
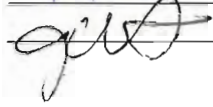


Meeting Date: 7/13/2010



Agenda Item # 8-D

# CITY COUNCIL AGENDA ITEM

Contact Name: Peter Thomas Department Director:   
 Department/Contact # 386-775-5483 City Manager: 

- Type of Item:
- |   |   |
|---|---|
| <input type="checkbox"/> Public Hearing           | <input type="checkbox"/> Resolution                     |
| <input type="checkbox"/> Ordinance First Reading  | <input checked="" type="checkbox"/> Discussion & Action |
| <input type="checkbox"/> Ordinance Second Reading | <input type="checkbox"/> Council Approval               |

**Subject:** Records Management System

**BACKGROUND:** Several years ago the Volusia County Sheriff's Office (VCSO) began the implementation of a new county wide and multi agency Records Management System (RMS). The system also includes an integrated report writing system and an electronic citation module. One of the expected benefits of the RMS system is the reduction in staff hours for police officers and records management staff by eliminating redundancy. Some of the other benefits of this system are:

- Data sharing between agencies within Volusia County
- Staying current with technology advancements
- Integrating police reports with records management
- Working with a local technical support (Volusia County) vs. out of state (Presynct)
- Gain staff efficiency by eliminating redundancy in records management
- Replacing the current antiquated record management system
- Adopting a paperless report procedure (eliminating paper, toner and printer maintenance, etc...)
- Yearly maintenance savings by eventually discontinuing the current RMS

Agencies currently partnering in this RMS system are the Volusia County Sheriff's Office, Volusia County Beach Patrol, DeLand, Ormond and South Daytona Police Departments.

**RECOMMENDATIONS:** It is staff's recommendation to enter into an Interlocal Agreement with Volusia County for RMS services. Staff also recommends continuing the maintenance agreement for our current RMS system until such time as the records maintained are deemed obsolete.

**ATTACHMENTS:** Interlocal agreement for RMS services

**FINANCIAL IMPACT:** The maintenance cost of this system is based upon the number of computers connected to the system. The estimated cost is \$5,100 annually beginning with the 2011/2012 budget (First year is free). This is based upon thirty report writing work stations and two records management entry stations. Although the first year of maintenance will be waived there will be a one-time equipment cost estimated at \$9,500. This includes \$2,000.00 for digital signature pads, which are required if we want to take full advantage of the system and adopt a paperless procedure and \$7,500 for in-car printers, which will allow for printing electronic citations, crash reports, as well as other forms.

Reviewed by City Attorney \_\_\_\_\_  
 Reviewed by Finance Dept. \_\_\_\_\_



## **INTERLOCAL AGREEMENT FOR RMS SERVICES**

**Between**

**County of Volusia**

**And**

**City of Orange City**

**TABLE OF CONTENTS**  
**INTERLOCAL AGREEMENT FOR**  
**RMS SERVICES**

1.	DEFINITIONS.....	6
2.	ORDER OF PRECEDENCE .....	14
3.	SCOPE OF SERVICES .....	14
	3.1.1 DESCRIPTION OF FUNCTIONALITY .....	15
	3.1.2 DATA CONVERSION.....	15
	3.1.3 OUT-OF-SCOPE SERVICE ITEMS.....	15
	3.2 TRAINING AND SUPPORT .....	15
	3.2.1 INITIAL TRAINING SESSIONS .....	15
	3.2.2 DOCUMENTATION.....	16
	3.2.3 TRAINING SYSTEM.....	16
	3.2.4 CITY RMS DESIGNEES .....	17
	3.2.4.1 TECHNICAL SUPPORT DESIGNEE.....	17
	3.2.4.2 SYSTEM ADMINISTRATOR DESIGNEE .....	17
	3.2.4.3 RECORDS CUSTODIAN DESIGNEE.....	18
4.	TERM.....	19
5.	LICENSE .....	19
	5.1. COUNTY’S RIGHT TO USE AND SUBLICENSE.....	19
	5.2.2 QUANTITY .....	20
	5.2.3 RESTRICTIONS OF USE.....	20
	5.2.3.11 DISASTER RECOVERY .....	22
	5.2.3.12 ARCHIVAL REPRODUCTIONS.....	22
	5.2.3.13 DATABASE CONNECTION .....	23
	5.2.3.14 OWNERSHIP OF COUNTY DATA.....	23
	5.2.3.15 DISCLOSURE OF DATA.....	24
	5.2.3.16 SHARING OF DATA.....	26
	5.2.3.17 DISSEMINATION OF DATA .....	26
	5.2.3.18 SEPARATION OF DATA.....	26
	5.2.3.19 DATA SECURITY.....	26
	5.2.3.20 NETWORK SECURITY .....	27
6.	INVOICING AND PAYMENT.....	27
7.	RESPONSIBILITIES.....	28
	7.1 PROJECT MANAGERS .....	28
	7.2 COUNTY RESPONSIBILITIES .....	29
	7.3 CITY RESPONSIBILITIES .....	29
	7.4 MAINTENANCE AND SERVICE FEE .....	30
	7.4.1 COUNTY RESPONSIBILITIES.....	30
	7.4.2 CITY RESPONSIBILITIES .....	31
	7.4.2.2 ANNUAL SERVICE FEE.....	31
	7.4.2.3 ANNUAL ADJUSTMENTS .....	31
	7.4.2.4 REMOTE WORKSTATION ACCESS.....	32
	7.4.2.4 ERROR REPRODUCTION .....	32
	7.5 DISCLAIMERS .....	32

7.5.1	IMPLEMENTATION OF LICENSED APPLICATIONS .....	32
7.5.2	NO WARRANTIES OR GUARANTEES.....	33
7.5.3	THIRD-PARTY SOFTWARE.....	34
8.	INSURANCE COVERAGE .....	35
9.	PERSONNEL MATTERS .....	35
10.	NO PLEDGE OF AD VALOREM TAXES .....	36
11.	SOVEREIGN IMMUNITY .....	36
12.	MODIFICATIONS AND AMENDMENTS .....	37
13.	INFORMAL DISPUTES .....	37
13.5	ESCALATION TIMETABLE .....	38
14.	VENUE, WAIVER OF JURY TRIAL AND APPLICABLE LAW.....	39
15.	TERMINATION .....	40
16.	NOTICE .....	40
17.	THIRD PARTY BENEFICIARIES.....	41
18.	NON-ASSIGNABILITY .....	41
19.	SEVERABILITY .....	41
20.	ENTIRE AGREEMENT.....	41
	SIGNATURE PAGE.....	42

## **INTERLOCAL AGREEMENT FOR RMS SERVICES**

THIS AGREEMENT is entered into by and between the County of Volusia, a political subdivision of the State of Florida, with administrative offices at 123 West Indiana Avenue, DeLand, Florida 32720-4613, hereinafter referred to as County, and the City of Orange City, a municipal corporation, organized under the laws of the State of Florida, with administrative offices at 205 East Graves Avenue, Orange City, Florida 32763, hereinafter referred to as City.

### **RECITALS**

WHEREAS, the County is authorized by Section 125.01(p), Florida Statutes, to enter into agreements with other governmental agencies within or outside the boundaries of the county for the joint performance, or performance by one unit on behalf of the other, of any of either agency's authorized functions; and

WHEREAS, public agencies (including County and City) are authorized by Section 163.01(14), Florida Statutes, to enter into contracts for the performance of service functions of such public agencies, but shall not be deemed to authorize the delegation of the constitutional or statutory duties of state, county or city officers. The parties expressly deny any intent, express or implied, in this Agreement to provide for a delegation by City of such constitutional or statutory duties to County; and

WHEREAS, the foregoing authorization for such agreements is granted to counties and cities for the purpose of permitting local governments to make the most efficient use of their powers by enabling them to cooperate with the other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities in accordance with Section 163.01(21), Florida Statutes; and

WHEREAS, pursuant to Section 768.28, Florida Statutes, neither the County nor the City waives any defense of sovereign immunity, or increases the limits of its liability, upon entering into this Agreement. This Agreement does not contain any provision that requires one party to indemnify or insure the other party for the other party's negligence, or to assume any liability for the other party's negligence; and

WHEREAS, the Volusia County Sheriff's Office has established a Records Management System application service and database management program which is capable of allowing the City's law enforcement agency remote access to the Volusia County Sheriff's Office Records Management System which is installed on computer hardware equipment controlled and owned by the County (hereinafter referred to as "RMS").

WHEREAS, the County's RMS is currently maintained by the Volusia County Sheriff's Office at the Volusia County Emergency Operations Center located at 49 Keyton Drive, Daytona Beach, Florida 32124; and

WHEREAS, the City and the County have individually evaluated allowing the City remote access to the County's RMS and have legislatively determined such access will provide an enhanced opportunity to improve services through the sharing of law enforcement information; and

WHEREAS, upon recommendation of the Sheriff, the County made the legislative determination to allow the City remote access to RMS as being in the best interest of the public's safety and operational efficiency of the Sheriff's Office and law enforcement agency of the City; and

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

as follows:

## 1. DEFINITIONS

1.1. The capitalized terms set forth in this Service Agreement shall have the meanings set forth below or set forth in this Agreement. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. Terms not defined below or otherwise in this Agreement shall have the meaning set forth in the Software License Agreement (the "SLA") of the RMS System Implementation Agreement between the County and CompuDyne-Public Safety & Justice, Inc., (n/k/a Tiburon, Inc.) dated November 17, 2005, and any amendments thereto (hereinafter "RMS System Implementation Agreement"), which is incorporated herein by reference unless such terms conflict with this Agreement. The SLA is attached hereto and incorporated herein as Exhibit 1. Upon request of the City, County will provide a copy of the RMS System Implementation Agreement to the City.

1.1.1. **Authorized Volusia Law Enforcement Agencies:** shall mean up to nineteen (19) law enforcement agencies within Volusia County, including City, as authorized in Section 2.3.1 of the RMS Implementation Statement of Work.

1.1.2. **Authorized Server:** With respect to any Licensed Application, the server identified as corresponding to such Licensed Application identified on Exhibit 1 of the SLA.

1.1.3. **Authorized Site:** With respect to any Authorized Server, the address and room number identified as corresponding to such Authorized Server identified on Exhibit 1 of the SLA.

1.1.4. **County:** The County of Volusia, Florida, and shall be synonymous with the term "County."

- 1.1.5. **County Data:** All data input or stored in any RMS database whether by County, City, or any entity.
- 1.1.6. **City Data:** The information owned and input by City into the RMS and stored in any RMS database regardless of the form that it is stored, whether electronically or in paper format.
- 1.1.7. **Contract Administrator:** The Volusia County Sheriff's Office Information Systems designated representative or designee.
- 1.1.8. **Confidential Information:** The materials which are exempt from disclosure pursuant to the laws of the State of Florida, or the United States if the same preempts Florida law, and is also specifically designated in writing as "confidential information" or a "trade secret" by the disclosing party; (ii) materials, including claim files or data files which contain employee social security numbers, banking information, criminal intelligence information or criminal investigative information, any information, including the photograph, name, or other fact, which reveals the identity of a victim of crime of child abuse or, any sexual offense; (iii) photograph, videotape or image of body of a victim, or information provided to another governmental agency in the furtherance of its official duties as set forth in §119.071, et seq.; and, (iv) any other materials or information meeting the definition of "trade secret" set forth in Section 812.081(c) of the Florida Statutes. The term "Confidential Materials" does not include the following:
- 1.1.8.1. Information already known or independently developed by the receiving party without use of disclosing party's confidential information;
- 1.1.8.2. Information in the public domain through no wrongful act of the receiving party;
- 1.1.8.3. Information received by the receiving party from a third party without an

obligation to maintain the information confidential;

1.1.8.4. Information regularly disclosed by the disclosing party to third parties without restriction on disclosure; or

1.1.8.5. Information required to be disclosed by requirement of law or judicial order, provided that the receiving party notifies the disclosing party of such requirement prior to disclosure, and provided further that the receiving party makes diligent efforts to limit disclosure.

1.1.9. **Data Circuit:** A medium used to transmit or channel information that is coded into binary digits which are then represented on a physical medium. The data circuit can be a guided system such as wires or optical fiber, or a non-guided system such as radio. The Data Circuit connects data circuit-terminating equipment (DCE) and data terminal equipment (DTE). This circuit facilitates dataflow from one law enforcement agency to another.

1.1.10. **Derivative Works:** The creation or development of any software, or Documentation with respect to any Licensed Application, any translation, abridgement, revision, modification, or other form in which such Licensed Application may be recast, transformed, modified, adapted or approved after acceptance of the As-Built Specifications for such Licensed Application in accordance with the Implementation Agreement.

1.1.11. **Documentation:** Written, electronic, or recorded work that describes the use, functions, features, or purpose of the RMS, or any component or subsystem thereof, and that is published or provided to the County by Tiburon, Tiburon's subcontractors or the original manufacturers or developers of third party products provided to the County by Tiburon, including, without limitation, all end user manuals, training

manuals, guides, program listings, data models, flow charts, logic diagrams, and other materials related to or for use with the RMS.

1.1.12. **Effective Date:** The date that this Agreement is fully executed by all parties.

1.1.13. **Enhancement:** shall mean, with respect to any Licensed Application, a computer program modification or addition, other than a Maintenance Modification, that alters the functionality of, or adds new functions to, such Licensed Application and that is integrated with such Licensed Application after acceptance of the As-Built Specifications for such Licensed Application in accordance with the applicable implementation agreement, or that is related to a given Licensed Application but offered separately by Tiburon after acceptance of the As-Built Specifications for such Licensed Application in accordance with the applicable implementation agreement.

1.1.14. **Error:** With respect to any Licensed Application, a defect in the Source Code of the Licensed Applications or Software that prevents such Licensed Application from functioning in conformity with the As-Built Specifications with respect thereto.

1.1.15. **Fees:** The compensation, payments, or fees to be paid by the City to the County as articulated in Exhibit "4" (Fee Schedule) for access to the RMS, the Licensed and/or Sublicensed Applications and services rendered by the County under this Agreement.

1.1.16. **Force Majeure Event:** The occurrence beyond the reasonable control of County and without its fault or negligence such as, acts of God, acts of terrorism, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays in common carriers.

1.1.17. **Licensed Application:** The following software components and other necessary software applications set forth on Exhibit 1 of the SLA attached hereto and incorporated herein developed by Tiburon and furnished to the County in conformity

with As-Built Specifications with respect thereto pursuant to the RMS System Implementation Agreement, together with all Derivative Works, all Maintenance Modifications and all Documentation with respect thereto. In addition, the Licensed and Sublicensed Applications shall consist of Object Code only.

1.1.17.1. The following software components will be made available to the City as they become available to the County according to the number of Workstation licenses declared in a written notice provided by the City to the County.

<b>Software Component Description</b>
Law Enforcement Records Management -- RMS/TI
<b>RMS Nucleus, including:</b>
RMS workstation / WebQuery / Copperfire licenses
Forms-based Field Reporting including:
- State of Florida Traffic accident reporting
- Volusia Arrest Affidavit
Automated Reporting System (LAN-based)
WebQuery Browser system
- Beat Book
Alpha system
Location system
Incident System
- Arrest and Booking
- Property/Evidence (with or without utilizing bar coding support)
Demographic Tracking
Field Interviews
Pawned Property
Service Request
Special flags
- Restraining Orders
<b>Included Modules:</b>
Case Management
Crime Analysis
Fleet Maintenance
Inventory
Juvenile Records

Software Component Description
State of Florida UCR Crime Statistics (Agency Specific)
Officer Activity
Personnel/Training
Traffic Management
Warrant Tracking (to include functions for extradition and to be included in the baseline for RMS)
Property Bar Code System:
Property/Evidence fixed workstation
Pocket Prop handheld workstations
Field Automation System -- FAS
Mag stripe reader interface for MDS
Mobile signature capture software licenses
ARS System base
State of Florida Traffic accident reporting
Volusia Arrest Affidavit
Infokall State of Florida Traffic Citation solution client (wireless handheld and desktop) and server software (including managing and printing State assigned control numbers)

1.1.18. **Maintenance Modifications:** With respect to any Licensed Application, a computer software change to correct an Error in, and integrated into, such Licensed Application, but that does not alter the functionality of such Licensed Application and that is provided to the County by Tiburon.

1.1.19. **Object Code:** The computer programs assembled or compiled in magnetic or electronic binary form on software media, which are readable and usable by machines, but not generally readable by humans without reverse-assembly, reverse-compiling, or reverse-engineering related to the Licensed or Sublicensed Applications.

1.1.20. **Payment Date:** October 1 of each year during the Term of this Agreement.

1.1.21. **Project Manager:** The County's and City's primary point of contact regarding the services provided under this Agreement which shall be the Information Systems representative or designee of the Volusia County Sheriff's Office and the City's law enforcement representative or designee. The County's Project Manager shall be the

Information Systems Director for the Volusia County Sheriff's Office.

1.1.22. **RMS:** Volusia County Sheriff's Office's Records Management System software application service and data base management program as stated herein and known as the "System" in the SLA of the RMS Implementation Agreement. As such, the RMS is the County's computer automated system consisting of the Licensed and/or Sublicensed Applications combined with any of the Authorized Servers, the operating systems installed on each of the Authorized Servers, any database or other Third-Party software products installed on any of the Authorized Servers, any PC or other workstation equipment having access to any of the Licensed Applications, any communications interfaces installed on any of the Authorized Servers, any network communications equipment and any other third party software, wiring, cabling and connections and other hardware relating to any such Authorized Servers, workstation or network communications equipment located at any of the Authorized Sites.

1.1.23. **SLA:** The Tiburon Software License Agreement of the RMS System Implementation Agreement, attached hereto as Exhibit 1, which includes the Licensed or Sublicensed Applications. Licensed software shall include all corrections, upgrades, and enhancements as provided to the County and made available to the City pursuant to the SLA.

1.1.24. **Source Code:** The computer programs written in higher-level programming languages, sometimes accompanied by English language comments. Source Code is intelligible to trained programmers and may be translated to Object Code for operation on computer equipment through the process of compiling.

1.1.25. **Sublicensed Applications:** The Sublicensed Applications specified on Exhibit 1 of the SLA attached hereto and developed by any source external to Tiburon such as a subcontractor, distributor, re-seller, personal computer software supplier or system

software supplier, and furnished to the Licensee by Tiburon and integrated into the RMS.

1.1.26. **System Administrator:** The County and City's key point of contact for all requests for service and/or problem reporting regarding the use of the RMS application software. The City's System Administrator shall be the person designated to handle their Level One problems and contact the County's System Administrator for Level Two problems.

1.1.27. **Sublicensed Application:** The licensed software as defined in Paragraph 1.15 of Exhibit 1 of the SLA and any amendments thereto.

1.1.28. **Third-Party Software:** Software licensed to the County by vendors other than Tiburon to facilitate the operation and functionality of RMS.

1.1.29. **Tiburon:** Tiburon, Inc. formerly known as CompuDyne Public Safety & Justice, Inc. located at 6200 Stoneridge Mall Road, Suite 400, Pleasanton, CA.

1.1.30. **Upgrades:** The modifications or improvements made by Tiburon to the RMS software products pursuant to the SLA which relate to operating performance and does not change the basic function of the Licensed or Sublicensed Applications.

1.1.31. **Workstation Software:** The specific software or Licensed Application owned by Tiburon that will be provided by the County in the quantities requested by City, at City's expense, under this Agreement in a CD-ROM format or through a medium allowing for downloading or copying of said software to City computers. The purpose of the Work Station Software is to enhance data entry and report writing functions of Authorized Law Enforcement Agency to maintain data in RMS.

1.1.31.1. For the purposes of this Agreement, there are three types of workstations,

“data entry”, “report writing”, and “inquiry-only workstations”.

1.1.31.1.1. **Data Entry Workstation:** Any workstation capable of updating City data contained on the RMS server by installing Workstation Software.

1.1.31.1.2. **Reporting Writing Workstation:** Any workstation that has the ability to generate electronic forms using the field reporting software to be used with the RMS.

1.1.31.1.3. **Inquiry-Only Workstation:** Any workstation used by the City to query RMS through a County provided web-based application which does not require the installation of Workstation Software.

1.1.31.2. Unless specifically identified in this Agreement, the terms “Data Entry WorkStation” and “Report Writing Workstation” shall be collectively referred to as “Workstation”.

## 2. ORDER OF PRECEDENCE

2.1. In the event of any inconsistency between this Agreement and its attached documents or exhibits regarding the Scope of Services and fees, this Agreement shall be controlling. For inconsistencies between this Agreement and its attachment or exhibits regarding the licensing of the City’s access to the RMS, the SLA attached hereto as Exhibit “1” shall be controlling. For all other inconsistencies between this Agreement and its attached documents or exhibits, this Agreement shall be controlling.

## 3. SCOPE OF SERVICES

3.1. The County shall provide the City with limited remote access to Volusia County Sheriff's Office RMS installed on computer hardware equipment controlled and owned by the County to provide an opportunity to improve services through the sharing of law enforcement information.

3.1.1. **DESCRIPTION OF FUNCTIONALITY.** The software functionality provided to City under its licenses shall be limited to that which is generally described in the Software Components identified in Subsection 1.1.17.1 of this Agreement.

3.1.2. **DATA CONVERSION.** The conversion of existing City record management system databases is not covered under this Agreement. If the City desires to convert City data that has not been entered in the County RMS using the Licensed Applications or Sublicensed Applications, then the City shall obtain a fixed quote from Tiburon and will enter into a separate agreement with Tiburon for data conversion services to be provided by Tiburon.

3.1.3. **OUT-OF-SCOPE OF SERVICE ITEMS.** The City may request the County to provide additional services, software products, and software licenses that are outside the scope of those provided as part of this Agreement. Any out of scope service items that affect the RMS functionality or require an interface to the RMS must be approved by the County's Project Manager and will be funded by the City. No Out of Scope Items shall be provided under this Agreement unless this Agreement is amended in accordance with Section 12 to incorporate the terms relating to the Out- of -Scope Items.

3.2. **TRAINING AND SUPPORT.**

3.2.1. **INITIAL TRAINING SESSIONS.** Included in the initial annual fee are one-time only train-the-trainer workshops at County facilities. As such, the County shall provide

one-time only train-the-trainer sessions to the City's designated personnel on the installation and use of the Workstation Software and RMS. The duration of the train-the-trainer training sessions shall be determined by the County's Project Manager. The following training shall be applicable under this Agreement.

RMS Train-the-Trainer Training Sessions		
Course	Number of Trainees (Max)	Student Groups
System Administration & Set-up	4	System Administrator /Technical
Workstation Software Installation	4	System Administrator /Technical
Report Writing and General System Usage for Law Enforcement Officers	6	Law Enforcement Officers
General System Usage for Administrative Personnel	6	Support and Administrative Personnel
Records Management	6	Records Management Personnel
Evidence Management	6	Evidence Personnel
Personnel, Special Flags, and Fixed Assets	6	Administrative Personnel

3.2.2. **DOCUMENTATION.** The County will provide the City with one (1) master electronic media of the user manuals and system administrator manuals that were provided to the County by Tiburon. All electronic documents shall be in Adobe PDF or Microsoft Word format.

3.2.3. **TRAINING SYSTEM.** The County will provide the City with unlimited access to an RMS Training System from City workstations at no-charge to facilitate the City conducting subsequent training for City personnel. The City will be responsible for: (1) notifying the County System Administrator which workstations require access to the Training System, (2) installing the Workstation Software on City workstations requiring access to the Training System, (3) and entering any data in the Training System necessary to conduct additional training.

3.2.4. **CITY RMS DESIGNEES.** Within fifteen (15) days after the Effective Date of this Agreement, City Project Manager shall submit a written notice to the County's Project Manager assigning City personnel to serve as a Technical Support Designee, a System Administrator Designee, and a Records Custodian Designee. The initial notice and subsequent changes to the City designees shall be on a duplicate of the form attached to this Agreement as Exhibit "2" and incorporated herein by this reference.

3.2.4.1. **TECHNICAL SUPPORT DESIGNEE.** The City shall designate one (1) member from its Information Technology Department as the City's Technical Support Designee to address technical issues with the installation and connectivity of RMS Licensed or Sublicensed Application or Workstation software. The City shall designate and maintain at least one (1) competent Technical Support Designee during the Term of this Agreement. In the absence of the assigned Technical Support Designee, the City Project Manager may authorize a temporary Technical Support Designee by providing written notification (e.g. e-mail) to the County Project Manager. All City requests for technical support services provided by the County shall be made in writing and submitted to the County's System Administrator containing a complete and detailed description of the problem.

3.2.4.2. **SYSTEM ADMINISTRATOR DESIGNEE.** The City shall designate one (1) member of the City's law enforcement department as the City's System Administrator for all requests regarding the use of RMS Licensed or Sublicensed Application or Workstation software. All end-user support or Level One requests (i.e., RMS or Workstation Software end-user usage or access issues) shall be managed and resolved by the City's System Administrator. Level Two or technical support requests pertaining to

software defects or errors shall be reported by the City's designee and will be managed by the County's System Administrator. The City shall designate and maintain at least one (1) competent System Administrator during the Term of this Agreement. In the absence of the assigned System Administrator Designee, the City Project Manager may authorize a temporary System Administrator Designee by providing written notification (e.g. e-mail) to the County Project Manager. Any City request for Technical Support services provided by the County pertaining to software defects or errors shall be made in writing and submitted by the City's System Administrator to the County's System Administrator containing a complete and detailed description of the problem. As such, the following types of support shall be applicable during the Term of this Agreement.

	TYPE OF SUPPORT	SUPPORT RESPONSIBILITY
LEVEL 1	End-user RMS and Workstation installation, usage, access, or training issues	City System Administrator
LEVEL 2	RMS or Workstation software errors or defects	County System Administrator

3.2.4.3. **RECORDS CUSTODIAN DESIGNEE.** The City shall designate one (1) member from its law enforcement department to serve as the custodian of the City's information stored in the RMS. This includes, but is not limited to, matters such as sealing and expunging information in response to Court Orders, records retention, and supervision of public record requests under provisions of the Florida Public Records Law (Chapter 119, F.S.). Any government entity utilizing the RMS shall direct public record requests for City information stored in the RMS database to the City's designated Records Custodian. The City shall designate and maintain at least one (1)

competent Records Custodian during the Term of this Agreement.

4. **TERM.** The initial term of this Agreement shall be from the Effective Date through September 30, 2010. The remaining terms shall be from October through September of each succeeding year. Subject to Section 15 and annual budget appropriations, this Agreement shall automatically renew on October 1 of each year thereafter.

5. **LICENSE.**

5.1. **County's Right to Use and Sublicense Licensed and Sublicensed Applications.** County, pursuant to the RMS System Implementation Agreement and SLA attached hereto as Exhibit 1, owns the license to the RMS and as a result, has been granted the right to use and sublicense the RMS Licensed and Sublicensed Applications owned by Tiburon including Workstation Software developed and owned by Tiburon and provided by County, at the City's cost, to the City for the purposes of this Agreement.

5.2. Upon the Effective Date of this Agreement and City's payment of all amounts due hereunder with respect hereto, County will grant to City a nonexclusive limited right to use and remotely access RMS and its Licensed or Sublicensed Applications, and necessary Third-Party Software related to RMS, in Object Code only, pursuant to, and subject to the terms of the SLA. Subject to the foregoing, the County shall provide the City with the number of authorized workstation licenses set forth on Exhibit "3" which is attached hereto and incorporated herein. Said RMS, Licensed and Sublicensed Applications, and Workstation Software are provided to City "AS IS" without any warranty or guarantee of any kind whatsoever. This license may be revoked by County if RMS or its Licensed Applications are used for unlawful purposes, in violation of any term or condition of this Agreement, or to create or develop "works", as defined under the U.S. Copyright Act of 1976, that infringe the intellectual property rights of any third party including Tiburon, an intended third party beneficiary of this Agreement, or

### Third-Party Software.

5.2.1. Regardless of the communications mediums (including Data Circuits or tunnels) used by City to access the RMS and its Licensed Applications or Sublicensed Applications, such access shall only be through the County's firewall.

5.2.2. **Quantity.** The initial number of authorized workstation licenses are set forth on Exhibit "3" and incorporated herein by this reference. The City shall ensure that the number of installed copies does not exceed the number of workstation licenses specified in Exhibit "3". The City, at its cost, may obtain from County additional authorized workstation licenses. If the City desires to obtain additional workstation licenses, it shall submit a written notice to the County's Project Manager stating the number of workstation licenses requested. The notice shall delineate between the total number of "Data-Entry Workstations" and "Report Writing Workstations", as defined in Subsection 1.1.31.1. The notice shall be on a duplicate of the form which is attached to this Agreement as Exhibit "3" and incorporated herein by this reference. Within fourteen (14) calendar days, the County's Project Manager shall provide written notification to the City Project Manager whether the request can be accommodated. Accommodation of said request shall be at the sole discretion of the County's Project Manager. If the additional workstation licenses are granted, the City shall be required to pay for such workstation licenses in accordance with Section 6 of this Agreement. Upon payment by City, the County will activate the workstation licenses. The notice provided by the City will be signed by the County's Project Manager and incorporated herein to Exhibit "3" as an amendment thereto.

### 5.2.3. **Restrictions on Use.**

5.2.3.1. City agrees to use RMS and any Licensed Applications and/or Sublicensed Applications (if applicable), and any Third-Party Software only for City's own

use and shall not allow use of any Licensed Application, Sublicensed Application or Third-Party Software by any parent, subsidiaries, affiliated entities, or other third parties.

- 5.2.3.2. Subject to the terms of this Agreement, the RMS software and Third-Party Software (if applicable) shall only be used for law enforcement purposes by personnel employed by the City's law enforcement agency using City computers. Each user accessing the RMS shall utilize a unique user account assigned by the City System Administrator. The City is not authorized and shall not give access to the RMS or otherwise share the RMS or its Licensed or Sublicensed Applications or Third-Party Software with any person or entity not authorized under this Agreement.
- 5.2.3.3. Except as otherwise specifically authorized in the SLA, the City shall have no right to copy any Licensed or Sublicensed Application or Third-Party Software.
- 5.2.3.4. Any copy of any Licensed Application (whether or not such copy is permitted) shall be the exclusive property of Tiburon.
- 5.2.3.5. Any copy of a Sublicensed Application or Third-Party Software (whether or not such copy is permitted) shall be the exclusive property of the developer or owner of such Sublicensed Application or Third-Party Software.
- 5.2.3.6. City and its employees or agents shall not knowingly distribute or allow distribution of any Licensed or Sublicensed Application, Third-Party Software or any Documentation, or other materials to any third party, person or entity not subject to this Agreement, in violation of any state or federal law regulating the communication or electronic transmission of law enforcement data or the SLA.

- 5.2.3.7. City shall have no license or right with respect to the Source Code for any Licensed or Sublicensed Application, or Third-Party Software.
- 5.2.3.8. City shall not permit any other party to make any alteration, modification or enhancement to RMS or any Licensed or Sublicensed Application, or Third-Party Software.
- 5.2.3.9. City shall not permit any other party to, disassemble, de-compile or reverse-engineer any Licensed or Sublicensed Application, or Third-Party Software.
- 5.2.3.10. City shall neither use RMS or any Licensed or Sublicensed Application, or Third-Party Software, nor permit any third party to use any Licensed or Sublicensed Application, or Third-Party Software, for processing data of any entity other than the City's Authorized Volusia County Law Enforcement Agency as stated in this Agreement.
- 5.2.3.11. **Disaster Recovery.** City shall have the right, subject to the County's System Administrator's approval, to utilize this license in conjunction with its Disaster Recovery facility for the purposes of testing its Disaster Recovery Plan. As such, the County's Project Manager shall have the sole discretion to approve and schedule such testing. Therefore, City shall, as promptly as practical, provide written notice to the County's System Administrator requesting to utilize the RMS for disaster recovery testing.
- 5.2.3.12. **Archival Reproductions.** The City authorizes the County to create backup copies of its data for disaster recovery purposes. Furthermore, the City is authorized to create backup copy(s) of its data using the Database Connection defined in Subsection 5.2.3.13, but not any other government entity's data stored in the RMS, in machine readable form for operational

backup and disaster recovery purposes, provided that such copy(s) is solely for City use as authorized herein and that no more than the number of workstations licensed according to this Agreement are in use at any one time.

To ensure the backup process does not adversely affect the performance of RMS, the City shall provide five (5) business days' written notice to the County's System Administrator outlining the City's backup procedures and schedule. The County's Project Manager shall have the sole discretion to approve and schedule the City's back-up procedures. City agrees that the said backup and disaster recovery copy(s) satisfies the requirements of the applicable Copyright Laws of the United States.

5.2.3.13. **Database Connection.** The City will be provided with a read-only connection through the County's firewall to the RMS database for the purpose of querying and extracting data stored by the City in the RMS database. The City will be responsible for acquiring and maintaining any software that utilizes this connection.

5.2.3.14. **Ownership of County Data.** County is the owner of its data, data compilations and reports of its or third party data generated from use of the RMS and its Licensed or Sublicensed Applications ("County Data") and stored on any RMS database. Notwithstanding anything to the contrary contained in this Agreement, the County shall have the right to use the RMS and its Licensed or Sublicensed Applications and Third-Party Software to access and have unfettered use of such data, reports, compilations, or information derived from or resulting from the use by County or third parties of the RMS and its Licensed or Sublicensed Applications and Third-Party Software to generate reports from such data, files or information or to provide such data, files or information on electronic media to the public or

law enforcement agencies as it deems appropriate. Said use shall be pursuant to the Florida Public Records Law and federal and state law regulating the electronic data transfer of law enforcement information. Accordingly, City acknowledges and agrees that the County is the owner 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 RMS and its Licensed or Sublicensed Applications and Third-Party Software in relation to such information or data does not in any way restrict County in the County's rights of disclosure or use of said data and information. City further acknowledges and agrees that County shall not be the custodian of data input by the City into RMS ("City Data") or responsible for the accuracy or reliability of City Data. Subject to the foregoing, City shall retain all rights, title and interest in City Data and shall be responsible for the maintenance of all of its data including but not limited to: the sealing, expunging or redacting information contained in City's documents or pleadings used in legal proceedings; and/or, collected for the purposes of City's records retention and supervision of its public records which is stored or copied to RMS.

5.2.3.14.1. The County shall have the unfettered right to use any data that has been added to the RMS system by any entity, including the City. As such, the County shall have the unfettered right to make backups and perform database administration on all data that is stored or maintained in the RMS as the County deems necessary.

5.2.3.15. **Disclosure of Data.** City represents and warrants to County that: (i) City and its affiliates, the service providers, and such other third parties are authorized to disclose City Data to County for use pursuant to this

Agreement; (ii) such disclosure does not and shall not violate applicable law or, if applicable, City's or its affiliates' agreements with or privacy notices to individuals with respect to whom the City Data relates; and (iii) City shall not request County to use, disclose or otherwise process City Data in any manner that would not be permissible under applicable law or, if applicable, City's or its affiliates' agreements containing privacy notices to individuals with respect to whom the City Data relates, if such agreements exist.

5.2.3.15.1. Specifically, information obtained from the Florida Crime Information Center (FCIC) files, or obtained through computer interfaces to other state or federal systems, by means of access granted pursuant to Section 943.0525, F.S., shall only be used for criminal justice purposes. City agrees that such information obtained through the FCIC is restricted to law enforcement and other criminal justice agencies for official use only and that information retrieved from the FCIC by direct access shall not be made available under provisions of the Florida Public Records Law (Chapter 119, F.S.). City agrees that compliance with Chapter 119, F.S., is accomplished by directing record requests to FDLE per Chapter 11C-6, F.A.C., and Section 943.053(3), F.S. City further agrees that it is the responsibility of the authorized agency (City) to insure that access to the FCIC/NCIC network is for authorized criminal justice purposes only, and to regulate proper use of the network and information at all times. In addition to the foregoing, the City acknowledges that the improper use and dissemination of criminal history information may subject the

City's officers or employees to a fine not to exceed \$10,000 as provided for in Department of Justice Regulations, 28 C.F.R. Section 20.25, and/or discontinuance of services as provided for by Department of Justice Regulations, 28 C.F.R. Section 20.38.

5.2.3.16. **Sharing of Data.** The City agrees that any law enforcement related data added to the RMS is automatically eligible to be shared with other law enforcement agencies utilizing the centralized RMS software. This data will be shared with other law enforcement agencies for inquiry purposes only and will not include any information that is not law enforcement related (e.g. City personnel information).

5.2.3.17. **Dissemination of Data.** The City agrees to restrict the release or dissemination of information made available through RMS consistent with the Florida Public Records Act, Chapter 119 and Subsections 3.2.4.3 and 5.2.3.15. Further, City agrees that it will not release or disseminate any information obtained in RMS that belongs to another law enforcement agency.

5.2.3.18. **Separation of Data.** All City data collected and stored in the RMS Database by City shall be separated or segregated from the records or data of other city or law enforcement agency data by a physical and/or logical separation medium as deemed appropriate by County.

5.2.3.19. **Data Security.** Notwithstanding Subsection 5.2.3.15, the security of law enforcement data in RMS shall be bound by applicable federal and state laws, regulations, and rules to the same extent that would be if such provisions were fully set out herein. Moreover, this Agreement incorporates

both present and future law, regulations, and rules. The City may terminate this Agreement if the changes in law, regulations or rules are not acceptable to the City. The County reserves the right to terminate this Agreement immediately if improper or unauthorized access to RMS or other County networks by the City is detected.

5.2.3.20. **Network Security.** The County shall ensure the protection of all RMS data while being transmitted electronically inside the County's physical RMS network perimeter that is terminated by a firewall. The City shall ensure that proper security protocols are used when accessing the RMS within its network boundary, including the Data Circuit providing connectivity to the County RMS network in order to limit the access of RMS data only to authorized law enforcement personnel and to system processes acting on behalf of authorized law enforcement personnel. The City agrees to supply and monitor the equipment used to access the RMS in order to prevent unauthorized use to gain access to RMS or other County network resources.

## 6. **INVOICING AND PAYMENT.**

- 6.1. County shall forward invoices for services to the City for payment.
- 6.2. The amounts to be paid to County shall not include any federal, state or local excise or sales taxes now in force or which may be enacted in the future. Neither party to this Agreement shall pay federal, state, or local excise or sales taxes.
- 6.3. The City shall pay undisputed invoices within thirty (30) days of receipt of the invoice unless otherwise provided herein.

6.4. Throughout the term of this Agreement, the City may obtain additional workstation licenses by submitting a written notice to the County's Project Manager pursuant to Subsection 5.2.2. If the additional workstation licenses are granted, the County shall forward an invoice to the City for payment in accordance with Section 7.4.2.2 of this Agreement for the additional workstation licenses. The County will not activate the workstation licenses until the City submits payment for the invoice.

6.5. Payment of invoices hereunder shall be submitted to the following address:

COUNTY OF VOLUSIA  
SHERIFF'S OFFICE  
ATTENTION: Timothy Jolley, Information Systems Director  
1330 Indian Lake Road  
Daytona Beach, Florida 32124  
PH: 386-323-3501  
FAX: 386-323-3502

To be deemed proper, all invoices must comply with the requirements set forth in this Agreement.

## 7. RESPONSIBILITIES.

7.1. **PROJECT MANAGERS.** Within ten (10) business days following the Effective Date, the City shall designate in writing its Project Manager to direct the efforts of its city personnel and serve as the primary point of contact to the County. The County's Project Manager shall be the Information Systems Director for the Volusia County Sheriff's office and will direct the efforts of its county personnel and serve as the primary point of contact to the City. The responsibilities of each Project Manager include, but are not limited to:

7.1.1. Manage the efforts of the overall project activities for their government agency and coordinate system backup, disaster recovery, Help Desk/Technical Support, and other activities that may need to be scheduled or coordinated by the City and County.

7.1.2. Insure that their government agency support resources are made available to the other party.

7.1.3. Ensure adherence to the terms and conditions of this Agreement by their respective governmental entity.

7.2. **COUNTY RESPONSIBILITIES.** The County shall:

7.2.1. Provide, and maintain County owned hardware necessary to connect the Data Circuit at the County's firewall location for the City's interface to the County network.

7.2.2. At its sole cost provide, implement, and maintain all hardware and software necessary to ensure the protection of the RMS data while being transmitted electronically inside the County's physical RMS network perimeter that is terminated by a firewall.

7.2.3. Subject to Subsection 5.2.3.13, provide a read-only database connection to a database view containing information stored by the City in the RMS database; such provision to be made within fifteen (15) business days from the date that the City notifies the County that City's Data Circuit is completed.

7.2.4. Subject to Subsection 5.2.3.13, grant City the limited right to use the RMS database connection in accordance with this Agreement from the date the City's Data Circuit to the County firewall is complete until termination or expiration of this Agreement.

7.2.5. Conduct initial train-the-trainer sessions for designated City personnel as stated in Section 3.2.1.

7.3. **CITY RESPONSIBILITIES.** The City shall:

7.3.1. City shall be responsible for administering, managing, and updating all aspects of City-specific data, including the user account and security information for the City and

any City-specific computer system or network parameters.

7.3.2. At its sole cost provide, implement, and maintain all hardware and software necessary to effectuate such security as required under this Agreement and necessary to ensure the City's data is properly accessed in RMS. As such, the City is solely responsible for all costs associated with acquiring and maintaining all computer hardware, software, communications, and other services required to access the RMS software and database located on the server hardware maintained by the County.

7.3.3. Coordinate and oversee the initial installation of all Workstation Software provided by the County to City.

#### **7.4. MAINTENANCE AND SERVICE FEE.**

7.4.1. **COUNTY RESPONSIBILITIES.** The County shall:

7.4.1.1. Provide the City with support for all Level Two errors or defects as shown in Subsection 3.2.4.2 with the RMS software reported by the City's System Administrator. The County shall be responsible for determining which Level Two support incidents reported by the City require services from the developer of the Licensed Application or Sublicensed Application. While the County will endeavor to respond to reported software defects and errors in a timely fashion, the County does not make any express or implied warranty, that software defects and errors will be corrected or provide a guarantee as to the amount of time required to complete corrective actions.

7.4.1.2. Perform preventive maintenance and upgrades on the RMS server hardware and software as deemed necessary by the County. The County shall notify the City via email at least 48 hours in advance of any scheduled maintenance impacting the City's access to RMS. The County agrees to

make reasonable attempts to perform scheduled maintenance during historically low use hours. The County is permitted to conduct emergency maintenance on an "as-needed" basis.

**7.4.2. CITY RESPONSIBILITIES.** The City shall:

7.4.2.1. Pay all service fees necessary to operate RMS which is included in the City's Annual Service Fee identified in Subsection 7.4.2.2 below.

7.4.2.2. **Annual Service Fee.** The City 's annual service fee for the first fifteen (15) months or from July 1, 2010 to September 30, 2011, of this Agreement shall be in the amount of \$0.00. Thereafter, the City shall pay the County an annual fee for the use of RMS in accordance with the fee schedule shown in Exhibit "4". The total annual fee paid by the City will be based upon the number of Data Entry Workstations and Report Writing Workstations used by the law enforcement agency of the City as defined by Subsection 1.1.31.1. The total annual fee will be calculated using the per-Workstation costs defined in Exhibit "4" (Fee Schedule). The first payment by the City shall be a prorated amount of the annual fee based upon the number of days remaining until the first Payment Date for which a full annual fee would be due. All payments of annual fees thereafter during the Term of this Agreement shall be paid on or before the established Payment Date.

7.4.2.3. **Annual Adjustments.** The County reserves the right to evaluate the City's annual service fee and adjust it accordingly based upon the cost of the services provided. The County shall provide the City with at least one hundred twenty (120) days prior written notice of any increase to the annual service fee. Any such increase shall be no more than five percent (5%)

annually and shall become effective on the next occurring Payment Date.

7.4.2.4. **Remote Workstation Access.** To assist the County System Administrator in diagnosing software errors and defects reported by the City, the City shall allow the County System Administrator or designee to connect directly to the Workstation encountering the problem. The connectivity will be established through a mutually agreed method utilizing a secure connection. County personnel will not remotely access a City Workstation without first obtaining verbal consent from the City's Technical Support Designee or System Administrator.

7.4.2.5. **Error Reproduction.** . For all Level Two errors or defects as defined in Subsection 3.2.4.2 with the RMS software reported by the City's System Administrator, the City shall provide the County System Administrator with a listing of output and any other data in order to reproduce operating conditions similar to those present when the defect or error occurred.

## 7.5. **DISCLAIMERS**

7.5.1. **IMPLEMENTATION OF LICENSED APPLICATIONS.** EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT, COUNTY MAKES NO WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED OR SUBLICENSED APPLICATIONS OR SERVICES PROVIDED BY COUNTY HEREUNDER, INCLUDING QUALITY, PERFORMANCE, AVAILABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. NO COUNTY AGENT OR EMPLOYEE IS AUTHORIZED

TO MAKE ANY EXPANSION, MODIFICATION OR ADDITION TO THIS LIMITATION AND EXCLUSION OF WARRANTIES IN THIS AGREEMENT. County shall not be responsible for: (i) any non-conformities of the RMS, Licensed or Sublicensed Applications or Third-Party Software with or without Documentation, omissions, delays, inaccuracies or any other failure caused by County, its affiliates' or any service providers' computer systems, hardware or software, including by interfaces with such Third-Party Software or RMS, or any inaccuracies that such systems may cause within the RMS and and/or Licensed or Sublicensed Applications; (ii) any inaccuracies in or failures of the Licensed or Sublicensed Applications or Third-Party Software to conform to Documentation arising out of the use of a version or release of the Licensed or Sublicensed Applications or Third-Party Software; (iii) any data that County inputs in to RMS or that is input by any other entity (including City) or that is received from City or third party sources, including their PPOs, and including the data's accuracy or completeness; or (iv) the, Licensed or Sublicensed Applications or Third-Party Software to the extent they are modified by anyone. To the extent the Licensed or Sublicensed Applications or Third-Party Software utilize Internet systems to transmit data or communications or a Data Circuit, County disclaims any liability for interception of any such data or communications, including of encrypted data. Except as otherwise provided herein, City agrees that County shall have no responsibility or liability for any damages arising in connection with the City's access to or use of the RMS and/or its Licensed or Sublicensed Applications Licensed or Third-Party Software, or service providers used in connection with this Agreement. City further agrees that County shall not be responsible for the reliability or continued availability of the data or telephone lines and equipment used by the County or City to access RMS and/or its Licensed or Sublicensed Applications or Third-Party Software.

7.5.2. **No Warranties or Guarantees.** Except as expressly set forth in this Agreement,

County makes no warranties, expressed, implied, statutory, or in any other provision of this Agreement or any other communication. County specifically disclaims any warranty of merchantability or fitness for a particular purpose. In no event shall County or its agents or employees be liable to City for damages for loss of data, intercepted data, loss profits, or any indirect, special, incidental or consequential damages arising out of this Agreement or the use of RMS and its Licensed or Sublicensed Applications and Third-Party Software, even if City has been advised of the possibility of such damages, or for any claim by any third party. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies. As such, City agrees that County shall not be liable for any and all damages arising from City's use of the RMS, Licensed or Sublicensed Applications, or Third-Party Software. This limitation shall also apply to any claims or actions for indemnification or contribution against County by City. These terms and conditions shall survive the termination of this Agreement.

7.5.3. **Third-Party Software.** The content of third party websites, systems, products or advertisements not supplied by County that may be linked to the RMS, Licensed or Sublicensed Applications or Third-Party Software are not maintained or controlled by County. County is not responsible for the availability, content or accuracy of such third party websites, systems or goods that may be linked to, or advertised on, the RMS and/or Licensed or Sublicensed Applications or Third Party Software. County does not: (i) make any warranty, express or implied, with respect to the use of the links provided on, or to, the RMS and/or Licensed or Sublicensed Applications or Third-Party Software; (ii) guarantee the accuracy, completeness, usefulness or adequacy of any other websites, systems, products or advertisements that may be linked to or referenced in the RMS and/or Licensed or Sublicensed Applications or Third-Party Software; or (iii) make any endorsement, express or implied, of any other

websites, systems, products or advertisements that may be linked to or referenced in the RMS and/or Licensed or Sublicensed Applications or Third-Party Software.

8. **INSURANCE COVERAGE.** Each party shall maintain its own insurance in amounts deemed appropriate for its operations. Such insurance shall provide coverage for negligent acts, errors, or omissions and provide protection against bodily injury or property damage claims. It is expressly understood that each party shall be solely responsible for its own actions and such insurance shall not extend to protect any other party.
  
9. **PERSONNEL MATTERS.** The City shall be responsible for the city employees and the County shall be responsible for county employees.
  - 9.1. All personnel shall adhere to such rules and regulations as may be applicable to their respective employment.
  - 9.2. Neither officials nor employees of the County nor officials or employees of the City shall be deemed to be the agent, representative, or employee of the other party relative to the respective duties or activities performed by them pursuant to and in furtherance of this Agreement.
  - 9.3. Persons employed by a party for the performance of services and functions pursuant to this Agreement shall have no claim on the other party for pension, worker's compensation, unemployment compensation, civil service, or any other employee benefit, right or privilege granted by operation of law, or otherwise, to the officers and employees of the other party to this Agreement.
  - 9.4. Each party agrees to furnish the necessary personnel, equipment, resources, and facilities in order to render services to the other party in accordance with the terms of this Agreement.
  - 9.5. No agency, officer or employee of the parties to this Agreement shall perform any function or service outside the scope of duties of such agency, officer or employee in the respective primary jurisdiction of such agency, officer or employee.

9.6. Except as herein otherwise provided, all liability for injury to personnel and for loss or damage of equipment shall be assumed by the party employing such personnel and owning such equipment.

**10. NO PLEDGE OF AD VALOREM TAXES.**

10.1. All funds for payment by the County under this Agreement are subject to the availability of an annual appropriation for this purpose by the County.

10.2. All funds for payment by the City under this Agreement are subject to the availability of an annual appropriation for this purpose by the City.

**11. SOVEREIGN IMMUNITY.** Each party to this Agreement expressly retains all rights, benefits and immunities of sovereign immunity that they presently enjoy under the Constitution and statutes of the State of Florida, and particularly with respect to Chapter 768, Florida Statutes. It is the intent of the City that the City's management decisions as contemplated above, are to be the exercise of a legislative, planning level function of the City, and that the City shall not undertake to exercise specific operational control over the provision of the contract services state herein. Should the City direct or exercise operational control in fact beyond that contemplated in this Agreement, and there be liability to third parties and/or to the County that flows therefrom, then the City shall have such responsibility for the liability attributable to the City subject to the provisions of this Agreement. Notwithstanding anything set forth in any article of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of either party beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and any liability of either party for damages shall not exceed the statutory limits of liability, regardless of the number or nature of any claim which may arise including but not limited to a claim sounding in tort, equity or contract. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against any party, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

12. **MODIFICATIONS AND AMENDMENTS.** No modification, amendment, change order or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by a duly authorized official of each party.
13. **INFORMAL DISPUTES.** It is the desire and intent of the parties to avoid, if possible, the expense and delay inherent in litigation; therefore, the parties agree that whenever any individual party cannot resolve an issue with any other party, the affected parties shall engage in the alternative dispute resolution process described below prior to resorting to litigation and shall exercise their best efforts to negotiate and settle promptly any dispute.
- 13.1. The parties will 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. Issues will be escalated to successive management levels as needed.
- 13.2. If either party (the "Disputing Party") disputes any provision of this Agreement, or the interpretation thereof, or any conduct by the other party under this Agreement, that party shall bring the matter to the attention of the other party at the earliest possible time in order to resolve such dispute.
- 13.3. If such dispute is not resolved by the representative responsible for the subject matter of the dispute within ten (10) business days, the Disputing Party shall deliver to the first level of representatives below a written statement (a "Dispute Notice") describing the dispute in detail, including any time commitment and any fees or other costs involved.
- 13.4. Receipt by the first level of representatives of a Dispute Notice shall commence a time period within which the respective representatives must exercise their best effort to resolve the dispute. If the respective representatives cannot resolve the dispute within the given time

period, the dispute shall be escalated to the next higher level of representatives in the sequence as set forth below.

- 13.5. Progressive management involvement in dispute negotiations will be initiated by written notice to the other party at the same management level as shown in the chart below. Each level of escalation will have a period of allotted time for review and response as specified below:

**ESCALATION TIMETABLE**

<u>Level</u>	<u>Business Days</u>	<u>CITY</u>	<u>COUNTY</u>
First	0 to 5 <sup>th</sup>	Project Manager	Project Manager
Second	6 <sup>th</sup> to 10 <sup>th</sup>	_____	Chief Deputy Sheriff
Third	11 <sup>th</sup> to 15 <sup>th</sup>	_____	Sheriff

- 13.6. If the dispute has not been resolved within thirty (30) calendar days after delivery of the disputing party's notice, or if the parties fail to meet within twenty calendar days, either party may give written notice to the other party declaring the negotiation process terminated.

- 13.7. The parties regard the obligations to notify the other party of a dispute and to negotiate such dispute pursuant to this Article 13 as an essential provision of this Agreement and one that is legally binding on each of them.

- 13.8. Each party shall each bear its own costs and expenses incurred in connection with any negotiations and dispute resolution.

- 13.9. Upon failure to resolve any dispute in accordance with this Article 13, the parties may engage

in mediation, arbitration, or other dispute resolution processes at their discretion, or pursue other local remedies.

13.10. Notwithstanding the foregoing, either party may, before or during the exercise of the informal dispute resolution procedures set forth in this Article 13, apply to a court having jurisdiction for a temporary restraining order or preliminary injunction where such relief is necessary to protect its interests pending completion of such informal dispute resolution procedures.

13.11. Notwithstanding the fact that the parties may be attempting to resolve a dispute in accordance with the informal dispute resolution procedures set forth in this Article 13 hereof, the parties agree to continue without delay all their respective responsibilities under this Agreement that are not affected by the dispute.

**14. VENUE, WAIVER OF JURY TRIAL AND APPLICABLE LAW.**

14.1. The venue for any litigation between the parties arising under this Agreement shall be exclusively in the County of Volusia, Florida, unless the litigation is exclusively cognizable in federal court and venue shall then be exclusively in the United States District Court, Middle District of Florida in Orlando, Florida. Each party hereby agrees to submit to the personal jurisdiction of these courts for any lawsuits filed there against such party arising under or in connection with this Agreement.

14.2. In the event that a legal proceeding is brought for the enforcement of any term of this Agreement, or any right arising there from, the parties expressly waive their respective rights to have such action tried by jury trial and hereby consent to the use of non-jury trial for the adjudication of such suit.

14.3. 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 the Code of

Ordinances of County of Volusia, Florida, without giving effect to the choice of law principles thereof and unless otherwise preempted by federal law.

15. **TERMINATION.** Either party may terminate the Agreement upon written notice to the other party, said written notice to be given no less than thirty (30) days prior to the requested termination or renewal date. Said notice shall be deemed delivered when a copy of the same is delivered to the other party and a receipt thereof signed by the other party. Notwithstanding the foregoing, the County may immediately terminate this Agreement if the County determines, in its sole judgment that an action by the City interferes with the operation or use of the RMS. In the event of termination, the City must stop using and/or accessing the RMS software and destroy all copies of the RMS software in the City's possession. The effective date for any termination pursuant to this section shall be the next occurring Payment Date or thirty (30) days after receipt of said termination notice, whichever occurs first.

16. **NOTICE.** Notice as required to be given in this Agreement shall be provided to the following persons:

**COUNTY:** A. County Manager, James T. Dinneen  
Thomas C. Kelly Administration Center  
123 West Indiana Avenue  
DeLand, Florida 32720

B. Sheriff, Ben F. Johnson  
Thomas C. Kelly Administration Center  
123 West Indiana Avenue  
DeLand, Florida 32720

**CITY:** A.

17. **THIRD PARTY BENEFICIARIES.** This Agreement is entered into for the benefit of the County and City. Nothing in this Agreement, except as otherwise stated herein, shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, the general public or any member thereof, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries, property damage, or any other relief in law or equity in connection with this Agreement.
  
18. **NON-ASSIGNABILITY.** This Agreement is not assignable by either party without the express written consent of the other party.
  
19. **SEVERABILITY.** If any provision of this Agreement is found to be unconstitutional, illegal, or otherwise unenforceable by judgment of a Court of competent jurisdiction, such judgment shall not invalidate the remainder of this Agreement, unless such judgment renders the purpose or performance of this Agreement no longer practical for either party.
  
20. **ENTIRE AGREEMENT.** This Agreement reflects the full and complete understanding of the parties and may be modified or amended only by a document in writing executed by all the parties, with the same formalities as this Agreement.

**IN WITNESS WHEREOF**, the parties to this Agreement have caused the same to be signed by their duly authorized representatives this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

ATTEST:

**COUNTY OF VOLUSIA, FLORIDA,**

By: \_\_\_\_\_  
James T. Dinneen  
County Manager

By: \_\_\_\_\_  
Frank T. Bruno, Jr., County Chair

By: \_\_\_\_\_  
Ben F. Johnson, Sheriff

ATTEST:

**CITY OF ORANGE CITY, FLORIDA**

By: \_\_\_\_\_

By: \_\_\_\_\_

**EXHIBIT 1  
TO  
INTERLOCAL AGREEMENT**

**TIBURON SLA**

**EXHIBIT 2**  
**TO**  
**INTERLOCAL AGREEMENT**  
**CITY CONTACT SHEET**

**Volusia County Sheriff's Office**  
**Records Management System City Contact Information**

**CITY INFORMATION**

Law Enforcement Agency Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

**TECHNICAL POINT-OF-CONTACT**

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Telephone: \_\_\_\_\_ Cell: \_\_\_\_\_ Email: \_\_\_\_\_

**SYSTEM ADMINISTRATOR**

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Telephone: \_\_\_\_\_ Cell: \_\_\_\_\_ Email: \_\_\_\_\_

**RECORDS CUSTODIAN**

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Telephone: \_\_\_\_\_ Cell: \_\_\_\_\_ Email: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

**EXHIBIT 3  
To  
INTERLOCAL AGREEMENT  
WORKSTATION FORM**

# Volusia County Sheriff's Office Records Management System Workstations

**A) How many of each of the following types of RMS workstations will your agency utilize?**

Data Entry Workstations

Report Writing Workstations

**B) What is the requested activation date for the abovementioned workstations?**

Requested Activation Date

**Instructions:** In the above form, enter your agency name and the number of workstations that will be utilized by your agency. If this is a change to the number of workstations already in use, then enter the total number of workstations utilized by your agency to include the change. The completed form should be signed by an authorized agent for your agency and forwarded to the Information Systems Director for the Volusia County Sheriff's Office.

**Fees and Processing:** Within fourteen (14) calendar days from the receipt of this form, the Information Systems Director for the Volusia County Sheriff's Office will provide written notification as to whether the request can be accommodated. The number of workstations selected above will require an annual service fee as defined in the current Fee Schedule contained in the Interlocal Agreement for RMS Service. These fees are due prior to the requested activation date noted above. Upon payment, the workstation licenses will be activated and this form will be signed by the Information Systems Director and incorporated into Exhibit 3 of the Interlocal Agreement for RMS Service.

**Additional Workstations:** If this form is being submitted to request additional workstations, then the total amount due to activate these workstations will be a prorated amount as defined in the Interlocal Agreement for RMS Service.

**Signature:** I agree that I have the authority to bind my agency to this agreement and agree that my agency will abide by the terms and conditions in such agreement. This form, when executed, will replace any previous form that was submitted.

Agency Name: \_\_\_\_\_

**Volusia County Sheriff's Office**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name:

Title:

Title: Information Systems Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT 4**

**To  
INTERLOCAL AGREEMENT**

**VOLUSIA COUNTY SHERIFF'S OFFICE  
RECORDS MANAGEMENT SYSTEM SERVICE FEE SCHEDULE**

# Volusia County Sheriff's Office Records Management System Service Fee Schedule

## Instructions

### Annual Fees – Effective October 1, 2008

Effective October 1, 2008, the annual service fees for an agency to use the Volusia County Sheriff's Office Records Management System (RMS) are listed below. The total annual fee paid will be based upon the number of data entry workstations and report writing workstations deployed at the agency.

### Workstation Definitions

A **“data entry workstation”** is defined as any workstation capable of updating agency data contained on the RMS server and requiring client software to be installed on the workstation. A **“report writing workstation”** is defined as any workstation that has the ability to generate electronic forms using the RMS field reporting software. Examples of electronic forms include, but are not limited to, incident reports, arrest affidavits, traffic accident reports, and traffic citations.

### Payment

All payments of the annual service fees shall be paid on or before October 1. For additional workstations, the first payment shall be a prorated amount of the annual fee based upon the number of days remaining until the first payment date for which a full annual fee would be due.

### Fee Adjustments

The annual fees listed below are current as of October 1, 2008. However, in the event that the annual maintenance service costs for the RMS software increases, the County reserves the right to evaluate the agency's annual service fee and adjust accordingly. For any fee adjustments, the County will provide the agency with an updated Fee Schedule at least thirty (30) days prior to the next payment date. Changes to the Fee Schedule shall be on a duplicate of this form and attached to the Interlocal Agreement for RMS Services as Exhibit “4”. Any adjustments to the fees shall be effective on the next occurring payment date.

Workstation Type	Annual Fee per Workstation
Data Entry Workstation	\$1,200.00
Report Writing Workstation	\$100.00
Inquiry-only Workstation	No fee



## SOFTWARE LICENSE AGREEMENT

This Software License Agreement is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_ (the "Effective Date"), by and between the County of Volusia, a body corporate and politic and a political subdivision of the State of Florida, with its principal place of business at 123 West Indiana Avenue, DeLand, Florida 32720 (the "Licensee"), and CompuDyne – Public Safety & Justice, Inc., a Virginia corporation, with its principal place of business at 39350 Civic Center Drive, Fremont, California, 94538 ("CompuDyne").

### RECITALS

WHEREAS, CompuDyne has developed certain software applications that have been installed on the Licensee's automated computer system and the Licensee desires to obtain a license and right to use such software applications on such system in accordance with the terms, and subject to the conditions, set forth below; and

WHEREAS, CompuDyne has the right to sublicense certain software applications developed by third parties that have been installed on the Licensee's automated computer system and the Licensee desires to obtain a sublicense and right to use such third party software applications on such system in accordance with the terms, and subject to the conditions, set forth below;

NOW THEREFORE, in consideration of the mutual covenants contained herein this Agreement, the Licensee and CompuDyne hereby agree as follows:

### AGREEMENT

#### 1. Definitions

For this Agreement, capitalized terms, phrases, words and their respective derivations shall have the meaning set forth and defined herein. If there is no definition in this Agreement or its exhibits, the applicable definition contained in the Volusia County Code of Ordinance shall be used. If there is no applicable definition as described above, the terms, phrases, and words, and their respective derivations when used in this Agreement, shall have the meanings ascribed to them in Webster's New Collegiate Dictionary (G & C Merriam Co., 11th ed. July 2003, or any subsequent edition).

1.1. **"Agreement"** shall mean this Software License Agreement and its exhibits, as the same may from time to time be amended in accordance with the terms hereof.

1.2. **"As-Built Specification Document"** shall mean, with respect to any Licensed Application, the document setting forth the specifications for such Licensed Application delivered upon acceptance of the Licensed Application in accordance with the applicable implementation agreement, as such specifications may thereafter be modified or supplemented from time to time to reflect Enhancements subsequently provided by CompuDyne.

1.3. **"Authorized Server"** shall mean, with respect to any Licensed Application, the server identified as corresponding to such Licensed Application on Exhibit 1 attached hereto and incorporated herein by this reference.

1.4. **"Authorized Site"** shall mean, with respect to any Authorized Server, the address and room number identified as corresponding to such Authorized Server on Exhibit 1 attached hereto and incorporated herein by this reference.

1.5. **"Derivative Works"** shall mean, with respect to any Licensed Application, any translation, abridgement, revision, modification, or other form in which such Licensed Application may be recast,

transformed, modified, adapted or approved after acceptance of the As-Built Specifications for such Licensed Application in accordance with the applicable implementation agreement.

**1.6. "Documentation"** shall mean any written, electronic, or recorded work that describes the use, functions, features, or purpose of the System, or any component or subsystem thereof, and that is published or provided to the Licensee by CompuDyne, CompuDyne's subcontractors ("Subcontractors") or the original manufacturers or developers of third party products provided to the Licensee by CompuDyne, including, without limitation, all end user manuals, training manuals, guides, program listings, data models, flow charts, logic diagrams, and other materials related to or for use with the System.

**1.7. "Effective Date"** is defined in the preamble hereof.

**1.8. "Enhancement"** shall mean, with respect to any Licensed Application, a computer program modification or addition, other than a Maintenance Modification, that alters the functionality of, or adds new functions to, such Licensed Application and that is integrated with such Licensed Application after acceptance of the As-Built Specifications for such Licensed Application in accordance with the applicable implementation agreement, or that is related to a given Licensed Application but offered separately by CompuDyne after acceptance of the As-Built Specifications for such Licensed Application in accordance with the applicable implementation agreement.

**1.9. "Error"** shall mean, with respect to any Licensed Application, a defect in the Source Code for such Licensed Application that prevents such Licensed Application from functioning in conformity with the As-Built Specifications with respect thereto.

**1.10. "Licensed Application"** shall mean each of the software applications set forth on Exhibit 1 attached hereto and incorporated herein by this reference, which Licensed Applications were developed by CompuDyne and furnished to the Licensee in conformity with the As-Built Specifications with respect thereto, together with all Derivative Works, all Maintenance Modifications and all Documentation with respect thereto; provided, however, that Licensed Applications shall consist of Object Code only and shall not include any Enhancements.

**1.11. "Licensee"** is defined as the County of Volusia

**1.12. "Maintenance Modifications"** shall mean, with respect to any Licensed Application, a computer software change to correct an Error in, and integrated into, such Licensed Application, but that does not alter the functionality of such Licensed Application and that is provided to the Licensee by CompuDyne after acceptance of the As-Built Specifications for such Licensed Application in accordance with the applicable implementation agreement.

**1.13. "Object Code"** shall mean computer programs assembled or compiled in magnetic or electronic binary form on software media, which are readable and usable by machines, but not generally readable by humans without reverse-assembly, reverse-compiling, or reverse-engineering.

**1.14. "Source Code"** shall mean computer programs written in higher-level programming languages, sometimes accompanied by English language comments. Source Code is intelligible to trained programmers and may be translated to Object Code for operation on computer equipment through the process of compiling.

**1.15. "Sublicensed Applications"** shall mean the Sublicensed Applications specified on Exhibit 1 attached hereto developed by any source external to CompuDyne, such as a subcontractor, distributor, re-seller, personal computer software supplier or system software supplier, and furnished to the Licensee by CompuDyne for integration into the System.

**1.16. "Authorized Volusia Law Enforcement Agencies"** shall mean up to nineteen (19) law enforcement agencies within Volusia County, excluding Licensee, as authorized in the RMS

Implementation Statement of Work at Section 2.3.1.

1.17. **“System”** shall mean the Licensee’s computer automated system consisting of the Licensed Applications combined with any of the Authorized Servers, the operating systems installed on each of the Authorized Servers, any database or other third party software products installed on any of the Authorized Servers, any PC or other workstation equipment having access to any of the Licensed Applications, any communications interfaces installed on any of the Authorized Servers, any network communications equipment and any other third party software, wiring, cabling and connections and other hardware relating to any such Authorized Servers, workstation or network communications equipment located at any of the Authorized Sites.

1.18. **“CompuDyne”** is defined in the preamble hereof.

1.19. **“Confidential Information”** is defined in Section 6.1 hereof.

## 2. Licenses and Restrictions

2.1. **Grant of Licenses.** Subject to the conditions set forth in Section 2.2 hereof, CompuDyne hereby grants to the Licensee, pursuant to the terms and conditions hereof, a perpetual, nonexclusive, nontransferable license:

(a) to use each Licensed Application and each Sublicensed Application, in Object Code only, on the Authorized Server with respect thereto and at the Authorized Sites with respect thereto and to authorize the use of the same including Documentation by Authorized Volusia Law Enforcement Agencies during the Term of this Agreement;

(b) to conduct internal training and testing on each Licensed Application and each Sublicensed Application;

(c) to perform disaster recovery, backup, archive and restoration testing, and implementation with respect to each Licensed Application and each Sublicensed Application as stated in Section 2.3 (f) and Section 2.3 (g); and

(d) to make no more than two (2) archival copies of any Licensed Application or Sublicensed Application, provided that each copy of any Licensed Application shall include CompuDyne’s copyright and other proprietary notices and each copy of any Sublicensed Application shall include the copyright and other proprietary notices required by the developer of such Sublicensed Application.

2.2. **Conditions to Grant of Licenses.** No grant of any license or right pursuant to Section 2.1 hereof with respect to any Licensed Application or any Sublicensed Application shall be effective, and the Licensee shall have no license or right to use such Licensed Application or such Sublicensed Application, until such Licensed Application or such Sublicensed Application has been accepted by the Licensee in accordance with the acceptance terms set forth in the applicable implementation agreement and all license fees, sublicense fees or royalties with respect to such Licensed Application or such Sublicensed Application have been paid in full in accordance with the payment terms set forth in the applicable implementation agreement. Use by Authorized Volusia Law Enforcement Agencies, as described in Section 2.1 (a), is subject to and conditioned upon such agencies agreeing to the terms and conditions of this Agreement.

## 2.3. Restrictions on Use

(a) Except as set forth in Section 2.1(a), the Licensee agrees to use the Licensed Applications and the Sublicensed Applications only for the Licensee’s own use and shall not allow use of any Licensed Application or any Sublicensed Application by any parent, subsidiaries, affiliated entities, or other third parties, or allow any Licensed Application or any Sublicensed Application to be

used on other than on the Authorized Server at the Authorized Site with respect thereto.

(b) Except as otherwise specifically set forth in Section 2.1 hereof, the Licensee shall have no right to copy any Licensed Application or any Sublicensed Application. Any copy of any Licensed Application (whether or not such copy is permitted) shall be the exclusive property of CompuDyne. Any copy of any Sublicensed Application (whether or not such copy is permitted) shall be the exclusive property of the developer of such Sublicensed Application. The Licensee shall not knowingly distribute or allow distribution of any Licensed Application or any Sublicensed Application or any Documentation or other materials relating thereto in accordance with Section 6.1.

(c) The Licensee's licenses and rights to use the Licensed Applications and the Sublicensed Applications is limited to a license and right to use only the Object Code relating thereto. The Licensee shall have no license or right with respect to the Source Code for any Licensed Application or any Sublicensed Application.

(d) The Licensee shall not, and shall not permit any other party to, make any alteration, modification or enhancement to any Licensed Application or any Sublicensed Application unless, and only to the extent, specifically authorized by CompuDyne. The Licensee shall not, and shall not permit any other party to, disassemble, de-compile or reverse-engineer any Licensed Application or any Sublicensed Application.

(e) The Licensee shall not use any Licensed Application or any Sublicensed Application, and shall not permit any third party to use any Licensed Application or any Sublicensed Application, for processing data of any entity other than the Licensee and the Authorized Volusia Law Enforcement Agencies.

(f) **Disaster Recovery:** Licensee shall have the right to utilize this license in conjunction with its Disaster Recovery facility for both 1) the purposes of testing its Disaster Recovery Plan, and 2) for processing in the event of an actual disaster that precludes Licensee from utilizing the Licensed Applications on the Authorized Server and at the Authorized Site set forth at Exhibit 1 hereto. Licensee shall, as promptly as practical, provide written notice to CompuDyne stating the server and site information in the event it utilizes the Licensed Applications pursuant to this subsection 2.3(f)(1) herein.

(g) **Archival Reproductions:** Licensee is authorized to create backup copy(s) of the master copy of the Licensed Application(s) in machine readable form for operational backup and disaster recovery purposes, provided that such copy(s) is solely for Licensee's use as authorized herein and that no more than the number of Licensed Application(s) licensed according to this Agreement are in use at any one time. Licensee agrees that the said backup and disaster recovery copy(s) satisfies the requirements of the applicable Copyright Laws of the United States.

**2.4. Source Code Escrow:** As provided in the Systems Implementation Agreement at Section 9.2.1, CompuDyne shall retain a copy of CompuDyne Application Source Code, and, at no additional charge to Licensee, shall also deposit a copy of that Source Code into an escrow account pursuant to a Master FlexSAFE Agreement ("Escrow Agreement") with Iron Mountain Intellectual Property Management, Inc. no later than fifteen (15) days after the Effective Date of this Agreement. Licensee shall be a named beneficiary of that account, and will receive deposit verification and semi-annual deposit histories directly from Iron Mountain Intellectual Property Management, Inc. CompuDyne will deposit copies of all modules associated with CompuDyne Application(s) implemented hereunder, and those deposits shall include the developer's notes. In an event whereby Licensee is granted access to the Source Code held in escrow due to an occurrence of a Release Condition, Licensee will not be assessed any additional license fees for the use of the Source Code.

As used in this Agreement, "Release Condition" shall mean the existence of any one or more of the following circumstances, uncorrected for more than thirty (30) days:

- a. Entry of an order for relief under Title 11 of the United States Code;
- b. The making by Depositor of a general assignment for the benefit of creditors;
- c. The appointment of a general receiver or trustee in bankruptcy of Depositor's business or property; or
- d. Action by Depositor under any state or federal insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

**3. Ownership.** Except for the rights expressly granted therein pursuant to Section 2 hereof, CompuDyne shall at all times retain all right, title and interest in and to each Licensed Application and all copies thereof (whether or not permitted), including all Derivative Works, Maintenance Modifications, Enhancements and Documentation with respect thereto (whether or not developed by CompuDyne). By this Agreement, the Licensee hereby assigns to CompuDyne any and all rights it may have or later acquire to any and all Derivative Works (whether or not developed by CompuDyne).

#### **4. Term and Termination**

**4.1. Effective Date.** This Agreement shall take effect on the Effective Date after (i) it has been fully executed by duly authorized representatives of both parties, and (ii) CompuDyne's receipt of written notification from the Licensee that any certification or approval of this Agreement required by statute, ordinance, or established policy of the Licensee has been obtained.

**4.2. Term.** This Agreement shall continue in effect until terminated as set forth under Section 4.3 hereof (the "Term").

**4.3. Termination.** The Licensee may terminate this Agreement by providing thirty (30) days prior written notice to CompuDyne of its intent to do so. CompuDyne and Licensee may terminate this Agreement immediately if the other party breaches any material provision of this Agreement.

**4.4. Effect of Termination.** Upon termination of this Agreement, all licenses granted to the Licensee hereunder shall be revoked. Upon termination of this Agreement, (a) the Licensee shall return to CompuDyne, within ten (10) business days of such termination, all CompuDyne Confidential Information and all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment other documents or property relating thereto and all copies of any of the foregoing (in whatever medium recorded); (b) the Licensee shall discontinue all use of the Licensed Applications and the Sublicensed Applications; and (c) the Licensee shall certify in a written document signed by an authorized representative that the material specified in the preceding clause (a) has been returned to CompuDyne, that all copies of the Licensed Applications and the Sublicensed Applications have been permanently deleted or destroyed, and that all use of the Licensed Applications and the Sublicensed Applications has been discontinued. The expiration or termination of this Agreement will not relieve the Licensee of its obligations under Section 6 hereof regarding CompuDyne Confidential Information.

#### **5. Limited Warranties and Liability**

**5.1. Warranty.** THE LICENSED APPLICATIONS ARE LICENSED "AS IS" EXCEPT (a) AS PROVIDED UNDER THE RMS SYSTEM IMPLEMENTATION AGREEMENT AND MASTER SUPPORT AGREEMENT ATTACHED TO THE RMS SYSTEM IMPLEMENTATION AGREEMENT BETWEEN LICENSOR AND LICENSEE AND (b) AS SET FORTH BELOW IN SUBSECTION 5.3 (RIGHT TO LICENSE AND LICENSOR INDEMNITY). NO OTHER EXPRESS OR IMPLIED WARRANTIES FOR THE LICENSED APPLICATIONS, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE CREATED BY THIS SOFTWARE LICENSE AGREEMENT.

**5.2. Limitation of Liability.** EXCEPT AS SET FORTH HEREIN BELOW AT SUBSECTION 5.3 (RIGHT TO LICENSE AND LICENSOR INDEMNITY), NEITHER CompuDyne NOR ANY PERSON ASSOCIATED WITH CompuDyne SHALL BE LIABLE TO ANY PARTY FOR ANY DIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR BREACH OR FAILURE TO PERFORM UNDER THIS AGREEMENT, EVEN IF CompuDyne HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED BENEFITS OR PROFITS RESULTING FROM THE OPERATION OR FAILURE TO OPERATE OF THE LICENSED APPLICATIONS. THIS CLAUSE SHALL SURVIVE THE FAILURE OF ANY EXCLUSIVE REMEDY FOR BREACH OF WARRANTY OR ANY OTHER PROVISION OF THIS AGREEMENT.

**5.3. Right to License and Licensor Indemnity:**

CompuDyne hereby warrants and represents that it is the sole owner of all right, title, and interest in and to the Licensed Applications, user manuals and Documentation, including all patents, copyrights, copyright rights, trade secrets, trademarks, trade names and all proprietary and intellectual rights and confidential information contained therein, and that it is authorized to enter into this Agreement. CompuDyne further warrants and represents that CompuDyne has the right to use, license, and sublicense all Licensed and Sublicensed Applications delivered to the Licensee under this Agreement. CompuDyne also warrants that no portion of the Licensed and Sublicensed Applications used by Licensee pursuant to the terms of this Agreement violates or is protected by right, title, interest or similar right of any third person or entity, however organized, except as may be set forth in this Agreement. Licensee shall have the quiet and peaceful enjoyment of the use of all the Licensed Applications and Sublicensed Applications to be supplied under this Agreement between the Licensee and CompuDyne for the duration of this Agreement, free from interference by any and all parties including CompuDyne. If any claim is asserted or action or proceeding brought against the Licensee which alleges that all or any part of the Licensed and Sublicensed Applications as provided under this Agreement by CompuDyne or the operation or use thereof by the Licensee, infringes or misappropriates any third party's United States patent, copyright, mask copyright, any trade secret or other proprietary right and i) CompuDyne is promptly notified in writing by Licensee of such claim, and ii) CompuDyne is given control over the defense against, and settlement of, the claim, then CompuDyne will save and hold Licensee harmless from any loss, damage or claim in which such infringement is alleged, including reasonable attorney's fees and other associated expenses together with payment of settlement or compromise of any claim and payment of all damages and cost awarded by judgment or other court order against Licensee. CompuDyne shall also take the following steps to assure that Licensee can continually use that which CompuDyne has delivered to Licensee in substantially the same manner delivered or subsequently enhanced or modified:

5.3.1 Promptly replace the allegedly infringing or misappropriated item or items with compatible, functionally equivalent items which are not alleged to be infringing or misappropriated; or

5.3.2 Promptly modify the alleged infringing or misappropriated item or items to eliminate the alleged infringement or misappropriation without impairing LICENSEE'S intended use of Licensed Applications and/or Sublicensed Applications in any manner; or

5.3.3 Promptly procure the right for the LICENSEE to continue to use the Licensed Applications and/or Sublicensed Applications without modification.

**6. Confidential Information**

**6.1 Confidential Information.** CompuDyne and Licensee recognize that during Term of this Agreement, personnel of CompuDyne and Licensee may be involved in analyzing automated systems, computer software applications and programs. During the Term of this Agreement, personnel of CompuDyne and Licensee may be required to review and/or use software programs and application licensed to or by each other or by third parties and such software programs and applications may be subject to confidentiality agreements and disclosure restrictions. Personnel of CompuDyne and Licensee may have access to the one another's or a third parties' data, information, memorandum, documents, trade secrets and ideas which also may be subject

to confidentiality agreements and disclosure restrictions, including requirements imposed by law. CompuDyne and the Licensee hereby acknowledge that the personnel of CompuDyne and Licensee each may be exposed to confidential and proprietary information of one another 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. CompuDyne acknowledges that CompuDyne personnel will be exposed to information which is privileged and not public information under state and/or federal law and shall not be disclosed by CompuDyne without a court order or the express written authorization of the appropriate County official. Such information shall include, but not limited to, ongoing investigative information, "juvenile" information, and law enforcement personnel personal information. CompuDyne acknowledges that all of the forgoing shall be treated as confidential information and restricted as described in this paragraph. Any "confidential information" and/or "trade secret" information disclosed by CompuDyne to Licensee must be expressly identified in writing by CompuDyne. The terms "confidential information" and "trade secret" shall be that which is exempt from disclosure pursuant to the laws of the State of Florida or the United States if the same preempts Florida law.

**6.2. Exclusions.** "Confidential information" and/or "trade secret" do not include the following:

- (a) Information already known or independently developed by the party in possession;
- (b) Information in the public domain through no wrongful act of the party in possession,
- (c) Information received by the party in possession from a third party who was free to disclose it,
- (d) Information regularly disclosed to third parties without restriction on disclosure, or
- (e) Information required to be disclosed by law or an order of court.

**6.3. Restrictions Upon Disclosure of Information.** Each party agrees:

- (a) To treat the other's Confidential Information as its own proprietary information.
- (b) To not knowingly disclose to any person, other than its employees or consultants (which consultants must agree in writing to be bound by the same or substantially similar provisions), or entity not a party to this License (other than its employees or third party consultants authorized by the other party in writing), any Confidential Information belonging to the other party;
- (c) To inform its employees and consultants of the confidential nature of the other party's information and of the requirement of nondisclosure.

**6.4. Notice of Disclosure.** In the event either party has actual knowledge of a breach of the nondisclosure requirements, 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.

**6.5. Notice of Request for Disclosure.** Where Licensee receives a request for disclosure of information that Licensee believes to be "confidential information" and/or a "trade secret", Licensee shall give notice to CompuDyne and CompuDyne shall take immediate action to notify Licensee whether CompuDyne agrees to the disclosure or whether CompuDyne opposes disclosure and will take legal action to prevent such disclosure.

Where CompuDyne receives a request for disclosure of information that CompuDyne believes to be "confidential information" and/or a "trade secret", CompuDyne shall give notice to Licensee and Licensee shall take immediate action to notify CompuDyne whether Licensee agrees to the disclosure or whether Licensee opposes disclosure and will take legal action to prevent such disclosure.

**6.6. Public Records Request.** In the event a third party makes a public records request to the Licensee for any item which has been marked by CompuDyne as confidential or a trade secret, the Licensee has refused disclosure and the third party files suit to require disclosure, CompuDyne recognizes the Licensee is required to submit any requested item to the court for inspection in camera as set forth in Section 119.07(1)(e), Florida Statutes (2004). CompuDyne further acknowledges that Section 119.12, Florida Statute

(2004) 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.*

Should a court, based upon Section 119.12, Florida Statutes (2004), or its successor, assess and award costs of enforcement against the Licensee arising from any obligation of the Licensee under Section 6 (Confidential Information), CompuDyne agrees at its expense to indemnify, and hold harmless the Licensee and its elected officials, officers, agents and employees.

**6.7. Licensee's Data.** CompuDyne acknowledges and agrees that the Licensee 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 Applications in relation to such information or data does not in any way restrict Licensee rights or obligations regarding disclosure of their data and information.

**6.8. Restrictions on Commercial Use.** Except to the extent authorized in this License or another written agreement between CompuDyne and Licensee, both parties hereby agree that during the term of this License and at all times thereafter, neither shall use, commercialize or disclose such "confidential information" 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.

**6.9. Exceptions.** Notwithstanding the foregoing provisions, disclosure of a purported "trade secret" or "confidential information" shall not be precluded if:

- (a) 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; and/or
- (b) such disclosure is necessary to establish rights or enforce obligations under this Agreement and the Statement of Work, but only to the extent that any such disclosure is necessary for such purpose; and/or
- (c) the Licensee received the prior written consent to such disclosure from CompuDyne, but only to the extent permitted in such consent; and/or
- (d) disclosure is required by Florida law including but not limited to Chapter 119, Florida Statutes; and/or
- (e) disclosure is not exempted by Florida law including but not limited to Chapter 119, Florida Statute; and/or
- (f) disclosure is required by Federal law which is preemptive of Florida law;

**6.10. Survival.** Unless mutually agreed otherwise in writing, the above duties and obligations shall survive the expiration or termination of this License.

## 7. Miscellaneous

**7.1. Relationship.** The relationship created hereby is that of Licensor and Licensee. Nothing herein shall be construed to create a partnership, joint venture, or agency relationship between the parties hereto. Neither party shall have any authority to enter into agreements of any kind on behalf of the other and shall have no power or authority to bind or obligate the other in any manner to any third party. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Each party hereto represents that it is acting on its own behalf and is not acting as an agent for or on behalf of any third party.

**7.2. No Rights in Third Parties.** This Agreement is entered into for the sole benefit of CompuDyne and Licensee and, where permitted herein, their permitted Authorized Volusia Law Enforcement Agencies, successors, executors, representatives, administrators and assigns. Nothing in this Agreement shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, the general public or any member thereof, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries, property damage, or any other relief in law or equity in connection with this Agreement.

**7.3. Entire Agreement.** This Agreement sets forth the final, complete and exclusive agreement and understanding between CompuDyne and the Licensee relating to the subject matter hereof and supersedes all quotes, proposals understandings, representations, conditions, warranties, covenants, and all other communications between the parties (oral or written) relating to the subject matter hereof. No affirmation, representation or warranty relating to the subject matter hereof by any employee, agent or other representative of CompuDyne shall bind CompuDyne or be enforceable by the Licensee unless specifically set forth in this Agreement.

**7.4. Amendments.** No amendment or other modification of this Agreement shall be valid unless pursuant to a written instrument referencing this Agreement signed by duly authorized representatives of each of the parties hereto.

**7.5. Assignment.** Neither party hereto may assign its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that CompuDyne may assign this Agreement to its successor in connection with a sale of its business without obtaining consent of any party. Subject to the foregoing, each and every covenant, term, provision and agreement contained in this Agreement shall be binding upon and inure to the benefit of the parties' successors, executors, representatives, administrators and permitted assigns. Any assignment attempted in contravention of this section will be void.

**7.6. Governing Law.** 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 without giving effect to the choice of law principles thereof and unless otherwise preempted by federal law. The United Nations Convention on the International Sale of Goods shall not apply to any transactions contemplated by this Agreement. Notwithstanding anything set forth in this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the Licensee beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and any liability of the Licensee for damages shall not exceed the statutory limits of liability, regardless of the number or nature of any claim which may arise including but not limited to a claim sounding in tort, equity or contract. The foregoing shall not apply to payment of the fees referenced in 2.2 of this Agreement. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the County and/or its agents, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

**7.7. Arbitration.** All questions concerning the validity, operation, interpretation, construction and enforcement of any terms, covenants or conditions of this Agreement, or the breach thereof, must be submitted to and resolved by final and binding arbitration by the American Arbitration Association in accordance with its Commercial Arbitration Rules then in effect. The parties understand and agree that the arbitration will be instead of any civil litigation, , and that the arbitrator's decision will be final and binding to the maximum extent permitted by law and enforceable by any court described in Section 7.8 having competent jurisdiction thereof except that either party may petition a court for equitable remedy.

**7.8. Venue.** Arbitrations and/or legal proceedings instituted in connection with this Agreement may only be brought in the State of Florida. Venue in state court shall be in Volusia County, Florida. Venue in federal court shall be in the United States District Court, Middle District of Florida, Orlando division. Each party hereby agrees to submit to the personal jurisdiction of those courts for any lawsuits filed there against

such party arising under or in connection with this Agreement. In the event that a legal proceeding is brought for the enforcement of any term of this Agreement, or any right arising therefrom, the parties expressly waive their respective rights to have such action tried by jury trial and hereby consent to the use of non-jury trial for the adjudication of such legal proceeding.

**7.9. Waiver.** In order to be effective, any waiver of any right, benefit or power hereunder must be in writing and must be signed by an authorized representative of the party against whom enforcement of such waiver would be sought, it being intended that the conduct or failure to act of either party shall imply no waiver. Neither party shall by mere lapse of time without giving notice or taking other action hereunder be deemed to have waived any breach by the other party of any of the provisions of this Agreement. No waiver of any right, benefit or power hereunder on a specific occasion shall be applicable to any facts or circumstances other than the facts and circumstances specifically addressed by such waiver or to any future events, even if such future events involve facts and circumstances substantially similar to those specifically addressed by such waiver. No waiver of any right, benefit or power hereunder shall constitute, or be deemed to constitute, a waiver of any other right, benefit or power hereunder. Unless otherwise specifically set forth herein, neither party shall be required to give notice to the other party, or to any other third party, to enforce strict adherence to all terms of this Agreement.

**7.10. Severability.** If any provision of this Agreement shall for any reason be held to be invalid, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, such provision shall be construed so as to make it enforceable to the greatest extent permitted, such provision shall remain in effect to the greatest extent permitted and the remaining provisions of this Agreement shall remain in full force and effect.

**7.11. Survival of Provisions.** All provisions of this Agreement that by their nature would reasonably be expected to continue after the termination of this Agreement, including but not limited to Section 6.1, will survive the termination of this Agreement.

**7.12. Notices.** All notices, requests, demands, or other communications required or permitted to be given hereunder shall be in writing, shall be addressed to the parties at their respective addresses set forth below, and shall be sent by certified United States Mail, or national commercial carrier, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The names and places for giving notice shall remain the same as set forth herein until changed by giving a written notice of the new names, and/or addresses, and effective date for the changes in the manner described in this section. All notices and other communications regarding default or termination of this Agreement shall be delivered by hand or sent by certified mail, postage pre-paid and return receipt requested. For the present, the parties designate the following persons to receive notice:

To CompuDyne:

Attn: Contract Administrator  
CompuDyne – Public Safety &  
Justice, Inc.  
39350 Civic Center Dr., Ste. 150  
Fremont, CA 94538  
Phone: 510-792-2108  
Fax: 510-742-1057

To Licensee:

County of Volusia  
Office of Purchasing Director  
123 W. Indiana Avenue, 3<sup>rd</sup> Floor  
DeLand, Florida 32720-4608  
Phone: (386) 736-5935  
Fax: (386) 736-5972

**7.13. Construction.** The paragraph and section headings used in this Agreement or in any exhibit hereto are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement or exhibit. Any term referencing time, days or period for performance shall be deemed calendar days and not business days, unless otherwise expressly provided herein.