the city whatsoever except for TWI, whether such disclosure of use are on account of Client's negligence or are deliberate acts. CITY acknowledges that no person from TWI will ever ask for any password and that TWI employees do not need and should not ask for CITY's password.

(3) CITY's Responsibility To Change Passwords. CITY shall change its password periodically and whenever anyone who has had access to a password is no longer employed or authorized by CITY to use the Services. TWI may require CITY to change its password at any time. TWI may deny access to the Services without prior notice if it is unable to confirm to its satisfaction any person's authority to access the Services or if TWI believes such action is necessary for security reasons.

F. Data Privacy And Security Responsibilities of TWI.

(1) No Extra-Addendum Disclosure. In accordance with data privacy laws and regulations applicable to this Addendum, which may include but not be limited to the Gramm-Leach Bliley Act ("GLBA") and the Health Insurance Portability and Accountability Act ("HIPAA"), TWI shall not disclose or permit access to or use of the nonpublic personal information of CITY or its Customers made available by CITY to TWI for any purposes other than those specifically required to fulfill TWI's contractual obligations with CITY. TWI shall not sell or offer for use (other than its own pursuant to the Agreement) the information regarding CITY or its Customers, or any information derived therefrom, for any reason. In connection with providing Services to CITY, TWI shall take all commercially reasonable steps to ensure the privacy and security of the information of CITY and its Customers in TWI's possession and protect against anticipated threats and hazards to the security of such information. TWI shall take all commercially reasonable steps to prevent unauthorized access to or use of such information that could result in substantial harm or inconvenience to CITY or its Customers. In the event any court or regulatory agency seeks to compel disclosure of the information, TWI shall, if legally permissible, promptly notify CITY of the disclosure requirement and will cooperate so that CITY may at its expense seek to legally prevent this disclosure of the information.

(2) Privacy Policy. TWI has separately published its data privacy and security compliance commitment to its customers, which corresponds at a minimum to the provisions of this Section F as of the Effective Date of this Addendum. To the extent that additional commitments by TWI are reflected in future published versions of this policy, these additional commitments shall be incorporated as part of the Agreement without further actions by the parties. In no event shall a future published data privacy and security compliance statement issued by TWI lessen or eliminate any of the commitments by TWI stated in this Section F.

(3) Duties Upon Breach of TWI System. If a breach of security results in an unauthorized intrusion into TWI's systems which affects CITY or its Customers, TWI will take appropriate measures to stop the intrusion; report on the intrusion to CITY within a reasonable time after discovery of the intrusion; subsequently report the

corrective action taken by TWI in response to the intrusion; and provide reasonable assistance to CITY to support any mandatory disclosures about the intrusion by CITY to its Customers required by law. If TWI has notified law enforcement agencies about the intrusion, TWI may delay its notification of the intrusion to Client until authorized to do so by the law enforcement agencies.

G. Warranties . TWI warrants to CITY that the Services provided by its third party ACH Processor will be performed in a professional and timely manner consistent with ACH transaction processing industry standards and in accordance with the NACHA Rules and applicable laws and regulations and any written TWI policies and procedures communicated by TWI to CITY. In the event that CITY discovers an error in the Services which has been caused by TWI or its third party ACH Processor, CITY shall immediately notify TWI of the existence and details of the error. TWI shall apply commercially reasonable efforts to correct the error within a reasonable time after TWI's receipt of notification of the error. EXCEPT FOR THE FOREGOING WARRANTY, TWI's THIRD PARTY ACH PROCESSOR MAKES NO OTHER WARRANTIES FOR ITS SERVICES. TWI'S THIRD PARTY ACH PROCESSOR DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF CLIENTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TWI and its Third Party ACH Processor do not guarantee the completeness or accuracy of the information provided from a third-party database. TWI shall have no liability to CITY for any invalid Customer information provided by CITY or Entries returned unpaid to CITY.

H. Indemnification. TWI shall indemnify, defend and hold CITY harmless from and against all claims, actions, losses and expenses, including reasonable attorney's fees and legal costs, incurred by CITY arising out of a third party claim that the Services provided by TWI infringe the valid intellectual property rights of the third party.

I. Conflict between Agreement and the special ACH terms contained in Section 32. In the event that there is a conflict between the terms contained in Section 32 and the Agreement, the terms of the Agreement shall control.

J. Limitations Of Liability. IN NO EVENT SHALL TWI, ITS THIRD PARTY ACH PROCESSOR, THE ODFI OR THE BANK OF FIRST DEPOSIT UNDER THIS ADDENDUM BE LIABLE TO CLIENT OR ANY OTHER PARTY FOR ANY LOSS OF PROFITS OR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, EVEN IF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES WAS FORESEEABLE. Except for TWI's indemnification liability stated in Section H above and damages arising from any action or inaction by TWI which constitutes fraud, gross negligence or willful misconduct, TWI and its Third Party ACH Processor's aggregate, cumulative liability to the Client for all claims of actual direct damages relating to the ACH Services, or the relationship between TWI and Client in regards to the ACH Services, including any cause of action in contract, negligence,

tort, strict liability or otherwise, shall not exceed an amount equal to the total amount of all fees paid by the Client to TWI for the ACH Services delivered under the special requirements of this Section 32 during the three (3) month period preceding the origination of the claim giving rise to liability.

2. All other terms, conditions, and provisions of the Agreement shall be and remain in full force and effect.

The agreement is entered into this ____ day of _____, 2013.

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

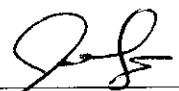
ATTEST:

Sheela Amin, City Clerk

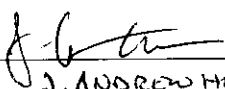
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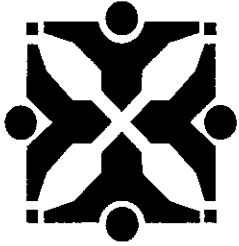
Nancy Thompson, City Counselor

TELE-WORKS INCORPORATED

By:  _____
Title: JOHN SCOTT
PRESIDENT

ATTEST:

By:  _____
Title: J. ANDREW HALL
CFO



Source: Finance

A handwritten signature in black ink, likely belonging to the City Manager.

Agenda Item No:

To: City Council

From: City Manager and Staff

Council Meeting Date: Sep 3, 2013

Re: Amendment to the Tele-works contract

EXECUTIVE SUMMARY:

The terms necessary for Tele-Works Incorporated (hereinafter "TWI") to process electronic checks via Automated Clearing House (hereinafter "ACH") on behalf of the City were not incorporated with the original contract documentation.

DISCUSSION:

On October 5, 2012, Council authorized the City Manager to enter into a contract with TWI for the implementation of the Summation 360, a multi-channel billing, payment, and automation solution for utility billing and the incorporation of a convenience fee.

The original contract omitted the terms necessary, as required by TWI's financial institution, for TWI to process electronic checks via ACH. TWI inability to process ACH transactions impacts our customer's ability to pay their utility bill on-line or telephone via check.

The amendatory agreement with the necessary terms is attached as "Exhibit A". Once executed, we can move forward with the implementation of the Summation 360 Solution Suite.

FISCAL IMPACT:

Allows the City to begin saving \$350 - \$400K savings in bank related fees and software maintenance cost.

VISION IMPACT:

<http://www.gocolumbiamo.com/Council/Meetings/visionimpact.php>

SUGGESTED COUNCIL ACTIONS:

Approve the resolution the City Manager to execute the amendment.

FISCAL and VISION NOTES:					
City Fiscal Impact Enter all that apply		Program Impact		Mandates	
City's current net FY cost	\$450,000.00	New Program/ Agency?	No	Federal or State mandated?	No
Amount of funds already appropriated	\$0.00	Duplicates/Epands an existing program?	Yes	Vision Implementation impact	
Amount of budget amendment needed	\$0.00	Fiscal Impact on any local political subdivision?	No	Enter all that apply: Refer to Web site	
Estimated 2 year net costs:		Resources Required		Vision Impact?	
One Time	\$0.00	Requires add'l FTE Personnel?	No	Primary Vision, Strategy and/or Goal Item #	
Operating/ Ongoing	\$0.00	Requires add'l facilities?	No	Secondary Vision, Strategy and/or Goal Item #	
		Requires add'l capital equipment?		Fiscal year implementation Task #	