



**AGENDA ITEM REQUEST FORM  
CITY OF JOHNSON CITY, TEXAS  
CITY COUNCIL**

**ITEM NO. 10**

**MEETING DATE:**           **October 5, 2021**

**AGENDA PLACEMENT:**

- Ceremonial
- Consent
- Individual
- Closed Session

**CAPTION:**

Approval of a Software Subscription Agreement between Fund Accounting Solution Technologies, Inc. (“FundView”) and the City of Johnson City, Texas for a FundView software subscription and the payment for the same; and authorizing the Chief Administrative Officer to execute the Agreement on behalf of the City Council of the City of Johnson City, Texas. (Staff)

**STRATEGIC WORK PLAN:**

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Not Applicable                     | <input type="checkbox"/> Goal 5:    Improve Fire Safety                                |
| <input type="checkbox"/> Goal 1:    Increase Housing Diversity         | <input type="checkbox"/> Goal 6:    Improve Streets                                    |
| <input type="checkbox"/> Goal 2:    Expand Quality Lodging             | <input type="checkbox"/> Goal 7:    Increase Publicity &<br>Promotion of the Community |
| <input type="checkbox"/> Goal 3:    Improve Code Enforcement           | <input type="checkbox"/> Goal 8:    Increase Economic<br>Development Activities        |
| <input type="checkbox"/> Goal 4:    Improve Streetscaping &<br>Signage |  |

**EXECUTIVE SUMMARY:**

To better manage and increase efficiencies across all Departments, City Council authorized City Staff to transition the following Departments / municipal activities from a variety of different applications to one (1), all-encompassing platform:

- |                             |                             |
|-----------------------------|-----------------------------|
| 1.    Utility Billing;      | 7.    Service Orders;       |
| 2.    Municipal Court;      | 8.    Permitting;           |
| 3.    Payroll;              | 9.    Cash Receipting;      |
| 4.    Finance & Accounting; | 10.   Code Enforcement; and |
| 5.    Human Resources;      | 11.   Online Payments.      |
| 6.    Time Entry;           |                             |

In City Staff’s opinion, FundView software provides:

1. Lower initial cost and subsequent maintenance fees;
2. Ease of use and functionality;
3. Secure hosting and data backup (i.e. in the cloud); and
4. Accessible from anywhere with an internet connection.

The City Attorney has provided revisions, incorporated into the attachment, to FundView, and we are currently waiting on their reply.

**FINANCIAL:** See Agreement Addendums A & B.

**ATTACHMENTS:** Proposed Agreement

**SUGGESTED ACTION:**

City Staff recommends approval of a Software Subscription Agreement between Fund Accounting Solution Technologies, Inc. (“FundView”) and the City of Johnson City, Texas for a FundView software subscription and the payment for the same; and authorizing the Chief Administrative Officer to execute the Agreement on behalf of the City Council of the City of Johnson City, Texas.

**PREPARED BY:** City Staff

**DATE SUBMITTED:** 9/30/21

## SOFTWARE SUBSCRIPTION AGREEMENT

This Software Subscription Agreement ("**Agreement**") is made as of the Effective Date (the "**Effective Date**") between Fund Accounting Solution Technologies, Inc., a Texas corporation (Company), and the City of Johnson City, a Texas municipality, (Customer). The Effective Date of this agreement is October 1st, 2021. This Agreement describes Customer's subscription for access to Software and payment for Services provided by Company. Company and Customer therefore agree as follows:

### 1) DEFINITIONS.

(a) "**Software Subscription**" means the software developed and delivered by Company provided to Customer as described in this Agreement.

(b) "**Government Authority**" means any governmental authority or court, tribunal, agency, department, commission, arbitrator, board, bureau, or instrumentality of the United States of America or any other country or territory, or domestic or foreign state, prefecture, province, commonwealth, city, county, municipality, territory, protectorate or possession.

(c) "**Law**" means all laws, statutes, ordinances, codes, regulations and other pronouncements having the effect of law of any Government Authority.

(d) "**Services**" means the Services Company provides to Customer as described in this Agreement.

(e) "**Software**" means the software described in this Agreement.

2) **SERVICES.** Company agrees to provide the Services as described in Addendum B,

attached hereto and incorporated fully herein.

### 3) SUBSCRIPTION.

(a) **Scope.** Company agrees to provide support for the Software listed in Addendum A, attached hereto and incorporated fully herein, of this Agreement. Both parties acknowledge that the Subscription Agreement covers support for both the Software products listed in Addendum A of this Agreement and for updates of the Software products. The Subscription agreement will provide support services as described in Addendum B of this Agreement.

(b) **Updates.** Company will install the Software in a hosted computer environment as described in Addendum A of this Agreement. Updates to the software, including new releases and fixes, will be managed by Company in the hosted environment.

4) **DELIVERY.** The Software and Services will be delivered as described in Addendums A & B to this agreement. Customer agrees that the Company Software consists of Company's trade secrets. Company shall retain all copyrights in the Company Software, whether published or unpublished. Company agrees that all data provided to Company for Software shall remain the property of Customer. Should Customer terminate the Agreement in good standing and in accordance with the termination provisions of this Agreement, Company agrees to return to Customer, all data files held by Company.

5) **OWNERSHIP AND TITLE.** Customer agrees that Company possesses exclusive title to and ownership of the Company Software.

a) Customer agrees that Customer acquires neither ownership nor any other interest in the Company Software, except for the right to use the Company Software in

accordance with the terms and conditions of this Agreement.

b) All rights not expressly granted to Customer in this Agreement are retained by Company.

c) Customer agrees that Company Software including, but not limited to, systems designs, programs in source and/or object code format, applications, techniques, ideas, and/or know-how utilized and/or developed by Company are and shall remain the exclusive property of Company.

**6) FEES.** In consideration for Company performing all obligations under this Agreement, Customer agrees to pay Company as described in Addendum A & B of this agreement.

**7) INVOICES AND TAXES.** Customer agrees to pay to Company fees owed under this Agreement within thirty (30) days after the date of Customer's receipt of an invoice (unless noted otherwise on the invoice). An invoice will contain the invoice number, invoice date, description of the transaction, total invoice amount with miscellaneous charges listed separately and payment terms consistent with and not additional to any provisions under this Agreement. To the extent that the transactions under this Agreement are subject to any sales, use, value added or any other taxes, payment of these taxes, if any, is Customer's responsibility. Company is liable for any and all taxes on any and all income it receives under this Agreement.

**8) INDEMNIFICATION.** Company agrees to indemnify and hold harmless the City and its elected officials, officers, and employees from any claims, suits, and causes of actions, liabilities and expenses, including reasonable attorney's fees, of any nature whatsoever by a third party arising out of Company's performance of this Agreement. Nothing contained in this Agreement shall be construed as a waiver of or relinquishment of

governmental or sovereign immunity by the City. The indemnity provided herein shall survive termination and/or expiration of this Agreement.

**9) CONFIDENTIALITY.** All the reports, information, data, etc., gathered, prepared or assembled by Company under this Agreement are confidential. Company agrees that this information shall not be made available to any individual, organization or third party, without the prior written consent of the City.

**IN WITNESS WHEREOF,** the parties execute this Agreement as of the Effective Date. Each person who signs this Agreement below represents that such person is fully authorized to sign this Agreement on behalf of the applicable party.

**Company**



By:

Print Name: Brian G. Cook, CPA  
Title: CEO

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

**CUSTOMER  
CITY OF JOHNSON CITY, TEXAS**

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

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

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

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

**ADDENDUM A**  
**Subscription Agreement**

**A) Software Modules.** The following modules represent the Software covered by these agreements. The modules included are as follows:

General Ledger  
Bank Reconciliation  
Accounts Payable  
Payroll  
Distributed Time Entry  
Utility Billing  
Service Orders  
AMR Interface  
Municipal Court  
Citation Import Interface  
Permits  
Cash Receipting  
Code Enforcement  
Online Payments – Court/Utility Billing

All personnel (including but not limited to employees, contractors, sub-contractors and part-time staff) of the Customer will be licensed to use any of the modules described in Addendum A of this Agreement.

**1) Software.**

- a) Ownership of the software products, accompanying documentation and related materials, and any modifications and enhancements to such software products and any related interfaces shall remain with Company.
- b) The software products covered by the subscription are not to perform functions or processing for subdivisions or entities that were not considered by Company at the time Company issued this Agreement.
- c) Customer agrees that the software products, any modifications and enhancements and any related interfaces are proprietary to Company and are being developed as a trade secret at Company's expense. Customer agrees to keep the software products confidential and use its best efforts to prevent any misuse,

unauthorized use or unauthorized disclosures by any party of any or all of the software products or accompanying documentation.  
d) If Customer makes modifications to the software products, Company will not support or correct errors in the modified software products.

**2) Escrow.**

e) If requested by Customer, Company will maintain at Customer's expense an escrow agreement with an Escrow Services Company under which Company will place the source code of each major release. Customer will be invoiced the annual beneficiary fee by Company and is solely responsible for maintaining its status as a beneficiary.

**3) Subscription Fees**

- a) The subscription fees listed below do not include any tax or other governmental impositions including, without limitation, sales, use or excise tax. All applicable sales tax, use tax or excise tax shall be paid by Customer and shall be paid over to the proper authorities by Company or reimbursed by Customer to Company any amounts on demand in the event that Company is responsible or demand is made on Company for the payment thereof. If tax-exempt, Customer must provide Company with Customer's tax-exempt number or form.
- b) In the event of any disputed invoice, Customer shall provide written notice of such disputed invoice to Company. Such written notice shall be provided to Company within fifteen (15) business days. An additional fifteen (15) business days is allowed for the Customer to provide written clarification and details for the disputed invoice. Addresses for Company and Customer are as follows:

City of Johnson City  
303 E Pecan Drive  
P.O. Box 369  
Johnson City, TX 78636

Fund Accounting Solution Technologies, Inc.  
5225 S Loop 289

Suite 222  
Lubbock, TX 79424

Company shall provide a written response to Customer that shall include either a justification of the invoice or an explanation of an adjustment to the invoice and an action plan that will outline the reasonable steps needed to be taken by Company and Customer to resolve any issues presented in Customer's notification to Company. Customer may withhold payment of only the amount actually in dispute until Company provides the required written response, and full payment shall be remitted to Company upon Company's completion of all material action steps required to remedy the disputed matter. Notwithstanding the foregoing sentence, if Company is unable to complete all material action steps required to remedy the disputed matter because Customer has not completed the action steps required of them, Customer shall remit full payment of the invoice. If the matter is not resolved by negotiation within 30 days of receipt of the written notice, the Parties agree first to try in good faith to settle the matter by mediation. Each Party shall bear their share of the mediation costs. If the matter remains unresolved, either Party may proceed to file suit. Each Party shall be responsible for their own costs.

c) Any invoice not disputed as described above shall be deemed accepted by the Customer. If payment of any invoice that is not disputed as described above is not made within forty (40) calendar days, Company reserves the right to suspend delivery of all subscription services in the Agreement. Any late payments will be subject to an interest charge equal to 1.5% of the amount due per month, or the maximum rate permitted by law. Service will be suspended without further notice on the 10<sup>th</sup> day after payment is due.

**4) Billing.** Company will bill a one-time service fee for services prior to work being performed to insure commitment by both parties. Subscription fees will be billed upon

initiation of the specific service implemented, with renewals as described below.

**5) Payment.**

a) Customer agrees to pay Company the Annual Subscription amount for licensing, support, and hosting services, as described below. The annual amount identified below will become due the first of the month of any year for which a subscription fee is being charged as described in Addendum A of this Agreement.

b) Support and services will be suspended whenever Customer's account is ten (10) calendar days overdue. Support and services will be reinstated when Customer's account is made current.

**6) Acceptance of the Software.**

a) Within ninety (90) days after the software products have been installed and fully implemented by the Customer, Customer shall acknowledge their acceptance of the software products. Should Customer decline acceptance, Customer shall be billed for services implemented on a pro rata basis from date of installation and implementation.

b) At its option, Customer may perform Customer's own defined internal validation process to test the Software to substantially comply with Company's needs for the Software products and functionality of the Software as demonstrated by Company. Completion and validation of compliance by such testing shall constitute Customer's acceptance.

c) Notwithstanding anything contrary herein, Customer's full time use of the software products for its intended purpose, shall constitute Customer's verification of the software products, without exception and for all purposes.

d) Verification or validation that the Software products substantially comply with Company's demonstration and any written commitment to Customer shall be final and conclusive except for latent defect, fraud, and such gross mistakes that amount to fraud and the operation of any provision of this Agreement which specifically survives

verification. In the event said verification becomes other than final, or becomes inconclusive, pursuant to this paragraph, Customer's right and remedy against Company shall be to require Company to correct the cause thereof.

e) Company shall correct any functions of the software products which failed the standard verification testing by Customer.

**7) Mutual Warranties.** Each party represents, warrants and covenants to the other that:

(i) General. It: (a) is a company or municipality duly organized and validly existing and in good standing under the Laws of its jurisdiction of organization; (b) is qualified or licensed to do business and in good standing in every jurisdiction where qualification or licensing is required; and (c) has the corporate power and authority to negotiate, execute, deliver and perform its obligations under this Agreement.

(ii) Law Compliance. It complies with all applicable Laws.

**8) Limited Warranty.** Company represents that the Software will conform to meet all necessary requirements for Customer. If the Software does not perform as warranted, Company's obligation will be to use reasonable efforts, consistent with industry standards, to cure the defect. Should Company be unable to cure the defect or provide a replacement product, Customer must give written notice to Company of the nature of the unaccepted issues with the Software. If Company cannot resolve the issues to Customer's satisfaction within ninety (90) days of written notice, Company will refund any payments made by Customer for Subscription Fees within ten (10) days after the ninety (90) day resolution period and the Agreement will be Terminated for both Customer and Company. Company will return all Customer data to Customer and Customer will return all documentation and related materials to Company. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES. TO THE MAXIMUM

EXTENT PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED OR VERBAL, STATUTORY OR OTHERWISE, AND WHETHER ARISING UNDER THIS AGREEMENT OR OTHERWISE ARE HEREBY EXCLUDED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**9) Limitation of Liability.**

a) In the event that the software products are determined to infringe upon any existing United States patent copyright or trademark rights held by any other person or entity, Company shall defend and hold harmless Customer and its officers, agents and employees from any claim or proceedings brought against Customer and from any cost damages and expenses finally awarded against Customer which arise as a result of any claim that is based on an assertion that Customer's use of the software products under this Subscription Agreement constitutes an infringement of any United States patent, copyright or trademark provided that Customer notifies Company promptly of any such claim or proceeding and gives Company full and complete authority, information and assistance to defend such claim or proceeding and further provided that Company shall have sole control of the defense of any claim or proceeding and all negotiations for its compromise or settlement provided that Company shall consult with Customer regarding such defense. In the event that the software products are finally held to be infringing and its use by Customer is enjoined, Company shall, at its election; (1) procure for Customer the right to continue use of the software products; (2) modify or replace the software products so that it becomes non-infringing; or (3) if procurement of the right to use or

modification or replacement cannot be completed by Company, terminate the subscription for the infringing software product, and upon termination, refund the subscription fees paid for the infringing software product. Company shall have no liability hereunder if Customer modified the software products in any manner without the prior written consent of Company and such modification is determined by a court of competent jurisdiction to be a contributing cause of the infringement or if the infringement would have been avoided by Customer's use of the most current revision of the software products. The foregoing states Company's entire liability and Customer's exclusive remedy with respect to any claims of infringement of any copyright, patent, trademark, or any property interest rights by the software products, any part thereof, or use thereof.

b) In no event shall Company be liable for special, indirect, incidental, consequential or exemplary damages, including without limitation any damages resulting from loss of use, loss of data, interruption of business activities or failure to realize savings arising out of or in connection with the use of the software products. Company's liability for damages arising out of this Agreement, whether based on a theory of contract or tort, including negligence and strict liability shall be limited to the Company subscription fees identified above. The subscription fees set forth below reflect and are set in reliance upon this allocation of risk and the exclusion of such damages as set forth in this Agreement.

**10) Force Majeure.** Any failure or delay by a party in the performance of its obligations under this Agreement is not a default or breach of the Agreement or a ground for termination under this Agreement to the extent the failure or delay is due to elements of nature or acts of God, acts of war, terrorism, riots, revolutions, or strikes or other factor beyond the reasonable control of a party (each, a "*Force Majeure Event*").

The party failing or delaying due to a Force Majeure Event agrees to give notice to the other party which describes the Force Majeure Event and includes a good faith estimate as to the impact of the Force Majeure Event upon its responsibilities under this Agreement, including, but not limited to, any scheduling changes. However, should any failure to perform or delay in performance due to a Force Majeure Event last longer than thirty (30) days, or should three (3) Force Majeure Events apply to the performance of a party during any calendar year, the party not subject to the Force Majeure Event may terminate this Agreement by notice to the party subject to the Force Majeure Event.

**11) No Intended Third Party Beneficiaries.**

This agreement is entered into solely for the benefit of Company and Customer. No third party shall be deemed a beneficiary of this agreement, and no third party shall have the right to make any claim or assert any right under this Agreement. Subject to the terms and conditions of this Agreement and during the Term, Company shall make the Subscription Service available to Customer solely for Customer's and its Affiliates' Users for internal business operations.

**12) Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action brought under this Agreement shall be in Blanco County, Texas.

**13) Entire Agreement.**

a) This Agreement and the functional description of the software products presented in Company's demonstration to Customer, as depicted in Addendum C, attached hereto and incorporated fully herein, **NEED COPY OF HANDOUT/BROCHURE OR SOMETHING DESCRIBING THE DEMONSTRATION** will represent the entire agreement of Customer and Company with respect to the software products and supersedes any prior agreements,



understandings and representations, whether written, oral, expressed, implied, or statutory. Customer hereby acknowledges that in entering into this Agreement it did not rely on any representations or warranties other than those explicitly set forth in this Agreement and the functional description of the software products presented in Company's demonstration to Customer.

b) If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

c) Customer should return an executed copy of this Agreement to Company. If the Agreement is not returned to Company within thirty (30) days from the issue date, then such Agreement is subject to be voided and prices are subject to change.

**14) Cancellation or Termination.** In the event of cancellation or termination of this Agreement for any reason other than those contained in Section 7) Limited Warranty and Section 9) Force Majeure in Addendum A, Customer will make payment to Company on a pro rata basis for all software products, services and expenses delivered or incurred prior to the termination or cancellation of this Agreement. Upon receipt of all outstanding payments owed to Company by Customer, Company will provide Customer with a final copy of all of Customer's data, and access to the Hosted environment will then be terminated.

**15) Approval of Governing Body.** Customer represents and warrants to Company that this Agreement has been approved by its governing body and is a binding obligation upon Customer.

**B) Subscription.** Both parties acknowledge that this Subscription Agreement covers both Support for the Software listed on Addendum A of this Agreement and updates to the installed Software. Updates are not subject to additional billing.

**C) Term of Agreement.** This Subscription Agreement is effective on October 1, 2021, and after execution by authorized representatives of Company and Customer, and shall terminate September 30, 2022, unless renewed as provided herein.

**1) Subscription Renewal.** The Annual Subscription Agreement will automatically renew on the anniversary of the Effective Date for subsequent one-year terms unless either party gives the other party at least 60 (sixty days) prior written notice of its intent not to renew. Subsequent terms will begin on October 1 and terminate on the last day of September of the following year. Company reserves the right to implement price changes of an Agreement's modules by giving written notice to Customer at least ninety days prior to subscription renewal. Upon acceptance by Customer, the fees and the term of use for additional modules and services procured during an existing subscription term shall be set at then current Company pricing, unless otherwise agreed to by the parties.

**2) Terms and Conditions for Updates of the Software.**

a) Customer is hereby granted non-exclusive and nontransferable access and right to use the Software listed in Addendum A of this Agreement. Company agrees to extend and Customer agrees to accept a subscription subject to the terms and conditions contained herein for the Software. Company agrees to provide and install all updates to the Software in the hosted environment provided Customer is in good standing regarding payments for Subscription Fees and any Services billed by Company to Customer. The terms of this Agreement shall also apply to updates, and upgrades subsequently provided by Company to Customer for the Software. Company shall

host the Software and may update the functionality, user interface, usability and other user documentation, training and educational information of, and relating to the Software from time to time in its sole discretion and in accordance with this Agreement as part of its ongoing mission to improve the Software and customers' use of the Software.

b) The Software listed in Addendum A is for use only for the benefit of Customer listed in this Agreement. The software products are not to perform functions or processing for subdivisions or entities that were not considered by Company when Company placed Customer in the categories listed on the cover of this Agreement. **WHAT IS THE "COVER"?**

c) Customer agrees that the Software is proprietary to Company and has been developed as a trade secret at Company's expense. Customer agrees to keep the software products confidential and use its best efforts to prevent any misuse, unauthorized use or unauthorized disclosures by any party of any or all of the software products or accompanying documentation.

d) If Customer has made modifications to the software products, Company will not support the modified software products, unless modifications were specifically authorized in writing by Company.

e) For as long as a current Subscription Agreement is in place, Company shall promptly correct any functions of the software products which fail to substantially comply with Company's documentation for the Software. If Customer has made modifications to the software products, Company will not make such corrections, unless modifications were specifically authorized in writing by Company.

### **3) Terms and Conditions for Support.**

a) Company shall provide software related Customer support during standard support hours. Standard support hours are from 8:00am to 5:00pm Central Standard Time, Monday thru Friday, excluding holidays.

Support requests may be initiated via Company's published support phone line, via e-mail to Company's support group, or via Company's instant-messaging support software during regular support hours.

Company reserves the right to modify these support hours as Company sees fit in order to better serve its Customer. Assistance and support requests which require special assistance from Company's development group will be taken and directed by support personnel.

b) Company will maintain staff that is appropriately trained to be familiar with the software products in order to render assistance, should it be required.

c) Company will provide Customer with all updates that Company may make to the then current version of the Software covered in this Agreement.

d) Company will make available appropriately trained personnel to provide Customer additional training, program changes, analysis, consultation, data recovery, non-coverage maintenance service, etc. Company shall provide Customer with on-line support through the use of desktop control software.

e) If a Customer decides to discontinue the Software Subscription and later chooses to reinstate the Software Subscription, the Customer will be required to pay the portion of annual Software Subscription dating back to the date when the Customer discontinued the Annual Software Subscription. Should Customer choose to reinstate the Software Subscription, Company agrees to install the then current version of the Software and related Customer data. These installation Services will be performed on a time and material basis at the current Company rates.

### **4) Hosting.**

a) Company shall provide the Software to Customer in a hosted network environment accessible to Customer employees via an internet connection using MS Edge.

Company supports Software access using versions of MS Edge currently supported by

Microsoft. Company software may function using other browsers but are not supported. Company will install the Software and Customer data on a network server providing secure access, high-speed performance, and a Data Backup Plan as elements of the Subscription Agreement.

b) Company will maintain staff that is appropriately trained to be familiar with the Hosted server in order to render assistance, should it be required.

c) Company will provide a Data Backup Plan that will include scheduled backups, data redundancy, and off-site data storage.

d) Customer will access the hosted network environment via a reliable internet connection that provides a minimum 6Mbps download speed and 1.5Mbps upload speed. Company cannot be liable for software performance if Customer's internet connection speeds do not meet these minimum requirements. Customer will maintain updates to any third-party software required to access and use Company software via the secure internet connection.

**5) Additional Services.** The Services listed below are not included in the Subscription Agreement. These services may be provided at Company's discretion and may be billed on a time and materials basis. Customer will not be liable to pay for any Additional Services unless Company provides Customer with a detailed estimate for the Additional Services, and Customer accepts the estimate, prior to Company expending any time and materials on Additional Services and Customer approves the estimate. If Company believes that it will exceed the estimate provided to Customer for Additional Services, Company must notify Customer in writing of the additional expenses before performing any Additional Services in excess of the estimate. Customer will not be liable to pay for any amount of Additional Services for which Company has not provided prior notice of cost and has not approved at Company's then current rates.

a) Changes to print programs. Company agrees to provide initial print programs for Customer as required for the Software modules described in Addendum A at no charge. After Acceptance of the Software as described in Addendum A of this Agreement, additional customer print programming may be subject to time and material Services fees at the then Company current billing rates for such Services.

b) Software modifications by Customer, excluding software updates.

c) Software Training. The scope of Training to be provided in this Agreement is defined in Addendum B.

d) Responding to problems caused by bad data.

e) Responding to problems caused by Customer hardware.

f) Responding to problems caused by operator error.

g) Responding to problems caused by software that is not Company software.

h) Responding to problems resulting from misuse, accidents, neglect, fire, or any other cause not within Company's reasonable control.

i) Changes made to the Company Software by someone other than Company personnel.

j) Responding to problems resulting from issues with Customer's internet access.

**6) Limitations and Exclusions.** The support and services of this Subscription Agreement do not include the following:

a) Support service does not include the customization of the software products and other consulting services, support of an operating system or hardware, or any support requested outside of normal business hours.

b) Customer understands that changes made by Company to the current version are for implementation in the installed Software products version as it exists without customization or Customer alteration.

**7) Customer Responsibilities.**

a) Customer shall provide, at no charge to Company, full and free access to the network, working space, adequate facilities, use of

machines, features, or other equipment necessary to provide the specified support and maintenance service. Such environment requires the Customer to have email and Internet access. Customer shall provide phone lines, communications software specified by Company and all equipment necessary to use Company's on-line support. Customer will be responsible for all additional costs incurred to the extent such hardware and software does not conform to Company's specifications. The acquisitions of necessary hardware and software meeting the requirements then in effect shall be sole responsibility of the Customer.

b) Customer shall provide a designated email address (or subsequent email addresses as advised by Customer) for communication and notice purposes relating to this Agreement. Company may provide any and all notices, statements, and other communications to Customer through either e-mail, posting on the Service (or other electronic transmission) or by mail or express delivery service. Company recommends sending updated main and billing contact email addresses so that notices are reviewed promptly and not delayed due to the absence of one individual. In addition, Company may rely and act on all information and instructions provided to Company from the above-specified e-mail address.

c) Customer is responsible for all activities conducted under its User logins and for its Users' compliance with the Software Subscription Agreement. Customer shall not permit any third party to: (a) copy, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Service or any part thereof or otherwise attempt to discover any source code or modify the Service in any manner or form unless expressly allowed in the User Guide; (b) use unauthorized modified versions of the Service, including (without limitation) for the purpose of building a similar or competitive product or service or for the purpose of obtaining unauthorized access to the Service;

(c) use the Service in a manner that is contrary to applicable law or in violation of any third party rights of privacy or intellectual property rights; (d) publish, post, upload or otherwise transmit Customer Data that contains any viruses, Trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another; or (e) use or knowingly permit the use of any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the Service.

d) Customer shall maintain a stable internet connection as prescribed by Company. This internet connection must provide a minimum 6Mbps download speed and 1.5Mbps upload speed. Company cannot be liable for software performance if Customer's internet connection speeds do not meet these minimum requirements. Company shall also use the connection to assist with problem diagnosis and resolution. Customer shall provide Company adequate remote access communication infrastructure to Customer's computing environment to enable Company technical services assistance.

e) Company uses Microsoft Word to launch printing of the integrated documents produced in the hosted software. If Customer desires to be able to edit standard documents included with the software or create new documents for use in document generation functions of the Company software, Customer will need to purchase or own a licensed copy of Microsoft Word. To receive support from Company for the document generation tools, the licensed copy of Microsoft Word must currently be supported by Microsoft.

f) All printers used by Customer to print documents and reports from the Software must have the most recent version of a currently supported Windows driver. Company supports only the Epson TM-T88V receipt printer. Other receipt printers may

function with Company software but are not supported.

**8) Non-Assignability.** The Customer shall not have the right to assign or transfer its rights hereunder to any party.

**A. Annual Subscription Costs**

General Ledger	\$2,500.00
Bank Reconciliation	1,250.00
Accounts Payable	2,250.00
Payroll	2,750.00
Distributed Time Entry	2,000.00
Utility Billing	3,500.00
Service Orders	1,500.00
AMR Interface	1,500.00
Municipal Court	2,000.00
Citation Import Interface	1,500.00
Permits	2,000.00
Cash Receipting	1,500.00
Code Enforcement	1,500.00
Online Payments - CT/PM/UB	2,250.00
Total Subscriptions	<u>\$28,000.00</u>

## ADDENDUM B

### Services Agreement

**A) Services Provided.** Company shall provide the following services to Customer:

- a) Training – Remote
- b) Data Conversion/Migration
- c) AMR Interface Setup/Configure
- d) Citation Import Setup/Configure
- e) Online Payment Design/Configure
- f) Data Center Setup/Configuration
- g) Data Backup Setup/Configuration
- h) Project Management

**B) Professional Services Fees.**

Training - Remote

- General Ledger	\$2,000.00
- Bank Reconciliation	1,000.00
- Accounts Payable	1,750.00
- Payroll	2,250.00
- Distributed Time Entry	1,750.00
- Utility Billing	3,000.00
- Service Orders	1,500.00
- AMR Interface	750.00
- Municipal Court	2,000.00
- Citation Import Interface	750.00
- Permits	1,750.00
- Cash Receipting	1,500.00
- Code Enforcement	1,500.00
- Online Payments	750.00

Data Conversion/Migration

- General Ledger	2,000.00
- Accounts Payable	1,500.00
- Payroll	2,000.00
- Utility Billing	3,500.00
- Municipal Court	2,000.00

AMR Setup/Configuration 1,000.00

Citation Import Setup 750.00

Online Payment Design 750.00

Data Center Setup 500.00

Data Back Setup 500.00

Project Management 2,500.00

Total Services \$39,250.00

**1) Services.**

Remote Training, Data Conversion, Citation Import Setup/Configuration, Online Payment Design/Configuration, Data Center Setup/Configuration, Data Backup Setup/Configuration, and Project Management Services will be delivered as described above and detailed below as determined by Customer and the Project Manager.

If Customer adds new users to existing modules that Customer's staff was not previously trained on, the new users must receive training on each module they will access prior to using the software. Payment for training must be received in full prior to activation of the new user. Training will be provided remotely under the terms as described below.

**2) Training Environment.** During remote training, Customer should be free of distractions and interruptions. If training is being conducted onsite at the Customer's location, the Customer is responsible for providing a productive environment to conduct training.

**3) Rescheduling/Cancellation of Training.** The Project Manager for Company will coordinate with Customer to schedule dates/times for training/go-live. If Customer has to reschedule or cancel a confirmed event, Customer will provide Company at least seventy-two hours notice of its intent to reschedule or cancel prior to the scheduled time. If Customer does not provide adequate notice or fails to attend for a scheduled event, Customer will be subject to a two hundred-fifty dollar (\$250) penalty for the first occurrence and a five hundred dollar (\$500) penalty for each subsequent occurrence.

**4) Additional Services.** Additional related services not listed above may be billed at Company's then current market rate for the service as they are

incurred. Any services addressed under this area of the Agreement would be discussed with Customer prior to the Services being performed by Company. From time to time, Company may assist with the resolution of a payroll or accounting matter related to Customer's financial data. Customer acknowledges that the services provided should not be construed in any way as professional accounting or consulting advice and should not be relied upon as such. Customer is strongly encouraged to consult with their currently retained auditor to determine the proper course of action. Additional services provided beyond the scope of software support will be categorized as a billable event and will require a signed Service Level Agreement (SLA) detailing the work to be performed by each respective party and the fees to be paid in advance by Customer to Company for services rendered.

**5) Limitation of Liability.** Company shall not be liable for inaccurate data in Company's application software which is the result of inaccurate data electronically migrated from the previous systems. Company's liability for damages arising out of this Agreement, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to any Service fees paid to Company by Customer. The Service terms set forth above reflect and are set in reliance upon this allocation of risk and the exclusion of such damages as set forth in this Agreement.

**6) Data Conversion Limitations.** Customer will help provide data to be electronically converted to FundView in a consumable format such as .csv, Excel, Access, or SQL database. Customer will also provide the related file definitions and record layouts. Following is a list of the modules of

data to be converted and the scope of services provided by Company:

**Required:**

1. Changes to chart of accounts, adopting Consolidated Cash, and related bank account consolidation require formal sign off by auditor and approval by council.

**General Ledger –**

1. Chart of accounts for all funds. \*See below.

2. Account balances for the current and two prior fiscal years.

3. Current year budget and two prior fiscal year budgets.

**Accounts Payable –**

1. Vendor master file to include vendor name, address, taxpayer ID, and contact information

2. Current year summary 1099 balances as provided by the Customer.

**Payroll -**

1. Set up current pay codes, deduction codes and leave codes.

2. Define positions.

3. Populate current employee payroll detail including pay rate, deductions, direct deposit, tax settings, related employment dates and leave balances.

4. Current calendar year pay history to include paychecks, earnings, expense distribution, deductions and taxes.

5. Format payroll check template provided check stock meets FundView layout standard.

**Utility Billing -**

1. Account master file to include name, billing address, service address, services, deposit, meter information, billing preferences and bank drafts.

2. Current year usage and prior two years.

3. Customer payment history for the current year and two prior years.

**Municipal Court -**

1. Company will electronically convert up to the last ten (10) years of historical data from Customer's current legacy system. Company and Customer will work together to reconcile the most recent twelve (12) months of data.

*\* Changes to the Chart of Accounts from the legacy system to the current system should be discussed with Customer's auditor prior to implementing these changes in FundView.*

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