



**AGREEMENT FOR
SECURITY SYSTEM UPGRADES
AT THE DAYTONA BEACH INTERNATIONAL AIRPORT**

Between

The County of Volusia

and

Birdi Systems, Inc.

County of Volusia
Purchasing & Contracts Division
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DeLand, Florida 32720-4608
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AGREEMENT FOR THE SECURITY SYSTEM UPGRADES AT THE DAYTONA BEACH INTERNATIONAL AIRPORT

This Agreement for the Security System Upgrades for the Daytona Beach International Airport (hereinafter "Agreement") is hereby made and entered into by and between Birdi Systems, Inc., duly authorized to conduct business in the State of Florida, whose principal place of business is located at 723 East Green Street, Pasadena, CA 91101 (hereinafter the "Contractor") and COUNTY OF VOLUSIA, a body corporate and politic and a subdivision of the State of Florida, whose address is County of Volusia, 123 West Indiana Avenue, DeLand, Florida 32720 (hereinafter the "County").

RECITALS:

Whereas, the County desires to retain the services of a competent and qualified Contractor to provide implementation and maintenance for security system upgrades at the Daytona Beach International Airport; and

Whereas, the County has propounded Request for Proposals #21-P-1811F (the "RFP") seeking a qualified firm to provide installation, implementation, construction, and maintenance and support for security system upgrades at the Daytona Beach International Airport; and

Whereas, the County has determined that the Contractor is fully qualified to render the required service; and

Whereas, it has been determined that the execution of this Agreement is beneficial to the people of County of Volusia, Florida.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference, and other specific consideration set forth in this Agreement, the receipt and sufficiency of which is acknowledged by the Contractor and County, the parties agree and stipulate as follows:

1 DEFINITIONS

For this Agreement and any incorporated exhibits, certain terms, phrases, words and their respective derivations shall have the meaning set forth and defined therein and shall be applicable in both. Definition of terms in the Agreement shall first be governed by this Agreement, second by the incorporated Scope of Work (Exhibits A.1 – A.11), and third by the incorporated Price Schedule (Exhibit B). In the event of any conflict among the foregoing, the conflict shall be resolved in the order of priority set forth in the preceding sentence.

- 1.1. **Acceptance:** A signed document indicating that a Deliverable meets the Acceptance Criteria specified in the Agreement or is deemed accepted by the County.
- 1.2. **Acceptance Criteria:** The functional, non-functional, and performance criteria set forth as the conditions to be met in Exhibit A.1 – Scope of Work and in each applicable and subsequent statement of work which includes the requirement that the Deliverable or Services (and all related or dependent Deliverables or Services): (i) has been completed and delivered to the County; (ii) meets or exceeds all functional, technical, and other requirements and specifications identified in Exhibit A.1 – Scope of Work for each Deliverable or Services; (iii) in the case of a software Deliverables, successfully

completes all applicable quality assurance and related tests defined in Exhibit A.1 – Scope of Work of this Agreement; (iv) has been properly and fully documented; and (v), conforms to such other criteria as may be developed and agreed upon by the parties.

- 1.3. **Access Control:** A process of granting or denying specific requests to: 1) obtain and use information or data and related information processing services; and 2) enter specific physical facilities, such as buildings, centers, restricted areas with special entrance rules.
- 1.4. **Agreement:** This Agreement, including its articles, exhibits, and attachments.
- 1.5. **Amendment:** An amendment to this Agreement in writing, approved by the Director of Purchasing and Contracts, and signed by the County and the Contractor authorizing a modification or revision to one or more terms or conditions of this Agreement.
- 1.6. **Change Order:** A written change or modification to this Agreement approved by the County's Project Manager and Contract Administrator to the Contractor signed by the County and the Contractor authorizing an addition, deletion, or revision in the Scope of Work (SOW), or an adjustment in the Agreement price or time, without change to any other terms or conditions of the Agreement.
- 1.7. **Common Vulnerabilities and Exposures (CVE):** A catalog of known security threats sponsored by the United States Department of Homeland Security (DHS).
- 1.8. **Compensation:** The amount paid by the County to Contractor for Services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated which includes the total monies payable to the Contractor which includes all Services, labor, materials, supplies, travel, training, profit, overhead, costs, expenses, and any other costs necessary to complete work under the Scope of Work.
- 1.9. **Contract Administrator:** The Director of Purchasing and Contracts or his/her designee responsible for addressing any concerns within this Agreement.
- 1.10. **Contractor:** Birdi Systems, Inc.
- 1.11. **Contractor's Project Manager:** The Contractor's Project Manager has responsibility for administering this Agreement for the Contractor and will be designated prior to execution of the Agreement.
- 1.12. **Contractor's Services:** Those Services within the Scope of Work of this Agreement or any exhibit, attachment, or addendum thereto which relates to the General Scope of Work in Section 4 to be performed by Contractor in connection with Contractor's employment or practice.
- 1.13. **County:** Means the County of Volusia (a body corporate and politic and a subdivision of the State of Florida) including its districts, authorities, separate units of government established by law, ordinance or resolution, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the County has agreed by contract to provide additional insured status.

- 1.14. **County Hosted Solution:** A solution wherein the County shall house the application on County-provided servers and hardware that meets or exceeds the Contractor's Hardware & Software Warranty requirements. For this solution the County provides the server operational support limited to hardware monitoring, hardware repair, loading tapes, electrical, and HVAC and the Contractor is responsible for management plan of backups, database tuning, patches, diagnosis, recovery, and version upgrades as needed. The Contractor works directly with the County on application modifications, diagnosis, recovery, hardware repair, customization, configuration, and how-to questions.
- 1.15. **County Project Manager:** Also known as the person designated by the County to review, approve and make decisions regarding the Scope of Work in this Agreement.
- 1.16. **Critical Problem:** A problem that prevents the System from operating in a production environment and/or affects the integrity of the data and for which no workarounds exist which would enable the System to be used in a production environment and ensure data integrity.
- 1.17. **Data Risk Management:** Assess and manage security and privacy risks to County Data and the systems used to process, store, or transmit County Data.
- 1.18. **Day:** The word "day" means each calendar day or accumulation of calendar days.
- 1.19. **Deliverable:** The result(s) or end products or services of that meet the requirements and functional parameters articulated in the Scope of Work for this Agreement including but not limited to: services, reports, written documentation, training, systems or processes.
- 1.20. **Documentation:** The organized collection of information that describes the structure, purpose, operation, maintenance, and data requirements for the functionality specified for the software, hardware, operating system, database, and services in Scope of Work.
- 1.21. **Effective Date:** The date that this Agreement is fully executed by Contractor and the County.
- 1.22. **F.O.B Point:** The F.O.B. points for the Agreement and for all purchases made under it shall be as specified by the using department (in accordance with the RFP proposal form), in Volusia County, Florida. Delivery will not be complete until the using department has accepted each item. Delivery to a common carrier shall not constitute delivery to the ordering agency. All disputes shall be between the Seller/Respondent and the carrier.
- 1.23. **Final System Acceptance:** The date upon which all Deliverables of the Scope of Work have been accepted by the County.
- 1.24. **Hardware:** Physical equipment with a purpose to facilitate electronic functions, store data, display data, process computer instructions, and direct communications.

- 1.25. **Hardware & Software Warranty:** A warranty provided by the Contractor covering the Hardware and Software provided by Contractor, the associated integration services, and the Hardware specified by Contractor and provided by the County for the System, ensuring that all of the aforementioned shall perform in accordance with all system and application specifications in the Scope of Work for the Agreement term begins after Final System Acceptance such that no other Hardware or Software is required to be purchased or installed by the County to achieve or maintain such functionality so long as the applicable applications are continuously under maintenance.
- 1.26. **Initial Term:** Term of the negotiated Agreement prior to renewals.
- 1.27. **Integration:** The state of connecting multiple systems with the intent of sharing or transferring data.
- 1.28. **Interface:** A boundary across which two independent systems meet and act on or communicate with each other.
- 1.29. **Key Personnel:** Contractor's personnel, designated by Contractor, who are responsible for Contractor's day-to-day Project operations as described in the Contractor's Proposal.
- 1.30. **Known Vulnerabilities:** Vulnerabilities with a Common Vulnerabilities and Exposures (CVE) identifier listed in the United States National Vulnerability Database (NVD) or discovered by the Contractor or County and associated with a specific set of software products and operating systems; to include operating systems and firmware. The NVD is located at <https://nvd.nist.gov/>.
- 1.31. **Licensed Software:** Contractor's licensed and other proprietary Software developed by Contractor and required to operate the System, to be provided by Contractor as part of its Services and pursuant to Scope of Work which includes each computer program or module, application and patent which makes up Contractor's Licensed Software and each copy, translation, update, upgrade, and release, together with any materials related thereto normally provided by Contractor as part of its Services. Contractor's Licensed Software shall be considered Confidential Information to the extent permitted and subject to Chapter 119, F. S. (Florida Public Records Law).
- 1.32. **Licensed Technology:** Licensed Software and Documentation.
- 1.33. **Maintenance:** Services, including support services, or any activity performed by the Contractor or its subcontractor intended to eliminate faults, to improve or to keep the System in satisfactory working condition, including tests, measurements, adjustments, and changes, modifications, enhancements or repairs, upgrades, and updates including those set forth in the SOW of this Agreement.
- 1.34. **Milestone:** A significant event, task, or deliverable that occurs during the project, not all of which are, nor shall be, designated on the milestone payment schedule.
- 1.35. **Module:** A component of a system.
- 1.36. **Non-Critical Problem:** A Problem that does not materially affect the operation of the System or the integrity of the data in a production environment.

- 1.37. **Person or Persons:** An individual, firm, partnership, corporation, association, executor, administrator, trustee or other legal entity, whether singular or plural, masculine or feminine, as the context may require.
- 1.38. **Plug-in:** Plug-in is a computer program that interacts with a web browser to provide a certain, usually very specific, function “on demand.”
- 1.39. **Project:** The project that is described in Exhibits A.1 – A.11 of this Agreement.
- 1.40. **Proposal:** The document submitted by the Contractor in response to a formal solicitation (RFP No.) used to determine if the Contractor is highly qualified.
- 1.41. **Real Time:** The actual time during which operations are taking place.
- 1.42. **Recurring Fees:** The annual fees for Maintenance and Support Services that commence after the expiration of the Initial Warranty period and that shall continue to be provided under this Agreement for so long as the County pays the Recurring Fee.
- 1.43. **Release:** All modifications to the software including new functionality, bug fixes, patches, and service pack releases.
- 1.44. **Routine Maintenance Services:** Those services defined in the Agreement, Scope of Work, and Exhibits.
- 1.45. **Scope of Work:** The work, herein defined in this Agreement under the Scope of Work (e.g., Exhibit A.1) and Exhibits (e.g., ISMS Requirements Matrix, Exhibit A2, and Exhibit A3) that is agreed to by the parties in writing, which includes responsibility for performing and complying with all incidental matters pertaining thereto.
- 1.46. **Secure Configuration:** The management and control of configurations for an information system to enable security and facilitate the management of risk. Secure configuration management builds on the general concepts, processes, and activities of configuration management by attention to the implementation and maintenance of the established requirements of the County.
- 1.47. **Security:** References and distinctions to security shall be understood to relate to the subject matter it is referencing such as Physical Security, Information Security, Cyber Security, Aviation Security, etc.
- 1.48. **Services:** Those services set forth in this Agreement including any Exhibits thereto. Without limiting the foregoing, the Services to be performed by Contractor fall into six (6) general categories: (i) System implementation, (ii) Support Services, (iii) Software programming or modification/ configuration of the Licensed Software to meet County's needs as reflected in this Agreement, (iv) project management, (v) training of County staff, and (vi) Software, Firmware, and Hardware maintenance.
- 1.49. **SFTP (Secure File Transfer Protocol):** The protocol for exchanging files over the Internet in an encrypted format. SFTP is most commonly used to securely download a file from a server using the Internet or to securely upload a file to a server using the Internet.

- 1.50. **Software:** The Contractor Licensed Software, software modules, user licenses, web licenses, and/or Interfaces (collectively Licensed Material) identified in Exhibits and Scope of Work and including the following:
 - 1.50.1 Any and all reports and supporting materials provided by the Contractor;
 - 1.50.2 Any additional Licensed Material subsequently purchased by the County;
 - 1.50.3 Any Updates and Upgrades which Contractor makes available to the County during the Maintenance & Support Period, or under any subsequent Contractor software maintenance agreement; and
 - 1.50.4 Requirements for the software is identified in the Exhibits (e.g., Scope of Work and Requirements Matrix).
- 1.51. **Specification:** Technical and/or functional details that provide information on how a requirement shall be addressed by or within a proposed system.
- 1.52. **State:** State of Florida.
- 1.53. **Subcontractor:** A person other than a material man or laborer who enters into an Agreement with a Contractor for the performance of any part of the basic agreement.
- 1.54. **System:** The solution provided by the Contractor.
- 1.55. **System Acceptance:** The System, or functional components thereof, as applicable, that have met the final Acceptance Criteria as set forth in this Agreement.
- 1.56. **System Administrator:** The individual designated by the County to serve as key points of contact for all requests for service and/or problem reporting for County.
- 1.57. **System Acceptance Criteria:** The criteria for initial and final System Acceptance as identified, as set forth in this Agreement that shall define the objectives by which the System and its functional components shall be tested.
- 1.58. **Third Party Software:** Other software recommended by the Respondent that supplements or interoperates with the Respondent's system (software or hardware) so that the entire system provided by the Respondent operates within the functional specifications and requirements of the Scope of Work.
- 1.59. **Training Materials:** Contractor's education and training materials which shall be provided to the County as part of the Deliverables.
- 1.60. **Turnkey Solution:** A complete vendor provided solution that is supplied, installed, configured and purchased in a condition ready for immediate use, occupation, or operation within a specified time frame.
- 1.61. **Update(s):** The periodic release(s) of the Licensed Software that may contain fixes or incremental enhancements to the Licensed Software and are included in Maintenance and Support Services.

- 1.62. **Upgrade(s):** The periodic releases of the Licensed Software that contain significant enhancements that may include changes necessary to accommodate changes in the capability and functionality.
- 1.63. **Vulnerability:** A vulnerability is a weakness in the computational logic (e.g., code) found in software and some hardware components (e.g., firmware) that, when exploited, results in a negative impact to confidentiality, integrity or availability of County Data.
- 1.64. **Vulnerability Management:** A security capability that provides ongoing assessments of a grouping of security controls that are used to: 1) provide visibility into known vulnerabilities present on the network; 2) delay or prevent entry of malicious or compromised software from being installed on the network; 3) reduce the number of easy-to-compromise devices due to vulnerable software; 4) delay or prevent vulnerable software from being used to gain access to other parts of the network for expansion; 5) prevent escalation of privileges; and/or, 6) prevent data exfiltration.
- 1.65. **Warranty:** The warranty or warranties as set forth in this Agreement including any warranties required by State Law or regulation.
- 1.66. **Web Based:** Web based is access to the proposed solution through a web browser with no client software, other than Plug-ins.
- 1.67. **Work:** Any and all obligations, Services, duties and responsibilities necessary to the successful completion of the Scope of Work assigned to or undertaken by Contractor under the Agreement, including the furnishing of all labor, materials, equipment and other incidentals.

2 EXHIBITS

- 2.1 The exhibits listed below are incorporated into and made a part of this Agreement.
 - 2.1.1 Exhibit A.1 - Scope of Work – Project Manual/Technical Specifications (SSI)
 - 2.1.2 Exhibit A.2 – Birdi Systems Compliance Matrix
 - 2.1.3 Exhibit A.3 – ISMS System Requirements Specification Matrix
 - 2.1.4 Exhibit A.4 – Issued for Construction Drawing Set (SSI) Secured Documents
 - 2.1.4.1 Exhibit A.4.1 – Issued for Construction Security Drawings
 - 2.1.4.2 Exhibit A.4.2 – Issued for Construction Telecom Drawings
 - 2.1.4.3 Exhibit A.4.3 – Issued for Construction Architectural Drawings
 - 2.1.4.4 Exhibit A.4.4 – Issued for Construction Civil Drawings
 - 2.1.4.5 Exhibit A.4.5 – Issued for Construction Electrical Drawings
 - 2.1.4.6 Exhibit A.4.6 – Issued for Construction Mechanical Drawings
 - 2.1.5 Exhibit A.5 – Birdi Systems Project Approach
 - 2.1.6 Exhibit A.6 – Birdi Systems Technical Approach

- 2.1.7 Exhibit A.7 – Birdi Systems ISMS Diagrams
- 2.1.8 Exhibit A.8 – Birdi Systems Implementation Plan and Schedule
- 2.1.9 Exhibit A.9 – Birdi Systems Prime Sub Form
- 2.1.10 Exhibit A.10 – Birdi Systems Hardware Compliance Matrix
- 2.1.11 Exhibit A.11 – Birdi Systems SSI Cyber Security Management Plan
- 2.1.12 Exhibit B - Price Schedule
- 2.1.13 Exhibit C - County Computing Security Procedures
- 2.1.14 Exhibit D - Technology Systems Design and Installation Guidelines (Division 27)
- 2.1.15 Exhibit E - Insurance Requirements
- 2.1.16 Exhibit F – Final System Acceptance Forms
- 2.1.17 Exhibit G – FAA Contract Provisions
- 2.1.18 Exhibit H – Buy American Form
- 2.1.19 Exhibit I – Notice of Requirement for Affirmative Action to Ensure EEO
- 2.1.20 Exhibit J - Sales Tax Exemption - Owner Direct Purchase Procedures
- 2.1.21 Exhibit K – Performance and Payment Bond

3 ORDER OF PRECEDENCE

- 3.1 If Contractor finds a conflict, error, or discrepancy in the Agreement, it shall call it to the County Project Manager's attention in writing and request the County Project Manager's interpretation and direction before proceeding with the Work affected thereby. Such notice shall be provided by the Contractor to the County's Project Manager in a timely fashion so as not to cause additional costs due to delay.
 - 3.1.1 If there are conflicts or inconsistencies between provisions of the exhibits or attachments to this Agreement, the following order of precedence shall govern:
 - 3.1.1.1 First: The terms and conditions in the main body of this Agreement
 - 3.1.1.2 Second: Exhibit A.1 – Scope of Work
 - 3.1.1.3 Third: Exhibits A.4.1 – A.4.6 – Issued for Construction Drawing Set (SSI) Secured Documents
 - 3.1.1.4 Fourth: Exhibit A.3 – ISMS System Requirements Specification Matrix

- 3.1.1.5 Fifth: Exhibit A.2 – Birdi Systems Compliance Matrix
 - 3.1.1.6 Sixth: Exhibit A.11 – Birdi Systems SSI Cyber Security Management Plan
 - 3.1.1.7 Seventh: Exhibit A.5 – Birdi Systems Project Approach
 - 3.1.1.8 Eighth: Exhibit A.6 – Birdi Systems Technical Approach
 - 3.1.1.9 Ninth: Exhibit A.7 – Birdi Systems ISMS Diagrams
 - 3.1.1.10 Tenth: Exhibit A.8 – Birdi Systems Implementation Plan and Schedule
 - 3.1.1.11 Eleventh: Exhibit A.9 – Birdi Systems Prime/SubContractor Form
 - 3.1.1.12 Twelfth: Exhibit A.10 – Birdi Systems Hardware Compliance Matrix
 - 3.1.1.13 Thirteenth: Exhibit E – Insurance Requirements
 - 3.1.1.14 Fourteenth: Exhibit B – Price Schedule
 - 3.1.1.15 Fifteenth: Exhibit C – County Computing Security Procedures
 - 3.1.1.16 Sixteenth: Exhibit D - Technology Systems Design and Installation Guidelines (Division 27)
 - 3.1.1.17 Seventeenth: Exhibit F – Final System Acceptance Forms
 - 3.1.1.18 Eighteenth: Exhibit G – FAA Contract Provisions
 - 3.1.1.19 Nineteenth: Exhibit H – Buy America Form
 - 3.1.1.20 Twentieth: Exhibit I – Notice of Requirement for Affirmative Action to Ensure EEO
 - 3.1.1.21 Twenty-first: Exhibit J - Sales Tax Exemption – Owner Direct Purchase Procedures
 - 3.1.1.22 Twenty-second: Exhibit K – Payment and Performance Bond
- 3.1.2 In the event of conflicts or inconsistencies between the System Acceptance Criteria, Agreement, the System Acceptance Criteria established by the County and Contractor during the performance of this Agreement shall be controlling.

4 SCOPE OF WORK

The Contractor shall provide Work under this Agreement and act as Contractor to the County in accordance with the Scope of Work as specifically set forth in this Agreement and its Exhibits.

4.1 **Performance Criteria:**

- 4.1.1 All services or work must be performed in accordance with the Agreement and carried out under the direction of the County's Project Manager.
- 4.1.2 All labor necessary to complete the Scope of Work must be performed in a good and competent workmanlike manner to the satisfaction of the County.
- 4.1.3 **Changes to Scope of Services.** The County may at any time, by written order, make changes within the general Scope of Work to be performed under this Agreement. Except as provided in this Agreement otherwise, if any such change causes an increase or decrease in the Contractor's cost of, or the time required for performance of the Project Services, an equitable adjustment shall be made and this Agreement shall be amended in writing, signed by authorized representatives of the parties, stating the equitable adjustment. Unless the County grants, in writing, an additional period of time before the completion of the Agreement, any claim by the Contractor for adjustment under this Section must be asserted in writing within thirty (30) days from the date of receipt by the Contractor of the notification of change; otherwise, the claim shall be deemed waived. The Contractor shall then proceed with the prosecution of the Work as changed. Except as otherwise provided in this Agreement, no charge for any extra work or materials shall be allowed or approved by the County. No additional work shall be performed or extra materials purchased until a written Change Order has been approved by Contractor and County.
- 4.1.4 **Time is of the Essence.** Time is of the essence for all Work and Services performed under this Agreement and all Projects performed in accordance herewith.
- 4.1.5 **Authority to Act on Behalf of County.** County's Purchasing and Contracts Director or such other proper authority pursuant to County policies and procedures has the authority to approve, award, and execute all documents or other instruments required to effectuate changes, modifications, or additional service, so long as the then cumulative financial obligation of County for such additional items does not exceed the Director of Purchasing and Contracts' authority under the County Code of Ordinances or policies and procedures. Any change, modification or additional service that causes the cumulative financial obligation of County for such additional items to exceed the Purchasing Director's or County Manager's authority under the Procurement Code shall be presented to the Volusia County Council for approval.

4.2 During the term of this Agreement, the Contractor shall fully cooperate with the County to enable the County to comply with applicable Florida and federal statutes that prescribe requirements for the security, distribution and release, filing, submission and reporting of information relating to the Work and provided to local, state, and federal agencies. The County shall notify the Contractor in writing of any additional requirements pursuant to the change order (see Section 9.5.1 of the Agreement.) Without limiting the foregoing, the Contractor shall enable the County to comply with the requirements of the Florida and Federal statutes prescribing requirements for the security, distribution and release, filing, submission and reporting of information.

4.3 **Disaster Recovery and Testing.** The County is permitted to install the Licensed Software at its internal disaster recovery site(s) and to store copies of the databases used by the Licensed Software for the purposes of testing its disaster recovery plan. The County is also permitted to install the Licensed Software in a testing environment at its licensed site(s) and to store copies of the databases used by the Licensed Software for the purposes of testing future releases and training users.

4.3.1 **Disaster Recovery Plans and Procedures.** Contractor will deliver Disaster Recovery Procedures for the Integrated Security Management System. These procedures will describe the detailed steps to perform in order to recover the system from backup in the event of a ISMS failure.

A Disaster Recovery plan shall be provided that documents the testing, and maintenance protocols, including conditions under which the plan is to be executed, required personnel, prerequisites that must exist before the procedures can be executed, the criteria that will be used to determine if the DR was executed successfully.

The contractor shall provide Training to the owner's technical representative on the Disaster Recovery Plan and Procedures.

4.3.2 **Disaster Recovery (DR) Exercise.** During warranty and maintenance period, Contractor will exercise the ISMS Disaster Recovery procedures once per month to ensure that they are current and that the ISMS will recover correctly from backup in event of a failure.

4.4 **Training.** Contractor will provide all necessary training for the Software as defined in this Agreement, including any Exhibits hereto.

4.5 **Services.** The Contractor shall provide the services as defined and in accordance with this Agreement including any Exhibits hereto.

4.6 All hardware, software, communications, and other products located at the County site are the sole property of the County, and the County shall maintain its ownership, right, title, or interest in those products by virtue of this Agreement other than the non-exclusive right of use granted herein.

4.6.1 Any software modifications or enhancements performed by the Contractor specifically on behalf of the County, regardless of whether paid for by the County, shall remain the property of the Contractor. Any Software modifications or enhancements performed by the Contractor specifically on

behalf of the County, whether paid for by the County or not, will be carried forward into new releases and versions.

- 4.7 **Maintenance.** After the first payment of the Annual Maintenance & Support Fees, and for so long as the County continues to pay the annual Recurring Fee as specified in Section 9.10.3, the Contractor agrees to provide Maintenance and Support Services identified in the Agreement, and Exhibits (e.g., Exhibit A1 – Scope of Work), including maintenance and support services by the Contractor to the County regarding the licenses for the Licensed Material purchased by the County hereunder.
- 4.8 Contractor represents that all persons delivering the Services required by this Agreement have the knowledge and skills, by training and experience, to adequately and competently perform the duties, obligations, and Services set forth in this Agreement, and to provide and perform such Services to the County in a competent and professional manner for the agreed compensation. The Contractor shall provide all Services under this Agreement in a professional manner. The Contractor agrees to perform all Work in the most expeditious and economical manner consistent with the standard of care applicable to a contractor with the degree of skills and diligence normally employed by a professional in its field, performing the same or similar services. The Contractor shall perform its duties, obligations, and Work under this Agreement in a skillful and competent and workmanlike manner.
- 4.9 **Alterations by the County.** If the County arranges to modify data in the database by means other than technology provided by the Contractor, any troubleshooting, maintenance and support work requested by the County and resulting from such modifications, will be chargeable to the County at Contractor's standard service rates.
- 4.10 **Transition Support Services.** If this Agreement expires or is earlier terminated, the Contractor shall provide transition support services to the County and develop a transition plan (the "Transition Plan") in the form of an Amendment or Change Order to this Agreement to be signed by the County and the Contractor. Contractor's time will be limited to transition support services needed to produce required materials and to respond to questions regarding the System to be transitioned to another Contractor. Examples of transition support services include but are not limited to delivering via electronic media, accurate copies of any data that is requested, creation of data conversion and/or migration maps, and other tasks necessary to perform the services. The Contractor shall cooperate with the County to develop and implement an orderly transition plan and the Contractor shall continue to provide services to the County until the transition plan is completed to the satisfaction of the County. Materials include but are not limited to assistance including all Documentation so Contractor can provide the transition support services to the County or another Contractor. However, in no event shall the Contractor be obligated to disclose any legally recognized proprietary information or trade secrets, such as database schema, to any competitor of Contractor. In the event that the Contractor is not willing to share database schema with a successor, then the Contractor agrees to grant to the County a renewal option on the same terms and conditions as the prior term, to be exercised (or not) by the County at least sixty (60) days prior to the expiration of the current term.
- 4.10.1 **Creation of Data Conversion and/or Migration Maps.** The Contractor's technical staff familiar with the Contractor's applications and the data structure shall work with the County assigned information technology staff in the creation of data conversion and/or migration maps or equivalent to be used to convert

the data from the Contractor's application databases to the application database selected by County as a replacement.

4.10.1.1 Upon notification to the Contractor that the County is ready to convert to a replacement system, the Contractor shall transfer the County's data in a format as may be mutually agreed to by the County and the Contractor.

4.10.1.2 If this Agreement is earlier terminated by the Contractor, other than for default by the County, then the Contractor shall provide the above transition support services at no cost to the County. If this Agreement expires or is earlier terminated by the County, then Contractor shall provide the above transition support services upon terms mutually agreed upon by the parties. As above, in the event that the Contractor is not willing to share database schema with a successor, then the Contractor agrees to grant to the County a renewal option on the same terms and conditions as the prior term, to be exercised (or not) by the County at least sixty (60) days prior to the expiration of the current term.

4.11 **Ownership of County Intellectual Property.** Contractor agrees that all domain names registrations, SSL certificates, personal name SLDs, e-mail addresses, other registrations, and trade names or trademarks that the County owns prior to or acquires under this Agreement, whether purchased by the County or by Contractor for the specific benefit of the County under this Agreement will be owned by the County with all rights of title, interest, and possession. As such, the Contractor agrees that the County will have immediate and unfettered access to and the use and benefit of the County's domain name registrations, SSL certificates, Personal name SLDs, and trade names or trademarks at any time, including upon the termination of this Agreement by either party. The Contractor further agrees that the County's domain names, SSL certificates, personal name SLDs, trade names or trademarks will not be used by the Contractor or its subcontractors unlawfully or allow unauthorized access to the County's data in the County systems or networks.

4.12 **Separation of Data.** If required under this Agreement or any subsequent statement of work or scope of work, the Contractor agrees that data collected or created pursuant to this Agreement shall be separated or segregated from other records or other Contractor client or business data holdings such that the data is maintained by logical separation of data (e.g., record or user ID); or by a combination of both physical and logical separation mediums. Any database established for the County must be logically independent from all other Contractor client databases, directly or indirectly, and located in the United States. All aspects of data processing must be conducted in the United States. DAB Airport Security Information is considered SSI, which is a category of sensitive information that must be protected because it is information that, if publicly released, would be detrimental to the security of transportation. Airport Security Information either provided to the contractor, by the county, in order to perform his work, created by the contractor as part of his work, or discovered during the course of his work, must be maintained and controlled in accordance with the SSI regulation, 49 C.F.R § 1520.

- 4.13 **Documentation.** The Contractor agrees to provide the County with all Documentation, including revised, modified, or updated Documentation related to enhancement or modification to the System, in electronic format, and hereby grants the County permission to copy or reproduce, in whatever form, electronic, machine readable, hard copy or otherwise, any documentation supplied by it to the County, including material related to subsequent Releases for the County internal use only.
- 4.14 **Deliverables.** All Deliverables, excluding the County Data, including the Licensed Software are proprietary to Contractor. Title to and ownership of Deliverables, excluding County Data, including, but not limited to, the Licensed Software, and related documentation shall at all times remain with the Contractor. Title to third party software used in connection with the Deliverables, if any, resides with the vendor of each software package.
- 4.15 **Proprietary Rights.**
- 4.15.1 The Contractor owns the Software, all Documentation and training materials provided by the Contractor. The County has the right to use the aforementioned items to the extent specified in this Agreement. The Contractor also owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned items. The aforementioned items also contain confidential and proprietary trade secrets of the Contractor that are protected to the extent that the law allows in accordance with Florida Statute Chapter 119 and are of substantial value to Agreement.
- 4.15.2 The County shall not cause or permit the adaptation, conversion, reverse engineering, disassembly, or decompilation of any of the Software.
- 4.16 **Date Standards.** The Contractor warrants that each item of software in the SOW or a future statement of work that it delivers, develops, modifies, or recommends to the County for uses under this Agreement shall be able to accurately store and process date/time data in four (4) digit year fields (including, but not limited to, calculating, comparing, interfacing and sequencing) from, into, and between the nineteenth through the twenty-second centuries, and leap year calculations. The duration of this warranty and the remedies available to the County for breach of this warranty shall be as defined in, and subject to, the terms and limitations of the Contractor's warranties contained in this Agreement; provided that notwithstanding any provision to the contrary in any such warranty provision(s), or in the absence of any such warranty provision(s), the exclusive remedies available to the County under this warranty shall include repair or replacement, at no cost to the County of any of the products whose noncompliance is discovered and made known to Contractor in writing, after System Acceptance by County. Nothing in this warranty shall be construed to limit any rights or remedies the County may otherwise have under this Agreement with respect to Defects.
- 4.17 **Proof of Third Party Software Licenses.**
- 4.17.1 If third party software is provided by the Contractor to the County, whether by itself or in conjunction with any products, equipment, solutions, or services provided by the Contractor or any of its subcontractors, the Contractor shall:

- 4.17.1.1 Provide documented proof of proper licensure allowing the County the lawful use of all such third-party software products as contemplated by this Agreement. This proof will include, at a minimum, copies of software licenses and proofs-of-purchase (e.g., copies of paid invoices).
 - 4.17.1.2 Provide updated copies of such proof of proper licensure as requested and as necessary when software is changed during system upgrades or modifications.
 - 4.17.1.3 Supply additional supporting evidence of software licensure upon request in order to meet auditing and/or tracking requirements of the County. This includes promptly supplying such evidence of licensure in the event of an audit or evaluation of the County's software or systems performed at the request or upon the demand of a software developer or supplier.
- 4.17.2 The Contractor shall respond to all requests for documentation regarding third-party software licensure within one (1) week, unless otherwise agreed between the parties. Time is of the essence in producing such documentation, insofar as there may be penalties assessed against the County for any delays encountered during a license audit.
- 4.17.3 The Contractor shall further indemnify, defend, and hold the County harmless from and against any contractual, statutory, or regulatory penalties and costs assessed against the County arising from the Contractor's failure to provide proper software licensure or proof thereof, including the cost to the County of purchasing appropriate licenses to continue the County's use of the software pursuant to this Agreement.

5 RESPONSIBILITY OF COUNTY

- 5.1 The County shall assign a County Project Manager to represent the County in all matters pertaining to the services rendered pursuant to this Agreement.
- 5.2 The County shall:
- 5.2.1 Provide Contractor, or cause the Contractor to be provided with, the following documents, services and site information, relative to the specific project at no charge to Contractor:
 - 5.2.1.1 Access to Servers with minimum specifications as detailed in Exhibits (e.g., Exhibits A1, Exhibit A3).
 - 5.2.1.2 Access to County's facilities, related software and hardware at times and on days to be approved by the County.
 - 5.2.1.3 County personnel, space and time for system training, installation and implementation performed by County.

5.2.1.4 A County Representative with authority to approve various implementation plans.

5.2.1.5 A reasonable work area for the Project Manager and support staff with access to computers, printers, telephone, and facsimile machine.

6 RESPONSIBILITY OF CONTRACTOR

6.1 Where questions exist as to the Scope of Work to be provided, Contractor shall confer with the Project Manager to ascertain the functional or design criteria of the Scope of Work. The Services of the Contractor shall also include the following:

6.1.1 Contractor shall take all appropriate measures in accordance with 49 C.F.R. 1520 and other applicable laws to protect all proprietary, privileged, confidential, or otherwise Sensitive Security Information ("SSI") that may come into Contractor's possession as a result of this Agreement. Specifically, Exhibit(s) A.1 and A.4 that contain or constitute SSI as defined by as defined by 49 C.F.R. 1520.7. Contractor shall restrict access to all such records, documents and information that contain and/or constitute SSI only to those employees of the Contractor who require such access to perform the services required under this Agreement. The unauthorized release of SSI is prohibited. All records, documents and information defined by 49 C.F.R. 1520 et seq. as SSI, or designated by the County as SSI, shall be marked, stored, distributed and destroyed in accordance with 49 C.F.R. 1520 et seq. SSI records, documents and information received during the course of this Agreement are the property of the County. No part of any such records or documents, or any of the information contained therein, may be photocopied or reproduced in any way except as specifically required or permitted by the terms of this Agreement, or released to any person outside the terms of this Agreement. Unauthorized possession, photocopying, reproduction, or release of such records and documents, or any portion of their contents, or failure to return them to the County immediately upon request, shall constitute a material breach of this Agreement, and may result in immediate termination of this Agreement and/or such other action as deemed appropriate by the County.

6.1.2 Contractor acknowledges that it shall comply with all applicable laws, regulations, rules, procedures, and standards, including any of their updates and amendments without limitation, federal airport security regulations as outlined in the Code of Federal Regulations (CFR) Title 49 Chapter XII Part 1542, active aviation security policy enforcement (e.g., those promulgated from Transportation Security Administration.

6.1.3 Contractor covenants and agrees that there are no obligations, commitments, or impediments of any kind that will limit, impede, or prevent Contractor's performance of the Work.

6.1.4 Contractor shall keep the County informed of any changes or advancements in technology occurring any time prior to or during actual implementation of

the Services to the extent that such changes and advancements may increase efficiency or otherwise allow for better services or reductions in costs to the County.

6.1.5 Contractor covenants and agrees as follows:

6.1.3.1. That Contractor recognizes that its special talent, training, and experience caused the County to select Contractor to be the prime professional;

6.1.3.2. That Contractor comprehends the specifications and requirements of the Scope of Work and the use of the same in their entirety;

6.1.3.3. That Contractor possesses the special skills to recognize material errors or omissions that would result in failures to appropriately perform in accordance with the Scope of Work; and

6.1.3.4. That Contractor shall adhere to the standard of care applicable to a contractor with the degree of skills and diligence normally employed by a licensed professional in his field or practice performing the same or similar Services or Work in compliance with all applicable federal, state, and municipal laws, regulations, codes, and ordinances.

6.1.6 **Accuracy of Documentation.** Contractor covenants and agrees that any Project data, summaries, reports, or studies, submitted by the Contractor to the County shall be competently drafted and accurate with regard to the information contained therein. County's acceptance, approval, or reliance on any such documentation shall not release Contractor from any liability if such information is incorrect or inaccurate, it being understood that the County is relying on the Contractor's status as an industry professional in accepting such documentation.

6.1.7 **Notification of Errors or Defects.** Contractor covenants and agrees to notify the County if it discovers or has knowledge of anything of any nature in any reports, studies, bulletins, schedules, documentation, requirements or instructions prepared by Contractor or data or instructions supplied to Contractor by the County or any other party, Contractor regards in Contractor's professional opinion as unsuitable, improper, or inaccurate.

6.1.8 **Administration.** Contractor covenants and agrees to efficiently administer and perform all Work or Services economically and expeditiously in a competent and workmanlike manner.

6.2 **Supervision.** The Contractor shall direct and supervise competent and qualified personnel and shall devote time and attention to the direction of the operation to ensure performance of obligations and duties as set forth herein. The Contractor shall hire, compensate, supervise, and terminate members of its work force, and the Contractor shall direct and control the manner in which Work is performed including conditions under which individuals shall be assigned duties, how individuals shall report, and the hours individuals shall perform. The Contractor shall be responsible

for all income tax, social security and Medicare taxes, federal unemployment taxes, and any other withholdings from the company's employees' and/or subcontractors' wages or salaries. Benefits, if any, for the Contractor's employees and/or subcontractors shall be the responsibility of the Contractor including, but not limited to, health and life insurance, retirement, liability/risk coverage, and worker's and unemployment compensation. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures in delivering Work pursuant to this Agreement. Further, Contractor shall be responsible for assuring the County that finished or completed Deliverables accurately comply with the requirements of this Agreement and the Scope of Work contained therein.

- 6.3 **Assurance.** Contractor gives County its assurance that all Work performed under this Agreement shall be timely performed in a competent and workmanlike manner and in accordance with the specifications and requirements of the Agreement and any approvals required under the Agreement. All Work not conforming to the specifications and requirements of the Scope of Work will be considered materially defective and constitute a breach of this Agreement.
- 6.4 **Accuracy of Reports / Summaries.** The Contractor shall be responsible for the professional and technical accuracy and the coordination of all data, reports, summaries, and any other Work furnished by the Contractor under this Agreement. The Contractor shall, without additional cost to the County, correct or revise any errors or deficiencies in its Work for which it is responsible.
- 6.5 **Work to Comply with Specifications and Law.** All Work performed by the Contractor including all general provisions, special provisions, job specifications, drawings, addendum, amendments to the basic Agreement, written interpretations, and written orders for minor changes in Work, must comply with the Scope of Work and all applicable local laws, codes, ordinances and statutes.
- 6.6 **Subcontractors.**
- 6.6.1 **Employment or Substitution of Subcontractors.** Contractor shall not employ any Subcontractor, other person, or organization of against whom the County may have reasonable objection, nor will Contractor be required to employ any Subcontractor against whom it has reasonable objection. Contractor shall not make any substitution for any Subcontractor who has been accepted by the County without the County's approval.
- 6.6.2 **Disapproval of Subcontractors.** County's disapproval or requirement of removal or replacement of Contractor's employee or Subcontractor will be deemed for lawful reasons if in County's reasonable judgment, such Contractor's employee or Subcontractor (i) poses a threat or causes harm to the health, welfare, or safety, or morale of the County or its agencies, personnel or property; (ii) fails any drug test administered in connection with this Agreement; (iii) has been convicted of a felony or a misdemeanor involving "moral turpitude;" or (iv) has been released or dishonorably discharged or separated under conditions other than honorable from any of the Armed Forces of the United States.

6.6.3 **Contractor Responsible for Subcontractors.** Contractor shall be fully responsible for all negligent acts and omissions of its Subcontractor and of persons directly or indirectly employed by such Subcontractor and of persons for whose negligent acts any of them may be liable to the same extent that the Contractor is responsible for the negligent acts and omissions of persons directly employed by the Contractor. Nothing in the Agreement will create any contractual relationship between any Subcontractor and the County or any obligation on the part of the County to pay or to see to the payment of any monies due any Subcontractor, except as may otherwise be required by law. County may furnish to any Subcontractor, to the extent practicable, evidence of amounts paid to Contractor on account of specific Work done in accordance with the schedule of values.

6.6.4 **Subcontractors to Act Pursuant to this Agreement.** Contractor agrees to bind specifically every Subcontractor to the applicable terms and conditions of the Agreement for the benefit of the County and shall require all Subcontractors or other outside associates employed in connection with this Agreement to comply fully with the terms and conditions of this Agreement as such may apply to the Work being performed for the Contractor.

6.6.5 **Consent Required for Substitution.** Any Subcontractor and/or outside associates required by the Contractor in connection with the Work covered by the Agreement will be limited to such individuals or firms as are specifically identified for the Scope of Work assigned under this Agreement. Any substitution of such Subcontractors associates will be subject to the prior written approval of the County Project Manager.

6.7 **Warranty**

6.7.1 The System, during the term of the Agreement and any renewals thereto, is warranted by Contractor to provide the functions, features and capabilities specified and described in the Agreement. Contractor further warrants and represents that the System and its software components will operate together as a whole to perform the functions in the manner specified and delineated in the Agreement. County shall be responsible for acquiring and maintaining its own personal computers necessary to access the System. Contractor expressly warrants that each module of the System will be free from reproducible Defects that cause the System to fail to conform to the operational and performance specifications as set forth in the Agreement. Contractor makes the foregoing warranty for the System for a minimum period of one (1) year after Final System Acceptance by County, and for the duration of any maintenance and support agreement covered in by the Agreement or incorporated into the Agreement for so long as the County pays the annual recurring fee.

6.7.2 Contractor does not warrant that the operation of Licensed Software and its updates will be uninterrupted or error free.

6.7.3 ANY WARRANTIES PROVIDED HEREUNDER WILL BE VOID IF FAILURE OF THE LICENSED SOFTWARE HAS RESULTED FROM AN ACT OF GOD OR ABUSE OR MISUSE BY THE COUNTY.

6.7.4 EXCEPT AS EXPRESSLY PROVIDED HEREIN, THERE ARE NO OTHER WARRANTIES EXPRESSED OR IMPLIED. CONTRACTOR DISCLAIMS ANY IMPLIED OR OTHER WARRANTIES NOT OTHERWISE EXPRESSED IN THIS AGREEMENT.

6.7.5 Contractor also warrants that the System is free from viruses and/or malicious software which would prevent the System from being operated as described and set forth in the Agreement.

6.8 Software Releases/Upgrades During Warranty and Term of Maintenance Agreement

The County is entitled to any and all releases of the software and upgraded versions of the software covered in the Agreement that becomes available from the Contractor at no charge during the warranty period and through the duration of the maintenance agreement period. The maximum charge for any upgrade after the expiration of the warranty period and the software maintenance agreement period will not exceed the total difference between the cost of the County's current version and the price at which the Contractor sells or licenses the upgraded software under similar circumstances. If software is customized for the County, the Contractor shall be compensated at an agreed-upon rate.

6.9 Software, Hardware, or Other Technical Maintenance

- A. The Contractor shall provide all necessary maintenance on a turnkey basis during the term of the Agreement. This may include software, hardware, or other technical maintenance.
- B. If not otherwise provided for in the Contractor's pricing, after the initial term, the annual cost for maintenance may only increase annually by the lesser of three percent (3%) or the Bureau of Labor Statistics, Table 5, Compensation (<http://www.bls.gov/news.release/eci.t05.htm>), Professional, Scientific, and Technical Services Index for the applicable year (not seasonally adjusted).

6.10 Source Code in Escrow

A. Source Code

- 1. In the event the Contractor ceases to maintain experienced staff and resources needed to provide any required software maintenance, the County shall be entitled to have, use, and duplicate for its own use, a copy of the source code, compiler instructions, passwords, file structure and any other software required for a fully operational recovery, along with all documentation for the software products covered by the Agreement.

2. Until such time as a complete copy of such material is provided, the County shall have exclusive right to possess all physical embodiments of such Contractor-owned materials.
3. The rights of the County in this respect shall survive for a period of twenty (20) years after the expiration or termination of the awarded Agreement.
4. All lease and royalty fees necessary to support this right are included in the initial license fee as contained in the price schedule.

B. Escrow Agreement

1. Contractor shall provide a copy of the Software Escrow Agreement for the software with the submittal documents provided by the Contractor or indicate that an agreement shall be provided.
2. Alternatively, Contractors may provide a statement that the County will be provided, upon award of Agreement, a copy of the source code, compiler instructions, file structure, documentation, and any other software required to produce a fully operational and recovered system.
3. All copies provided to the County or stored in escrow shall be maintained at the most current version of the Contractor's application software source code, compiler instructions, passwords, file structure, along with any other software, implementation instructions, and license keys required to operationally recover the County systems, should the Contractor default.
4. In lieu of an Software Escrow Agreement, Contractors may provide the County with other options for consideration.

6.11 Data Security

With respect to the System and environment the Contractor uses to provide services, including those for data processing, storage and transmission, the Contractor is responsible for protecting the confidentiality, integrity, and availability of County Data and agrees as follows:

- A. Ownership of County Data. County is the owner of its data, data compilations and reports or compilations of its data generated from use of the Licensed Software ("County Data"). Notwithstanding anything to the contrary contained in this Agreement, the County shall have the right to use the Contractor's Licensed Software to access and have unfettered use of such data, reports, compilations, or information derived from or resulting from the use of the Licensed Software and/or to generate reports from such data, files or information. Contractor acknowledges and agrees that the County is the owner and custodian of said data, compilations and information whether or not such is electronically retained and regardless of the retention media and that the use of the Licensed Software in relation to such information or data does not in any way restrict County in the County's rights of disclosure of its data and information.
- B. County Proprietary Information. It is acknowledged by Contractor that to fulfill obligations under the Agreement, Contractor personnel may come in contact with

business proprietary, personally identifiable, health care, sensitive and privileged law enforcement, and criminal justice information. Contractor is prohibited from divulging, disclosing, or providing access to information obtained as a result of the Agreement to any entity or individual not so authorized by the County. Any misuse or unauthorized access of information is subject to administrative and criminal penalties.

1. The Contractor shall take necessary security measures to ensure there is no unauthorized access to County data and that the County proprietary information cannot be downloaded to or printed from any devices that its employees, contractors or subcontractors use, including, and without limitation, desktops, laptops, and USB flash drives.
- C. County Data. In storing, processing, or transmitting County Data, the Contractor shall not commingle the County Data with any data from Contractor's other clients.
- D. Data Sanitization Requirements. The Contractor shall certify to the County, when required, that County data is destroyed and the Contractor is not maintaining, keeping, or archiving County data. Said certification will be provided to the County Project Manager in writing. Times this may be required during final acceptance and at Agreement termination.
- E. Data Monetization. The Contractor shall not profit from utilizing County data, metadata, or other County information.
- F. Security Operating Protocols. The Contractor shall adhere to cybersecurity standards and best practices published by the National Institute of Standards and Technology (NIST) as applicable, and, employ generally accepted industry security methods and internal security operating protocols to prevent unauthorized access into the service the Contractor provides to the County or interception of data or communications by unauthorized individuals or unauthorized third parties. Such practices shall include, as applicable: Data Risk Management; Secure Configuration and Vulnerability Management; Access Control; encryption of data stored and transmitted using cryptographic modules validated as compliant with Federal Information Processing Standard 140-2; firewall protection; password protection; review of firewall logs and intrusion detection and protection systems (IDPS) notifications on a daily basis; and, update of virus definitions and security patches on an as-needed basis.
- G. Hosting Provider. The Contractor shall only use hardware and software located in secure facilities in the U.S. and administered by the Contractor or a third-party hosting provider ("Hosting Provider") to provide services to the County. The Contractor represents and warrants that each Hosting Provider used by the Contractor will cause to be conducted, on at least an annual basis, an SSAE 18 SOC 2 (or equivalent) security audit by a qualified and reputable auditing organization who shall identify in a written report (a copy of which shall be promptly delivered to the County upon request and which shall be the Contractor's Proprietary Information) any deficiencies or weaknesses to internal controls that impact system security availability, processing integrity, confidentiality, or the privacy of County Data in connection with the applicable Hosting Provider's services that the Contractor uses and the operating environment thereof.

- H. **County Data Location.** Except for sending the County Data to the County and to offsite backup storage facilities, the Contractor shall keep the County Data solely in its Hosting Provider's facility or facilities located in the United States and shall not allow such data to leave such facility or facilities in any form.
- I. **Security Breach.** As soon as possible or within twelve (12) hours of discovery, the Contractor shall notify the County and the Airport Security Coordinator should it discover any breach of the security provisions set forth in this Agreement or a loss, interception, unauthorized disclosure or other compromise of the County Data and shall immediately coordinate with the County to investigate and remedy such breach(es) in a diligent and timely manner. Except as may be strictly required by applicable law, the Contractor agrees that it will not inform any third party of any such security breach involving the County Data without the County's prior written consent; however, if such disclosure is required by applicable law, the Contractor agrees to work with the County regarding the content of such disclosure so as to minimize any potential adverse impact upon affected parties.
- J. **Backup Materials.** The Contractor or its Hosting Provider shall maintain backups of all hardware and software used to provide services to the County and the data stored or processed through the System ("Backup Materials"). Backup Materials shall be inventoried, tracked and maintained at a separate secure physical location located in the United States. The separate secure physical location is subject to the same security requirements of the primary facilities where daily and routine processing, storage and transmission of County Data occurs. If access or use of the service is interrupted, the appropriate backup shall be activated within four (4) hours to minimize disruptions.

6.12 Hosted Solution Incident and Disaster Recovery Plans

The Contractor shall implement and maintain, at all times, appropriate incident response and disaster and recovery plans and provide the County with a written copies of the plans upon request. In addition, the Contractor shall provide the County with a copy of any future third party certification report(s) that review and/or certify the incident response or disaster and recovery plans when such report(s) are made available to the Contractor.

6.13 Compliance with Laws and Regulations

Contractors shall be responsible to know and to apply all applicable federal, state, and local laws, ordinances, rules, regulations (including but not limited to the following statutes: Americans with Disabilities Act (ADA), Titles I, II and III of the ADA; Federal Immigration Reform and Control Act of 1986 (as amended); and Title VII of the Civil Rights Act of 1964 (as amended), and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the work, or which in any way affect the conduct of the work. Contractor shall always observe and comply with all such laws, ordinances, rules, regulations, orders, and decrees. The Contractor shall indemnify, defend, and hold harmless the County and all its officers, agents, servants, or employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order, or decree caused or committed by Contractor, its representatives, Subcontractors, sub-consultants, professional associates, agents, servants, or employees.

For internet/web Services: For the purposes of this paragraph, any Services or products offered to public via the internet or online must comply with WCAG 2.0 AA in order to be deemed ADA compliant. The County will provide Contractor with prompt written notice with respect to any ADA deficiencies of which the County is aware and Contractor will promptly correct such deficiencies. If the County, the Department of Justice or other governmental entity tasked with the enforcement of the ADA (“Enforcement Agency”) notes any deficiency in the facilities, practices, services, or operations of the Contractor furnished or provided in connection with this Agreement, Contractor shall, at no additional charge or cost to the County, immediately cure any such deficiencies without delay to the satisfaction of such Enforcement Agency. Contractor further agrees that it shall, to the extent permitted by law, indemnify, defend, and hold harmless the County against any and all claims, sanctions, or penalties assessed against the County, which claims, sanctions, or penalties arise or otherwise result from Contractor’s failure to comply with the ADA or WCAG 2.0 AA, for online or internet Services or products.

6.14 Contractors shall hold the required licensure to be the prime Contractor for all work to be performed under this Contract. If any Contractor proposes to use a Subcontractor or sub-consultant to perform any work under this Contract, such Subcontractor and/or sub-consultant shall hold the required licensure for all work to be performed under this Agreement as a Subcontractor and shall maintain such license(s) in full force and effect during the term of the awarded Agreement. All licenses and permits required to perform Contractor’s duties under this Contract, whether such license or permit is required by the federal government, State of Florida, Volusia County, or any municipality, shall be at each Contractor’s sole cost and expense, and shall not be a cost of the County. All required licenses and permits shall be maintained in full force and effect during the term of the awarded Agreement.

6.15 **Authority for Contracting.**

6.15.1 By executing this Agreement, the Contractor represents that it has visited the site, familiarized itself with the local conditions under which the Work is to be performed, and correlated its observations with the requirements of the Agreement. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation:

6.15.1.1 The location, conditions, layout and nature of the Project site and surround,

6.15.1.2 Anticipated labor supply and costs,

6.15.1.3 Availability and cost of materials, tools, equipment, and other similar issues, and

6.15.1.4 The County assumes no responsibility or liability for the physical conditions or safety of the Project site or any improvements located on the Project site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work and the County shall not be required to make any

adjustment in either the agreed amount of the Agreement Price or the Agreement Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements hereof.

- 6.15.2 This Agreement between the County and the Contractor is intended solely for the benefit of the County and the Contractor and no other persons or entities. The services to be performed hereunder shall be performed by the Contractor's own staff, unless otherwise authorized by the County. The employment of, contract with, or use of the services of any other person or firm by the Contractor, as consultant or otherwise, shall be subject to the prior written approval of the County. Such approval shall not be construed as constituting an Agreement between the County and any such person or firm. Failure to obtain such approval or the use of unauthorized persons, firms, consultants, or subcontractors shall constitute a material breach of this Agreement.
 - 6.15.3 In the event the parties hereto enter into a subsequent Agreement specifically modifying this Agreement between County and Contractor, it is expressly agreed that such modification shall take precedence over this Agreement to the extent of the modification only.
 - 6.15.4 The intent of the Agreement Documents is to include all items necessary for the proper execution and completion of the Work. The Agreement Documents are complementary, and what is required by any one shall be as binding as if required by all.
 - 6.15.5 Work not covered in the Agreement Documents shall not be required unless it is consistent therewith and is reasonably inferable there from as being necessary to produce the intended results.
 - 6.15.6 Words and abbreviations which have well-known technical, or trade meanings are used in the Agreement Documents in accordance with such recognized meanings.
 - 6.15.7 The organization of the Technical Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any one of them.
- 6.16 The Contractor shall be responsible for compliance of all relevant local, State, and Federal regulations including but not limited to the above-mentioned regulations. Where compliance with two or more industry standards or sets of requirements is specified, and overlapping if those different standards or requirements establishes different or conflicting levels of quality, protection or service, the most stringent requirement is intended and shall be enforced. Except to the extent that more explicit or more stringent requirements are written directly into the Agreement documents, applicable standards of the construction industry have the same force and effect and are made part of the Agreement documents.

- 6.16.1 No member, officer or employee of the Recipient or of the locality during his tenure or for 2 years thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
 - 6.16.2 The Recipient shall include in all contracts and subcontracts for amounts in excess of \$150,000 a provision requiring compliance with all applicable standards, order or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
 - 6.16.3 The parties agree to comply with s.20.055(5). Florida Statutes, and to incorporate in all subcontracts the obligation to comply with s.20.055(5), Florida Statutes.
- 6.17 **Standards.** The Contractor shall be responsible for the professional quality and the accuracy of all deliverables and services provided under this Agreement and shall, without additional compensation, correct any errors in the same. Deliverables prepared by the Contractor in response to the requirements of this Agreement shall, unless otherwise provided for in this Agreement, be thoroughly researched for accuracy of content, be grammatically correct and not contain errors, be numerically accurate, be submitted in the format approved in advance by the County Project Manager, and be submitted for advance review and comment by the County Project Manager. The cost of correcting errors, correcting report data, or making other revisions required to bring the deliverable into compliance with the requirements of this Agreement shall be borne solely by the Contractor.
- 6.18 **Value Engineering.** The Contractor shall review the plans and specifications as prepared by the A/E and perform value engineering services. The County Representative, the A/E and the Contractor shall review the proposed changes and the County shall determine which shall be incorporated into the plans and specifications. As an optional service, the Contractor may be called upon to develop these changes into drawing formats generally compatible with the existing plans and specifications. The fee for this optional work will be determined when required.
- 6.19 **Project Site Facilities.** Review the Plans and Specifications to ensure that they contain provision for all temporary facilities required for the performance, management, inspection and supervision of the Work.

7 SYSTEM ACCEPTANCE

7.1 Acceptance Criteria

- 7.1.1 **Functional Demonstration.** The Contractor is required to demonstrate the System features to the County for verification of the functional requirements as defined in the Scope of Work. The County's role will be to provide the necessary personnel to support the demonstration and ensure availability of external systems to assist the Contractor. The County will confirm that the Contractor utilizes mutually agreed upon test scenarios and test data in the demonstration. The demonstration will be considered complete when the Contractor has demonstrated, and the County has confirmed, the

functionality of all requirements have been met and the County's Project Manager has accepted the corrective action plan for any outstanding defects or errors.

- 7.1.2 **Functional Testing.** Upon the County's approval of the Contractor's functional demonstration, the County will be provided sufficient time to conduct additional internal functional testing of the System. The purpose of this internal functional testing is to provide the County with the opportunity to perform additional testing using varying test scenarios and to identify any undiscovered discrepancies with regard to the requirements defined in the Scope of Work. The amount of time provided for the period of internal testing will be determined after the abovementioned Contractor's functional demonstration and will be mutually agreed to by both the County and the Contractor. The internal functional testing will be considered complete after the mutually agreed to amount of time has elapsed and the County's Project Manager has accepted the corrective action plan for any outstanding defects or errors.
 - 7.1.3 **Production Cut-Over.** Upon successful completion of the functional demonstration and the functional testing, as defined in the Scope of Work, the Contractor and the County will mutually determine the date to implement the System in a production environment. This date will be confirmed by obtaining written authorization from the County's Project Manager.
- 7.2 **System Acceptance**
- 7.2.1 **30 Day System Acceptance.** The County requires a minimum thirty (30) consecutive calendar day System acceptance period from the date that the System is placed in a production environment as defined above.
 - 7.2.2 **Availability Levels.** During the acceptance period, the System and all associated modules must demonstrate critical System availability levels of 95% or better for a thirty (30) consecutive calendar days. The thirty (30) consecutive calendar day availability test will begin immediately upon placement of System into a production environment. If the required level of 95% for thirty (30) consecutive days has not been met, the reliability test period will continue until this level of reliability has been demonstrated.
 - 7.2.3 **System Availability.** The System will be considered unavailable if any defined requirements, inquiries, or standard reports are not functioning. Functional problems that allow the System to remain operational, and do not affect any of these components are not considered downtime. Furthermore, the System will not be considered unavailable during any manual or automated fail-over process, or if the System is operational in a backup mode or via replacement with System spares, pending the receipt of replacement components and repair of the failed component. Downtime will begin at the time that the designated contact person for the Contractor has been notified of the failure.

7.2.4 **System Acceptance**

7.2.4.1 Any System unavailability issues will stop the thirty (30) consecutive calendar day System acceptance period. Upon correction of System unavailability, the thirty (30) consecutive calendar day System acceptance period will begin again.

7.2.4.2 System Acceptance occurs upon written notification by the County to the Contractor of System availability for thirty (30) consecutive calendar days.

7.3 **Final System Acceptance.** Final System Acceptance occurs upon written notification by the County to the Contractor of successful completion of System Acceptance. Final System Acceptance shall be memorialized by Exhibit F - Final System Acceptance Form.

8 **TERM OF AGREEMENT AND NOTICE TO PROCEED**

8.1 **Term of Agreement.** The term of this Agreement shall begin on the Effective Date and have an initial term of five (5) years after Final System Acceptance with two (2) subsequent two (2) year renewals, and a final one (1) year renewal option, or as negotiated. The Contractor agrees during the term of this Agreement to timely complete projects as specified by the County ("Projects"). Contractors shall provide all survey, permits, labor, supervision, and equipment necessary to provide for construction services in accordance with specifications provided by the County in Exhibit "A.4", Issued for Construction Drawings and Exhibit "A.1", Scope of Work – Project Manual/Technical Specifications (SSI), other contract documents prepared by Volusia County, and all applicable building codes

8.1.1 **All Change Orders** issued under this Agreement will terminate at the expiration of the term of the Change Order, unless amended in writing by the parties, or the term of this Agreement, except if a Change Order issued before the expiration of this Agreement cannot be completed until after the expiration of this Agreement, then this Agreement shall expire on the Completion Date of said Change Order, including any amendments thereto, and after all Work under the Change Order have been approved and accepted by County's Project Manager. As such, the obligations entered therein by both parties under this Agreement and said Change Order will remain in full force and effect until completion of all Work performed under this Agreement and/or the Change Order.

8.1.2 **Notice to Proceed.** "Notice to Proceed" means written notice (including a Purchase Order) issued by the Contract Administrator authorizing Contractor to proceed with providing the Work pursuant to this Agreement. Prior to beginning the performance of any Work, Contractor must receive a Notice to Proceed from the Contract Administrator. Prior to the execution of this Agreement, Contractor shall provide County with a properly completed insurance certificate, the completion of and submittal of which is considered a condition precedent to the execution of this Agreement, County shall issue the Notice to Proceed no later than twenty-five (25) County business days after County's receipt and approval of the insurance certificate and the date

that County executes this Agreement. The Contractor shall diligently proceed with the completion of the Project in accordance with the date expressly set forth in the Notice to Proceed.

- 8.1.3 **Liquidated Damages:** The Contractor and the Contractor's surety, shall be liable for and shall pay the County the sum per day calculated in accordance with Section 8-10.2 of the Florida Department of Transportation Standard Specifications (edition in use on the date Contractor submitted its Bid) as liquidated damages, and not as a penalty, for each calendar day of delay after the date established for Substantial Completion in the Agreement Documents until the Work is substantially complete. For purposes of calculating the amount of liquidated damages per day, the original Agreement Sum in Section 9 below shall be used.
- 8.1.4 In the event that the Contractor shall fall behind schedule at any time, for any reason, and such delay is adversely affecting the County's timely occupation of the Project for its intended purpose, the County shall be entitled to direct acceleration or re-sequencing of the Work to bring the Project back on schedule. The Contractor shall reserve in each of its subcontracts entered into in connection with the Project, a right to accelerate consistent with the Contractor's obligations hereunder.
- 8.1.5 In the event the Contractor determines that the Completion Date cannot be met by re-sequencing the work, then the Contractor shall immediately provide the County, and in any event within three (3) days after the date of receipt of the County's instruction for re-sequencing or accelerating, a plan to complete the Project in the shortest possible time. No approval by the County of any plan for re-sequencing or accelerating of the work submitted by the Contractor pursuant to this clause shall constitute a waiver by the County of its rights of recovery of liquidated damages as a result of delayed Project completion.
- 8.1.6 **Release of Liens.** The Contractor shall deliver to the County, a complete release of liens arising out of each project before receiving payment. If any liens remain unsatisfied after all payments are made, the Contractor shall refund to the County such amount as the County may be compelled to pay in discharging such liens, including all costs and reasonable attorney's fees.

8.2 Completion of System Timetable.

- 8.2.1 **Completion Timetable.** The installation, construction, and implementation phase of the Project shall be in accordance with Exhibit A.8 – Birdi Systems Implementation Plan and Schedule from receipt of the Purchase Order, or such other time frame mutually agreed upon by the Parties.
- 8.2.2 Contractor shall not be responsible for any delay resulting from acts or omissions due to a Force Majeure Event described in Section 26.13; or County's failure to perform testing because of a Force Majeure Event or its proximate fault, to provide information or materials requested by Contractor that are necessary for making the System ready for System Acceptance; or

any material delay caused by County preventing Contractor for making the System ready for System Acceptance.

9 COMPENSATION AND METHOD OF PAYMENT

9.1 The Compensation shall not be adjusted because of errors or omissions which are not the fault of the County in computing the Project costs which result in an increase in the cost to Contractor to perform this Agreement or because the time for completion varies from the original estimate, including completion or substantial completion of this Agreement prior to the scheduled or Agreement completion date or on account of County's election to furnish any of the Work.

9.2 **Payments.** In each invoice for payment, the Contractor shall certify as follows:

9.2.1 Contractor shall deliver with the invoice, as a condition precedent to payment thereof, waivers of lien for each of its Subcontractors.

9.2.2 The County shall promptly review each invoice for payment and make such exceptions, as the County reasonably deems necessary or appropriate under the state of circumstances then prevailing.

9.2.3 Based upon the approved invoice, the County shall make payment to Contractor in the amount approved, subject, however, to the provisions of Section 9, herein. The payment of any invoice for payment by the County does not constitute approval or acceptance of that part of the Project to which such payment relates or relieve the Contractor of any of its obligations hereunder with respect hereto.

9.2.4 Contractor shall submit a monthly Application for Progress Payment to the County, which may require execution of a separate or integrated Contractor's Release and Affidavit. The period covered by each Application for Progress Payment shall be one calendar month unless otherwise agreed in writing. The County shall process the Application for Progress Payment in accordance with the Local Government Prompt Payment Act; Florida Statutes §218.70-.80 and the Agreement Documents.

9.2.5 The Application for Progress Payment shall be supported by documents and data as required by the County to substantiate its accuracy. The Contractor and County shall agree on a schedule of values as a basis for reviewing the Contractor's Applications for Progress Payment.

9.2.6 Subject to other provisions of the Agreement Documents, the amount of each payment shall be determined by multiplying the percentage of completion of a designated portion of the Work as listed in the agreed schedule of values, by the lump sum Agreement Sum allocated to that portion of the Work, or in the case of a unit price pay item, by multiplying the unit price per item by the number of units incorporated into the Project. Where items are listed for payment as lump sum units and the Agreement Plans do not show estimates of component quantities, the Contractor is solely responsible for his own estimates of such quantities. For those items having variable final pay

quantities that are dependent on actual field conditions, use and measurement, the quantities shown in the Plans and in the proposal form are approximate and provide only a basis for calculating the bid upon which the County awarded the Agreement.

- 9.2.7 Contractor shall include in its Application for Progress Payment, that portion of the Agreement Sum properly allocable to materials and equipment delivered and suitably stored at the Project site for incorporation into completed construction.
- 9.2.8 Contractor shall pay its subcontractors and suppliers in accordance with Florida Statute §218.735(6). Contractor shall require its subcontractors to pay all of the subcontractor's subcontractors in accordance with §218.735(6).
- 9.2.9 Per Florida Statute §255.05(11), the County may condition payment of a Progress Payment or Final Payment on the production of a release, waiver or like documentation from a claimant demonstrating that the claimant does not have an outstanding claim against the contractor, the surety, the payment bond, or the County for payments due on labor services or materials furnished on the project unless the Contractor provides the County with a written consent from the surety regarding the Project or payment in question. No party requiring a release from a claimant may require use of a form other than those specified in Florida Statute §255.05(2)(b-c).
- 9.2.10 Contractor shall prepare and submit an Application for Final Payment when Contractor believes in good faith that Substantial Completion of the Work has been achieved. The County shall review the application and perform a Substantial Completion inspection.
- 9.2.11 Within ten (10) days of certification of Substantial Completion, the County shall provide Contractor a preliminary list of items required to render the Work complete, satisfactory and acceptable to the County. The Contractor shall provide any comments, including Contractors estimated time to complete all items on the list, to the County in writing within five (5) days of receipt of the preliminary list from the County. The County shall review the Contractors written comments and deliver to Contractor a final list of items within five (5) days of receipt of Contractor's comments. Contractor shall perform all items on the final list within thirty (30) days of receipt from the County unless otherwise agreed in writing by the County.
- 9.2.12 Contractor shall notify the County and the Project Manager that the Project is ready for Final Inspection upon completion of all items on the final list. The County will then schedule the Final Inspection, in coordination with the Contractor. The Final Inspection shall be conducted by the County, within ten (10) days of the Contractor's notification to the County. Following the Final Inspection, the County shall provide the Contractor a list of any additional items for corrective action and conduct an additional inspection, if necessary, to ensure that the Work has been completed.

- 9.2.13 The County reserves the right, if it discovers an error in the partial or final quantity estimates used for payments, or if it discovers that the Contractor performed defective Work or used defective materials, after the Final Payment has been made, to claim and recover from the Contractor or his surety, or both, by process of law, such sums as may be sufficient to correct the error or make good the defects in the Work and materials.
- 9.2.14 Contractor shall retain all records pertaining to the Project for a period of three years from the date of the County's final acceptance of the Project. Upon request, Contractor shall make all such records available to the County or its representative. For the purpose of this Article, records include all books of account, supporting documents, and papers that the County deems necessary to ensure compliance with the Agreement.
- 9.2.15 Any provisions hereof, to the contrary notwithstanding, the County shall not be obligated to make current payment to the Contractor hereunder if any one of the following conditions exists:
- 9.2.15.1 The Contractor fails to diligently prosecute the work in an efficient, timely, and workmanlike manner and in strict accordance with the provisions of the Agreement Documents; or
- 9.2.15.2 The Contractor fails to use an adequate number of qualified personnel and sufficient equipment to complete the Project without undue delay; or
- 9.2.15.3 The Contractor fails to make prompt payments to its Subcontractors, suppliers, materialmen, or laborers; or
- 9.2.15.4 The Contractor is otherwise in default of any of its obligations hereunder or otherwise is in default under any of its contractual requirements; or
- 9.2.15.5 The Contractor failed to provide a certified letter of the proper removal of lead and/or asbestos; or
- 9.2.15.6 Any discrepancies between the County's records and the Contractor's submittals must be rectified, to County's satisfaction, by the Contractor before the County makes payment on those items. The Contractor shall only issue invoices for services rendered. Pursuant to Chapter 218, Florida Statutes, the County will pay interest not to exceed two percent (2%) per month on all undisputed invoices not paid within twenty (20) days after receipt and acceptance of the service for construction related services, and receipt by the County of a properly completed invoice, whichever is later. Invoices for payments hereunder shall be submitted to the Project Manager.

9.2.15.7 To be deemed proper, all invoices shall comply with the requirements set forth in this Agreement and shall be submitted on the form and pursuant to instructions prescribed by the County.

9.3 **Cost of the Work.** The Cost of the Work shall include, without limitation, the cost items set forth as follows:

- 9.3.1 The cost of all materials, supplies and equipment, integration, testing, acceptance and maintenance services incorporated in the Scope of Work and the cost of transportation and storage thereof. The County, at its sole discretion, may make payment for materials, supplies or equipment stored off-site;
- 9.3.2 Payments made by the Contractor to its Subcontractors for work performed for the Project under trade or subcontract contracts;
- 9.3.3 The cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers, which are used and consumed in the performance of the Work and the cost, less salvage value, on items used but not consumed which remain the property of the Contractor. This cost shall not include the cost of materials, supplies, equipment, temporary facilities and hand tools furnished by Subcontractors as part of their trade work which shall be incorporated in the trade contracts cost;
- 9.3.4 Rental charges of all necessary motor vehicles, machinery and equipment, including hand tools, whether rented from the Contractor or others, and including transportation and delivery costs, installation, maintenance, repair and replacement, and dismantling and removal, at rental charges consistent with those prevailing in the area of the Project;
- 9.3.5 Actual cost, without mark-up, of the premium for all insurance and bonds which the Contractor is required to provide pursuant to this Agreement;
- 9.3.6 Sales, use, gross receipt, or similar taxes related to the performance of the Work, imposed by any governmental authority and for which the Contractor is liable;
- 9.3.7 Building and operating permit fees, inspection and filing fees, sewer and water fees and deposits lost for causes other than Contractor's own negligence;
- 9.3.8 Losses, expenses or damages to the extent not compensated by insurance or otherwise, including settlement made with the written approval of the County;
- 9.3.9 The cost of corrective work (within the Agreement Price limit);

- 9.3.10 Minor expenses such as telegrams, long-distance telephone calls, telephone service at the Project site, postage, office supplies, and similar items;
- 9.3.11 Cost of debris and trash removal including daily cleanup;
- 9.3.12 Cost of final cleanup prior to occupancy including window washing, dusting of all surfaces, carpet cleaning and vacuuming, floor polishing, fixture cleaning etc.;
- 9.3.13 Cost related to emergencies affecting the safety of persons and loss of property;
- 9.3.14 Legal costs properly resulting from prosecution of the Work for the County, provided that they are not the result of Contractor's own negligence or malfeasance. Legal costs incurred in connection with disputes with the County shall not be included in the Cost of the Work;
- 9.3.15 Cost of items related to the Project Safety Program including barricades, firefighting equipment and extinguishers, special and protective wearing apparel and safety equipment, temporary roads and parking, dust and noise control, installation and operation of temporary hoists, scaffolds, ladders and runways, and likely items;
- 9.3.16 Cost of watchmen or similar security services;
- 9.3.17 Cost of survey, measurement and layout work required for the proper execution of the Work;
- 9.3.18 Cost of purchase or rental of office equipment such as typewriters, cameras, radio communications, computers, pagers, copiers, dictating units, and other items such as office and tool trailers, vehicles and furniture purchased by Contractor in connection with the Work;
- 9.3.19 Cost of preparation of training documentation, shop drawings, coordination drawings, photographs, and "as-built" documentation;
- 9.3.20 Cost of data processing, computerized scheduling and document reproduction services required in the performance of the Work; and
- 9.3.21 Costs incurred during the warranty period after completion of the Project (within the Agreement Price).
- 9.3.22 Overhead and any other costs incurred by the Contractor in the performance of the Agreement; and,
- 9.3.23 Costs related to the airport badging requirements of the contractors and subcontractors personnel.

- 9.4 Adjustments of the Compensation shall be made only as follows:
- 9.4.1 For approved changes in the Work (additional), an increase to the fee in an equitable amount to be included in the Change Order.
- 9.4.2 If the Contractor is placed in charge of the reconstruction of any insured or uninsured loss, the fee shall be increased in the same proportion pursuant to Sections 4.1.3 – Change in Scope of Services, and 9.5.1, above.
- 9.5 The Compensation shall include only those taxes which are legally enacted at the time the Compensation is established. Taxes included in the Compensation shall be segregated by category of taxes so that the County may ensure that the tax exemptions applicable to County are excluded from the Compensation.
- 9.6 The value included in the Compensation for General Conditions and supervision shall be defined as a fixed amount and agreed upon by the County and the Contractor at the time the Compensation is accepted by the County. The County and the Contractor further agree that the provisions of Section 9, hereof, in reference to the Compensation line-item budgeted amount adjustment affecting the Compensation, as applicable to the General Conditions and supervision total amount, shall be limited and shall not exceed the agreed fixed amount by more than a maximum of ten percent (10%), if absolutely necessary. All cost savings, if any, shall be returned to the County as part of the net aggregate savings established at the time the final accounting is submitted, at the completion of the Work.
- 9.7 **Exclusions.** The Compensation shall not include such Project expenses as cost of site, site survey and subsurface investigations, professional design fees, inspection services or moveable equipment and furnishings.
- 9.8 **Compensation.** As consideration for the Contractor's satisfactorily performing the Statement of Work set forth in Section – Scope of Work hereof and complying with other terms of this Agreement and all Exhibits hereto, the Contractor shall be compensated in the amounts provided in **Exhibit B - Price Schedule**. The Contractor agrees to provide Work to the County in accordance with this Agreement and all Exhibits hereto, and the County agrees to compensate the Contractor for the services and deliverables as described in this Agreement.
- 9.9 The Compensation shall not be adjusted because of errors or omissions which are not the fault of the County in computing the Project costs which result in an increase in the cost to Contractor to perform this Agreement or because the time for completion varies from the original estimate, including completion or substantial completion of this Agreement prior to the scheduled or Agreement completion date or on account of County's election to furnish any of the Work.
- 9.10 As of the Effective Date of this Agreement, the not to exceed compensation amounts identified in **Exhibit B – Price Schedule** are as follows:

9.10.1 Base Bid Non-Recurring Fees (B1-B7):

- FIVE MILLION FIFTY-EIGHT THOUSAND FIVE HUNDRED FORTY-SIX DOLLARS AND 18/100 (\$5,058,546.18) for Physical Access Control System (PACS);
- TWO MILLION FOUR HUNDRED FIVE THOUSAND THREE HUNDRED EIGHTY-ONE DOLLARS AND 87/100 (\$2,405,381.87) for Video Surveillance System (VSS);
- TWO HUNDRED SIXTY-NINE THOUSAND ONE HUNDRED FIFTY-TWO DOLLARS AND 63/100 (\$269,152.63) for IT Infrastructure Enhancements;
- FOUR HUNDRED NINETY-THREE THOUSAND EIGHT HUNDRED SIXTY-FIVE DOLLARS AND 73/100 (\$493,865.73) for Infrastructure Related Upgrades;
- THREE HUNDRED FIFTY-SIX THOUSAND ONE HUNDRED FIFTEEN DOLLARS AND 70/100 (\$356,115.70) for Perimeter Gate Enhancements;
- TWENTY THOUSAND DOLLARS AND 00/100 (\$20,000.00) for Cable Replacement Allowance; and
- NINETY-SIX THOUSAND NINE HUNDRED THIRTY-EIGHT DOLLARS AND 80/100 (\$96,938.80) for Bonding Costs – Included all Bonding Costs associated with this Contract;
- **TOTALING EIGHT MILLION SEVEN HUNDRED THOUSAND DOLLARS AND 91/100 (\$8,700,000.91) as detailed in Exhibit B – Price Schedule.**

9.10.2 Add Alternate Non-Recurring Fees (A1-A11):

- ONE MILLION EIGHT HUNDRED SEVENTY THOUSAND EIGHT HUNDRED SIXTY-THREE DOLLARS AND 18/100 (\$1,870,863.18) for AOC Buildout and Reconfiguration;
- FOUR HUNDRED THOUSAND EIGHT HUNDRED TWENTY-FIVE DOLLARS AND 82/100 (\$400,825.82) for Additional Access Controlled and Monitored Doors;
- THREE HUNDRED FIFTY-SIX THOUSAND EIGHT HUNDRED NINETY DOLLARS AND 76/100 (\$356,890.76) for Programmable Smart Key Control System;
- TWENTY-FOUR THOUSAND ONE HUNDRED EIGHTY DOLLARS AND 00/100 (\$24,180.00) for Integration with Lucy;

- THREE HUNDRED SEVENTY-EIGHT THOUSAND NINE HUNDRED NINETY-FIVE DOLLARS AND 89/100 (\$378,995.89) for Video Management System Enhancements;
- TWO HUNDRED TWELVE THOUSAND SIX HUNDRED EIGHTY-EIGHT DOLLARS AND 82/100 (\$212,688.82) for Perimeter Gate Enhancements;
- SIX HUNDRED TWENTY-SEVEN THOUSAND NINE HUNDRED SEVENTY-EIGHT DOLLARS AND 00/100 (\$627,978.00) for ID Management System (IDMS) Software/Module;
- ONE MILLION FORTY THOUSAND TWO HUNDRED FORTY-TWO DOLLARS AND 97/100 (\$1,040,242.97) for Perimeter Intrusion Detection System Enhancements;
- TWO HUNDRED FOURTEEN THOUSAND FIVE HUNDRED NINETEEN DOLLARS AND 10/100 (\$214,519.10) for Infrastructure Related Upgrades; and
- EIGHTY-FOUR THOUSAND DOLLARS AND 00/100 (\$84,000.00) for Security Equipment originally grouped with Emergency Blue Light Call Boxes (which has been since removed).
- **TOTALING FIVE MILLION TWO HUNDRED ELEVEN THOUSAND ONE HUNDRED EIGHTY-FOUR DOLLARS AND 54/100 (\$5,211,184.54) as detailed in Exhibit B – Price Schedule.**

9.10.3 Extended Maintenance and Support Services (optional) (101) following the 1-year warranty period, as detailed in Exhibit B – Price Schedule:

- Year 2 (optional term): FIVE HUNDRED FIFTEEN THOUSAND SEVEN HUNDRED SIXTY-SIX DOLLARS AND 30/100 (\$515,766.30)
- Year 3 (optional term): FIVE HUNDRED TWENTY-EIGHT THOUSAND SIX HUNDRED SIXTY DOLLARS AND 47/100 (\$528,660.47)
- Year 4 (optional term): FIVE HUNDRED FORTY-ONE THOUSAND EIGHT HUNDRED SEVENTY-SIX DOLLARS AND 96/100 (\$541,876.96)
- Year 5 (optional term): FIVE HUNDRED FIFTY-FIVE THOUSAND FOUR HUNDRED TWENTY-THREE DOLLARS AND 90/100 (\$555,423.90)
- Year 6 (optional term): FIVE HUNDRED SIXTY-NINE THOUSAND THREE HUNDRED NINE DOLLARS AND 47/100 (\$569,309.47)

- Year 7 (optional term): FIVE HUNDRED EIGHTY-THREE THOUSAND FIVE HUNDRED FORTY-TWO DOLLARS AND 23/100 (\$583,542.23)
- Year 8 (optional term): FIVE HUNDRED NINETY-EIGHT THOUSAND ONE HUNDRED THIRTY DOLLARS AND 78/100 (\$598,130.78)
- Year 9 (optional term): SIX HUNDRED THIRTEEN THOUSAND EIGHTY-FOUR DOLLARS AND 05/100 (\$613,084.05)
- Year 10 (optional term): SIX HUNDRED TWENTY-EIGHT THOUSAND FOUR HUNDRED ELEVEN DOLLARS AND 14/100 (\$628,411.14)

9.10.4 **Head End Hardware Pricing, as detailed in Exhibit B – Price Schedule (102A): NINE HUNDRED THIRTY-FOUR THOUSAND FOUR HUNDRED SIXTY-TWO DOLLARS AND 55/100 (\$934,462.55).**

9.10.5 Head End Hardware Support Maintenance Pricing (optional) (102B) following the 1-year warranty period, as detailed in Exhibit B – Price Schedule:

- Year 2: ONE HUNDRED TWELVE THOUSAND ONE HUNDRED THIRTY-FIVE DOLLARS AND 50/100 (\$112,135.50)
- Year 3: ONE HUNDRED FOURTEEN THOUSAND NINE HUNDRED THIRTY-EIGHT AND 88/100 (\$114,938.88)
- Year 4: ONE HUNDRED SEVENTEEN THOUSAND EIGHT HUNDRED TWELVE DOLLARS AND 36/100 (\$117,812.36)
- Year 5: ONE HUNDRED TWENTY THOUSAND SEVEN HUNDRED FIFTY-SEVEN DOLLARS AND 67/100 (\$120,757.67)
- Year 6 (optional term): ONE HUNDRED TWENTY-THREE THOUSAND SEVEN HUNDRED SEVENTY-SIX DOLLARS AND 61/100 (\$123,776.61)
- Year 7 (optional term): ONE HUNDRED TWENTY-SIX THOUSAND EIGHT HUNDRED SEVENTY-ONE DOLLARS AND 02/100 (\$126,871.02)
- Year 8 (optional term): ONE HUNDRED THIRTY THOUSAND FORTY-TWO DOLLARS AND 81/100 (\$130,042.81)
- Year 9 (optional term): ONE HUNDRED THIRTY-THREE THOUSAND TWO HUNDRED NINETY-THREE DOLLARS AND 88/100 (\$133,293.88)
- Year 10 (optional term): ONE HUNDRED THIRTY-SIX THOUSAND SIX HUNDRED TWENTY-SIX DOLLARS AND 22/100 (\$136,626.22)

9.10.6 **WorkStation Hardware Pricing, as detailed in Exhibit B – Price Schedule (102C): ONE HUNDRED NINETEEN THOUSAND ONE HUNDRED NINETY-EIGHT DOLLARS AND 56/100 (\$119,198.56).**

9.10.7 WorkStation Hardware Support/Maintenance Pricing (optional) (102D) following the 1-year warranty period, as detailed in Exhibit B – Price Schedule:

- Year 2: FOURTEEN THOUSAND THREE HUNDRED THREE DOLLARS AND 83/100 (\$14,303.83)
- Year 3: FOURTEEN THOUSAND SIX HUNDRED SIXTY-ONE DOLLARS AND 43/100 (\$14,661.43)
- Year 4: FIFTEEN THOUSAND TWENTY-SEVEN DOLLARS AND 95/100 (\$15,027.95)
- Year 5: FIFTEEN THOUSAND FOUR HUNDRED THREE DOLLARS AND 66/100 (\$15,403.66)
- Year 6 (optional term): FIFTEEN THOUSAND SEVEN HUNDRED EIGHTY-EIGHT DOLLARS AND 76/100 (\$15,788.76)
- Year 7 (optional term): SIXTEEN THOUSAND ONE HUNDRED EIGHT-THREE DOLLARS AND 46/100 (\$16,183.46)
- Year 8 (optional term): SIXTEEN THOUSAND FIVE HUNDRED EIGHTY-EIGHT DOLLARS AND 05/100 (\$16,588.05)
- Year 9 (optional term): SEVENTEEN THOUSAND TWO DOLLARS AND 74/100 (\$17,002.74)
- Year 10 (optional term): SEVENTEEN THOUSAND FOUR HUNDRED TWENTY-SEVEN DOLLARS AND 81/100 (\$17,427.81)

9.10.8 COTS Software Support Maintenance Pricing (optional) (103B) following the 1-year warranty period, as detailed in Exhibit B – Price Schedule:

- Year 2: ONE HUNDRED SIXTY-TWO THOUSAND EIGHT HUNDRED FIFTY-TWO DOLLARS AND 95/100 (\$162,852.95)
- Year 3: ONE HUNDRED SIXTY-SIX THOUSAND NINE HUNDRED TWENTY-FOUR DOLLARS AND 27/100 (\$166,924.27)
- Year 4: ONE HUNDRED SEVENTY-ONE THOUSAND NINETY-SEVEN DOLLARS AND 38/100 (\$171,097.38)
- Year 5: ONE HUNDRED SEVENTY-FIVE THOUSAND THREE HUNDRED SEVENTY-FOUR DOLLARS AND 81/100 (\$175,374.81)

- Year 6 (optional term): ONE HUNDRED SEVENTY-NINE THOUSAND SEVEN HUNDRED FIFTY-NINE DOLLARS AND 19/100 (\$179,759.19)
- Year 7 (optional term): ONE HUNDRED EIGHTY-FOUR THOUSAND TWO HUNDRED FIFTY-THREE DOLLARS AND 17/100 (\$184,253.17)
- Year 8 (optional term): ONE HUNDRED EIGHTY-EIGHT THOUSAND EIGHT HUNDRED FIFTY-NINE DOLLARS AND 50/100 (\$188,859.50)
- Year 9 (optional term): ONE HUNDRED NINETY-THREE THOUSAND FIVE HUNDRED EIGHTY DOLLARS AND 99/100 (\$193,580.99)
- Year 10 (optional term): ONE HUNDRED NINETY-EIGHT THOUSAND FOUR HUNDRED TWENTY DOLLARS AND 51/100 (\$198,420.51)

9.10.9 **Cots Software License Cost, as detailed in Exhibit B – Price Schedule (103A): SEVEN HUNDRED NINETY-NINE THOUSAND FIVE HUNDRED FIFTY-NINE DOLLARS AND 49/100 (\$799,559.49).**

9.11 The Fees shall be amended or modified solely by Amendment or Change Order to this Agreement.

9.12 Subject to any changes approved pursuant to Section 9 it is acknowledged and agreed by the Contractor that the Fees set forth in Section 9 is the maximum compensation payable and constitutes a limitation upon the County's obligation to compensate the Contractor. The maximum amounts, however, do not constitute a limitation of any sort, upon the Contractor's obligation to perform all Services and complete all items of Work required by or which can be reasonably inferred from this Agreement. The Contractor shall provide the County with a project work plan stipulating the total number of hours to be performed on each project task following the initial discovery. As part of the project work plan, the parties will mutually define the Final System Acceptance Criteria for the project.

9.13 The compensation set forth in Section 9 is inclusive of any and all of the Contractor's overhead, operating costs, outlays, profit, and associated out-of-pocket costs including, but not limited to photocopying, long distance telephone service, special mailings and the like. The Contractor shall also bear all of its own expenses arising from its performance of the obligations under this Agreement and the SOW including (without limitation) expenses for facilities, work spaces, utilities, management, clerical and reproduction services, supplies, and the like. The foregoing shall not be construed to mean that the Contractor did not include their expenses as a factor such fees set forth in **Exhibit B – Price Schedule**. The prices and costs stated for Deliverables exclude all taxes.

9.13.1 If additional travel outside of the SOW becomes necessary, all such travel will be preconditioned on execution of an Amendment/Change Order and

shall be conducted pursuant to the County of Volusia Travel and Training Policy as set forth in the County's web site:

<http://www.volusia.org/core/fileparse.php/4585/urlt/Travel-and-Training-Policy.pdf>

9.14 **Amendment/Change Orders.** The County may at any time, by written order, make changes within the general Scope of Services to be performed under this Agreement. Except as provided in this Agreement otherwise, if any such change causes an increase or decrease in the Contractor's costs or the time required for performance of the Project Work or Services, an equitable adjustment will be made, and this Agreement will be amended in writing, signed by authorized representatives of the parties, to state the equitable adjustment. Unless the County grants, in writing, an additional period of time before the completion of the Agreement, any claim by the Contractor for adjustment under this Section must be asserted in writing within thirty (30) days from the date of receipt by the Contractor of the notification of change; otherwise, the claim shall be deemed waived. The Contractor will then proceed with the prosecution of the Work or Services as changed. Except as otherwise provided in this Agreement, no charge for any extra work or materials will be allowed or approved by the County. No additional work will be performed or extra materials purchased until a written Change Order has been approved by the Contractor and the County. All change orders or amendments to this Agreement must be authorized by the appropriate County official or governing body having the requisite purchasing authority under the County's Code of Ordinances and Purchasing Policies and Procedures to obligate the County for additional cumulative financial obligations or risk exposure associated with a change order or amendment to this Agreement.

9.14.1 The Contractor acknowledges that the County is a tax exempt entity, and the County agrees to provide the Contractor with written proof of such status, if requested. As such, the County shall not be responsible for paying taxes.

9.14.2 The County shall pay the Contractor within forty-five (45) days of receipt of the Contractor's proper invoice of services non-construction related, subject to the applicable provisions of the Florida Prompt Payment Act (Part VII of Chapter 218, Florida Statutes) and pursuant to Section 9. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and applicable law and must be submitted on the form and pursuant to instructions prescribed by Contract Administrator. If the County receives an improper payment request or invoice from the Contractor, the County shall, within 10 days after receipt of such improper request or invoice, notify the Contractor in writing that the request or invoice is improper and state what corrective action on the part of the Contractor is needed to rectify the request or invoice. Payment may be withheld for disputed amounts until resolved by the parties as provided for by law.

9.15 **Invoices.** Invoices shall be addressed to the following:

Volusia County – Daytona Beach International Airport
Attn: Airport Administration
700 Catalina Drive, Suite 300
Daytona Beach, FL 32124
Email: etreudt@flydab.com

(Note: Invoice mailing address and email addresses subject to change with notification provided to Contractor by County Project Manager.)

9.16 **Claim Notice**

The Contractor shall immediately report in writing to the County's designated representative or agent any incident that might reasonably be expected to result in any claim under any of the coverage mentioned herein. The Contractor agrees to cooperate with the County in promptly releasing reasonable information periodically as to the disposition of any claims, including a résumé of claims experience relating to all Contractor operations at the County project site. The designated representative for the County shall be:

Name: County of Volusia, Florida
Personnel/Risk Management
Division Address: 125 West New York Avenue, Suite 141
DeLand, Florida 32720
Telephone: 386-736-5963
Fax: 386-822-5006

9.17 **Payment and Performance Bond.** Contractor shall furnish a payment and performance bond, prior to performing any work under the Agreement, in an amount equal to one hundred percent (100%) of the total Agreement price for implementation and equipment including any amendments or change orders made thereto pursuant to the order or other documentation executed by the parties. Failing to do so, shall constitute a material breach of this Agreement. The Bonds shall be secured from or countersigned by an agency or surety company recognized in good standing and authorized to do business in the State of Florida and subject to approval by the County Risk Manager.

Simultaneously with the delivery of the executed Agreement to the County, Contractor must deliver to the County, an executed payment and performance on the County's prescribed or approved forms, in the amount equal to one hundred percent (100%) of the total Agreement price including any amendments or change orders made thereto pursuant to an order or other documentation executed by the parties as security for the faithful performance of this Agreement. The payment and performance shall have as the surety thereon only such surety company or companies as are authorized to write bonds of such character and amount under the laws of the State of Florida and with a resident agent in Florida. The Attorney-in-Fact or other officer who signs the performance bond for a surety company must record with such bond a certified copy of Power of Attorney authorizing such person to do so.

Upon cancellation of the Agreement, the County reserves the right to obtain services on the open market as required without competition and for such time until a new solicitation can be advertised, received, evaluated, and an Agreement awarded.

10 TERM OF SOFTWARE LICENSE

Unless otherwise stated in this Agreement, the County expects that the software license(s) identified in the pricing schedule shall be available to the County for purchase or lease on a perpetual basis. However, the County reserves the right to terminate the license at any time, although the mere expiration or termination of the awarded Agreement shall not be construed as intent to terminate the license unless specifically so stated. CANCELLATION OF A PORTION OF THE PERPETUAL LICENSE SHALL NOT AFFECT THE PERPETUAL LICENSE OF ANY OTHER PORTION OF THE SOFTWARE. ALSO, CANCELLATION OF MAINTENANCE SUPPORT ON SOME OR ALL OF THE SOFTWARE PURCHASED SHALL NOT AFFECT THE PERPETUAL LICENSE OR BE A CAUSE FOR REPRICING OF ANY LICENSE. The County further reserves the right to transfer all rights under the license to another governmental agency to which some or all of its functions are transferred.

11 PRODUCT MALFUNCTION

In the event that the County terminates the Agreement due to default by the Contractor or does not accept the proposed product(s) after installation due to errors, malfunctions, and/or non-performance of the Contractor (or its sub-contractor), the County shall have the right to use the product(s), without charge, until it can be replaced in accordance with the Transition Plan provisions of this solicitation.

In the event that the Contractor cannot correct Critical or Non-Critical Problems noted by the County in the then implemented version (including updates) of the product(s), the Contractor shall replace the product or provide a "work around" within ten (10) calendar days after notification that a software correction is required. In the event that the Contractor does not keep the product(s) functioning according to specifications in accordance with the County's sole judgment, then the County, at its sole option, shall have the right to return any or all of the product(s) and related technical data and terminate the Agreement. The County may withhold final payments in the case that the system proves unreliable or does not perform. The County may terminate the Agreement for this cause.

12 RETURN OF ASSETS

Except as otherwise provided in the Agreement, or upon termination of the Agreement, the Contractor shall return all County-owned assets including, but not limited to, stored data and information.

13 EXCESSIVE DOWNTIME

Equipment or software furnished under the Agreement shall be capable of continuous operation in accordance with the minimum requirements.

14 CONFIDENTIAL INFORMATION

14.1 Generally. Both parties hereby acknowledge that each may be exposed to confidential and proprietary information of the other and providers of software and

confidential and proprietary information, business information, and information that may be exempted from disclosure or prevented from being disclosed by reason of law. If Contractor intends to designate certain information provided to County as Confidential, then such information must be expressly identified in writing by the Contractor and Contractor must provide the County with a completed Non-disclosure form provided by the County.

14.2 Confidential Information. Confidential information will constitute information that is exempt from disclosure or otherwise made confidential pursuant to Chapter 119, Public Records Law, Florida Statutes (2014), Article I, Section 24 of the Florida Constitution ("Florida Public Records Law"), Chapter 812 of the Florida Statutes (2014), and any other Florida statute that may provide for an exemption or the confidentiality of certain information (hereinafter "Confidential Information"). In addition, and for the purposes of this Agreement and any future statement of work, Confidential Information shall include Confidential Information and/or trade secret information disclosed by Contractor to the County that is expressly identified in writing by Contractor and Contractor's subcontractors. As such, any Confidential Information as defined herein that is provided by Contractor to County must be expressly identified in a fully completed and executed Nondisclosure Agreement for Confidential Materials, which Contractor may obtain from the County's Purchasing and Contracts Division.

Confidential Information and/or trade secrets do not include the following:

- 14.2.1 Information already known to or independently developed by the recipient;
 - 14.2.2 Information in the public domain through no wrongful act of the recipient;
 - 14.2.3 Information received by the party in possession from a third party the recipient;
 - 14.2.4 Information regularly disclosed by the owner of the information to third parties without restriction on disclosure; or
 - 14.2.5 Information required to be disclosed by law or an order of court, provided that a party required to make disclosure of the other party's Confidential Information shall first notify the other party of such requirement and permit the party to obtain a protective order or other similar relief.
- 14.3 With respect to the Confidential Information, both parties hereby agree that during the term of this Agreement and at all times thereafter, neither shall use, commercialize or disclose such Confidential Information obtained from the other to any person or entity, except to such other parties as the party claiming confidentiality may approve in writing and under such conditions as such claiming party may impose in writing.
- 14.4 Restrictions upon Disclosure of Information.** Each party agrees subject to the conditions and obligations of this Section 14 – Confidential Information:
- 14.4.1 To treat the other's Confidential Information as proprietary to the other;
 - 14.4.2 To not knowingly disclose to any person, other than its employees, consultants, or agents or the employees, consultants and agents of the other

party (as directed by the other party), any Confidential Information belonging to the other party;

14.4.3 To inform its employees, consultants and agents of the confidential nature of the others information and of the requirement of nondisclosure; and

14.4.4 In the event either party has actual knowledge of a breach of the nondisclosure requirements of this Article, the party acquiring such knowledge shall promptly inform the other party and assist that party in curing the disclosure, where possible, and preventing future disclosures.

Where County receives a request by a third party for disclosure of (i) the Confidential Information or (ii) other information that County believes to be Confidential Information and/or a trade secret of Contractor, County shall, in either instance, give written notice to Contractor and Contractor shall take immediate action to notify County in writing whether Contractor agrees to the disclosure or whether Contractor opposes disclosure and shall take legal action to prevent such disclosure.

14.5 Where Contractor receives a request by a third party for disclosure of information that Contractor believes to be Confidential Information and/or a trade secret of County, Contractor shall give written notice to County and County shall take immediate action to notify Contractor in writing whether County agrees to the disclosure or whether County opposes disclosure and shall take legal action to prevent such disclosure.

14.6 If a third party makes a public records request to the County for disclosure of the Licensed Software or Documentation or any item that has been marked and identified by Contractor as confidential or a trade secret, and, the County has refused disclosure and the third party files suit to require disclosure, Contractor acknowledges the County is required to submit any requested item to the court for inspection in camera as set forth in Section 119.07(1)(g), Florida Statutes (2014), or as such provision may be amended. Contractor further acknowledges that Section 119.12, Florida Statutes (2014), states:

If a civil action is filed against an agency to enforce the provisions of this chapter and if the court determines that such agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award, against the agency responsible, the reasonable costs of enforcement including reasonable attorneys' fees.

Contractor further agrees to indemnify, defend, and hold the County harmless from and against any penalties or sanctions, including attorney's fees and costs, assessed against the County pursuant to Chapter 119, Florida Statutes, when the County has refused disclosure of information or documents that the Contractor has marked as confidential or a trade secret.

14.7 Contractor understands and acknowledges that records kept, maintained, or made in the course of performing this Agreement are public records, subject to disclosure pursuant to Chapter 119, Florida Statutes, unless such records are deemed private or otherwise confidential and exempt pursuant to Florida law. If the Contractor fails to cooperate with the County in producing any such records or otherwise fails to maintain, keep, and store such records in accordance with Florida law, then the Contractor shall be liable to the County for any costs, fees, or penalties assessed against the County pursuant to Section 119.12, Florida Statutes (2014), including any successor statutes,

and shall further indemnify, defend, and hold the County harmless from any such costs, fees, or penalties.

- 14.8 Contractor acknowledges and agrees that the County is the owner and custodian of information and data, whether or not such is electronically retained and regardless of the retention media and that the use of any Licensed Software in relation to such information or data does not in any way restrict the rights or obligations of County regarding disclosure of their data and information, provided that the foregoing shall not be construed to permit County to disclose any Confidential Information (including without limitation the Licensed Software or Documentation) in contravention of County's obligations hereunder or under Florida or Federal law.
- 14.9 Except to the extent authorized in this Agreement, both parties hereby agree that during the term of this Agreement and at all times thereafter, neither shall use, commercialize or disclose Confidential Information as defined herein and/or trade secret obtained from the other to any person or entity, except to such other parties as the party claiming confidentiality may approve in writing and under such conditions as such claiming party may impose in writing.
- 14.10 Notwithstanding the foregoing provisions, disclosure of a purported trade secret or Confidential Information shall not be precluded if:
 - 14.10.1 Such disclosure is in response to a valid order of a court or other governmental body of the United States or any political subdivision thereof; or
 - 14.10.2 Such disclosure is necessary to establish rights or enforce obligations under this Agreement and the Scope of Work, but only to the extent that any such disclosure is necessary for such purpose; or
 - 14.10.3 The County received the prior written consent to such disclosure from Contractor, but only to the extent permitted in such consent; or
 - 14.10.4 Disclosure is required by Florida law, including but not limited to Chapter 119, Florida Statutes; or
 - 14.10.5 Disclosure is not exempted by Florida law, including but not limited to Chapter 119, Florida Statutes; or
 - 14.10.6 Disclosure is required by Federal law, which is preemptive of Florida law.
- 14.11 In the event of an intended or required disclosure described in Section 14, the party intending or being required to disclose the other party's Confidential Information shall provide the other party with reasonable advance notice in order to permit the other party the opportunity to seek a protective order or other appropriate relief. Regardless of Sections 14.10.2 and 14.10.3 above, County shall first comply with its obligations under this Agreement, subject to Chapter 119, Florida Statutes (2014) that permit Contractor to object to such disclosures.

14.12 Notwithstanding anything to the contrary contained above or elsewhere in this Agreement, County shall have the right to use the Licensed Software to provide access by the public or government agencies to the database(s), files or information derived from the use of the System and/or to generate reports from such files or information, files or information on electronic media to the public where required or allowed by the laws of the State of Florida or other laws allowing disclosure by County, provided that the foregoing shall not be construed to permit County to disclose any Contractor Confidential Information in contravention of County's obligations hereunder.

14.13 County Data Confidentiality and Use Restrictions

14.13.1 Contractor agrees and understands that all files and other information and data created, maintained, or kept in connection with this Agreement constitute a public record, except to the extent it is exempt from disclosure or proprietary under Florida Law, (including but not limited to Chapter 119, Florida Statutes). Contractor agrees to maintain for public record access such files and to maintain for public access such files after termination of this Agreement to the extent required by the laws and applicable retention periods of the State of Florida. Nothing in the foregoing should be construed to limit the rights of Contractor in its Licensed Software or Documentation, including without limitation any files, information or data created in the modification or customization of the Licensed Software or Documentation for any specific purpose of County, and County recognizes that Contractor shall retain all intellectual property rights in such modifications or customizations.

14.13.2 The parties agree that Chapter 119, F.S., and other Florida Statutes articulate that certain data and written and oral information is exempt or confidential under Florida law. As such, and pursuant to Chapter 119, F.S., County claims such exemption or confidentiality to include, but not be limited to, social security numbers, medical information, pending law enforcement investigations, and any information which reveals the home address or telephone number of a law enforcement officer. All such information or data that is supplied by County or any third party pursuant to this Agreement shall be kept confidential and shall not be used or disclosed to any other party, directly or indirectly, without County's prior written consent unless required by an order issued by a court of lawful jurisdiction. All data provided by County or its agents under this Agreement and all results derived therefrom through the use of the System shall be and remain the County's property and may be reproduced and reused solely at the discretion of the County.

14.13.2.1 Upon any termination or expiration of this Agreement, Contractor, upon County's written request, shall promptly deliver, but not more than thirty (30) days after County's request, to County an extract of County's data in the System in XML format or such other format as mutually agreed upon by County and Contractor.

14.14 THE ABOVE DUTIES AND OBLIGATIONS SHALL SURVIVE THE CANCELLATION OR TERMINATION OF THIS AGREEMENT.

15 SECURITY VULNERABILITY RISK MITIGATION

A security vulnerability identified in provided software and equipment is considered a major “bug” and a “critical problem” requiring immediate action and shall be expeditiously patched to mitigate risk to County systems and information. In cases where the Contractor is not the original manufacturer, the Contractor shall coordinate mitigation of security vulnerabilities with the original manufacturer. The Contractor shall provide temporary risk mitigation actions to protect vulnerable County systems and information until a permanent patch becomes available. The Contractor shall keep the County Project Manager fully informed of all security vulnerabilities and the actions underway to patch such vulnerabilities.

16 ACCESS TO THE COUNTY SYSTEM

- 16.1 The County, in its sole discretion, may permit the Contractor to have remote on-line access to designated computer systems of the County in order to facilitate the Contractor’s ability to perform its obligations under this Agreement. Such access shall be used only in furtherance of the Contractor’s duties under this Agreement and may not be used for any other purpose. If such access is granted, the Contractor shall give to the County the names of the Contractor’s employees who have a legitimate business need for such access to the County’s computer systems, and the County shall provide a separate user identification code for each person, if applicable. The Contractor shall audit all remote access used by its employees at least quarterly to ensure its employees are performing their duties in strict adherence to all security and privacy requirements under this Agreement and shall immediately notify the County of and take immediate action to rectify any deviations.
- 16.2 The Contractor, at its own expense, shall provide and maintain any hardware, telecommunications services and software not furnished by the County which is needed to communicate reliably with the County’s computer systems. The County, in its sole discretion, may terminate the Contractor’s access to the County’s computer network at any time. The Contractor shall ensure that: (a) computer access is limited to those employees with a legitimate business need whose names have been furnished to the County; and (b) such employees with access agree to keep any information so obtained strictly confidential, to use such information only to perform the Contractor’s contract obligations to the County and to cease accessing the County’s computer systems when no longer required to perform work under this Agreement.
- 16.3 The Contractor shall immediately notify the County if it becomes aware of any unauthorized access to the County’s computer systems or unauthorized use of the information on the systems. Any information to which the Contractor, its officers, employees, subcontractors or agents becomes privy as a result of such access will be deemed proprietary information and protected by the provisions of this Agreement.
- 16.4 The Contractor shall cooperate with the County in the investigation of any apparent unauthorized access by the Contractor to the County computer or electronic data storage systems or unauthorized release of the County Data by the Contractor. The Contractor warrants and agrees that its personnel will not remotely access the County’s system from a networked computer unless the network is protected from all third party networks by a firewall that is maintained with all patches up to date by qualified, trained and competent administrative staff. Said firewall must be certified by the International Computer Security Association (ICSA) (or an equivalent certification

as determined by the County) if the connection to the County's network is an ongoing connection such as broadband or Metro E.

17 SECURITY OFFICER AND BACKGROUND SCREENING

- 17.1 **Security Officer.** Throughout the term of the Agreement, Contractor shall designate a Security Officer who will serve as the principal point of contact for all matters pertaining to information security and ensure compliance with the security and personnel screening requirements defined in the Agreement. The County's Security Officer, at their sole discretion based on the "need to know" principle, may bypass the project lead(s) and other Contractor personnel and communicate directly with the designated Contractor's Security Officer to discuss and resolve security and privacy issues and concerns.

18 PAYMENT OF SUBCONTRACTORS

- 18.1 **Payment.** Contractor shall pay its Subcontractors and suppliers, within thirty (30) days following receipt of payment from the County for such subcontracted Work or supplies. Contractor agrees that if it withholds an amount as retainage from such Subcontractors or suppliers, that it shall release such retainage and pay same within thirty (30) days following receipt of payment of retained amounts from County.
- 18.2 **Indemnification as to Payment of Subcontractors.** Contractor shall save, defend, and hold the County harmless from any and all claims and actions from Contractor's Subcontractors for payment for Services and Deliverables provided by Subcontractors for Contractor under this Agreement. Regardless of the foregoing, nothing in this Agreement shall create any contractual relationship between any Subcontractor and the County or any obligation on the part of the County to pay or to see the payment of any moneys due any Subcontractor, except as may otherwise be required by law.

19 LIMITATION OF LIABILITY AND INDEMNIFICATION OF COUNTY

- 19.1 **Limitation of Liability.** In no event shall either party be liable to the other party for loss of profits or indirect, special, incidental or consequential damages incurred by the other party and arising out of or in connection with this agreement. The total liability of the Contractor to the county under this agreement, whether arising out of breach of contract (including but not limited to breach of warranty) or tort (including but not limited to negligence and strict liability), shall in no event exceed the applicable insured amounts as specified in Exhibit E – Insurance Requirements.
- 19.2 **Sovereign Immunity.** The County expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Agreement to the contrary, nothing in this Agreement may be deemed a waiver of the County's immunity or limits of liability beyond any statutory limited waiver of immunity or limits of liability which may have been or may be adopted by the Florida Legislature, and the cap on the amount and liability of the County for damages, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount set by the legislature for tort. Nothing in this Agreement may inure to the benefit of any third party for the purpose of allowing any claim against the County, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

19.3 **No Third Party Beneficiaries.** Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the County, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

19.4 **Indemnification.**

To the extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the County and the State of Florida, Department of Transportation (Department), including the Department's officers, agents, and employees, against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of Contractor, or any of its officers, agents, or employees, acting within the scope of their office or employment, in connection with the rights granted to or exercised by Contractor. The foregoing indemnification shall not constitute a waiver of the State of Florida, Department of Transportation or the County sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28. Nor shall the same be construed to constitute agreement by Contractor to indemnify County for the negligent acts or omissions of County, its officers, agents, or employees, or third parties. Nor shall the same be construed to constitute agreement by Contractor to indemnify the Department for the negligent acts or omissions of the Department, its officers, agents, or employees, or third parties.

This indemnification shall survive the termination of this Agreement. Nothing contained in this Article is intended to nor shall constitute a waiver of, the County's and Department's sovereign immunity.

In all claims against the County or any of its public officials (elected and appointed), successors and successors in interest, officers, agents, attorneys, and employees by any employee of Contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor, consultant or any subcontractor or subconsultant under workers' compensation acts, disability benefit acts or other employee benefit acts.

In no event shall Contractor or County be liable for consequential, special, incidental, indirect, exemplary, or punitive damages.

19.5 **Claims Notice.** The Contractor shall timely report in writing to the County's Director of Risk Management any incident which it believes might result in claims against the County under any of the coverages mentioned herein.

Name: County of Volusia, Florida
Human Resources/Risk Management Division
Address: 125 W. New York Ave., Suite 141
DeLand, Florida 32720
Telephone: 386-736-5963
Fax: 386-822-5006

20 **WARRANTY AS TO INTELLECTUAL PROPERTY INFRINGEMENT**

The Contractor represents and warrants that at the time of entering into this Agreement, no claims have been asserted or any action or proceeding has been brought against the Contractor, which claim or action alleges that all or any part of the Software to be supplied by

the Contractor or the operation or use thereof by the County, infringes or misappropriates any patent, copyright, mask copyright or any trade secret or other intellectual or proprietary right of a third party, nor is the Contractor aware of any such potential claim. The Contractor also represents and warrants that its Services and Deliverables to be provided pursuant to this Agreement do not infringe or misappropriate any patent, copyright, mask copyright or any trade secret or other intellectual or proprietary right of a third party. Nothing in this section shall be construed to limit the Contractor's obligation to indemnify County pursuant to Section 20 hereof.

21 INSURANCE

- 21.1 Insurance requirements (see Exhibit "E").
- 21.2 The provisions of this Article shall survive the cancellation or termination of the Agreement to the extent required to maintain coverage for losses arising out of performance of the Work by Contractor, its employees, agents and all persons or entities performing any portion of the Work via direct or indirect contract with the Contractor.
- 21.3 In the event Change Orders exceed the estimated Agreement Price, Contractor shall be required to obtain additional insurance to meet the new Agreement Price.
- 21.4 Prior to commencing Work, Contractor shall execute and record in the public records of Volusia County, a payment and performance bond with a surety insurer authorized to do business in Florida as surety. The bond(s) shall be in the form of those attached in Exhibit K hereto and shall in all respects be governed by Florida Statute §255.05 and the provisions of the Agreement Documents.
- 21.5 The provisions of this article shall survive the cancellation, termination or expiration of the Agreement to the extent necessary to provide required coverage for the Contractor's performance of the Work.

22 TERMINATION

- 22.1 The performance of Services under this Agreement may be terminated by the County in accordance with this Section 22, in whole or in part from time to time, for (1) a material breach subject to Section 23 - Dispute Resolution; (2) nonappropriation of funds; or, (3) for convenience (upon at least thirty (30) calendar days, prior written notice to Contractor) whenever the County shall determine that such termination is in the best interest of the County. Any such termination shall be affected by delivery to the Contractor of a written Notice of Termination specifying the extent to which performance of Work under this Agreement is terminated, and the subsequent date upon which such termination becomes effective.
- 22.2 After receipt of a Notice of Termination, and except as otherwise directed by the County, the Contractor shall:
 - 22.2.1 Stop work under this Agreement on the date and to the extent specified in the Notice of Termination.

- 22.2.2 Place no further orders or subcontracts for materials, Services or Work or facilities, except as may be necessary for completion of such portion of the Work under this Agreement, as it is not terminated.
- 22.2.3 Terminate all orders and subcontracts pursuant to this Section 22 – Termination to the extent that they relate to the performance of Services or Work terminated by the Notice of Termination.
- 22.2.4 Assign to the County, in the manner, at the times and to the extent directed by the County, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the County shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- 22.2.5 With the approval of the County and to the extent required by the County, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts. County's approval of such settlements shall be final for all the purposes of Section 22 – Termination.
- 22.2.6 Transfer title and deliver to the County, in the manner, at the times, and to the extent, if any, directed by the County:
 - 22.2.6.1 The designs, specifications, reports, studies, plans, bulletins, schedules, estimates, other documentation and/or other Work-in-process, completed Work or Services, supplies, and other materials produced as a part of, or acquired in connection with the performance of the Work or Services terminated by the Notice of Termination; and,
 - 22.2.6.2 The completed or partially completed designs, specifications, reports, studies, plans, bulletins, schedules, estimates or other documentation which, if this Agreement has been completed, would have been required to be furnished to the County.
- 22.2.7 Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination.

22.3 Termination by the Contractor.

- 22.3.1 The Contractor may terminate the Agreement if the Work is stopped for a period of ninety (90) consecutive days through no act of fault of the Contractor or its agents or employees or any other persons or entities performing portions of the Work in direct or indirect contract with the Contractor for the following reasons:
 - 22.3.1.1 Issuance of an order of court or other government entity with jurisdiction over the Project requiring a stoppage of Work; or
 - 22.3.1.2 Failure of the County to certify an application for payment without cause in accordance with the provisions of this Agreement and Florida Statutes

- 22.3.2 The Contractor may terminate the Agreement if, through no act of fault of the Contractor or its agents or employees or any other persons or entities performing portions of the Work in direct or indirect contract with the Contractor, the County causes repeated suspensions, delays or other interruptions which cause total cessation of performance of the Work by Contractor for more than 150 days in a 365-day period.
- 22.3.3 If one of the conditions above exist, Contractor may give County thirty (30) days written notice to the County, terminate the Agreement and Contractor shall be entitled to payment from the County for all Work actually performed, and costs directly incurred by reason of the termination. Upon failure of the Contractor to submit its termination claim within the time allowed, the County may determine on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

22.4 Termination by County for Cause or Default

- 22.4.1 Section 80-09 of FAA Advisory Circular 150/5370-10 establishes conditions, rights, and remedies associated with the County's termination of this contract due to default of the Contractor. The County may terminate the Agreement if the Contractor:
 - 22.4.1.1 Repeatedly refuses or fails to provide adequate manpower, equipment or proper materials to perform the Work on schedule;
 - 22.4.1.2 Fails to make payment to Subcontractors for labor or materials in accordance with Florida Statutes or the terms of the subcontract Agreements;
 - 22.4.1.3 Repeatedly fails to abide by applicable laws, statutes, ordinances, codes, rules, regulations, or orders of a government entity having jurisdiction over the Project;
 - 22.4.1.4 Fails to comply with the requirements of the FHWA or FDOT for the Project as required by the Agreement Documents or by the agencies themselves;
 - 22.4.1.5 Fails to perform the Work in a manner that meets or exceeds the industry standard for a similarly situated Contractor on a Project of this type;
 - 22.4.1.6 Failures to cure a substantial and material breach of the Agreement provisions;
 - 22.4.1.7 Is adjudged as bankrupt or insolvent, or if it makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for Contractor or for any of its property, or if it files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;

22.4.1.8 Fails to follow the instructions of the County or County's representative or otherwise violates any material provision(s) of the Agreement Documents, which if uncured in a timely manner could cause damages to the County.

22.4.1.9 The Recipient shall include the attached Exhibit "E", Title VI Assurances in all contracts will consultants and contractors performing work on the Project..."An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by the Department to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Recipient.

22.4.2 If County determines a condition described in Section 8.4.1 exists, County may, without prejudice to other rights or remedies and upon giving notice to the Surety, terminate the Contractor upon ten (10) days written notice and may, subject to the prior rights of Surety, if any:

22.4.2.1 Exclude the Contractor from the Project and take possession of all materials, equipment tools and construction equipment and machinery thereon owned by the Contractor;

22.4.2.2 Accept assignment of subcontracts; and

22.4.2.3 Withhold any further payment from Contractor until the Work is complete;

22.4.2.4 Finish the Work by whatever commercially reasonable method the County chooses. County shall maintain a detailed accounting of the costs incurred by the County to finish the Work.

22.4.3 If the unpaid balance of the Agreement Sum exceeds the cost of finishing the Work, including County's cost of compensation to the CEI (if any) and other direct costs made necessary thereby, and other damages incurred by the County not expressly waived, the difference shall be paid to the Contractor. If such costs to the County exceed the unpaid Agreement Sum, the Contractor shall pay the difference to the County.

22.5 Termination for Cause – Breach.

22.5.1 Subject to completion of the dispute resolution procedures set forth in Section 23 - Dispute Resolution, either party may, at its option, terminate this Agreement in the event of a material breach of the other party by providing the breaching party thirty (30) days' prior written notice of termination delivered in accordance with Section 26.4 - Notice hereof, which notice shall identify and describe with specificity the basis for such termination. If, prior to the expiration of the notice period, the breaching party either:

22.5.1.1 Cures the noticed breach as evidenced by written confirmation of the cure delivered by the non-breaching party in accordance with Section 26.4 – Notice and non-breaching party accepts cure; or

22.5.1.2 Submits to the non-breaching party a plan satisfactory to the non-breaching party to cure the noticed breach and cures the breach to the satisfaction of the non-breaching party within the time period agreed upon in the plan as evidenced by written confirmation of the cure delivered by the non-breaching party in accordance with Section 26.4 – Notice hereof within the period contained in such plan to cure, then this Agreement shall not be terminated for the noticed breach.

22.5.2 In the event the breaching party fails to cure the noticed breach within the time period set forth in this Section 22 - Termination, this Agreement may be terminated at the end of the 30 day cure period (or longer time period for cure if agreed in writing by the parties) and the non-breaching party can sue the breaching party for damages and/or specific performance under this Agreement and seek such other remedies as may be available under Florida law.

22.5.3 In the event Contractor fails to cure a noticed breach within the time period set forth in Section 22 and County terminates this Agreement, the County shall have the unfettered right to solicit, re-solicit and/or to contract for goods, Work or Services from any contractor, including Contractor's Subcontractors or Sub-subcontractors, to complete the Project.

22.6 Termination for Non-appropriation.

22.6.1 Notwithstanding any other term or provision of this Agreement, the continuation of this Agreement beyond a single fiscal year of County is subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes. Termination by the County due to nonappropriation shall be without a termination charge by Consultant. County shall not be obligated to pay Contractor under this Agreement beyond the date of termination except as set forth in this Agreement. County's obligation to pay Contractor is limited to the budgeted amount for a fiscal year approved by the Volusia County Council for the then current fiscal year of this Agreement and is otherwise limited to legally available non-ad valorem tax revenues.

22.6.2 Any such termination shall be affected by the delivery of Notice of Termination in accordance with Section 26.4 – Notice. A Notice of Termination shall specify the extent to which this Agreement is terminated and the date upon which termination will become effective.

22.6.3 In the event that this Agreement is terminated in whole for nonappropriation by the County or Contractor and subject to Section 9 – Compensation and Method of Payment; Punchlist, and Section 22 – Termination, Contractor shall be paid in accordance with terms of this Article to the date of termination on a prorated basis for any milestone or Deliverable designated for payment under this Agreement that was started but not completed. Notwithstanding the foregoing, County's obligation to pay Contractor under Section 9 – Compensation and Method of Payment; Punchlist and this Agreement is limited to the budgeted amount for the fiscal year approved by the Volusia County Council for the then current fiscal year of this Agreement and is

otherwise limited to legally available non-ad valorem tax revenues. Contractor shall have no right to compel the Volusia County Council to appropriate funds for any fiscal year to pay the compensation set forth in Section 9 – Compensation and Method of Payment; Punchlist. Upon being notified of County's election to terminate or Contractor election to terminate, Contractor and its Subcontractors shall refrain from performing further work or incurring additional expenses under the terms of this Agreement which is not specifically authorized in the Notice of Termination.

22.6.4 Upon being notified of County's election to terminate for default of Contractor, non-appropriation or convenience, Contractor and its Subcontractors shall refrain from performing further work or incurring additional expenses under the terms of the resulting Agreement which is not specifically authorized in the notice of termination.

22.6.5 If termination of the resulting Agreement occurs for any reason:

22.6.5.1 Except as otherwise provided in the resulting Agreement, Contractor shall return to the County, or destroy, all County confidential information in Contractor's possession and shall certify the destruction or return of said information in a written document signed by the duly authorized representative of the Contractor that all such information has been destroyed or returned, provided that Contractor shall be permitted to retain an archival copy of any such confidential information (provided it continues to maintain the confidentiality of such as prescribed herein) to the extent necessary to have a record of the service performed hereunder.

22.6.5.2 For all undisputed outstanding invoices submitted to the County for work completed or deliverables delivered prior to the effective date of the termination, the County shall cause payments to be made to Contractor within thirty (30) days of receipt of invoice. Contractor shall invoice the County for any sums Contractor claims to be owed by County under the resulting Agreement for work performed from the last invoice to the effective date of termination. County shall review such invoice for payment within fifteen (15) days of receipt and County shall pay any undisputed amount within thirty (30) days, subject to the Article entitled Compensation in the resulting Agreement. Any disputed amounts on any invoices shall be subject to the dispute resolution process set forth in the Article entitled Dispute Resolution in the resulting Agreement.

22.6.6 In the event of termination by the County for nonappropriation, for all items or products ordered by Contractor before receipt by Contractor of the Notice of Termination which Contractor could not cancel without imposition of a fee, the County shall cause payments to be made to Contractor within thirty (30) days of receipt of an undisputed invoice for all cancellation, restocking or residual fees resulting from the cancellation or return of third party products ordered from or shipped by the vendor thereof prior to the effective date of the termination.

22.7 Suspension by County for Convenience.

22.7.1 The County may order the Contractor in writing to suspend, delay or interrupt a portion or all of the Work, without cause.

22.7.2 The Agreement Time and Agreement Sum may be adjusted on account of any suspension, delay or interruption pursuant to Section 22.7, in accordance with the Agreement Documents, but no adjustment shall be required if:

22.7.2.1 And to the extent the performance is or would have been suspended by another cause for which the Contractor or those in direct or indirect contract with the Contractor are responsible; or

22.7.2.2 And to the extent that an equitable adjustment is made or denied under another provision of the Agreement Documents accounting for the suspension.

22.8 Termination by the County for Convenience.

22.8.1 The County may terminate the Agreement for convenience in whole or in part at any time without cause upon thirty (30) days written notice to Contractor. Such action may be without cause and without prejudice to any other right or remedy of the County. Upon receipt of a written notice of termination, except as explicitly directed by the County, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

22.8.1.1 Cease operations as directed by the County in the notice;

22.8.1.2 Protect and preserve the Work in place and stored materials as directed by the County;

22.8.1.3 Assign subcontracts and purchase orders as directed by the County;

22.8.1.4 Except as otherwise directed by the County, terminate all subcontracts and purchase orders effective on the termination date provided in the notice of termination and cease entering any new subcontracts or purchase orders.

22.8.1.5 Deliver to the Owner all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work, and as directed in the written notice.

22.8.1.6 Complete performance of the work not terminated by the notice.

22.8.2 If termination of this Agreement occurs for any reason:

22.8.2.1 Except as otherwise provided in this Agreement, Contractor shall return to the County all County Confidential Information in Contractor'

possession and shall certify in a written document signed by the Contractor and County Representative or any Amendment thereto then, in accordance with Section 26.4 - Notice that all such information has been returned.

22.8.2.2 Except as provided in herein, the County shall return to Contractor or destroy all Contractor Confidential Information in the County's possession (including, without limitation, all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment or other documents or property relating to such Contractor Confidential Information and all copies of any of the foregoing (in whatever medium recorded) and all third-party products in its possession not yet accepted and not yet paid for in full together with all copies of documentation and other material related thereto, and shall certify in a written document signed by the County Project Manager and Contractor or any amendment thereto that all such information and material has been returned or destroyed.

22.8.2.3 For all undisputed outstanding invoices submitted to the County prior to the effective date of the termination and subject to Section 9 – Compensation and Method of Payment and this Section 22 – Termination, the County shall cause payments to be made to Contractor within thirty (30) days of receipt of invoice. Contractor shall invoice the County for any sums Contractor claims to be owed by County under this Agreement for work performed from the last invoice to the effective date of termination. County will review such invoice for payment within fifteen (15) days of receipt and County will pay any undisputed amount within thirty (30) days.

22.8.2.4 Owner will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the Owner's termination action.

22.8.2.5 The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract.

22.9 If the Contractor's failure to perform and default arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor (such causes may include, but are not restricted to acts of God, acts of the public enemy, acts of the County in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor and the Contractor, within ten (10) days from the beginning of any such delay notifies the County in writing of the causes of delay, then the County, in its sole discretion, shall ascertain the facts and the extent of delay and extend the time for completing the Project when the findings of fact justify such an extension.

22.10 If, after Notice of Termination of this Agreement for default, it is determined for any reason that the Contractor was not in default or that the default was excusable under the provisions of paragraph above, the rights and obligations of the parties shall be

the same as if the Notice of Termination had not been issued pursuant to this Section 22 - Termination.

- 22.11 Any provision of this Agreement that imposes or contemplates continuing obligations on a party, will survive the expiration or termination of this Agreement.
- 22.12 If County terminates pursuant to this Section 22, Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, plus commercially reasonable overhead and profit on the Work not executed.
- 22.13 **Termination for Failure to Meet Acceptance Criteria.** If Contractor is unable to deliver the System in a manner that enables the System and all of its functional components to pass Final System Acceptance testing, County shall have the right to terminate the Agreement and have the right to receive from Contractor a refund of the fees actually received by the Contractor through the date of such termination. If County determines that the Contractor has not met the final testing and System Acceptance Criteria, County shall notify Contractor in writing with those specific criteria Contractor has failed to satisfy. Contractor shall have sixty (60) days to satisfy the requirements, or such longer time as the parties mutually agree.
- 22.14 The right of termination provided to the County and the Contractor herein shall be cumulative of all other remedies available at law.
- 22.15 All provisions of this Agreement which imposes or contemplates continuing obligations on a party will survive the expiration or termination of this Agreement.

23 DISPUTE RESOLUTION

- 23.1 The parties to this Agreement shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to this Agreement in accordance with the provisions set forth in this Section 23 – Dispute Resolution. The Contractor and County Project Manager shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, to address and work toward resolution of issues that arise in performance of this Agreement and any applicable Scope of Work. Issues shall be escalated to successive management levels as needed.
- 23.2 Contractor and County shall not allow any dispute to adversely affect the progress of the Work unless continuing the Work would likely result in dangerous conditions on the Project, danger to the public, or reasonably certain irreparable financial harm.
- 23.3 Contractor and County agree that all contractual provisions with respect to making claims, providing notice of default and opportunity to cure or termination, must be performed unless mutually waived in writing, as a condition precedent to initiating any dispute resolution process.
- 23.4 If a dispute develops between the parties concerning any provision of this Agreement, or the interpretation thereof, or any conduct by the other party under these Agreements, and the parties are unable to resolve such dispute within ten (10) days, that party, known as the Invoking Party, through its applicable Project Manager, shall promptly bring the disputed matter to the attention of the non-Invoking Party's Project

Manager or designated representative, as the case may be, of the other party in writing (“Dispute Notice”) in order to resolve such dispute.

- 23.5 Upon issuance of a Dispute Notice, the Project Managers or designated representative shall furnish to each other all non-privileged information with respect to the dispute believed by them to be appropriate and germane. The Project Managers shall negotiate in an effort to resolve the dispute without the necessity of any formal proceeding. If such dispute is not resolved by the Project Managers or designated representative within ten (10) business days, the Project Managers shall escalate the dispute as indicated below.

Business Days	Contractor’s Representative	County Representative
10	Contractor	Project Manager
10	Contractor’s Local Officer	Director of Purchasing & Contracts
20	Contractor’s COO or President	Deputy County Manager

- 23.6 **Formal Dispute Resolution.** At any point after issuance of a Dispute Notice under this section, either party may initiate formal non-binding mediation before a single mediator, which mediation shall be completed within thirty (30) days of initiation, in accordance with the rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700 et seq. of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize such termination remedies and commence litigation in a court of competent jurisdiction pursuant to this Agreement.
- 23.7 Each party agrees to bear its own costs and attorney’s fees relating to any dispute resolution procedures described in this section including without limitation attorney’s fees and costs, and any travel or related expenses of personnel or senior management whose presence may be necessary to resolve such issues, disputes or controversies.
- 23.8 **Mediation.** Contractor and County shall engage in non-binding mediation as a condition precedent to the initiation of litigation. The parties shall select a mutually agreeable Florida Supreme Court Certified Circuit Civil Mediator experienced and knowledgeable in construction law and/or large construction projects, within thirty (30) days of a request for mediation from the other party. The mediation shall occur at a mutually agreeable time, but not more than one-hundred twenty (120) days after the selection of a mediator, unless otherwise agreed in writing. The Florida Statutes and Florida Rules of Civil Procedure applicable to mediation shall apply. Notwithstanding the foregoing, Contractor and County agree that if they agree on a compromise and settlement, it would necessarily have to be presented in good faith to the entire county council at open meeting before it could be finalized, and such public presentation shall not be considered a breach of the confidentiality requirements of mediation. Each party shall bear their own costs and attorneys’ fees. The mediation shall occur in Volusia County unless otherwise mutually agreed in writing. Any Agreement reached at mediation shall be enforceable in a court of competent jurisdiction.

- 23.9 In the event of a claim by County against the Contractor, the County may, but is not obligated to, notify the Surety of the nature and amount of the claim. If the claim relates to a possibility of a Contractor's default, the County may, but is not obligated to, notify the surety and request the surety's assistance in resolving the dispute.

24 COUNTY DATA

- 24.1 Contractor agrees and understands that all files and other information and data created in connection with the administration of this Agreement, except those records and data designated as Sensitive Security Information (SSI), constitute a public record, except to the extent it is exempt or proprietary under Florida Law (Chapter 119, Florida Statutes) from disclosure or as preempted by federal law. Contractor agrees to maintain for public record access such files and to maintain for public access such files after termination of this Agreement to the extent required by the laws of the State of Florida.
- 24.2 Upon any termination or expiration of this Agreement, Contractor, upon County's written request, shall promptly deliver, but not more than thirty (30) days after County's request, to County an extract of County's data hosted in the System in XML format or such other format as mutually agreed upon by County and Contractor.
- 24.3 THE ABOVE DUTIES AND OBLIGATIONS SHALL SURVIVE THE CANCELLATION OR TERMINATION OF THIS AGREEMENT.

25 FEDERAL AVIATION ADMINISTRATION (FAA) GRANT REQUIREMENTS

- 25.1 Contractor shall abide by all requirements listed Exhibit G – FAA Contract Provisions to this Contract for the duration of this Contract.

25.2 ADDITIONAL REQUIREMENTS

1. Contractor is required (including all subcontractors) to insert these contract provisions in each lower tier contract (e.g. subcontract or sub-agreement).
2. Contractor is required (including all subcontractors) to incorporate the applicable requirements of these contract provisions by reference for work done under any purchase orders, rental agreements and other agreements for supplies or services.
3. Contractor shall be responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor or service provider.
4. Contractor shall verify that any required local or State provision does not conflict with or alter a Federal law or regulation. (FAA Guidelines, Page 5)

26 LOCAL GOVERNMENT REQUIREMENTS

- 26.1 **Public Records Law.** Pursuant to section 119.0701(2)(a), Florida Statutes, the County is required to provide Contractor with this statement:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: 386-736-5935, purchasing@volusia.org, by mail at 123 W. Indiana Ave., RM 302 DeLand, FL 32720.

26.2 By entering into this Agreement, Contractor acknowledges and agrees that any records maintained, generated, received, or kept in connection with, or related to the performance of services provided under, this Agreement are public records subject to the public records disclosure requirements of section 119.07(1), Florida Statutes, and Article I, section 24 of the Florida Constitution. Pursuant to section 119.0701, Florida Statutes, any Contractor entering into a contract for services with the County is required to:

26.2.1.1 Keep and maintain public records required by the County to perform the services and work provided pursuant to this Agreement.

26.2.1.2 Upon request from the County's custodian of public records, provide the County 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 in Chapter 119, Florida Statutes, or as otherwise provided by law.

26.2.1.3 Ensure that public records that are exempt, Sensitive Security Information, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the County.

26.2.1.4 Upon completion of the Agreement, transfer, at no cost, to the County all public records, as well as Sensitive Security Information records and data, in the possession of the Contractor or keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt, Sensitive Security Information, or confidential and exempt from public records disclosure requirements. The contractor shall provide documented proof of destruction. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

26.2.1.5 Requests to inspect or copy public records relating to the County's Agreement for services must be made directly to the County. If Contractor receives any such request, Contractor shall instruct the requestor to

contact the County. If the County does not possess the records requested, the County shall immediately notify the Contractor of such request, and the Contractor must provide the records to the County or otherwise allow the records to be inspected or copied within a reasonable time.

26.2.1.6 Contractor acknowledges that failure to provide the public records to the County within a reasonable time may be subject to penalties under section 119.10, Florida Statutes.

26.2.1.7 Contractor further agrees not to release any records that are statutorily confidential, Sensitive Security Information, or otherwise exempt from disclosure without first receiving prior written authorization from the County.

26.3 Contractor shall indemnify, defend, and hold the County harmless from and against any and all claims, damage awards, and causes of action arising from the Contractor's failure to comply with the public records disclosure requirements of section 119.07(1), Florida Statutes, or by Contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorney's fees and costs arising therefrom. Contractor authorizes County to seek declaratory, injunctive, or other appropriate relief against Contractor from a Circuit Court in Volusia County on an expedited basis to enforce the requirements of this section.

26.4 **No Code Violation or Past Due Debt.** Contractor warrants and represents that neither the business, nor any officer or significant stakeholder of the business is in violation of the Volusia County Code of Ordinances, and does not owe the County any past due debt. Any breach of the foregoing warranty and representation shall be a material breach of this Agreement and the County shall have the right to terminate this Agreement as set forth herein.

26.5 **Modifications Due To Public Welfare or Change in Law.** The County shall have the power to make changes in this Agreement as the result of changes in law and/or ordinances of Volusia County to impose new rules and regulations on Contractor under this Agreement relative to the scope and methods of providing services as shall from time-to-time be necessary and desirable for the public welfare. The County shall give Contractor notice of any proposed change and an opportunity to be heard concerning those matters. In the event any future change in Federal, State or County law or the ordinances of Volusia County materially alters the obligations of Contractor, or the benefits to the County, then this Agreement shall be amended consistent therewith. Nothing contained in this Agreement shall require any party to perform any act or function contrary to law. The County and Contractor agree to enter into good faith negotiations regarding modifications to this Agreement, which may be required in order to implement changes in the interest of the public welfare or due to change in law.

26.6 **Compliance with Laws.**

26.6.1 The Contractor shall be responsible to know and to apply all applicable federal and state laws, all local laws, ordinances, rules, regulations, and all

orders and decrees of bodies having jurisdiction or authority which in any manner affect the work, or which in any way affect the conduct of the work. Contractor shall always observe and comply with all such laws, ordinances, rules, regulations, orders and decrees whether or not they are specifically included or referenced by name in the Agreement Documents.

- 26.6.2 All licenses and permits required to perform Contractor's duties under this Agreement whether such license or permit is required by the federal government, State of Florida, Volusia County, or any municipality, shall be at Contractor's sole cost and expense, and shall not be a cost of the County. All required licenses and permits shall be maintained in full force and effect during the term of this Agreement.
- 26.7 **Truth-In-Negotiation Certificate.** The signature on this Agreement by Contractor shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual Unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of Contracting.
- 26.8 **Nondiscrimination and Americans with Disabilities Act.** Contractor shall not unlawfully discriminate against any person in the operations and activities in the use or expenditure of the funds or any portion of the funds provided by this Agreement. Contractor agrees it shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any Services funded by County, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In performing under this Agreement, Contractor agrees that it shall not commit an unfair employment practice in violation of any state or federal law and that it shall not discriminate against any member of the public, employee or applicant for employment for work under this Agreement because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability.
- 26.8.1 In accordance with the American Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing a special accommodation to participate in the proceedings, or an interpreter to participate in any proceedings, should contact the county's ADA Coordinator at 386-248-1760 for assistance, at least two business days before any meeting date. Assisted listening system receivers are available for the hearing impaired, and can be obtained from the Deputy Clerk by contacting the county's ADA Coordinator at 386-248-1760. Read the full [ADA Notice](#) under The American with Disabilities Act (Title II). Read the [County of Volusia Grievance Procedure](#) under The Americans with Disabilities Act (Title II).
- 26.9 **Fair Labor Standards Act.** The Contractor and any Subcontractor shall pay all employees working on this Agreement, not less than the minimum wage specified in the Fair Labor Standards Act (as amended).

26.10 **Drug-Free and Smoke-Free Workplace.** The County of Volusia is a drug-free and smoke-free workplace. Contractor agrees that its personnel and the personnel of each of its Subcontractors agree to adhere to the County's policies on drug-free and smoke-free work place during the term of this Agreement.

26.11 **Employment of Illegal Aliens.** Contractor certifies that it does not knowingly or willingly and will not during the performance of the Agreement employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986, as amended.

26.12 **Prohibition Against Contingent Fees.**

26.12.1 The Contractor warrants that he or she or it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement and that he or she or it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Contractor any fee, commission, compensation, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the County shall have the right to terminate this Agreement without liability and, at its sole discretion, to deduct from the Agreement price or compensation, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

26.12.2 Contractor understands and acknowledges that any individual, corporation, partnership, firm, or company, other than a bona fide employee working solely for the Contractor, who offers, agrees, or contracts to solicit or secure County contracts for professional Services for any other individual, company, corporation, partnership, or firm and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or the making of an agreement for professional Services shall, upon conviction in a competent court of this State, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes.

26.12.3 Any County official, agent or employee who offers to solicit or secure, or solicits or secures, an agreement for professional Services and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon the award or making of such an agreement for professional Services between the County and any individual person, company, firm, partnership, or corporation shall, upon conviction by a court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes.

26.13 **Public Entity Crime and Discriminatory Vendor List.** Pursuant to Florida Statutory requirements, Contractor is hereby notified of the contents of the following statutory provision:

26.13.1 **Section 287.133(2)(a)(as amended):** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any

goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Contractor, supplier, Subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

26.13.2 **Section 287.133(2)(b)(as amended):** A public entity may not accept any bid, proposal, or reply from, award any contract to, or transact any business in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO with any person or affiliate on the convicted vendor list for a period of 36 months following the date that person or affiliate was placed on the convicted vendor list unless that person or affiliate has been removed from the list pursuant to paragraph (3)(f). A public entity that was transacting business with a person at the time of the commission of a public entity crime resulting in that person being placed on the convicted vendor list may not accept any bid, proposal, or reply from, award any contract to, or transact any business with any other person who is under the same, or substantially the same, control as the person whose name appears on the convicted vendor list so long as that person's name appears on the convicted vendor list.

26.13.3 **Section 287.134(2)(a)(as amended):** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Contractor, supplier, Subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

26.13.4 **Section 287.134(2)(b)(as amended):** A public entity may not accept any bid, proposals, or replies from, award any contract to, or transact any business with any entity or affiliate on the discriminatory vendor list for a period of 36 months following the date that entity or affiliate was placed on the discriminatory vendor list unless that entity or affiliate has been removed from the list pursuant to paragraph (3)(f). A public entity that was transacting business with an entity at the time of the discrimination resulting in that entity being placed on the discriminatory vendor list may not accept any bid, proposal, or reply from, award any contract to, or transact any business with any other entity who is under the same, or substantially the same, control as the entity whose name appears on the discriminatory vendor list so long as that entity's name appears on the discriminatory vendor list.

26.14 By signing this Agreement, the Contractor represents and warrants that it is not violating Section 287.133, Florida Statutes, or Section 287.134, Florida Statutes.

26.15 In addition to the foregoing, the Contractor represents and warrants that Contractor is not under investigation for violation of such statutes and should Contractor prepare to use a Subcontractor or professional associate, Contractor shall require such Subcontractor or professional associate to sign an affidavit that the individual or entity is not under investigation nor in violation of these statutes.

26.16 Anti-Lobbying.

26.16.1 If this Project is funded by federal funds, then to the best of the County's knowledge and belief:

26.16.1.1 No Federal appropriated funds have been paid or shall be paid, by or on behalf of County, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Contract, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Contract.

26.16.1.2 If any funds other than Federal appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Contract, it shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

26.17 Equal Opportunity; Disadvantaged Business Enterprises.

The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from the County. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County. This clause applies to both DBE and non-DBE subcontractors.

26.18 Licenses

Contractors shall hold the required licensure to be the prime Contractor for all work to be performed under this Agreement. If any Contractor proposes to use a Subcontractor or sub-consultant to perform any work under this Agreement, such Subcontractor and/or sub-consultant shall, at the time of submittal, hold the required licensure for all work to be performed under this Agreement as a Subcontractor and shall maintain such license(s) in full force and effect during the term of the awarded Agreement. All licenses and permits required to perform Contractor's duties under this Agreement, whether such license or permit is required by the federal government, State of Florida, Volusia County, or any municipality, shall be at each Contractor's sole cost and expense, and shall not be a cost of the County. All required licenses and permits shall be maintained in full force and effect during the term of the awarded Agreement.

26.19 Scrutinized Companies-FL Statute Section 287.135 and 215.473.

Contractor must certify that the company is not participating in a boycott of Israel. For Contracts for goods or services of one million dollars or more, Contractor must also certify that Contractor is not on the Scrutinized Companies that Boycott Israel List, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has not been engaged in business operations in Cuba or Syria. Subject to limited exceptions provided in state law. The County will not contract for the provision of goods or services with (i) any company participating in a boycott of Israel, and, (ii) for Contracts for goods or services of one million dollars or more, any other scrutinized company as described above. Contractor must have submitted the certification form with their response to County Solicitation No. 21-P-1811F. Submitting a false certification shall be deemed a material breach of contract. The County shall provide notice, in writing, to the Contractor of the County's determination concerning the false certification. The Contractor shall have five (5) Calendar days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, the Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Contractor does not demonstrate that the County's determination of false certification was made in error then the County shall have the right to terminate

the Agreement and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time.

26.20 Compliance with Federal E-Verify Regulations

The Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility and work authorization status of all new employees hired by the Contractor on or after the effective date of this Agreement and thereafter during the remaining term of the Agreement, including Subcontractor. If and to the extent the Agreement meets the criteria set forth at 48 C.F.R. § 52.222- 54(e), the criteria of 48 C.F.R. § 52.222-54 are hereby incorporated by reference into this Agreement as if fully set forth herein.

The Contractor covenants and agrees that if the County has a good faith belief that Contractor has knowingly violated or if Contractor is found to have violated this Section 25.20; Section 446.09(1), Florida Statutes; Section 446.095, Florida Statutes; or the presidential Executive order and subsequent Federal Acquisition Regulation (FAR) rule requiring federal contractors to use E-Verify, if applicable, then the following shall be true: (i) such shall be a material breach of this Agreement by Contractor; (ii) Contractor shall indemnify, defend, and hold harmless the County from any fines or penalties levied by a government agency, including the loss or repayment of grant funds by the County; (iii) the County may terminate this Agreement immediately and without penalty and such termination shall not be or be considered a breach of this Agreement; and (iv) Contractor shall be liable for any additional costs incurred by the County as a result of the termination of the Agreement. Contractor acknowledges and understands that if the County terminates this Agreement in accordance with this section, the Contractor shall be ineligible for award of a public contract for at least one year after the date on which the Agreement was terminated.

Any subcontract entered into by Contractor with any Subcontractor performing work under this Agreement shall include the following language: "The Subcontractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Subcontractor on or after the effective date of this Agreement and thereafter during the remaining term of the Agreement." In accordance with Florida law, if Contractor enters into a subcontract to perform work under this Agreement, Contractor shall require from said subcontractor an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and Contractor shall maintain a copy of such affidavit for the duration of this Agreement and/or the agreement with the subcontractor, whichever is longer. Contractor acknowledges and agrees that if the County has a good faith belief that a subcontractor knowingly violated this section or Sections 446.09(1) or 446.095 of the Florida Statutes, but also has a good faith belief that Contractor otherwise complied with this Section 25.20 and applicable law, the County shall promptly notify the Contractor and order the Contractor to immediately terminate the agreement with the subcontractor. Failure to comply with said order shall constitute a violation of this section and the terms of this section shall apply.

26.21 Safety

The Contractor shall take the necessary precautions and bear the sole responsibility for the safety of the methods employed in performing the work. The Contractor shall

at all times comply with the regulations set forth by federal, state, and local laws, rules, and regulations concerning "OSHA" and all applicable state labor laws, regulations, and standards. The Contractor shall indemnify and hold harmless the County from and against all liabilities, suits, damages, costs, and expenses (including attorney's fees and court costs) which may be imposed on the County because of the Contractor, Subcontractor, or supplier's failure to comply with the regulations.

26.22 **Right to Require Performance**

The failure of the County at any time to require performance by the Contractor of any provision hereof shall in no way affect the right of the County thereafter to enforce same, nor shall waiver by the County of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

In the event of failure of the Contractor to deliver services in accordance with the Agreement terms and conditions, the County, after due written notice, may procure the services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the County may have.

27 **MISCELLANEOUS PROVISIONS**

- 27.1 **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties. There are no understandings or Agreements related hereto other than those which are expressed herein, and all prior negotiations, Agreements, and understandings, whether oral or written, are superseded by this Agreement, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto.
- 27.2 **Independent Contractor.** The Contractor shall provide the services required herein strictly in an independent contractual relationship with the County and, except as expressly set forth herein, is not, nor will be, construed to be an agent or employee of the County. Nothing herein will create any association, partnership, joint venture or agency relationship between them. The County shall not provide vehicles or equipment to the Contractor to perform the duties required under this Agreement nor will the County pay for any business, travel, office, or training expense or any other Agreement performance expense not specifically set forth in the Scope of Work of this Agreement. The Contractor is not exclusively bound to the County and may provide Services or Work to other private and public entities, but agrees and covenants that any such Service provided by the Contractor to or for such entities will not conflict or otherwise interfere with the Contractor's provision of Work to the County under this Agreement.
- 27.3 **Third Party Beneficiaries.** Neither Contractor nor County intends to directly or substantially benefit a third party by this Agreement. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement, except as otherwise provided in this Agreement.

27.4 **Notice.** All notice required under this Agreement shall be in writing and shall be sent by certified United States Mail or national parcel service, postage prepaid, return receipt requested, or by hand-delivery with a written receipt of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

In the case of County:	with a copies of legal notices to:
<p style="text-align: center;">County of Volusia</p> Attn: Director of Purchasing & Contracts Address: 123 W. Indiana Ave., Rm. 302 DeLand, Florida 32720 Phone: 386-736-5935	<p style="text-align: center;">County of Volusia</p> Attn: County Attorney Address: 123 W. Indiana Ave., Rm. 301 DeLand, Florida 32720 Phone: 386-736-5950
In the case of Contractor:	with a copy of legal notices to:
<p style="text-align: center;">Birdi Systems, Inc.</p> Attn: Monider Birdi Address: 723 East Green Street Pasadena, CA 91101 Phone: 626.840.4741	<p style="text-align: center;">Birdi Systems, Inc.</p> Attn: Monider Birdi Address: 723 East Green Street Pasadena, CA 91101 Phone: 626.840.4741

27.5 **Governing Law.** The laws of the State of Florida and the Code of Ordinances of the County of Volusia, Florida, shall govern this Agreement. All questions concerning the validity, operation, interpretation, construction and enforcement of any terms, covenants or conditions of this Agreement shall in all respects be governed by and determined in accordance with the laws of the State of Florida and Code of Ordinances of County of Volusia, without giving effect to the choice of law principles thereof and unless otherwise preempted by federal law.

27.6 **Assignment.**

Contractor may not assign or otherwise convey Contractor's rights and/or obligations under this Agreement without obtaining County's prior written consent, which consent County may withhold, limit and/or condition in County's sole discretion, including, but not limited to, requiring the Contractor or his/her proposed successor in interest to post a performance bond. Any consent by the County under this Section shall be by written amendment to the Agreement in a form and substance specified by the County in its sole discretion. If Contractor desires to assign or otherwise convey its rights and/or obligations under this Agreement, Contractor shall, no less than thirty (30) days prior to the assignment's proposed effective date, provide County with a written request for County's consent. Failure to provide such notice may result in the County assessing a processing fee of Five Hundred Dollars (US \$500.00); however, payment of such fee shall not entitle the Contractor to the County's acceptance or approval of its request for assignment.

Nothing herein shall preclude the right of the County to waive its rights under this Section but no waiver shall be granted by the County without a written and duly executed amendment to the Agreement.

27.7 Debarment.

The county endeavors to solicit offers from, award contracts to, and consent to subcontracts with responsible vendors and contractors only. To further this policy, the county asserts its authority to debar certain vendors and contractors from participating in solicitations pursuant to the policies and procedures herein. The serious nature of debarment requires that this sanction be imposed only when it is in the public interest for the county's protection and not for purposes of punishment. Debarment is intended as a remedy in addition to, and not in substitution of, the evaluation of the responsibility of county vendors and contractors, and this policy and the procedures provided for herein shall not supplant or supersede county's authority to reject or otherwise terminate vendors or contractors based on findings of non-responsibility on a case-by-case basis.

Further information regarding the County's policies and procedures in regards to DEBARMENT may be found at:

<https://www.volusia.org/core/fileparse.php/5896/urlt/Debarment-Policy-final-3-27-17.pdf>

27.8 Conflicts. Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment related to its performance under this Agreement. Contractor further agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against County in any legal or administrative proceeding in which he, she, or Contractor is not a party, unless compelled by court process. Further, Contractor agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Contractor or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding. In the event Contractor is permitted pursuant to this Agreement to utilize Subcontractors to perform any Services required by this Agreement, Contractor agrees to require such Subcontractors, by written Agreement, to comply with the provisions of this section to the same extent as Contractor.

27.9 Audit Right and Retention of Records. Contractor agrees to maintain such financial records and other records as may be prescribed by the County or by applicable federal and state laws, rules, and regulations. County shall have the right to audit the books, records, and accounts of Contractor that are directly related to this Agreement. Contractor shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. Contractor shall preserve and make available, at reasonable times for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Public Records Act (if applicable, or, if the Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Public Records Act is determined

by County to be applicable to Contractor' records, Contractor shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Contractor. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry.

27.10 **Payments Subject to Appropriation.** Notwithstanding any other term or provision of this Agreement, the continuation of this Agreement beyond a single fiscal year of County is subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes.

27.11 **Location of County Data.** Contractor shall not out-source any development and/or support for this Agreement or transfer any County Data outside the territorial limits of the United States of America, without the written approval of the Agreement Administrator.

27.12 **References to County or Contractor.** Contractor agrees that during the term of this Agreement, except as provided herein, Contractor may not reference County in Contractor's website, and/or press releases, and, may not place County's name and logo on Contractor's Web site or in collateral marketing materials relating to Contractor's products and Services without prior review and written approval by County. Further, Contractor agrees that it may not use County's name, logo or any trademarks (including in any press releases, customer "case studies," and the like) without County's prior written consent. Termination or expiration of this Agreement shall not affect Contractor's obligation in this regard and such obligation shall survive the termination or cancellation of this Agreement.

27.13 **Force Majeure.** Neither party shall be liable for any failure or delay in the performance of its obligations under the Agreement to the extent such failure or delay necessarily results from the occurrence of a Force Majeure Event beyond the control or reasonable anticipation of either party, including, but not limited to, compliance with any unanticipated government law or regulation not otherwise in effect at the time of execution of this Agreement, acts of God, unforeseeable governmental acts or omissions, fires, strikes, natural disasters, wars, riots, transportation problems, and/or any other unforeseeable cause whatsoever beyond the reasonable control of the parties (and such cause being referred to as a "Force Majeure Event"). Accordingly, the parties further agree that:

27.13.1 Upon the occurrence of Force Majeure Event, the non-performing party shall be excused from any further performance of those obligations under this Agreement that are affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the non-performing party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

27.13.2 Upon the occurrence of a Force Majeure Event, the non-performing party shall notify the other party of the occurrence of such event and describe in reasonable detail the effect(s) of such event upon the party's performance of its obligations and duties pursuant to this Agreement. Such notice shall be delivered or otherwise communicated to the other party within two (2) business days following the failure or delay caused by the Force Majeure

Event, or as soon as possible after such failure or delay if the Force Majeure Event precludes the non-performing party from providing notice within such time period.

27.13.3 In the event of a Force Majeure Event, the time for performance by the parties under the applicable Statement of Work shall be extended for a period of time equal to the time lost by reason of such cause through execution of a change order pursuant to the terms of the Agreement.

27.14 **Unusual Costs**

The Contractor may petition the County at any time for an additional rate adjustment on the basis of extraordinary and unusual changes in the costs of operation that could not reasonably be foreseen by a prudent operator and which, by all reasonable expectations, will continue for at least one (1) year. If the Contractor petitions for such an increase, the Contractor shall also petition for a rate reduction on the basis of extraordinary and unusual changes in the costs of operation that could not reasonably be foreseen by a prudent operator and which, by all reasonable expectations, will continue for at least one (1) year; failure to make such petition may be grounds for Agreement termination.

The Contractor's request shall contain substantial proof and justification to support the need for the rate adjustment. The County may request from the Contractor and the Contractor shall provide such further information as may be reasonably necessary in making its determination. The County shall approve or deny the request, in whole or in part, within sixty (60) days of receipt of the request and all other additional information required by the County. Any price redetermination shall be solely based upon the documentation provided and the County reserves the right to rescind any price relief granted should the circumstances change and prices decrease.

27.15 **Bankruptcy Rights of County.** All rights and licenses granted under or pursuant to this Agreement or any attachments hereto by Contractor to County are, and shall otherwise be deemed to be, for purposes of Section 365 (n) of the United States Bankruptcy Code (the "Code"), or replacement provision therefore, licenses to rights to "intellectual property" as defined in the Code. The parties agree that County, as licensee of such rights under this Agreement, shall retain and may fully exercise all of its rights and elections under the Code. The parties further agree that, in the event of the commencement of a bankruptcy proceeding by or against Contractor under the Code, County shall be entitled to retain all of its rights under this Agreement.

27.16 **Waiver of Claims**

Once the Agreement expires, or final payment has been requested and made, the Contractor shall have no more than thirty (30) calendar days to present or file any claims against the County concerning the Agreement. After that period, the County will consider the Contractor to have waived any right to claims against the County concerning the Agreement.

27.17 **Waiver of Breach and Materiality.** Failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of

any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

- 27.18 **Severance.** In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective to the extent practicable unless County or Contractor elects to terminate this Agreement.
- 27.19 **Entire Agreement.** This Agreement contains the entire agreement between Contractor and County. Any modifications to this Agreement shall not be binding unless in writing and signed by both parties.
- 27.20 **Applicable Law, Venue and Waiver of Jury Trial.** This Agreement is to be interpreted and construed in accordance with and governed by the laws of the state of Florida. Jurisdiction over and venue for any controversies or legal issues arising out of this Agreement will, if in state court, be exclusively in the 7th Judicial Circuit in and for County of Volusia, Florida, or, if in federal court, in the Middle District of Florida, Orlando Division. By entering into this Agreement, Contractor and County hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to this Agreement, and, unless otherwise expressly provided herein, each agrees to bear its own costs and attorney's fees relating to any dispute arising under this Agreement.
- 27.21 **FHWA Form 1273.** Contractor shall comply with the additional requirements set forth on the following pages, which incorporate State of Florida Department of Transportation Local Agency Program (LAP) Federal Requirements. These requirements include FHWA Form 1273. Contractor MUST include a copy of FHWA Form 1273 in all subcontracts for work performed under this Agreement, and will be responsible for ensuring subcontractor compliance with FHWA Form 1273.
- 27.22 **Prior Agreements.** This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The Parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

28 Agreement Provisions

All provisions of this Agreement which impose or contemplate continuing obligations on a party shall survive the expiration or termination of this Agreement.

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29 SIGNATURES

IN WITNESS WHEREOF, the parties have made and executed this Agreement for **THE DAYTONA BEACH INTERNATIONAL AIRPORT SECURITY SYSTEM UPGRADES** the day and year below written.

Vendor acknowledges that Moninder Birdi (the "Authorized Signatory") is authorized to execute contracts/agreements with the County of Volusia and any affixed electronic or conformed signature of the Authorized Signatory shall be the act of and attributable to the Authorized Signatory. By signing this Agreement electronically, the Authorized Signatory does thereby adopt the electronic or conformed signature as his or her own and designates a copy of same for use as an official record by the County of Volusia.

Attest:

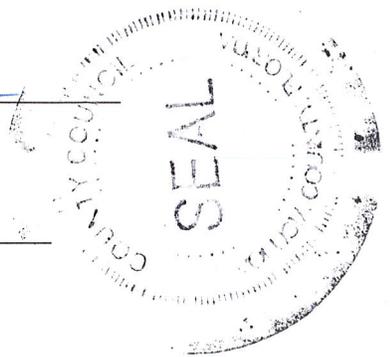
for George Recktenwald, Deputy CM
George Recktenwald
County Manager

Date: 11/17/22

COUNTY OF VOLUSIA

BY: Jeffrey S. Brower
County Chair

Date: 11/15/2022



County Council Approval Date: 11/15/2022

Attest:

DocuSigned by:
Frank Pervola
Signature

Frank Pervola

Print Name

BD Director

Title

Date: 11/2/2022 | 11:25:01 EDT

BIRDI SYSTEMS, INC.

DocuSigned by:
Moninder Birdi
Signature

Moninder Birdi

Print Name

President

Title

Date: 11/2/2022 | 07:07:50 PDT