

**RESOLUTION NO. 2024 - 3334**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING AN AGREEMENT WITH CIVICSMART PARKING TECHNOLOGIES, INC. f/k/a DUNCAN PARKING TECHNOLOGIES, INC., AUTHORIZING EXPENDITURE OF FUNDS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Surfside ("Town") desires to engage CivicSmart Parking Technologies, Inc. f/k/a Duncan Parking Technologies, Inc. (hereinafter, "Contractor") for purposes of a parking citation processing system and associated services ("Services"), in accordance with the terms and conditions outlined in the Agreement appended hereto as "Exhibit A"; and

**WHEREAS**, the Contractor desires to provide the Town with the Services in accordance with said Agreement appended hereto as "Exhibit A"; and

**WHEREAS**, the Town Commission finds that the Services set forth in the Agreement are exempt from competitive bidding pursuant to Section 3-13(3) of the Town Code; and

**WHEREAS**, the Town Commission desires to approve the Agreement with Contractor in substantially the form attached hereto as "Exhibit A", and hereby authorizes the expenditure of funds for the Services to be performed by Contractor; and

**WHEREAS**, the Town Commission finds that this Resolution is in the best interest and welfare of the residents of the Town.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The above-stated recitals are true and correct and are incorporated herein by this reference.

**Section 2. Approval and Authorization of Agreement.** The Town Commission hereby approves the Agreement with Contractor, in substantially the form attached hereto as "Exhibit A". Pursuant to Section 3-13(3) of the Town's Code, the Town Commission finds that the Services provided under the Agreement are exempt from competitive bidding.

**Section 3. Implementation.** The Town Commission hereby authorizes the Town Manager to execute the Agreement with Contractor, in substantially the form attached hereto as "Exhibit A", together with such non-substantive changes as may be approved by the Town Manager, subject to approval by the Town Attorney as to form and legal sufficiency, and to take any action which is reasonably necessary to implement the purposes of this Resolution and the Agreement.

**Section 4. Authorization to Expend Funds.** The Town Manager is authorized to expend Town funds for the Services and term outlined in the Agreement.

**Section 5. Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this 24<sup>th</sup> day of September, 2024.

Motion By: Commissioner Velasquez

Second By: Commissioner Coto

**FINAL VOTE ON ADOPTION:**

Commissioner Ruben Coto	<u>Yes</u>
Commissioner Nelly Velasquez	<u>Yes</u>
Commissioner Gerardo Vildostegui	<u>Yes</u>
Vice Mayor Tina Paul	<u>Yes</u>
Mayor Charles W. Burkett	<u>Yes</u>

  
\_\_\_\_\_  
Charles W. Burkett, Mayor

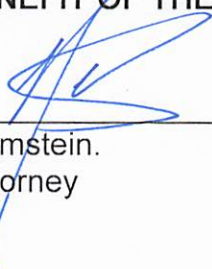
ATTEST:



\_\_\_\_\_  
Sandra N. McCready, MMC  
Town Clerk



APPROVED AS TO FORM AND LEGALITY FOR THE USE  
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:



\_\_\_\_\_  
Mark Blumstein.  
Town Attorney

**EXHIBIT A**  
**AGREEMENT BETWEEN THE TOWN OF SURFSIDE AND**  
**CIVICSMART PARKING TECHNOLOGIES INC.**

**AGREEMENT BY AND BETWEEN THE TOWN OF SURFSIDE  
AND CIVICSMART PARKING TECHNOLOGIES, INC.**

This software license, hardware, implementation, integration, training, maintenance and support services agreement ("Agreement") is made and entered into by and between the **Town of Surfside** (hereinafter called "Town"), having its principal office located at 9293 Harding Avenue, Surfside, Florida 33154, and **CivicSmart Parking Technologies, Inc. f/k/a Duncan Parking Technologies, Inc.** (hereinafter called ("Contractor")), a Delaware Corporation having a location at 11220 W. Lincoln Avenue, West Allis, WI, 53227.

**WITNESSETH:**

**WHEREAS** Town desires to procure from Contractor a Parking Citation Processing System and associated services, in accordance with the terms and conditions of this Agreement; and

**WHEREAS** the Town desires to obtain ongoing Maintenance and Support Services for such Parking Citation Processing System.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

**ARTICLE 1. APPLICABLE DOCUMENTS AND DEFINITIONS**

a) **Hierarchy of Documents.**

The provisions of this document, along with Exhibits 1 through 6, attached hereto and incorporated herein by reference and any Appendixes and Attachments not attached, but associated with the Agreement, collectively form, and hereinafter are referred to as the "Agreement". In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, or description of any task, subtask, Deliverable, good, Service or other Work, between this document as the body of the Agreement and the Exhibits, or between the Exhibits or components thereof, such conflict or inconsistency shall be resolved by giving precedence first to the body of this Agreement, and then to the Exhibits and their respective components, according to the following descending priority:

- Exhibit 1 -Scope of Services (SOS)
- Exhibit 2 - Maintenance and Support Services
- Exhibit 3 - Schedule
- Exhibit 4 – Pricing and Payment
- Exhibit 5 - Backup and DR Plan
- Exhibit 6 - Contractors Qualifications and Business References

b) **Rules of Interpretation.**

- 1) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- 2) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- 3) The terms "hereof", "herein", "hereafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement as a whole and not to any particular provision of this Agreement.
- 4) Titles, headings, captions, and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify, or modify the terms of this Agreement, nor affect the meaning hereof.

c) **Definitions.**

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- 1) The word "Acceptance" to mean Town's written approval of any tasks, subtasks, Deliverables, goods, Services, or other Work, provided by Contractor to Town pursuant to this Agreement.
- 2) The words "Agreement" or "Contract" to mean collectively these terms and conditions, including all other exhibits, appendices, and attachments hereto, and all amendments Issued hereto.
- 3) The words "Business Days" whether singular or plural, to mean Monday through Friday, excluding Town observed holidays, unless stated otherwise.
- 4) The words "Calendar Days" whether singular or plural, to mean any day Monday through Sunday including any Town observed holidays, unless stated otherwise.
- 5) The word "Town" to mean the Town of Surfside.

- 6) The words "Town Data" means any information or data (whether confidential or not) related to customers or employees of the Town, which is made available to Contractor by or at the direction of Town, or which Contractor accesses and/or processes on behalf of Town.
- 7) The word "Deliverables" to mean all Software Licenses, Equipment, Documentation, and any items of Work product of any nature submitted by the Contractor to Town's Project Manager for review and approval pursuant to the terms of this Agreement.
- 8) The word "Documentation" to mean all manuals, user documentation, and other related materials pertaining to the System which are furnished to the Town.
- 9) The words "Effective Date" to mean the date of execution of this Agreement by Town and the authorized representative(s) of Contractor.
- 10)The words "Equipment" or "Devices" to mean the hardware products identified on Exhibit 1, "Scope of Services" (SOS) that are provided by Contractor under this Agreement.
- 11)The words "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed, and/or approved by Town.
- 12)The words "Go-Live" to mean the point at which the System will be activated and in use in the live production environment by the Town, following Town's approval. Refer to Exhibit 3 (Project Timeline).
- 13)The word "Material Breach" to mean failure of performance under the Contract by either Party which is significant enough to give the aggrieved party the right to determine the other Party in default, and to act on such determination in accordance with Contract provisions.
- 14)The abbreviation "OTR" to mean Option to Renew.
- 15)The words "Project Manager" (PM) to mean the duly authorized representative designated to manage the Project.
- 16)The words "Project Plan" to mean the agreed upon tasks and timeline between Contractor and Town, to include each of the Deliverables, as specified in the Scope of Services.

- 17)The words "Scope of Services" to mean the document appended hereto as Exhibit 1 and describes in detail the Work that must be done and specifies the Equipment and Software involved and the exact nature of the Work or Services to be done.
- 18)The words "Software" to mean the computer programs in machine readable object code form listed In Exhibit 1, "Scope of Services" attached hereto, and any subsequent error corrections or updates supplied to Town by Contractor pursuant to this Agreement.
- 19)The word "System" to mean the Vendor-Hosted Web-Based Parking Citation System which is comprised of all items and Deliverables intended to be furnished, installed and integrated to fulfill the requirements of the Contract including, but not limited to: (i) all contractor-provided databases, equipment, features, cable, wire, documentation and procedures; (ii) Licensed Software; and (iii) Third Party Software.
- 20)The words "Support Services" to mean the process to resolve reported incidents through error correction, patches, hot fixes, workarounds, replacements or any other type of correction or modification required to fully utilize the Software capabilities, as outlined in Exhibit 2, "Maintenance and Support Services."
- 21)The word "Subcontractor" or "Sub-consultant" to mean any person, entity, firm, or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, or on behalf and/or under the direction of the Contractor.
- 22)The term "System Maintenance" to mean Maintenance Services and Support Services provided by Contractor in accordance with Exhibit 2 (Maintenance and Support Services), and further specified in Article 26 (Maintenance and Support Services).
- 23)The term "Termination Fee" to mean the fee outlined within Exhibit 4, if any, for the period beginning upon the Effective Date of this Agreement and ending sixty (60) months after the effective date. Upon the 1st day of each subsequent month from the Effective Date, the Termination Fee shall automatically reduce by 1/60<sup>th</sup> from the initial Termination Fee.
- 24)The words "Work" or "Services" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.



## **ARTICLE 2. NATURE OF THE AGREEMENT**

- a) This Agreement, including all Exhibits, constitutes the complete and exclusive statement of understanding between the parties and supersedes all previous agreements, whether written or oral, and any and all communications and negotiations between the parties relating to the subject matter of this Agreement.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related by virtue of ownership control or statutory control to a party.

## **ARTICLE 3. CONTRACT ADMINISTRATION**

- a) Town's Authorized Representative. Town or Town's Project Manager shall be the authorized representative(s) in all matters pertaining to administration of the terms and conditions of this Agreement and to whom all notices must be sent.
- b) **Authority of the Project Manager.**
  - 1) Contractor hereby acknowledges that Town's Project Manager will determine in the first instance all questions of any nature whatsoever out of, under, or in connection with, or in any way related to, this Agreement including without limitations: questions as to value, acceptability and fitness of the Work; questions as to clarification of either party's fulfillment of its obligations under the Agreement; negligence, fraud or misrepresentation before or subsequent to acceptance of Contractor's Proposal; questions as to the interpretation of the Statement of Work; and claims for damages, compensations and losses.
  - 2) Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with Town's Project Manager. In the event that Contractor and Town's Project Manager are unable to resolve their difference(s), Contractor may initiate a dispute in accordance with the procedures set forth in Article 41 (Dispute Resolution Procedure). Exhaustion of these procedures shall be a condition precedent to any lawsuit that may be considered hereunder.
  - 3) All tasks, subtasks, including Deliverables, and other Work provided by Contractor under this Agreement must have the written approval of Town's Project Manager as described in this Article 3. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable. Except as set forth in this Article and Article 20 (Change Notices and Amendments), Town's Project Manager is not authorized to make any changes in any of the terms and conditions of this

Agreement and is not authorized to further obligate Town in any respect whatsoever.

**c) Contractor-Key Personnel**

- 1) Contractor's Project Manager. For the term of this Agreement, Contractor shall assign an experienced and qualified project manager who shall serve as a central point of contact and be responsible for responding to all concerns presented by Town. The assigned Project Manager shall have full authority to act for Contractor on all contract matters relating to support services received under this contract, except that Contractor's Project Manager is not authorized to further obligate Contractor in any respect whatsoever. Contractor shall ensure that Contractor's project manager is able to receive telephone, cell phone and/or email communication from the Town's Parking Operations staff, as needed, between 8:00 a.m. and 5:00 p.m., Monday through Friday, except Town holidays, in order to respond to emergencies or other critical operation requirements. Contractor's Project Manager shall notify Town's Project Manager in writing of any change in address or phone number.
- 2) Contractor's Project Staff. In fulfillment of its responsibilities under this Agreement, Contractor shall utilize and permit utilization of only staff who are fully trained and experienced, licensed or certified in the technology, trade, tasks, and subtasks required by this Agreement. Town shall have the right to approve or disapprove; and may require replacement of any member of Contractor's Project Staff under this Agreement who have access to any of Town's sensitive information (hereinafter "Key Personnel"). Contractor shall, to the maximum extent possible, take all necessary steps to ensure continuity of the membership of the group constituting Key Personnel, and promptly fill any Staff vacancy with personnel having qualifications at least equivalent to those of the staff member being replaced.
- 3) Substitution of Key Personnel. In the event Contractor wishes to substitute key personnel, including Contractor's Project Manager, identified in Contractor's Proposal, Contractor must notify the Town's Project Manager in writing and request approval for substitution at least ten (10) business days prior to effecting such substitution. Any substituted key personnel shall be replaced within thirty (30) days when, as determined by Town's Project Manager, the individual(s) fails to perform effectively, and/or fails to ensure Contractor's compliance with the Agreement.

#### **ARTICLE 4. NOTICES**

Any notice given to a party under the Agreement must be deemed effective, if addressed to the party(ies) as addressed upon: (i) delivery, if hand delivered; (ii) the third Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; (iii) U.S. Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

**a) To Town**

Town of Surfside  
Attn: Town Manager  
9293 Harding Avenue  
Surfside, FL 33154  
Telephone: 305-861-4863  
Email: [townmanager@townofsurfsidefl.gov](mailto:townmanager@townofsurfsidefl.gov)

**b) To Contractor**

CivicSmart Parking Technologies, Inc.  
Attn: Balu Subramanya  
11220 W Lincoln Ave  
West Allis, WI 53227  
Telephone: 414-877-5481  
Email: [bsubramanya@civicsmart.com](mailto:bsubramanya@civicsmart.com)

Either party may change its contact information where notices are to be sent by giving notice according to this Article.

#### **ARTICLE 5. CONTRACT TERM**

- a) **Term:** The Agreement shall become effective on the date that it is signed by Town or Contractor, whichever is later, and shall continue through the last day of the 5th year following execution.
- b) **Renewal:** The Agreement may be renewed by the Town, at its sole Option, for two (2) additional, five (5) year periods. In the event of renewal of the Agreement, all terms, conditions, and provisions of the original Agreement shall remain the same and apply during the renewal period, except for minor scope additions and/or deletions, which must be mutually agreed upon in writing by the parties.

- c) Extension: Town, at its sole and absolute discretion, reserves the right to extend this Agreement for up to one hundred-eighty (180) calendar days beyond the current Agreement period or beyond any of the renewals herein, to be referred to as the Extended Term. Town will notify Contractor in writing of the extension. This Agreement may be further extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual, written agreement between Town and Contractor.
- d) Automatic Renewal: Agreement shall automatically renew for available extension periods, unless the Town has provided written notice to Contractor with its intention not to extend, at least 60 Calendar days prior to the expiration of the then current term.

#### **ARTICLE 7. PRICING**

- a) Except as otherwise set forth in this Agreement, prices and rates for proposed Work shall be as set forth in Exhibit 4 (Payment Schedule/Pricing), for the term of the Agreement, including any option or extension periods. The billed charges shall be applied monthly, and the total monetary amount payable each month shall include implementation costs; System maintenance; hardware and software costs; and ongoing administrative support costs. Contractor may offer Incentive discounts to Town at any time during the Agreement term, including any renewal or extension thereof.
- b) At the end of the original **five (5) year** Agreement term, or upon termination of this Agreement, the units provided under the Agreement **shall** become the property of the Town. The same goes for both OTR's; if we refresh the handheld units at the time of the OTR, the handheld units become property of the Town after the five (5) year OTR term.

#### **ARTICLE 8. ASSUMPTIONS, PARAMETERS, PROJECTIONS, ESTIMATES, AND EXPLANATIONS**

Contractor understands and agrees that any assumptions, parameters, projections, exceptions, and explanations presented by Town were provided to Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events, Town makes no representations or guarantees; and Town shall not be responsible for the accuracy of the assumptions presented or for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by Contractor. Contractor accepts all risks associated with using this information.

## **ARTICLE 9. INDEPENDENT CONTRACTOR**

- a) Whether Contractor is a corporation, partnership, other legal entity, or an individual, Contractor is an independent contractor. The manner in which the Work is performed shall be controlled by Contractor; however, the nature of the Work and the results to be achieved shall be specified by Town. Contractor is not to be deemed an employee or agent of Town and has no authority to make any binding commitments or obligation on behalf of Town, except as expressly provided herein.
- b) All employees of Contractor shall be, at all times, employees of Contractor under its sole direction and not employees or agents of Town.

## **ARTICLE 10. PERFORMANCE STANDARDS**

- a) Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out Its intent are required by this Agreement, and Contractor shall perform the same as though they were specifically mentioned, described, and delineated.
- b) Contractor's Services and other Work required by this Agreement shall during the term of the Agreement conform to reasonable commercial standards as they exist In Contractor's profession or field of practice. If Contractor's Services or other Work provided under this Agreement fail to conform to such standards, upon notice from Town specifying the failure of performance, Contractor shall, at Contractor's sole expense, provide the applicable remedy(ies) as specified in this Agreement. The Contractor shall not be held responsible for losses, delays, or other consequences resulting from the negligent acts or omissions of the Town. Contractor shall at its own expense, correct any data in which (and to the extent that) errors have been caused by Contractor, or malfunctions of the System, or by any other tools caused by or introduced by Contractor into the System for the purpose of performing services or other work under this Agreement or otherwise. For clarity, nothing in this Subsection shall be interpreted or construed as expanding in any manner or to any extent the obligations of Contractor under the SOS.
- c) Contractor agrees that at all times it will employ, maintain, and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. Contractor agrees to adjust its personnel staffing levels or to replace any of its personnel should Town make an informed and reasonable determination that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements of this Agreement as evidenced by Contractor's inability to timely deliver any

Deliverables according to the Project Timeline.

- d) Contractor agrees that Contractor caused delays in excess of thirty (30) calendar days in completion of any Phase as provided in this Article 10 and the Project Timeline may be cause for Town to determine Contractor in default of the particular Deliverable, subject to the Dispute Resolution Procedure; or if Town determines Contractor's delay in completing the particular Deliverable affects the functionality, performance or desirability to Town of the System as a whole, the entire Agreement each month shall include implementation costs; System maintenance; hardware and software costs; and ongoing administrative support costs. Contractor may offer Incentive discounts to Town at any time during the Contract term, including any renewal or extension thereof.
- e) At the end of the original five (5) year Agreement term, or upon termination of this Agreement, the units **shall** become the property of the Town. The same goes for both OTR's; if we refresh the handheld units at the time of the OTR, the handheld units become property of the Town after the five (5) year OTR term.

#### **ARTICLE 11. RECRUITING AND RETENTION**

Unless written authorization is received in advance, neither Contractor nor Town shall attempt to recruit, hire, or otherwise contract with the other's employees for the duration of the term of the Agreement and six (6) months after the termination of the Agreement. The term "attempt to recruit" excludes (i) any broad-based effort to attract applicants if not specifically designed to attract the other's personnel and (ii) any unsolicited inquiries made, or applications submitted by one party's personnel to the other party.

#### **ARTICLE 12. LICENSES, PERMITS, REGISTRATIONS, AND CERTIFICATIONS**

Contractor shall obtain and maintain in effect during the Term all licenses, permits, registrations, and certifications required by all Federal, State, and local laws, ordinances, rules, regulations, guidelines, and directives, which are applicable to Contractor's services under this Agreement. Contractor shall further ensure that all its officers, employees, agents, and subcontractors, who perform services hereunder, shall obtain and maintain in effect during the Term all licenses, permits, registrations, and certificates which are applicable to their performance hereunder. If requested by Town, a copy of each such license, permit, registration, and certificate required by Federal, State, and local laws, ordinances, rules, regulations, guidelines, and directives shall be provided to Town Manager, 9293 Harding Avenue, Surfside FL 33154.

### **ARTICLE 13. SUBCONTRACTUAL RELATIONS**

- a) If Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of Contractor; and Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by Contractor. Contractor, before subcontracting any portion of the Work required under this Agreement, will state in writing to Town the name of the proposed Subcontractor, the portion of the Work which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as Town may reasonably require. Town will have the right to require Contractor not to award any subcontract to a person, firm or corporation disapproved by Town; provided, however, that Town will provide Contractor with a written explanation detailing any such disapproval. Notwithstanding the foregoing, Town will not unreasonably withhold Contractor's request for subcontractor approval.
- b) Before entering into any subcontract hereunder, Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Work to be performed. Such Work performed by such Subcontractor will strictly comply with the requirements of this Contract.
- c) In order to qualify as a Subcontractor satisfactory to Town, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the reasonable satisfaction of Town that it has the necessary facilities, skill and experience, and ample financial resources to perform the Work in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of Town that it has satisfactorily performed, or is capable of performing, Work of the same general type which is required to be performed under this Agreement.
- d) Upon thirty (30) days prior written notice to Contractor, Town shall have the right to withdraw his consent to a Subcontractor if it appears to Town that use of the Subcontractor will delay completion of a deliverable or prevent or otherwise impair the performance of Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of Town and Town's proprietary and confidential information. Contractor shall furnish to Town copies of all contracts between Contractor and Subcontractors that will directly or indirectly impact this Project or Work provided hereunder. Within each such contract, there shall be a clause for the benefit of Town permitting Town to

request completion of performance by the Subcontractor of its obligations under the contract, in the event Town finds Contractor in material breach of its obligations, including the option to pay the Subcontractor directly for the performance by such Subcontractor. Notwithstanding, the foregoing shall neither party convey nor imply any obligation or liability on the part of Town to any Subcontractor hereunder.

#### **ARTICLE 14. SCOPE OF SERVICES (SOS)**

- a) Deliverables: In exchange for Town's payment to Contractor of the fees arising under the Agreement and Parking Citation Processing System invoiced by Contractor, Contractor shall on a timely basis provide, complete, deliver and/or implement all Work and Services set forth in Exhibit 1 (Scope of Services) of this Agreement, including but not limited to components of the System, Services, Maintenance and Support Services).
- b) System Components: Contractor shall provide all System and/or System components, including but not limited to Software, Third Party Software, Equipment and products, and any software updates that may be required by Town in order to effectively meet the System requirements as may be revised during the term of this Agreement.
- c) Software: All Software provided by Contractor to Town pursuant to this Agreement, including Software, Third Party Software and Software Updates, and related Documentation, is and shall remain the property of Contractor, with all Proprietary Rights, and which shall be subject to the terms of the License granted.
- d) Licenses: If Applicable, Contractor shall provide all Licenses required for System Software, Application Software, and Implementation Services, including required interfaces and customizations associated with such Software, all in accordance with the SOW and all attachments thereto.
- e) System Data: All System Data provided or made accessible by Town to Contractor is and shall remain the property of Town. The Contractor is required to make data available to the Town promptly upon request during the term of the agreement in a compatible format.
- f) Implementation Services: Contractor shall provide implementation Services, including but not limited to System setup, installation, interfaces, testing, training, and other services as may be required for the successful implementation of the System as specified in the SOS and elsewhere in the Agreement. The Town acknowledges that certain services to be provided by the Contractor are dependent upon the timely completion of tasks by the Town and their associated stakeholders. All Work performed as part of the implementation Services will be done during normal business hours. However,



some services may be required to be performed outside of normal business hours to accommodate Town operations. If such requirement arises, both parties will mutually agree as to the schedule and Work that will be performed during this period.

- g) Technical Support and System Maintenance. Contractor shall provide to Town Maintenance and Support Services relating to the System required for the Town to achieve optimal performance of the System, as provided in and in accordance with this Agreement, including Exhibit 1 (Scope of Services) and Exhibit 2 (Maintenance and Support Services). System Maintenance obligations shall commence upon Go-Live and shall continue through the term of this Agreement.
- h) Acceptance. Town Acceptance is expressly conditioned upon satisfactory completion of Deliverables, completion of all applicable Inspection and/or testing procedures as described in the SOS, and written certification by Town that Contractor has met all defined requirements under this Agreement. Such Acceptance will not be unreasonably withheld.
- i) Project Phasing: Project phasing will be in accordance with the Project Plan agreed to between the Town Project Manager and the Contractor Project Manager.

#### **ARTICLE 15. PROJECT TIMELINE**

- a) Project Timeline. Prior to Contract execution Contractor agrees to (1) diligently work with the Town's Project Manager to develop a Project Schedule in accordance with the SOS schedule and (2) pursue and complete all Deliverables as required in the SOS without interruption so that the System is in good working order and ready for use by the dates indicated in the Project Timeline.
- b) Milestones: The Project Timeline acknowledges certain milestones mutually agreed upon by Town and Contractor. A milestone shall be deemed completed for purposes of this Article 15 on the earliest date that all of the tasks, subtasks, Deliverables, goods, Services and other Work required for completion of such milestones are completed and delivered to Town, provided that approval of such Work is thereafter received in writing from Town's Project Manager, and such Acceptance shall not be unreasonable withheld. Contractor understands that failure by the Town to provide a notice of Acceptance does not constitute approval.
- c) Timeline Adjustments: Timeline adjustments may be made to the Project Timeline if there is mutual agreement between Town and Contractor that a Deficiency exists. For purposes of this Article, a Deficiency is defined as a condition that (1) Town and Contractor concur will prevent Contractor from

completing the Deliverable in accordance with the Project Timeline, or (2) Contractor requests a special exception to a Deliverable timeline due to extenuating circumstances for which Contractor is prepared to provide written documentation of such extenuating circumstances for Town consideration.

- d) The decision for revising the Project Timeline shall be made at the discretion of Town's Project Manager and in accordance with the Dispute Resolution Procedure (Article 41). Contractor may not revise, close, or inactivate a Deliverable without prior consent of Town's Project Manager.
- e) Notwithstanding any other provisions of this Article, to the extent that extensions of time for Contractor's performance do not impact either the scope of Work or cost of this Agreement, Town, in its sole and absolute discretion, may grant Contractor extensions of time in writing for work listed in Exhibit 1.

#### **ARTICLE 16. SYSTEM TESTS**

Contractor shall provide, configure, and program the System to conform to the Scope of Services. The System will be subject to several tests, including Acceptance tests as further defined in the Scope of Services.

- a) System Testing. Software testing shall consist of the tests as defined in the Scope of Services and are to be collectively conducted by Contractor and Town. Tests shall include actual demonstration of all required System features and demonstrate operability of the System in conformance with the requirements of the Contract.
- b) Production Testing: Town shall have the right to use, in a Production Test mode, any completed portions of the System, without any additional cost to Town where Town determines that it is necessary for the benefit of Town's operation. Such Production Testing shall not restrict Contractor's performance under this Agreement and shall not be deemed automatic Acceptance of the System. Upon successful completion and approval of all Production Testing, Town's Project Manager will provide written acknowledgement to Contractor that System Testing has been completed and the System is ready to "Go-Live".
- c) Go-Live. The System shall achieve Go-Live status for Phase 1 when Town's Project Manager provides signoff approval of all testing and provides written approval that the System is ready for Production Use. If the Town decides to proceed with Phase 2, a separate written approval will be required. Refer to Exhibit 3 (Project Timeline).

#### **ARTICLE 17. FAILED TESTS**

- a) In the event any component of the System fails to successfully achieve acknowledgement from Town's Project Manager that a System Test has

successfully completed, Contractor shall provide Town's Project Manager with diagnosis of the Deficiency(ies) and proposed solution(s) specifying with as much detail as possible the manner in which the System component or the System failed to pass the applicable designated Test. Contractor shall immediately commence all commercially reasonable efforts to complete, as quickly as possible, such necessary corrections, repairs and/or modifications to the System component or the System as will permit the System to be ready for retesting. Contractor shall notify Town's Project Manager in writing when such corrections, repairs and/or modifications have been completed and the applicable designated Test shall begin again. Town's Project Manager and Contractor shall agree upon all such proposed solutions prior to their implementation in accordance with the SOS and Dispute Resolution Procedure (Article 41).

- b) In the event Contractor, using good faith effort, is unable to cure a Deficiency after two (2) attempts, or within forty five (45) calendar days after the date scheduled for completion thereof as set forth in the Project Timeline, Town and Contractor will work together to agree on a mutually acceptable resolution, provided that if Town and Contractor cannot agree on a resolution, Town may at his sole option reasonably determine that failure of the applicable designated Test adversely affects the functionality, performance or desirability to Town of the System component or the System as a whole, Town may terminate the entire Agreement pursuant to Article 40 (Termination of Contract) subject to curative provisions provided therein.

#### **ARTICLE 18. COMPATIBILITY**

For the full term of this Agreement, Contractor shall ensure continued compatibility of the System with all new Contractor provided System releases, updates, or upgrades, including any new releases, updates, or upgrades of third-party software provided by Contractor to Town and used by Town for access or operation of the System. In the event a Contractor-provided new release, update, or upgrade results in adverse changes to System functionality and is the new release, update or upgrade is not backwards compatible with the System, Contractor shall use all commercially reasonable efforts to resolve such issues and to provide optimal functionality of the System in accordance with this Agreement. If Contractor is unable to provide continued optimal functionality of the System in accordance with this Agreement due to any applicable release, update or upgrade, Town shall be entitled to terminate the Agreement pursuant to Article 40 (Termination of Contract), subject to the curative provisions therein.

#### **ARTICLE 19. OPERATING ENVIRONMENT FOR INFORMATION SYSTEMS**

- a) Contractor acknowledges that the System and/or component and function thereof, will be capable of operating fully and correctly in Town's operating environment and with the System interfaces identified in the SOS. Contractor

hereby warrants and represents that the System will be fully compatible and will interface completely with the Town's operating environment and the System interfaces identified in the SOS, such that the System and Deliverables combined will perform and continuously attain the performance standards set forth in the SOS.

- b) Contractor shall not be responsible for installation, maintenance, support, use of hardware, configuration of Town networks, and any third-party software, services or equipment not provided by Contractor. Contractor shall have no responsibility for support or performance of software on hardware or network configurations that are not provided by Contractor or not in accordance with Contractor's recommended configurations herein.

## **ARTICLE 20. CHANGES, AMENDMENTS AND MODIFICATIONS**

- a) Amendments: Subject to subsection (c) below, Town reserves the right to request Changes or Amendments which may result in additions to, reductions to or deletions from the amount, type or value of the Work or Services required by this Agreement and/or additional Software or Equipment. Such Changes or Amendments may include but will not be limited to System Modifications, Additional Software Products, and/or Professional Services that may be provided by the Contractor upon Town's written request and Contractor's approval in accordance with this Article.
- b) Written Authority Required Prior to Performing Additional Work: No additional Work shall be performed except pursuant to written orders of Town expressly indicating his intention to treat the work described therein as additional Work. In the absence of such written order, if Town directs, orders, or requires any Work which Contractor deems to be a change to or modification of the original SOW, Contractor shall seek written authority in the form of a written Amendment from Town before performing such Work.
- c) Payment for Additional Work: Town and Contractor shall negotiate a mutually agreeable price to be paid by Town for Contractor's performance of such Changes, Amendments, or additional Work. Town's Project Manager may, at any time, require Contractor to substantiate the successful performance of any event or performance criteria, which has been or is represented as being payable.
- d) Additional Work without written approval: Additional Work rendered without benefit of written approval from Town shall be deemed to be a gratuitous effort on the part of Contractor and Contractor shall have no claim whatsoever against Town thereunder.

## **ARTICLE 21. ASSIGNMENT**

- a) Neither party may assign this Agreement or assign or delegate any of its duties or obligations under the Agreement, to any other party (whether by operation of law or otherwise), without prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the written consent requirement, Town may assign the Agreement to any other State agency, department, or division without prior consent of Contractor.
- b) Any assumption, delegation, or takeover of any of Contractor's duties, responsibilities, obligations, or performance of same by any entity other than Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other similar mechanism, with or without consideration for any reason whatsoever without Town's express written approval shall be a material breach of the Agreement which may result in the termination of this Agreement. In the event of such termination, Town shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.
- c) Contractor may not, without the prior written approval of Town, assign its right to receive payments due Contractor under this Agreement. If Town permits an assignment, Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Agreement that all payments must be made to one entity continues.
- d) If Contractor intends to assign the Agreement or any of Contractor's rights or duties under the Agreement, Contractor must notify Town in writing at least sixty (60) calendar days before the assignment. Contractor also must provide Town with adequate information about the assignee within thirty (30) calendar days before the assignment for Town to determine whether to approve the assignment. Any attempted assignment and/or delegation without prior Town written consent shall be considered null and void.

## **ARTICLE 22. PAYMENT FOR SERVICES/AMOUNTS OBLIGATED**

The compensation for all Work and Services performed under this Agreement, including all costs associated with such Work and Services, shall be as stipulated in the Exhibit 4, Payment Schedule. Town shall have no obligation to pay Contractor any additional amounts in excess of this amount, except for a change and/or amendment to the Agreement in accordance with this Article, which is approved and executed in writing by Town and Contractor. All Services undertaken by Contractor before Town's approval of this Contract shall be at Contractor's risk and expense.

## **ARTICLE 23. INVOICING AND PAYMENT**

- a) Contractor shall submit an invoice in accordance with Exhibit 4 and Town's written Acceptance of such Invoices can be submitted through the electronic mail to the Town.
- b) A proper invoice must include the following minimum information:
  - 1) Contractor's name, Federal Tax Identification Number, and Address
  - 2) Invoice date
  - 3) The billing month or period
  - 4) Invoice number (with a unique identification number)
  - 5) Agreement Name
- c) Specifically, each invoice shall list:
  - 1) Total number of billable citations processed for the preceding month period.
  - 2) The per-citation processing fee
  - 3) Contractor must include a monthly credit for voided citations in their monthly invoices; clearly identifying which citations were voided that month.
- d) Payment Terms: All invoices are due and payable within thirty (30) days from the invoice date.
- e) Tax Excluded from Fee Price: Town is exempt from State and Local Sales Tax and such taxes must not be included in Contractor's pricing. Exemption Certificates will be furnished upon request.
- f) Travel. With respect to travel costs and travel related expenses, Contractor agrees to adhere to Ch. 112.061 of the Florida Statutes and Miami Dade County Administrative Order 6-1 as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous costs and fees. Town shall not be liable for any such expenses that have not been approved in advance, in writing, by Town. Contractor acknowledges that out-of-pocket expenses, such as travel, meal, and lodging expenses, are not System reimbursable by the Town. Accordingly, Contractor's invoice shall not include out-of-pocket expenses.

## **ARTICLE 24, FUND OBLIGATION**

Contractor acknowledges and agrees to the following:

- a) Town's obligation to pay under this Agreement may be limited if it is payable only and solely from funds appropriated for purpose of this Agreement. Notwithstanding any other provision of this Agreement, Town shall not be obligated for Contractor's performance hereunder or by any provision of this Agreement during any of Town's future fiscal years unless and until funds have been appropriated for this Agreement in Town's budget for each such future fiscal year. In the event that funds are not appropriated for this Agreement, then Town shall, at its sole and absolute discretion, either (i) terminate this Agreement as of September 30 of the last fiscal year for which funds were appropriated or (ii) reduce the Work provided hereunder in accordance with the funds appropriated, as mutually agreed to by the parties. Town will notify Contractor in writing of any such non-appropriation of funds at its election as soon as possible.
- b) Town retains the right to negotiate the terms, conditions, and fees during the period of this Agreement if such renegotiation is necessitated by budget shortfalls or funding reductions.

## **ARTICLE 25. IDEMNIFICATION AND INSURANCE**

Contractor shall indemnify and hold harmless the Town, its elected officials, officers, employees, agents, volunteers and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Town, its elected officials, officers, employees, agents, volunteers or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners, principals or Subcontractors. Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Town, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Town, its elected officials, officers, employees, agents, and instrumentalities as herein provided.

Contractor shall furnish to the Town Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

Comprehensive General Liability ("CGL") insurance, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability, and Two Million Dollars (\$2,000,000) aggregate.

Worker's Compensation for all employees, as required by law, and which policy must include Employer's Liability with minimum limits of \$1,000,000.

Business Automobile Liability which shall include coverage for all business owned and business hired vehicles for minimum limits of not less than One Million Dollars (\$1,000,000) per occurrence, One Million Dollars (\$1,000,000) per accident for bodily injury and One Million Dollars (\$1,000,000) per accident for property damage.

Insurance required of Contractor shall be primary to, and not contribute with, any insurance or self-insurance maintained by the Town. Such insurance shall not diminish Contractor's indemnification and obligations hereunder. The insurance policy(ies) shall be issued by companies authorized to do business under the laws of the State of Florida and acceptable to the Town with a minimum A.M. Best rating of A-Excellent. Before any Deliverables are due under this Agreement, and at any time upon request, Contractor shall furnish to the Town certificates of insurance evidencing the minimum required coverage and shall be appropriately endorsed for contractual liability, with the Town named as additional insured. All policies shall contain a waiver of subrogation endorsement. All policies and certificates shall be in forms and issued by insurance companies acceptable to the Town. All insurance policies and certificates of insurance shall provide that the policies may not be canceled or altered without thirty (30) days prior written notice to the Town. The Town reserves the right from time to time to change the insurance coverage and limits of liability required to be maintained by Contractor hereunder. Contractor shall also require and ensure that each of its Subcontractors, if any, providing services hereunder (if any) procures and maintains, until the completion of the Agreement, insurance of the types and to the limits specified herein. ANY EXCEPTIONS TO THE INSURANCE REQUIREMENTS IN THIS SECTION MUST BE APPROVED IN WRITING BY THE TOWN.

**NOTE: CERTIFICATE HOLDER MUST READ TOWN OF SURFSIDE, FL**

Compliance with the foregoing requirements shall not relieve Contractor of its liability and obligation under this section or under any other section of this Agreement.

If Contractor fails to submit the required insurance documents within fifteen (15) calendar days after written request of such documents by Town, Contractor shall be in default of the contractual terms and conditions and Town may, at its sole and absolute discretion, terminate this Agreement for cause. If insurance certificates are



scheduled to expire during the contractual period, Contractor shall be responsible for submitting new or renewed insurance certificates to the Town at a minimum of thirty (30) calendar days prior to expiration. If expired certificates are not replaced with new or renewed certificates which cover the contractual period, the Town may suspend payments under the Agreement until such time as the new or renewed certificates are received by Town in the manner prescribed in the Agreement.

## **ARTICLE 26. SYSTEM MAINTENANCE AND SUPPORT SERVICES**

- a) Contractor shall provide Town with the required Maintenance and Support Services for the System as set forth in Exhibit 2. All such Maintenance and Support Services shall be included as part of Contractor's proposed fees.
- b) **System Updates:** Contractor will notify Town of any intended update(s) and/or releases to the System for purposes of enhancements, installing patches, bug fixes, maintaining currency with technology standards, or which are provided at no cost to Contractor's general customer base. Such updates shall be provided at no additional cost to the Town. Contractor shall also obtain all updates for any Contractor Third Party Software required for System to perform. Notwithstanding the foregoing, Contractor reserves the right to promote updates and/or releases to the System without notice in emergency situations and will notify the Town within a reasonable time.
- c) **Third Party Equipment/Products:** Maintenance additionally Includes maintaining compatibility of the Software with any Third-Party Equipment/Products that are provided with or required for the System to function in accordance with the SOS. Prior to the installation of any Third-Party Equipment/Product, or any update thereto, Contractor shall test and ensure such Third-Party Equipment/Product's compatibility with the then current version of the System. Contractor shall ensure that the System is compatible with the required or critical updates to Third Party Equipment/Products, including without limitation, service and compatibility packs and security patches, promptly upon their release.
- d) **Support Services:**
  - 1) Contractor shall provide sufficient administrative staff to maintain the Support Services as required in Exhibit 1 and Exhibit 2. Staff shall be fully trained and experienced in the technology, tasks and subtasks as required by this Agreement. Contractor Support Services will commence in accordance with the Go-Live date stated in the Project Timeline and continue throughout the Agreement term.
  - 2) In the event Contractor should ever need to revise committed staffing resources, or to remove any staff from performing Work under this Agreement, Contractor shall provide Town with notice at least ten (10)

calendar days in advance, except in circumstances in which such notice is not possible, and shall in any case work with Town on a mutually agreeable transition plan so as to provide an acceptable replacement and ensure service continuity. Contractor may be required to provide verifiable reports to support its compliance with the requirements set forth in this Section. Mutually acceptable changes to the Maintenance and Support Services may occur as a result of the performance reviews and/or report findings. Deficiencies or other failures or delays in Contractor's performance under the Maintenance and Support Agreement, which Town's Project Manager determines are severe or continuing and that may place performance of this Agreement in jeopardy if not corrected will be reported to Town. The report will include improvement and corrective action measures recommended to be taken by Town and Contractor. If Contractor fails to correct deficiencies, and/or, improvement does not occur consistent with the corrective action measures, Town may terminate this Agreement, subject to the curative provisions therein.

- e) Changes in Florida or United States Law. To the extent that a State or Federal legislative change involves the creation of a new module to the System or modification of the System, such updated module will be provided by Contractor and administered pursuant to Article 20 Changes, Amendments and Modifications.

#### **ARTICLE 27. DISASTER RESPONSE**

Contractor and Town recognize that Town provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Work and Services under this Agreement will provide Town with priority response for repairs and emergency work in the event of a Natural or Man-made Disaster. For purposes of this Agreement, a Natural or Man-made Disaster is defined as any condition -- man-made or natural -- those results in partial or total System failure and causes partial or total disruption of normal business operations.

#### **ARTICLE 28. TRAINING**

Contractor shall provide customized training for users of the System. Town's Project Manager will coordinate all user training. Training shall be conducted in accordance with Exhibit 1, Scope of Services, and shall be presented in a format and at a location approved by the Town. Training shall be provided to pre-determined Town personnel assigned to the Parking Citation Processing System, and shall minimally include the following:

- a) Classroom orientation and instructions on all System components, including:
  - 1) System database

- 2) Forms descriptions and functions
  - 3) Query tools and usage
  - 4) Ad hoc reports and reporting
  - 5) Operation of all Contractor-provided hand-held equipment
- b) Written step-by-step user documentation fully describing functionality and operation of the System. Documentation shall be in an electronic, on-line format, as determined in the best interest of the Town, by Town's Project Manager.
  - c) Full description of and hard copy training documents for all Contractor-provided field devices such as handheld citation writing computers.
  - d) All training and training materials shall be provided at no additional cost.

#### **ARTICLE 29. REPORTS**

Reports: In absence of reports being specified in Exhibit 1, Statement of Work. Contractor shall provide reports to Town's Project Manager. Such reports shall be provided by the Contractor as frequently as requested by the Project Manager, but in no event more frequently than monthly. Town and Contractor shall jointly and cooperatively determine report format and information that shall be contained in the reports.

#### **ARTICLE 30. NEW TECHNOLOGY**

Contractor and Town acknowledge the probability that the technology applicable to citation processing and related Services provided under this Agreement will change and improve during the Agreement term. Town desires the flexibility to Incorporate into the System any new technologies as they may become available. Accordingly, Contractor's Project Manager shall, promptly upon discovery and on a continuing basis, apprise Town's Project Manager of all such new technologies, and provide upon request, a description of such new technologies, methodologies and techniques, indicating the advantages and disadvantages of incorporating same into the System, and provide an estimate of the impact such incorporation will have on the performance, scheduling and cost of incorporating the new technologies into the System. Town at his sole discretion may request that this Agreement be amended to incorporate the new technologies, methodologies, and/or techniques Into the System pursuant to the provisions of Article 20 (Changes and Amendments). For clarity, nothing in this Article is intended to limit Contractor's obligations in respect to Maintenance or Support Services provided herein.

## **ARTICLE 31. WARRANTIES AND LIMITATIONS**

- a) **System Warranty:** Contractor hereby represents and warrants to Town:
- 1) that Contractor has reviewed and evaluated all information furnished by Town and has made all inquiries necessary such that Contractor is fully aware of Town's business requirements and intended uses of Contractor provided System as set forth or referenced in this Agreement, and
  - 2) that, for a period of one (1) year from System Go-Live, the System shall (1) be free from defects in material and workmanship under normal use; (2) function properly and in conformity with the Warranties in this Agreement and (3) conform to all of the performance standards set forth in Exhibit 1, Scope of Services.
- b) **Equipment Warranty:** Contractor commits to maintaining all its Equipment provided under this Agreement in accordance with Original Equipment Manufacturer (OEM) standards, or other regulatory standards as they may apply. All damaged or malfunctioning equipment/parts shall be repaired or replaced as necessary within 10 business days upon notification from the Town's Project Manager.
- c) **Third Party Warranties:** Contractor represents and warrants that it has not modified and shall not modify, nor does Contractor need to modify, any Third-Party Software or Equipment for the System to fully perform in accordance with all requirements of this Agreement. In the event it becomes necessary for Contractor to modify Third Party Software or Equipment to satisfy any of the requirements of this Agreement, Contractor shall promptly, and at no cost to Town, either (1) obtain a license or purchase from the appropriate third party to enable Contractor to modify such Third Party Software or Equipment, or (2) to the extent that Contractor is unable to obtain such a license or complete such purchase, provide an upgrade or alternative solution to Town, which is functionally equivalent, in Town's Project Manager's reasonable determination, in lieu of modification of such Third Party Software or Equipment.
- d) **Limitations:** Notwithstanding the warranty provisions set forth in this Article 31, all of Contractor's obligations with respect to such warranties shall be contingent on Town's use of the System in accordance with this Agreement and in accordance with System's Intended purpose, use and Contractor's Instructions as provided to Town in the Documentation, as such instructions may be amended, supplemented, or modified by Contractor from time to time.
- e) In addition to the foregoing warranties, to the extent assignable, Contractor hereby assigns Town, and Town shall have the benefit of, all subcontractors' and suppliers' warranties and representations with respect to any Third-Party

Software or Equipment and associated Services provided hereunder. In Contractor's agreements with subcontractors and suppliers, Contractor will use its best efforts to require that such parties (i) consent to the assignment of such warranties and representations to Town; (ii) agree that such warranties and representations are enforceable by Town in its own name.

- f) Remedy: The Town's remedies under the Agreement for breach of warranties are set forth in this Agreement, including Exhibit 2 (Maintenance and Support Services), will be limited to the repair or replacement by Contractor, at its own expense, of the non-conforming System components and the specific remedies set forth in Article 50 (Unscheduled System Downtime); and any other corrective measures specified in Exhibit 2 (Maintenance and Support Services) and this Agreement.
- g) Breach of Warranty Obligations. Failure by Contractor to timely perform its obligations set forth in this Article shall constitute a material breach, upon which, in addition to Town's other rights and remedies set forth herein, Town may, after written notice to Contractor and provision of a reasonable cure period, terminate this Agreement in accordance with Article 40 (Termination for Default).
- h) **EXCEPT AS SPECIFICALLY SET FORTH IN ARTICLES 31 AND 33 OR ELSEWHERE IN THIS AGREEMENT, CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

## **ARTICLE 32. BACKUP AND DISASTER RECOVERY PLAN**

Contractor commits to taking all reasonable actions necessary to protect the System from loss or damage by any cause. Such precautions shall include, but not be limited to maintaining, at its own expense, a comprehensive Disaster Recovery and Business Continuity Plan ("Backup and Disaster Recovery Plan"). The Backup and Disaster Recovery Plan shall define how Contractor will perform its obligations under the Agreement with minimal disruptions or delays. Contractor represents and warrants that the Backup and Disaster Recovery Plan (i) includes processes and procedures to minimize the likelihood of a business Interruption using redundant System systems and infrastructure; (ii) includes procedures to rapidly identify and respond to an outage event; (iii) restore business critical services following an outage event. Contractor shall provide Town with a detailed summary of its Backup and Disaster Recovery Plan, including provisions related to subcontracted services, prior to award of this Agreement. (See Exhibit 7)

### **ARTICLE 33. INTELLECTUAL PROPERTY WARRANTY**

- a) Contractor represents and warrants: (i) that Contractor has the full power and authority to grant the Software license and provide Equipment, ownership and all other rights granted by this Agreement to Town; (ii) that no consent of any other person or entity is required by Contractor to grant such rights other than consents that have been obtained and are in effect; (iii) that this Agreement and the Software and Equipment licensed or acquired herein, are neither subject to any liens, encumbrances, or pledges nor subordinate to any right or claim of any third party, including Contractor's creditors; (iv) that during the term of this Agreement, Contractor shall not subordinate this Agreement or any of its rights hereunder to any third party without the prior written consent of Town, and without providing such subordination instrument for non-disturbance of Town's use of the System (or any part thereof) In accordance with this Agreement; and (v) that neither the performance of this Agreement by Contractor, nor the license to or ownership by, and use by, Town and his users of the System In accordance with this Agreement will in any way intentionally infringe upon any copyright, trade secret, trademark, service mark, patent, invention, proprietary information, or other rights of any third party.
- b) Notwithstanding any provision to the contrary, whether expressly or by implication, Contractor shall indemnify, defend, and hold harmless the Town, its elected officials, officers, employees, agents and volunteers (collectively referred to for purposes of this Section b) as "Town") from and against any and all liability, including but not limited to demands, claims, actions, fees, damages, costs, and expenses (including attorneys and expert witness fees) arising from any alleged or actual infringement of any third party's patent or copyright, or any alleged or actual unauthorized trade secret disclosure, arising from or related to this Agreement and/or the operation and use of the System. Any legal defense pursuant to Contractor's indemnification obligations under this Article 33(b) shall be conducted by Contractor and performed by counsel selected by Contractor.

Town shall provide Contractor with information, reasonable assistance, and authority to defend or settle the claim. Notwithstanding the foregoing, Town shall have the right to participate in any such defense at his sole cost and expense.

- c) Remedial Measures. Town shall notify Contractor, in writing, as soon as practicable of any claim or action alleging such infringement or unauthorized disclosure. Upon such notice by Town, Contractor shall, at no cost to Town, take remedial measures to either: (i) procure the right, by license, purchase or otherwise, for Town to continue to use the System or affected component(s) thereof, or part(s) thereof, to the same extent of Town's license or ownership rights under this Agreement; or (ii) to the extent procuring such right to use

the System is not commercially reasonable, replace or modify the System or component(s) thereof with another system or component(s) thereof of at least equivalent In quality and performance capabilities, as mutually determined by Town and Contractor until the System and all components thereof become non-infringing, non-misappropriating and non-disclosing.

- d) If Contractor fails to complete the Remedial Measures described In Article 33(c) above then, Town may terminate this Agreement for default pursuant to Article 40 (Termination for Default), in addition to other remedies available to Town under the Agreement.

#### **ARTICLE 34. CONFIDENTIALITY**

- a) Each party shall inform all its officers, employees, agents, subagents, and subcontractors of the confidentiality provisions of this Agreement and shall ensure that all its officers, employees, agents, subagents, and subcontractors performing Work hereunder adhere to the confidentiality requirements of this Agreement.
- b) Any and all materials which are developed or were originally acquired by Contractor outside the Scope of this Agreement, which Contractor desires to use hereunder, and which Contractor considers to be proprietary or confidential, must be specifically identified by Contractor to Town's Project Manager as proprietary or confidential, and shall be plainly and prominently marked by Contractor as "PROPRIETARY" or "CONFIDENTIAL", if applicable. Accordingly, Town agrees to treat (and take precautions to ensure that its employees. treat) such Materials as confidential in accordance with the confidentiality requirements and conditions set below.
- c) All Town data, transactions of all forms, financial information, and other documentation obtained from Town in connection with the Services performed under this Agreement, made or developed for Town by Contractor in the course of the performance of the Agreement, or which Town holds the proprietary rights, constitute Confidential Information and may not, without prior written consent of Town, be used by Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of Town, unless required by Law.
- d) In addition to the foregoing, Town Data as well as all Town employee information and Town financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither Contractor nor its employees, agents, subcontractors, or suppliers may sell, transfer, publish, disclose, modify, delete, display, license or otherwise make available to others any part of such Confidential Information without prior written consent of Town. Additionally, Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless Town, and its officers and

employees from breach of any federal, state, or local law regarding the privacy of individuals.

- e) Contractor shall promptly advise Town in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractors or supplier's employees, present or former. In addition, Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the confidential information.

#### **ARTICLE 35. SECURITY OF TOWN DATA**

- a) Contractor agrees to maintain compliance throughout the term of this Agreement with all requirements of State and Federal Data Protection Laws which requires measures be taken to protect and secure electronic data containing Town Privacy Protected Information (hereinafter referred to as "Town Data"). At a minimum, compliance shall include:
  - 1) Implementing and maintaining all commercially reasonable technical, physical, and organizational security and confidentiality measures as required to protect against unauthorized or unlawful processing of Town Data, or accidental loss, alteration, disclosure, misuse of, or damage to Town Data.
  - 2) Taking all commercially reasonable steps to ensure the reliability of any of Contractor's staff who have access to or are responsible for the processing of Town Data, which may include performing security background checks of all assigned staff, and training and instructing such staff in writing to process Town Data only in accordance with Contractor's written policies and procedures.
- b) Contractor agrees that it shall not engage in or enable or allow others to engage in any systematic or automated data extraction, data mining, screen scraping, or other any similar activities for commercial or other non-court related purposes except as may be required to perform its obligations under this Contract, which obligations do not include the right to data extraction, data mining or other similar activities.
- c) Contractor shall immediately inform Town of any breach of its security and confidentiality obligations under this Section.
- d) As used herein, the following Definitions shall apply:
  - 1) "Town Data" means any information or data (whether confidential or not) related to customers or employees of the Town, which is made available to Contractor by or at the direction of Town, or which Contractor accesses and/or processes on behalf of Town.



- 2) "Data Protection Laws" means the data protection and privacy laws of the State of Florida, or any Federal Laws where Contractor is contractually or legally responsible for collecting, handling, or processing Town Data.
- 3) "Process" or "Processing" may be used interchangeably and means any procedures, processes, or activities by which Contractor receives, processes, transmits, or stores any Town Data or Town Customer Data on behalf of the Town.
- 4) "Screen Scraping" means the use of software to automatically collect privacy protected information directly or indirectly from Town-owned or Town-sponsored Websites and/or Systems.

#### **ARTICLE 36. PUBLIC RECORDS**

- a) Contractor agrees to keep and maintain public records in its possession or control in connection with its performance under this Agreement. The Town Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of the Contractor related to this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by Law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Town.
- b) Upon request from the Town's custodian of public records, Contractor shall provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by Law.
- c) Unless otherwise provided by Law, all records, including but not limited to reports, other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.
- d) Upon completion of this Agreement, including any extensions or renewals thereof, or in the event of termination by either party, all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Once the public records have been delivered, upon completion or termination of this Agreement, including any extensions or renewals thereof,

the Contractor shall destroy all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

- e) Any compensation due to Contractor shall be withheld until all records are received as provided herein.
- f) Provider's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.
- g) **Notice Pursuant to Section 119.0701(2)(a), Florida Statutes.**

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.**

**Custodian of Records: Town Clerk**  
**Mailing address: 9293 Harding Avenue**  
**Surfside, FL 33154**  
**Telephone number: 305-861-4863**  
**Email: smccready@townofsursidefl.gov**

- h) Contractor agrees not to use or disclose, either directly or indirectly, to any person, firm or corporation, Privacy Protected Information of any kind, nature, or description that is disclosed by or obtained by Contractor or discovered by Contractor. As used herein, "Privacy Protected Information" means non-public personal information regarding customers of Town, employees of Town, or third-party consumers having contact with Town, the confidentiality of which Contractor and Town are obligated to maintain pursuant to Chapter 119 (Public Records), of the Florida Statutes and Sections 2.420 and 2.430 of the Florida Rules of Judicial Administration. In the event Town is required to defend an action on a Public Records Request, Contractor agrees to indemnify and hold harmless Town from and against any and all liability, damages, costs, and expense arising in connection with such action. The provisions of this Article shall survive the termination of this Contract.

#### **ARTICLE 37. INJUNCTIVE RELIEF**

Contractor acknowledges that a breach or threatened breach by Contractor of Article 34 (Confidentiality) and Article 36 (Public Records), may result in Irreparable injury to Town residents or taxpayers served by Town that may not be adequately compensated by monetary damages, and that, in addition to Town's other rights under this Article and at law and in equity, Town shall have the right to injunctive relief to enforce the provisions of this Article, Article 34, and Article 36.

**ARTICLE 38. INTENTIONALLY OMITTED**

**ARTICLE 39. FORCE MAJEURE, NOTICE OF DELAY, NO DAMAGES FOR DELAY**

- a) Force Majeure. In no event shall Contractor be liable or responsible for, or be deemed to have defaulted under or breached this Agreement for any failure or delay in performing any terms of this Agreement, when such failure or delay is caused by any circumstances beyond Contractor's reasonable control (a "Force Majeure Event"), including acts of God, wars, riot or other civil unrest, acts of public enemies, strikes, fires, floods, national or regional emergencies, passage of law, or national or regional shortage of adequate power or telecommunications, or other similar cause beyond Contractor's reasonable control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to Contractor. In case of any failure or delay caused by a Force Majeure Event, Contractor shall promptly notify Town in writing and state the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the efforts of such Force Majeure Event.
- b) Notice of Delay/No Damages for Delay: In the event Contractor determines at any time that failure, delay or inadequacy of performance of any Town's obligations hereunder may prevent or tend to prevent Contractor from completing any of Contractor's obligations in a timely manner or may cause or tend to cause Contractor to incur additional or unanticipated costs or expenses, Contractor shall promptly following such determination (1) notify Town's Project Manager in writing, of which such Contractor's notice shall specify in reasonable detail any alleged failure, delay or inadequacy of performance by Town and (2) specify the estimated impact of such alleged failure, delay or inadequacy on the performance of Contractor's obligations. In the event Contractor fails to notify Town in writing of any alleged failure, delay or inadequacy of performance in a timely manner as set forth in this Article, Contractor shall not be entitled to rely upon such alleged failure, delay or inadequacy of performance for any purpose whatsoever, including as a justification for either: (1) claiming that Contractor is entitled to receive additional payments from Town hereunder, or (2) failing to fulfill any of Contractor's obligations in a timely manner. This Article shall not be interpreted or construed as expanding in any manner or to any extent the financial obligations of Town under this Agreement.

**ARTICLE 40. TERMINATION OF AGREEMENT**

- a) The Town may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the PM through fraud, misrepresentation, or material misstatement.

- b) The Town may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the Town and that such individual, corporation, or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) **TERMINATION FOR CONVENIENCE BY THE TOWN.** In addition to cancellation or termination as otherwise provided in this Agreement, the Town may at any time, in its sole and absolute discretion, with or without cause, terminate this Agreement by written notice to the Contractor. If the Town exercises its right to terminate this Agreement, the Contractor shall, upon receipt of such notice, unless otherwise directed by the PM:
- 1) Stop work on the date specified in the notice ("the Effective Termination Date");
  - 2) Take such action as may be necessary for the protection and preservation of the Town's materials and property;
  - 3) Cancel orders and provide delivery of a copy of the Town's data from their hosting environment;
  - 4) Assign to the Town and deliver to any location designated by the PM any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services; and
  - 5) Take no action which will increase the amounts payable by the Town under this Agreement.
  - 6) If the Town exercises its right to terminate this Agreement, the Contractor will be compensated as stated in the payment Articles herein for the:
    - i. Portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
    - ii. Non-cancelable Deliverables that are not capable of use except in the performance of this Agreement and have been specifically developed for the sole purpose of this Agreement, but not incorporated in the Services.
  - 7) To the extent practical, the fair and reasonable value shall be based on the price established in Exhibit 1, Statement of Work. In no event, shall any payments under this Paragraph exceed the maximum cost set forth in the Exhibit 1, Statement of Work.

- 8) The amount due hereunder shall be offset by all payments made to the Contractor.
- 9) In the event of a TERMINATION FOR CONVENIENCE by the Town pursuant to Article 40, the Town shall pay the Contractor the "Termination Fee."
- 10) All payments pursuant to this paragraph shall be accepted by the Contractor in full satisfaction of all claims against the Town arising out of the termination including, without limitation, lost profits, overhead or other consequential damages. Further, the Town may deduct or set off against any sums due and payable under this Paragraph any claims it may have against the Contractor.
- 11) All compensation pursuant to this Article is subject to audit.

**d) EVENT OF DEFAULT**

An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing, and in addition to those instances referred to herein as a breach, an Event of Default shall include the following:

- 1) The Contractor has not delivered Deliverables on a timely basis.
- 2) The Contractor has refused or failed to supply enough properly skilled staff personnel.
- 3) The Contractor has failed to make prompt payment to Subcontractors or suppliers for any services or materials provided.
- 4) The Contractor has become insolvent (other than decreed by the bankruptcy laws) or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver.
- 5) The Contractor has failed to obtain the approval of the PM where required by this Agreement.
- 6) The Contractor has failed to provide "adequate assurances" as required under subsection 7i) below.
- 7) The Contractor has failed in the representation of any warranties stated herein.

- i. When, in the opinion of the PM, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the PM may request that the Contractor, within the timeframe set forth in the PM's request, provide adequate assurances to the Town, in writing, of the Contractor's ability to perform in accordance with the terms of this Agreement.
  - ii. Until the Town receives such assurances, the Town may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed.
  - iii. If the Contractor fails to provide to the Town the requested assurances within the prescribed timeframe, the Town may treat such failure as a repudiation of this Agreement and resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- 8) In the event the Town shall terminate this Agreement for default, the Town or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.
- 9) Where the Town inaccurately terminates the Contract for default, the termination shall be converted to a Termination for Convenience, and the Contractor shall have no further recourse of any nature for wrongful termination.

**e) NOTICE OF DEFAULT OPPORTUNITY TO CURE**

If an Event of Default occurs in the determination of the PM, the PM shall so notify the Contractor ("Notice of Default"), specifying the basis for such default, and advising the Contractor that such default must be cured within a specified timeframe, no less than 30 calendar days, or this Agreement with the Town may be terminated. The Town may grant an extension to the curative period if the Town deems it appropriate and in the best interest of the Town, without waiver of any of the Town's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during the initial specified time frame or any other period which the Town prescribes. The Town at its sole discretion may have a default corrected by its own forces or another contractor and any such costs incurred will be deducted from any sums due the Contractor under any contract with the Town. Any work or materials used in correcting the Work will be covered by the Contractor's Warranty and the Contractor shall assume full responsibility and liability for such work.

**f) REMEDIES IN THE EVENT OF DEFAULT**

If a Termination for Default occurs, the Contractor shall be notified of the effective date of the Termination ("Termination for Default") and shall be liable for all damages resulting from the default, including but not limited to: lost revenues, re-procurement, and other direct damages.

The Contractor shall stop work as of the date of notification of the termination and immediately remove all labor, equipment, and materials (not owned or paid for by the Town) from the Work Site. The Town assumes no liability for the Contractor's failure to remove such Items from the Work Site as required and provide delivery of a copy of the Town's data and delete the town's data from your hosting environment.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The Town may also bring any suit or proceeding for specific performance or for an injunction.

**g) THE TOWN MAY AVAIL ITSELF OF ALL REMEDIES**

The Town may avail itself of each and every remedy herein specifically given to it now or existing at law or in equity, and each and every such remedy shall be in addition to every other remedy so specifically given or otherwise so existing and may be exercised from time to time and as often and in such order as may be deemed expedient by the Town. The exercise or the beginning of the exercise, of one remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, of any other remedy. The Towns' rights and remedies as set forth in the Agreement are not exclusive and are in addition to any other rights and remedies in law or in equity.

**h) TERMINATION FOR INSOLVENCY**

The Town may terminate this Agreement immediately at any time upon the occurrence of any of the following:

- 1) **INSOLVENCY OF CONTRACTOR:** The Town must be notified within 7 days prior to the filing of a voluntary or involuntary petition. Contractor shall be deemed to be insolvent if it has ceased to pay or has admitted in writing its inability to pay its debts for at least sixty (60) calendar days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the United States Bankruptcy Code and whether or not Contractor is insolvent within the meaning of the United States Bankruptcy Code, provided that Contractor shall not be deemed insolvent if it has ceased in the normal course of business to pay its debts which are disputed in good faith and which are not related to this Agreement as determined by Town;

- 2) The filing of a voluntary or involuntary petition to have Contractor declared bankrupt, where the involuntary petition is not dismissed within sixty (60) calendar days;
- 3) The appointment of a receiver or trustee for Contractor; or
- 4) The execution by Contractor of an assignment for the benefit of creditors.

The rights and remedies of Town provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

Contractor agrees that if Contractor as a debtor-in-possession; or if a trustee in bankruptcy rejects this Agreement, Town may elect to retain its rights under this Agreement, as provided under Section 365(n) of Chapter 11, Title 11 of the United States Code. Upon written request of Town to Contractor or the trustee in bankruptcy, as applicable, Contractor shall allow Town to exercise all or its rights and benefits under this Agreement including, without limitation, the right to continued use of all System Software and related Documentation in accordance with the terms of the Agreement, and shall not interfere with the rights and benefits of Town as provided therein. The foregoing shall survive the termination or expiration of this Agreement for any reason whatsoever.

**i) TERMINATION AND TRANSITION**

Contractor agrees that in the event of any termination of this Agreement, Contractor shall fully cooperate with Town in the transition of Town operations due to the unavailability of the System during such transition. Upon notice to Contractor, Contractor shall allow Town or another selected Contractor a transition period until expiration of the term of the Agreement, or in all other cases, at a date specified by Town, for the orderly turnover of Contractor's Agreement activities and responsibilities without additional cost to Town. The transition from the System to another system shall be performed by Contractor as Additional Work and compensated by Town as such.

**ARTICLE 41. DISPUTE RESOLUTION PROCEDURE**

- a) Contractor and Town agree to work in good faith and act immediately to mutually resolve any disputes which may arise with respect to this Agreement. All such disputes shall be subject to the provisions of this Article 41. Time is of the essence in the resolution of disputes.
- b) Contractor **shall** seek to resolve all differences concerning the Agreement with the Town Manager.



- c) Neither party shall delay or suspend its performance during the Dispute Resolution Procedure, except for the work relating to the disputed item.
- d) If Contractor and the Project Manager are unable to resolve their differences, within a reasonable time, not to exceed thirty (30) calendar days from the date of submission of the dispute, then the parties agree to submit the matter immediately in writing to the Town Manager for further consideration and discussion to attempt to resolve the dispute.
- e) If the Town Manager is unable to resolve the dispute within a reasonable time not to exceed ten (10) calendar days from the date of submission of the dispute, then each party may assert its other rights and remedies provided under this Agreement and/or its rights and remedies as provided by law.
- f) All disputes utilizing this dispute resolution procedure shall be documented in writing by each party and shall state the specifics of each alleged dispute and all actions taken. All parties shall act in good faith to resolve all disputes.

#### **ARTICLE 42. INTELLECTUAL PROPERTY RIGHTS**

Town acknowledges and agrees that Contractor retains all its intellectual property rights used to create, embodied in, used in, and otherwise relating to the Software, Equipment, Documentation, Devices, or the System. Any and all intellectual property rights are the sole and exclusive property of contractor of its affiliates and Town shall not acquire any ownership interests therein under this Agreement.

#### **ARTICLE 43. MUTUAL OBLIGATIONS**

- a) Contractor shall provide the Services described herein in a competent and professional manner in accordance with the terms and conditions of this Agreement. Town shall be entitled to a satisfactory performance of all Services described herein and in full and prompt cooperation by Contractor in all aspects of the Services.
- b) Contractor always agrees that it will employ, maintain, and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made.
- c) Contractor shall comply with all provisions of all federal, state, and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

- d) Any resources of Town furnished to Contractor shall be used only for the performance of this Contract Town will make available to Contractor, for Contractor's use in fulfillment of this Contract, resources as described below:
- 1) Project Manager: The Project Manager appointed by Town is the principal point of contact for this contract on behalf of Town. The Project Manager will be primarily responsible for the day-to-day contact with Contractor and day-to-day monitoring of Contractor's performance.
  - 2) Project Manager may provide access to qualified Technical Services and Town Operations staff and documentation as required to complete each Deliverable.
  - 3) Project Manager will provide timely reviews of submitted work products and approving such Deliverables when completion criteria have been met.

#### **ARTICLE 44. WAIVER**

No term of this Agreement may be waived except in a writing signed by the party waiving enforcement. No provision of this Agreement shall be deemed to be waived by reason of any failure to previously enforce such provision. The rights and remedies set forth in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

#### **ARTICLE 45. LOCAL, STATE AND FEDERAL COMPLIANCE REQUIREMENTS**

During the performance of this Agreement, Contractor agrees to the following:

- a) To comply with Miami Dade County Code, Chapter 11A, Article 3: Contractors and Subcontractors performing work in connection with this Agreement shall provide equal opportunity for employment regardless of race, religion, color, age, sex, national origin, sexual preference, disability, or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, Including apprenticeship. Contractor agrees to post in conspicuous places available for employees and applicants for employment, such notices as may be required by the Miami-Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work selling forth the provisions of the nondiscrimination law.
- b) Attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami- Dade County Resolution No. R-385-95. If Contractor or any owner, subsidiary or other firm affiliated with or related to Contractor is found by the responsible enforcement agency or Town to be in violation of the Act or the Resolution, such violation shall render this Agreement

void. This Agreement shall be void If Contractor submits a false affidavit pursuant to this Resolution or Contractor violates the Act or the Resolution during the term of this Agreement, even if Contractor was not in violation at the time It submitted its affidavit.

- c) To adhere to and be governed by Section 2-11. 1, Conflict of Interest, of the Code of Miami-Dade County, as amended, which Is incorporated herein by reference as if fully set forth herein, in connection with the conditions and terms of this Agreement. The Code is available for viewing online: [http://www.miamidade.gov/ethics/pdf/Ehics\\_manual.pdf](http://www.miamidade.gov/ethics/pdf/Ehics_manual.pdf).
- d) To comply with all other local, state, and federal laws, rules, and regulations applicable to this Agreement and to the goods delivered and/or services performed hereunder.
- e) By submitting its signed proposal, Contractor certifies that It has not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action In restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a bid; that this bid has been Independently arrived at without collusion with any other bidder, competitor or potential competitor; that this bid has not been knowingly disclosed prior to the opening of bids to any other vendor or competitor; and that the above statement is accurate under penalty of perjury.
- f) Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action If such action or abstention would, in lha good faith determination of Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws or regulations requiring that Contractor conduct its operations in a sound manner.
- g) Miami-Dade County Ownership Disclosure Affidavit (Section 2-8.1 of the Miami-Dade County Code)
- h) Miami-Dade County Employment Disclosure Affidavit (Ordinance No. 90.133 amending Section 2.8-1(d)(2) of the Miami-Dade County Code)
- i) Miami-Dade Employment Drug-free Workplace Certification (Section 2-8.1.2 (b) of the Miami-Dade County Code)
- j) Miami-Dade Disability and Non-discrimination Affidavit (Section 2-8.1.5 Resolution R18200 Amending R38505 of the Miami-Dade County Code)
- k) Debarment Disclosure Affidavit (Section 10.38 of the County Code)

- l) Miami-Dade County Vendor Obligation to County Affidavit (Section 2-8.1 of the Miami-Dade County Code)
- m) Miami-Dade County Code of Business Ethics Affidavit (Section 2-8. 1(l) and 2-11(b)(1) of the Miami-Dade County Code thru (6) and (9) of the Miami-Dade County Code and Section 2-11.1(c) of the Miami-Dade County Code)
- n) Miami-Dade County Family Leave Affidavit (Article 5 of Chapter 11 of the Miami-Dade County Code)
- o) Miami-Dade County Living Wage Affidavit (Section 2-8.9 of the Miami-Dade County Code)
- p) Miami-Dade County Domestic Leave and Reporting Affidavit (Article 8, Section 11A-60 11A-67 of the Miami-Dade County Code)

**ARTICLE 46. PRESS RELEASES OR OTHER PUBLIC COMMUNICATION**

Under no circumstances shall Contractor without the express written consent of Town:

- a) Issue or permit to be issued any press release, feature articles, commercial advertisement or literature of any kind which refers to Town, or the Work being performed hereunder, unless Contractor first obtains the written approval of Town. Such approval will not be unreasonably withheld unless Town believes that the publication of such information would be harmful to the public interest or is in any way undesirable.
- b) Except as may be required by law, or as otherwise provided in writing by Town, Contractor and its employees, agents, Subcontractors, and suppliers will not represent, directly or indirectly, that any product or service provided by Contractor, or such parties has been approved or endorsed by Town.
- c) Contractor may, without prior written consent of Town, indicate in its proposals and sales materials that it has been awarded this Agreement with Town, provided that the requirements of this Article shall apply.

**ARTICLE 47. USE OF TOWN'S IMAGE**

Contractor agrees not to use the Town's name, logo, or image for any advertising or other commercial purposes, without prior written approval of Town.

**ARTICLE 48. GOVERNING LAW AND VENUE**

This Agreement, including Attachments, Exhibits, Schedules, and all related matters, is accepted and shall be governed by and construed in accordance with the laws of

the State of Florida. The Parties mutually agree to submit all disputes, legal suits, actions, or claims arising out of or in connection with this Agreement to the exclusive jurisdiction and venue of the 11th Judicial Circuit, In and For Miami-Dade County, State of Florida.

#### **ARTICLE 49. SEVERABILITY**

If any provision hereof or any remedy herein provided for be invalid under any applicable law, such provision shall be inapplicable and deemed omitted but the remaining provisions hereof, including the remaining default remedies, shall be given effect in accordance with the manifest intent hereof.

#### **ARTICLE 50. UNSCHEDULED SYSTEM DOWNTIME - PERFORMANCE PENALTIES**

The Parties have mutually agreed to performance metrics in regard to service disruptions as a result of Unscheduled System Downtime. For purposes of this Agreement, "Unscheduled System Downtime" is defined as the total amount of time during any given calendar month, measured in minutes, during which there is a failure or loss of functionality of the System, or any major component of the System as defined in Article 2 (Software Support Services) of the Maintenance and Support Services Agreement. Should the Town's Project Manager, or designee, determine Contractor to be non-compliant with the terms and obligations assumed under the Maintenance and Support Services Agreement; and Contractor has not met the required response or resolution timeframes for the reported issues, Town reserves the option of assessing penalties for failure of Contractor to meet the response and resolution times required.

Performance penalties will be applied at the rates referenced in Exhibit II, Maintenance and Support Services. Town will advise Contractor in writing of its intent to assess performance measure penalties within 5 days of becoming aware of occurrence of any delay. Penalties shall be calculated separately for each incident of an Unscheduled System Downtime and will be assessed as a total amount of time, in hours, at the end of each month of System Maintenance. The time frame for measurement of response time and the resolution time shall begin at the exact time the problem was reported to Contractor. The time frame for the repair shall begin as soon as Contractor arrives at the site or begins work on the problem. Partial hours may be treated as whole hours at the sole and absolute discretion of the Town. Performance penalty amounts assessed by Town will be deducted from the Town's payment due contractor in the following month.

Contractor warrants System (or any component) to be available 99.00% of the time.

## **ARTICLE 51. AUDIT RIGHTS AND RECORDS RETENTION**

Contractor shall maintain accurate and complete financial records of all its activities related to this Agreement in accordance with generally accepted accounting principles. Contractor agrees that Town, or its authorized representatives, shall have access to and the right to examine, audit, or copy any pertinent transaction, activity, or records relating to this Agreement to the extent required by law. Contractor and its subcontractors shall preserve and make available at reasonable times, for examination and audit by Town, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Department of State, State Library of Archives of Florida, General Records Schedule for State and Local Government Agencies or for five (5) years after termination of this Agreement, whichever is longer.

If any audit has been initiated and audit findings have not been resolved at the end of the applicable retention period, the books, records, and accounts shall be retained until resolution of the audit findings. Failure on the part of Contractor to comply with any of the provisions of this Article shall constitute a breach of this Agreement upon which Town may terminate or suspend this Agreement under the terms of this Agreement.

## **ARTICLE 62. ELECTRONICALLY REPRESENTED SIGNATURES ACCEPTABLE**

Town and Contractor hereby agree to regard facsimile representation of original signatures in ink of authorized officials of each party, when appearing in appropriate places on further documents prepared pursuant to this Agreement and received via facsimile transmission, as legally sufficient evidence that such original signatures have been affixed to such documents, such that the parties need not follow-up facsimile transmissions of such documents with subsequent transmission of "original" versions of such documents.

## **ARTICLE 53. USE BY OTHER JURISDICTIONS**

This Agreement allows other governmental entities within the State of Florida, including cities, counties, school districts, and special districts, to utilize this Agreement under the same terms, conditions, and prices, in accordance with Section 287.057, Florida Statutes, and other applicable laws. Interested entities must notify both the Town and the Contractor in writing of their intent to participate and enter into a separate agreement with the Contractor. The Town bears no responsibility for the performance of the Contractor under any cooperative purchasing agreement. All participating entities must comply with their own procurement rules and applicable laws.

**ARTICLE 54 BIDDER'S STATEMENT OF QUALIFICATIONS AND BUSINESS REFERENCES**

Contractor must furnish the information requested by this form to include General information regarding their companies' management and operations, including a history of commenced and completed projects. Bidder will furnish evidence that it has been providing similar software, hardware and services of similar scope and intended under this Agreement for a period of more than 5 (five) years to cities and provide at least 3 references with contact information.

**IN WITNESS WHEREOF**, the parties have executed this Agreement effective as of the date herein above set forth.

**SIGNATURE PAGE**

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement on this \_\_\_\_\_ day of September, 2024.

**TOWN OF SURFSIDE, FL,**  
A Florida Municipal Corporation

\_\_\_\_\_  
Peter Jankowski  
Town Manager  
Town of Surfside  
9293 Harding Avenue  
Surfside, Florida 33154  
Miami-Dade: (305) 861-4863

**Attest:**

\_\_\_\_\_  
Sandra N. McCready, MMC, Town Clerk

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:**

\_\_\_\_\_  
Mark Blumstein, Town Attorney

**CIVICSMART PARKING TECHNOLOGIES,  
INC., a Delaware Company**



\_\_\_\_\_  
Balu Subramanya  
11220 W. Lincoln Ave.  
West Allis, WI 53227

## **EXHIBIT 1 - SCOPE OF SERVICES**

This Scope of Services defines the products and services to be provided by the Contractor to the Town to facilitate parking enforcement issuance.

The Contractor shall be responsible for providing support throughout the duration of the Agreement for all hardware and software provided. The enforcement application shall serve as an integrated system of technology that will provide the participating agencies with secure access to only their own agency information.

### **I.A Base System Components and Services**

#### **I.A.1. User Access and Administration**

- Following a one-time download/authentication process, the Contractor will provide authorized users with access to the enforcement system via the Web.
- The Contractor and the Town's system administrator will have the ability to establish/maintain all user accounts.
- The Contractor will work with the Town's system administrator to define user groups to restrict access by position and security requirements.
- The Contractor and the Town's system administrator will have the ability to maintain all relevant issuance database tables: (Violations, Officers, Beats, Zones, Streets, State Codes, Vehicle Makes, Vehicle Model, Vehicle Color, Standard Stored Remarks, etc...)

#### **I.A.2. Backend Application Features and Functionality**

- The Contractor's backend system will provide the following general features and functionality.
  - Provide a hosted, web-based solution providing access to authorized users from any PC.
  - Provide authorized users web-based access to standard and ad hoc reports, including the ability to email reports.
    1. The Town staff will identify any reports that must be produced on a scheduled basis
    2. The Contractor will automate the generation of reports in PDF format according to the schedule defined by the Town staff
    3. The Contractor and the Town staff will develop a list and detailed specifications of up to five (5) custom enforcement reports which the Contractor will develop as part of this scope.



4. The Contractor will provide a Business Intelligence reporting capability and provide up to five (5) custom dashboards and up to six (6) customized reports to meet Town's needs. Town may change the reports from time to time and Contractor will make the changes at no additional cost.

- Capture of GEO-code information for officer activity tracking and GIS map based reporting

- Provide a complete and transparent audit trail with ability to produce printable reports for citation issuance and associated activities, including but not limited to: record of all transactions at the meter level, complete records of all voided transactions, and complete records of all reinstated transactions.

### **1.A.3. Handheld Software Features and Functionality**

- The Contractor's handheld software will provide the following general features and functionality:

- The ability to support an Android application.

- Provide reliable, real-time integration with enforcement related applications (meter systems, mobile payments applications, permits systems, etc.) applicable to each Agency.

- An Automated Range Manager that will pre-allocate citation ranges for each participating agency.

- Ability to take pictures via in-device camera and establish relationship/link to corresponding citation.

- Ability to create an image facsimile of all citations issued.

- Download and synchronization of hot sheets, violation, and misc. enforcement tables.

- Ability to record void or "drove- off" status.

- Barcode reading (1D & 2D).

- Tow request submission.

- Signature capture-officer.

- Warning tracking.

- Scofflaw and Stolen Vehicle Audible Warnings.
- License Plate Recognition Scan Capability.
- Realtime parking rights check across permits and payments.

#### **I.A.4. Tablet Software Features and Functionality**

- The Contractor's tablet software will provide the following general features and functionality:
  - The ability to issue and print citations from a tablet device of the Contractor's choice.
  - Provide authorized users web-based access to standard Auto\SSUE ad hoc reports.
  - The ability to support an Android application.
  - Provide reliable, real-time integration with enforcement related applications (meter systems, mobile payments applications, permits systems, etc.) applicable to each Agency.
  - An Automated Range Manager that will pre-allocate citation ranges for each participating agency.
  - Ability to take pictures via in-device camera and establish relationship/link to corresponding citation.
  - Ability to create an image facsimile of all citations issued.
  - Download and synchronization of hot sheets, violation, and misc. enforcement tables.
  - Ability to record void or "drove-off" status.
  - Barcode reading (1D & 2D).
  - Tow request submission.
  - Signature capture-officer.
  - Warning tracking.
  - Scofflaw and Stolen Vehicle Audible Warnings.

- License Plate Recognition Scan Capability

#### **1.A.5. Data Transfer Capabilities**

- The Contractor's enforcement solution will provide the following general features and functionality:
  - The ability to send citation information in one file to the Towns' mainframe system.
  - The ability to send citation updates (e.g., voids) to the Towns' mainframe system.
  - Export and import files with the existing PVS Mainframe (via FTP, using existing protocols).
  - Execute reconciliation processes to ensure citations are properly captured from all agencies, all downloads are properly received and loaded by agency enforcement devices, and all citations are properly received for each upload to PVS.
- Real-time wireless communications via cellular communications.
- Real-time citation uploads.
- Real-time hot sheet lookups/validation.
- Real-time pay-by-phone meter enforcement.
- Real-time permit lookups/validation.
- Real-time third-party meter enforcement.

#### **1.B Smart Meter and Pay-by-Cell Interfaces**

- The Contractor's enforcement software must allow the user to enter the license/tag number onto device whereas the API will check payment status for the respective municipality's vendors.
- The response from the API will include tag number, tag state, payment status (Valid or Invalid based on payment location and payment start/end time), payment expiration date and time, and payment location. The same functionality must be provided when entering the tag number and tag state within the tag issuance software.

- The Contractor's enforcement solution must support up to eight (8) the following application programming Interfaces (AP Is) for the following types of systems:

- Single Space Meters:
- Multi Space Meters:
- Pay By Phone / Pay by App Systems
- Mobile LPR systems
- Fixed LPR systems

- If the Town onboards and utilizes new vendors during the Term, the Contractor will develop interfaces to the new systems at no additional cost.

- Town will provide permissions and facilitate integrations with external vendors as needed for Contractor to develop, test, and roll-out the interfaces.

### **I.C Handheld Hardware**

- Town will utilize one-piece hardware from 2T Systems and Contractor will have the ability to support and maintain such hardware.

#### **I.C.1. Related Supplies and Handheld Accessories**

- The Contractor shall provide citation ticket stock/paper per request from the Town. Such related supplies shall be delivered at no additional cost within ten (10) business days of receipt of the Town's request.

- The Contractor shall provide an initial supply of adequate handheld accessories (spare batteries, handheld straps, handheld cases, etc...).

### **I.D Wireless Service**

- The Contractor shall provide for wireless service on the handhelds and shall be familiar with carriers with good coverage in the Town.

## EXHIBIT 2-- MAINTENANCE AND SUPPORT SERVICES

### 1. System Uptime/Hosting Services

The Contractor shall ensure System availability twenty-four (24) hours per day, seven (7) days per week, three hundred and sixty-five (365) days per year including weekends and holidays, excluding periods of scheduled maintenance. System uptime shall be no less than 99.50% per year. Failure to comply with these requirements shall be considered an Event of Default and shall be subject to performance penalties in accordance with Article 50.

### 2. Software Support Services

The Contractor's project manager shall be responsible for addressing all critical issues as defined below. To the extent the project manager is unavailable, the Town shall contact the Contractor's general support services line. The Contractor shall provide live telephone support via a general support services line through a toll-free basis Monday through Friday between the hours 7:00 AM and 7:00 PM Eastern Time. When placing a support call, the Town shall indicate if the issue is software or hardware based as well as the nature and severity of the issue. The Contractor shall also provide an online support portal to make support requests. The Contractor shall provide the associated support based on the following delineations:

Severity	Definition	Applicability	Response	Resolution	Status	Penalties
<b>General</b>						
1=Critical	A major component of the system is in a non-responsive state and severely affects users' ability to issue electronic citations.	24/7/365	One (1) Elapsed Hour	Four (4) Elapsed Hours	One (1) Elapsed Hour	Occurrence \$500 per incident; Response \$500 per elapsed hour; Resolution \$250 per elapsed hour
2=Urgent	Any component failure or loss of functionality not covered in Severity 1, which is hindering operations. Including but not limited to; • Administrative access • Daily communication	7AM to 7PM M-F	One (1) Hour	One (1) Business Day	Four (4) Hours	Occurrence \$100 per incident  Response \$50 per elapsed hour Resolution \$100 per business day

	(citations, scofflaw, business day stolen, etc.) • Daily communications to and from with the Clerk of Courts mainframe backend					
3=Important	Anything not covered in Severity 1 or 2. Includes lesser issues or items that minimally impact the workflow.	7AM to 7PM M-F	One (1) Business Day	Seven (7) Business Days	Weekly Status Call	Occurrence No Penalty Response No Penalty Resolution \$75 per business day
<b>Enforcement Software and Hardware Only</b>						
4=RMA's	Average RMA Turnaround Time is under 10 Business Days	7AM to 7PM M-F	N/A	N/A	Weekly Status Call	Penalty = \$50 per month per affected device
5=System Upgrades	All applicable system upgrades provided by the vendor automatically within 6 months of completion	7AM to 7PM M-F	N/A	N/A	Weekly Status Call	Penalty = \$1000 per month

The penalties applied to the Contractor shall also be limited to the net financial loss incurred by the Town from the issuance and collection of citations due to a shortfall in support services.

### 3. Software Maintenance

**3.1** As referenced in Section 2, the Contractor shall provide the Town all Software upgrades, updates, and releases made generally available to Contractor's other customers at no additional cost. Such upgrades, updates, and releases may include error corrections, patches, and fixes of the Software. Contractor shall provide notice to the Town when new minor/medium/major updates are available and will advise of any Software downtime.

**3.2** Notwithstanding the foregoing, Contractor must provide five (5) days' notice of any Software downtime (i.e., taking the Software offline such that it is not accessible to the Town). The scheduled downtime should be mutually agreed upon in writing and must be scheduled to occur outside of normal Business Hours. Contractor may perform, without any notice to the Town, routine maintenance operations that do not require the Software to be taken offline.

**3.3** The Town's data will be hosted in the United States in a secure facility.

#### **4. Equipment Support Services**

**4.1** Repairs and/or Replacements. Contractor shall provide repairs and/or replacement Equipment for all manufacturers, models, and/or form factors that are provided to the Town. If Equipment requires repair, the Town shall place a support call to the Contractor. Contractor shall determine if Equipment requires repair or replacement and shall provide the Town with a Return Material Authorization (RMA) number and shipment information for Second Day Air shipping. Contractor shall repair or replace the Equipment and return fully functional Equipment to the Town within an average of ten (10) business days.

**4.2** On-site Equipment Inventory. Contractor shall provide the Town with an inventory of Equipment to be housed at the Town's site for use as spares. The quantity of spares shall be roughly equal to twenty percent (20%) of the quantity of handhelds and/or printers provided to the Town under this Agreement for any device type of which Participating Agencies use at least 25 units. For the purpose of calculating quantities of spares, quantities shall round to the nearest whole number (i.e., if participating agencies utilize thirty-four of Unit A, then there would be 7 spares; if participating agencies utilize 35 of Unit B, then there would be 7 spares). Such inventory shall be used to facilitate uninterrupted operations in the event the Equipment requires repair and/or replacement. Additionally, Contractor shall provide the Town with mutually agreed upon quantity of consumable parts (batteries and straps) that do not require technical expertise to apply.

#### **5. Enforcement Equipment Refresh**

Town's equipment shall be refreshed based on the refresh option selected by the Town.

#### **6. Additional Equipment**

If the Town adds additional services or identifies an operational need for additional Equipment, the Contractor and Town shall mutually agree to a quantity of additional Equipment to be provided to the Town according to the prices set forth in Exhibit 4.

### EXHIBIT 3-SCHEDULE

Contractor shall guarantee there is no disruption in ongoing services related to citation issuance or backend.

September 24, 2024	Estimated Contract Execution Date
September 30, 2024	Complete availability of hardware to ensure no discontinuity in the operations
October 3, 2024	Hardware configuration complete and tested in Town
October 9, 2024	End to end data flow testing
October 9, 2024	All screens and workflow to be provided to Town
October 15, 2024	Town approval for screens and workflows
October 22, 2024	Reports complete for Town
November 1, 2024	Training completes for all Town staff
November 8, 2024	Sign-off of all software features
November 15, 2024	Data import completion and readiness signoff
November 29, 2024	Ticket issuances go-live ready



## EXHIBIT 4-PRICING AND PAYMENTS

### 4.1 Handheld Citation Issuance Software and Hardware

The Town hereby selects the 5-year term from the available options under this Agreement. With each option, additional renewal periods at the Town's option shall be available as specified in this Agreement.

**Pricing Table for Handheld Citation Issuance Software and Hardware**

Volume Tier	No hardware upgrade Price	Pod + phone upgrade (Note 1)	Pod + phone upgrade (Note 1)	Pod + phone upgrade (Note 1)
Contract Years	1	2	3	5
<250	\$0.90	\$1.33	\$1.18	\$1.07
251-1500	\$0.90	\$1.33	\$1.18	\$1.07
1501-3000	\$0.74	\$0.94	\$0.86	\$0.81
3001-10000	\$0.68	\$1.07	\$0.97	\$0.89
10001+	\$0.65	\$0.91	\$0.81	\$0.73

Note 1: Inclusive of hardware warranty throughout the term and hardware upgrade schedule of the Town's choosing:

- o Town can choose when to upgrade its hardware during the term and avoid premature upgrades. This approach maximizes the longevity of the Town's hardware and guarantees that the Town's inventory will have the newest hardware at the end of the contract term, providing an overall better value for the Town.
- o Pricing is inclusive of printer warranty on Town's existing printers. Contractor shall replace any printers that malfunction during the term at no cost to Town.
- o All pricing includes pre-printed ticket paper. Details of quantities and any additional requirements from the Town will be outlined in the contract.

#### **Additional Notes on Pricing**

- **Hardware Upgrade: Each upgrade includes a new XFPOD, a latest available phone for XFPOD, two new batteries per device, and a hand strap. Printers will be replaced as needed.**

## 4.2 CurbSense Devices:

- If Town opts to install CurbSense for guided or automated citation issuance-
  - There will be a 50% reduction in the price of the ticket from whatever the cities pricing is from the table above. Example if the Town is between 1501-3000 tickets and at a 3-year contract with hardware upgrade then the rate falls from \$0.86 to \$0.43.
  - Town must deploy at least 10 times the number of CurbSense devices to enforcement devices or spaces monitored. So, if Town has 8 handhelds, then they will need to deploy 80 CurbSense devices or monitor 80 spaces. This can be accomplished by monitoring 1 lot with 2 devices or 80 spaces with a device deployed at each space.
  - All CurbSense equipment will be installed at no upfront cost to the Town (see revenue sharing for ongoing cost structure)
  - Contractor is responsible for all maintenance of CurbSense hardware at no cost to the Town.
  - Contractor will have local, trained personnel to manage CurbSense equipment maintenance.
- **Support Portals:** Contractor will provide the following support portals to the Town:
  - A residential permit request and management portal and permit approval workflow for use by residents and the Town
  - A merchant validation portal that works with the CurbSense Dynamic QR Code feature and Automatic Payment feature.
- **Additional Integrations:** Contractor will work with the Town's CAD vendor to implement an API with the Town's CAD system for stolen vehicle detection and alerts. Town will provide or facilitate approvals needed for such integration.
- **Revenue Sharing:** CurbSense implementations will involve a revenue share that is collected over the current base number of tickets issued per month, listed in the above table, and will be shared at a rate of 50% between the Town and Contractor.

### 4.3 Mobile LPR:

At the Town's option, Contractor can provide Mobile LPR cameras and install them on Town vehicles.

ELSAG-140032	140032 - ELSAG Plate Hunter™ M7 – 2 Camera	\$ 13,915.00
ELSAG-410917	410917 - GPS Antenna (GlobalSat Style)	\$ -
ELSAG-410052	410052 - Ethernet Cable Shielded 25 ft	\$ -
ELSAG-413335	413335 - M7 Trunk box Mounting Bracket - 1 piece	\$ -
ELSAG-421920U	421920U - M7 Trunk box, 1-2 Cameras	\$ -
ELSAG-421945U	421945U - M7 Cam 8mm 740nm	\$ -
ELSAG-421812	421812 - M6 Universal 1 Cam Mount	\$ -
ELSAG-413350	413350-16 - M7 Perm Camera Cable w/LP Bulkhead 16ft	\$ 127.05
ELSAG-421939U	421939U - M7 Cam 12mm 740nm	\$ -
ELSAG-421812	421812 - M6 Universal 1 Cam Mount	\$ -
ELSAG-413350	413350-16 - M7 Perm Camera Cable w/LP Bulkhead 16ft	\$ 127.05
ELSAG-413307	413307 - M7 Permanent Power Cable	\$ -
ELSAG-412995	412995 - Packing Foam Insert	\$ -
ELSAG-210020	210020 - Tech Dispatch -Travel and installation costs for Installer	\$ 1,375.00
ELSAG-510322	510322-5.X - EOC Operation Center License 5.X	\$ 1,402.50
ELSAG-510033	510033-CSC - Car System Version 6.X - EOC Connected	\$ -
ELSAG-210022	210022 - EOC Initial Configuration	\$ 1,375.00
ELSAG-530001	530001-HOSTED-SETUP - Hosted EOC Setup (Up to 25 Users)	\$ 687.50

- **Revenue Sharing:** If Town opts to use Mobile LPR along with CurbSense for guided or automated enforcement, the system will be provided with no additional cost and included as a part of CurbSense system.

For the purpose of calculating the Termination Fee, the Contractor's standard list prices for equipment and software installed or provided under this Agreement shall apply. These list prices shall be the most current, published rates at the time of supply of the equipment, software, and installation, and will serve as the basis for determining the amounts owed by the Town as a result of early termination.