

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN
MAINTENANCE AGREEMENT AND ADDENDUM AGREEMENT
BETWEEN THE VILLAGE OF DOWNERS GROVE
AND IMAGEWARE SYSTEMS, INC.**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois,
as follows:

1. That the form and substance of a certain Agreement (the “Agreement”) and Addendum Agreement (the “Addendum”), between the Village of Downers Grove (the “Village”) and Imageware Systems, Inc. (“IWS”), for software and hardware maintenance of the Police Department digital booking system, as set forth in the form of the Agreement and Addendum submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement and the Addendum, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement and Addendum.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

SOFTWARE AND HARDWARE MAINTENANCE RENEWAL AGREEMENT

(the "Agreement")

BETWEEN

IMAGEWARE SYSTEMS, INC ("IWS")

AND

THE VILLAGE OF DOWNER'S GROVE PD ("AGENCY")

1 **TERM AND PAYMENT**

1.1 **Initial Term.** The initial term of this Agreement shall be for one year and shall commence on **December 1, 2008** and end on **November 30, 2011**.

1.2 **Renewal Terms.** *(Refer to Addendum, Item A)*

1.3 **Annual Fee.** For the services specified herein, except for those services designated as "Extra Services" pursuant to Section 2.6 hereof, **AGENCY** agrees to pay an annual maintenance fee ("Maintenance Fee") as specified in Exhibit A. **Years 2 (2009-2010) and 3 (2010-2011) will include an annual increase not to exceed 4%.** *(Also Refer to Addendum, Item G).*

2 **MAINTENANCE SERVICE TO BE PROVIDED**

2.1 **General.** **IWS** shall provide to **AGENCY** maintenance service with respect to the Crime Capture System[®] (the "System", being the software purchased from **IWS** and the related hardware, whether purchased from **IWS** or supplied by **AGENCY**). The obligation of **IWS** to provide such maintenance service shall not extend beyond the items of software and hardware (the **IWS** supported items or "Supported Items" as are identified in Exhibit A) that **AGENCY** has purchased directly from **IWS**. Such maintenance service shall consist of (i) Preventive Maintenance as is described in Section 2.4, (ii) Remedial Maintenance as is described in Section 2.5, and (iii) Extra Services as is described in Section 2.6, all in accordance with and subject to the terms and conditions of this Agreement.

2.2 **Obligation for Maintenance Support.** **AGENCY** acknowledges that **IWS** will not be required to provide maintenance support during the time frames noted in Section 1 of the Agreement unless and until **AGENCY** has provided **IWS** with an executed copy of the Agreement.

2.3 **Connectivity.** Electronic communication connectivity between **IWS** and the System shall be via either a point-to-point Internet connection or via a dial-back modem (whereby **IWS** will dial **AGENCY**'s server and the server will dial back to **IWS**).

2.4 **Preventive Maintenance.** Preventive maintenance ("Preventive Maintenance") shall only be required for Supported Items and shall consist of all maintenance service, other than Excluded Services as defined in paragraph 2.7, performed by **IWS** representatives, independent of any System failure, for the purpose of maintaining the System in good working order, including, without limitation, the maintenance services described in

subsections 2.4.1 and 2.4.2 below. Any additional Preventive Maintenance beyond that described in subsections 2.4.1 and 2.4.2 shall be at the sole discretion of IWS. Preventive Maintenance performed on-site at AGENCY locations shall be performed by IWS representatives during normal working days, Monday – Friday except holidays, between the hours of 8:00 a.m. and 5:00 p.m. or as otherwise arranged. IWS will provide AGENCY with reasonable prior notice and AGENCY will assure that IWS has access to the equipment. Preventive Maintenance performed off-site from AGENCY locations may be performed by IWS representatives at any time.

2.4.1 Preventive Software Maintenance.

(a) Subject to the availability of access through IWS approved System connectivity, IWS representatives will perform Preventive Software Maintenance for a) System servers purchased directly from IWS, no less frequently than monthly; b) Capture Stations where the client hardware, on which such IWS software resides, has been purchased directly from IWS, no less frequently than quarterly; and c) Investigative Stations where client hardware, on which such IWS software resides, no less frequently than annually.

(b) If the System server(s) and/or Capture Station(s) and/or Investigative Station(s) hardware is changed by AGENCY, on which the IWS software resides, AGENCY must notify IWS in advance of its intent to purchase hardware. IWS will review hardware specifications for hardware to be supplied by AGENCY and IWS will provide approval for continuing Preventative Software Maintenance. If AGENCY fails to notify IWS and obtain approval in advance, IWS will not be required to provide Preventative Software Maintenance.

2.4.2 Preventive Hardware Maintenance. IWS representatives will perform an annual quality control check of the Supported Items to ensure that the System is performing at the prescribed standards for System functionality. Such check shall include a cleaning of the Supported Items, Supported Items hardware alignment, and general system checks to assess image quality and System performance.

2.5 Remedial Maintenance. Remedial maintenance (“Remedial Maintenance”) shall mean all maintenance, other than Excluded Services, reasonably required as a result of, and for the purpose of correcting, a System Failure. For purposes of this Agreement, “System Failure” shall mean any malfunction in the Supported Items that prevents or materially interferes with, any or all aspects of the System’s intended functions.

IWS will provide Remedial Maintenance through its Customer Support Department based on three technical levels of support. IWS will make available to AGENCY a Help Desk (Tier I support), which will be continuously accessible by telephone, e-mail or the worldwide web 24 hours per day, 7 days per week (including holidays). If so required to solve Remedial Maintenance issues, IWS, in its sole discretion, may also utilize specialized engineers and technicians (Tier II support) who are adept at solving more complex problems, as well as selected members of IWS’s Research and Development Department (Tier III support). Following the identification of a System Failure by AGENCY, and AGENCY’s completion of any diagnostic procedures recommended by IWS, AGENCY shall provide notification thereof to IWS. AGENCY agrees to actively cooperate with IWS in all further diagnostic testing, as determined and requested by IWS.

In the event of any software failure, IWS shall make a good faith effort to have an appropriate software support person respond to the AGENCY within the time frames described in the IWS Response Schedule (attached hereto as Exhibit B). Such response will be to provide notification with an update on possible causes and/or solutions.

In the event of the failure of any Critical Hardware Items (as defined below), IWS shall make a good faith effort to cause an authorized representative of IWS to arrive at the location where the System is installed no later than the time frames described in the IWS Response Schedule (Exhibit B).

- 2.5.1 Critical Hardware Items: Critical hardware items ("Critical Hardware Items") are hardware items purchased from IWS, that are specifically associated with the Server, the supplied interfaces, or the Capture Stations, and that are required for the AGENCY to perform its day-to-day duties associated with the capture and storage of mug photo images. As a point of clarification, printers are not among the Critical Hardware Items.
- 2.5.2 Non-critical Items: Non-critical items ("Non-critical Items") are hardware items purchased from IWS that are not mentioned in Section 2.5.1. Non-critical Items shall be repaired during IWS's normal work hours. Printers are not among Non-critical Items and are only supported by IWS during the initial 45 days after their installation.
- 2.5.3 Software Only Installations: If the System server(s) and/or Capture Station(s) and/or Investigative Station(s) hardware, on which the IWS software resides, has/have not been purchased directly from IWS, AGENCY must provide connectivity subject to section 2.3.
- 2.6 Extra Services. Extra services ("Extra Services") shall consist of any maintenance services with respect to the System, other than Preventive Maintenance and Remedial Maintenance, but including without limitation, Excluded Services (as defined below). IWS shall be under no obligation to perform any Extra Service but may undertake to make a good faith effort to render such services to the extent that it is capable of doing so without substantially interfering with its other obligations under this Agreement or its obligations to other customers. Extra Services will be charged to the AGENCY on a time and materials basis as determined by IWS and AGENCY will pay such charges as invoiced by IWS. If so requested by AGENCY, IWS shall provide a written estimate of the extra charges likely to be incurred as a result of the performance of such Extra Services, to the extent such charges can be reasonably ascertained in advance.
- 2.7 Excluded Services. For the purpose of this Agreement, "Excluded Services" are those services that IWS is not obligated to perform for the Maintenance Fee, but may perform for extra compensation as set forth in Section 2.6. Excluded Services shall be defined as: (a) the replacement of any hardware as is required by age, duty cycle, obsolescence or excessive use; (b) the replacement of any hardware or the support of third-party software where service or support for such hardware or such third-party software is no longer provided by the original equipment manufacturer of such hardware or the original vendor of such third-party software; (c) the update or upgrade of third-party software, including operating system(s); (d) the replacement of supplies or expendable items (e.g. ink rollers, ribbon cartridges, toner cartridges, fusers, paper, film, diskettes, tape cassettes, lamps, etc.); (e) any maintenance services to be performed on any software, hardware or other

item not furnished by IWS to AGENCY or any other work external to the System by anyone other than IWS; or (f) any maintenance services necessary or appropriate in order to correct any System Failure, or potential failure, attributable in whole or in part to any of the following factors, or any combination thereof:

- 2.7.1 Failure by AGENCY to provide or maintain a suitable installation environment as the System site in accordance with the operations documentation, and any other reasonable requirements thereafter communicated in writing by IWS to AGENCY, including without limitation, any electrical power, air conditioning, or humidity control failure or changes to the environment of the System site,
- 2.7.2 Use of supplies or materials not approved by IWS, or by the equipment manufacturer, as it applies to the supported items.
- 2.7.3 Use or attempted use of the System or any component thereof for any purpose other than that for which it was acquired,
- 2.7.4 Alterations to the System software (including operating system(s), operating system service packs or applications) other than alterations installed by, provided by, or approved in writing by IWS,
- 2.7.5 System failure caused by alterations to the System performed by non-IWS representatives using the NT server administrator password,
- 2.7.6 Connection of the System by mechanical or electrical means to any other machine, equipment or device, other than those installed by or approved in writing by IWS,
- 2.7.7 Any changes in the AGENCY network or in IP addresses that relate to or affect the System, other than those approved in writing by IWS,
- 2.7.8 Support issues related to the removal, transportation or relocation of the System by any person other than IWS's personnel. From area the system is currently located.
- 2.7.9 Neglect or misuse of the System by AGENCY or any third party,
- 2.7.10 Any other intentional or negligent damage to the System by the AGENCY or third party,
- 2.7.11 Any other failure by AGENCY to comply with its obligations under this Agreement or the Purchase and License Agreement, or
- 2.7.12 Any damage caused by other than normal operating conditions or events, including without limitation, accident, transportation, neglect, misuse, lightning, failure or fluctuation of electrical power, temperature or humidity changes, telephone equipment or line failure, failure of foreign interconnect equipment and acts of God.
- 2.8 Replacement or Repair. In performing Preventive Maintenance and Remedial Maintenance, IWS shall be entitled to exercise reasonable discretion in determining whether to replace or repair any malfunctioning item; provided, however, that any such replacement shall be a functional equivalent.

- 2.9 **Diagnostic Software.** In order to facilitate rapid analysis of a System Failure involving software, IWS will provide trained staff, at its company location, capable of handling software failures in an expedient manner. In addition they will have diagnostic software for the purpose of identifying the cause of System Failures, temporarily patching around the problem if necessary or temporarily disabling the use of the malfunctioning software module so that the System can be returned to use for other activities with minimal degradation in operation.
- 2.10 **Off-Site Maintenance:** Any maintenance services required to be performed under this Agreement which need not or cannot, in IWS's reasonable judgment, be performed effectively at or near the System site shall be performed at such other location(s) as IWS may determine, at no extra cost to Customer.
- 2.11 **Log Entries:** AGENCY, after its request, shall be provided with IWS records regarding System failures, and any other malfunctions, problems, or defects in the System, in accordance with a format to be provided by IWS.
- 2.12 **Network Connections:** Although IWS will provide some guidance and direction, IWS is not responsible for resolving problems relating to networks.
- 2.13 **Data Back-ups:** It is the AGENCY's responsibility to keep adequate System data back-ups. IWS is not responsible for loss of data.
- 2.14 **Proprietary Information:** AGENCY acknowledges that the database structure contains IWS trade secrets and intellectual property rights, which are the property of IWS. AGENCY agrees that the database structure may not be copied, modified or reproduced in whole or in part, for any purpose whatsoever. The database structure may not be reverse engineered, de-compiled, disassembled, or otherwise reverse engineered in whole or in part.

3. CUSTOMER RESPONSIBILITIES

- 3.1 **General:** AGENCY agrees to provide IWS with the contact information for their System Administrator(s), and their backup(s), who generally will be available during the AGENCY's normal Monday through Friday daytime business hours. AGENCY acknowledges that it is important for the AGENCY's System Administrator to take an active role in the management of the Crime Capture System and that image quality and consistency are very important in general and especially important with regard to any centralized repositories.
- 3.2 **Periodic Routines:** AGENCY agrees that it is the responsibility of the AGENCY's System Administrator to perform the following tasks.
- 3.2.1 Periodically inspect images for quality.
- 3.2.2 Use manufacturer approved consumable supplies.
- 3.2.3 Manage System data back-ups.
- 3.2.4 Maintain studio lighting with prescribed lamps.

- 3.2.5 Label stations with machine name and trouble reporting instructions.
- 3.2.6 Manage supporting network.
- 3.2.7 Manage users, groups, passwords, and access rights.
- 3.2.8 Train users as necessary.
- 3.2.9 Ensure problems are reported in a timely fashion to the IWS Help Desk.
- 3.2.10 Utilize most recent IWS provided software when required by IWS.
- 3.2.11 Provide reliable connectivity for remote entry.
- 3.2.12 Provide suitable environment for stations and especially for the servers.
- 3.2.13 Provide stable and adequate power.
- 3.2.14 Maintain effective communications with IWS.
- 3.2.15 IWS has given AGENCY System Administrator Password to assist IWS with System Administration.

4. MISCELLANEOUS TERMS

Confidential Information, Publicity: IWS will not publish or otherwise disclose any information or data obtained from AGENCY in any manner where the identity of any particular person or establishment can be identified, except with the consent of the AGENCY. Until such consent is obtained from AGENCY, IWS will keep such information confidential using the same care and discretion used with similar information that IWS designates as confidential.

Publicity giving reference to the sale, installation, and/or existence of the System, whether in the form of a press release, verbal announcement or filing of governmental form (as may be required by The Securities and Exchange Commission or other governmental entity under public disclosure laws, regulations or otherwise) may be given by IWS without the prior approval of AGENCY.

Limitation of Liability: IWS's maximum liability to the AGENCY arising for any reason relating to IWS's performance of the this Agreement, or any amendment thereto, shall be limited to the amount of fees paid to IWS for its performance under this Agreement for the specific year that is related to the event which gave rise to the liability.

4.3 Hold harmless: (Refer to Addendum, Item F and the following)

The AGENCY will indemnify, defend and hold harmless IWS, its officers, agents, employees or representatives from all liability for any loss, damage, or injury to persons or property arising from or related to the performance of this Agreement, including without limitation all consequential damages and attorney's fees, resulting from AGENCY's gross negligence or its wrongful or reckless performance hereunder.

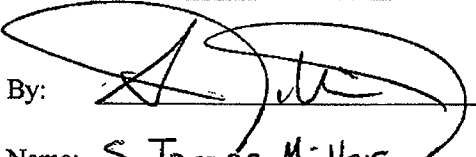
- 4.4 **Independent Contractor:** This Agreement is for the professional services of IWS and its representatives and is non-assignable by IWS without the prior written consent of the AGENCY. In performing these professional services, IWS is an independent Contractor and is not acting as an agent or employee of the AGENCY.
- 4.5 **Termination:** *(Refer to Addendum, Item F)*
- 4.6 **Disputes:**
- (a) Disputes: In the event that any dispute or controversy arises between IWS and AGENCY, IWS and AGENCY agree to first attempt to resolve the matter through discussions directly between themselves.
 - (b) In the event the parties cannot resolve the matter through discussions, the parties agree that the court system in DuPage County, Illinois is to be deemed the venue and jurisdiction for all disputes.
- 4.7 **Notices:** All notices required under this agreement shall be made in writing and addressed or delivered as follows:
- TO AGENCY-**
VILLAGE OF DOWNER'S GROVE POLICE DEPT.
ATTN: MARY NELSON
825 BURLINGTON AVE
DOWNER'S GROVE, IL 60615
- TO IWS-**
IMAGEWARE SYSTEMS, INC.
JEFF HOTZE, CONTROLLER
10883 THORN MINT RD
SAN DIEGO, CA 92127
- Either party may, by written notice to the other, change its own mailing address.
- Any notice or other written communication, if delivered personally to such party or if delivered by registered U.S. Mail or by prepaid overnight courier, shall be deemed to have been received on the day of its delivery, and if delivered by any other means, shall be deemed to have been received upon the receiving party's acknowledgement of such receipt.
- 4.7 **Governing Law:** The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties under this Agreement, will be construed pursuant to and in accordance with the laws of the State of Illinois.
- 4.8 **Severability of Agreement:** If any term of this Agreement is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the terms of the Agreement will remain in full force and effect and will not be affected.
- 4.9 **Cumulative Remedies:** The exercise of or failure to exercise legal rights and remedies by either party in the event of any default or breach hereunder will not constitute a waiver or

forfeiture of any other rights and remedies, and will be without prejudice to the enforcement of any right or remedy available by law or authorized by this Agreement.

- 4.10 Compliance with Laws: Each party to this Agreement will comply with all applicable laws.
- 4.11 Non Discrimination: IWS will comply with all applicable federal, state and local laws, rules and regulations in regard to non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, disability or other prohibited basis.
- 4.12 Entire Agreement, Modification: This Agreement, including the exhibit(s) *and addendum*, constitute the entire agreement between the parties and supersedes all previous agreements or representation, oral or written, relating to this Agreement. This Agreement may only be modified or amended by a written modification signed by each party. Both parties acknowledge they have read this Agreement, understand its terms and conditions, and agree to be bound by it.

Agreed to:
IMAGEWARE SYSTEMS, INC.

Agreed to:
AGENCY

By: 
Name: S. James Miller
Title: Chairman & CEO
Date: Nov. 4, 2008

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

**QUOTE WITH
SCHEDULE OF SUPPORTED ITEMS & MAINTENANCE FEES
"SEE ATTACHED MAINTENANCE SCHEDULE"**

ITEM DESCRIPTION	QTY	IWS SO#	CUST PO#	MONTH MAINTENANCE
DEPDGES (Server) (Serial # 78W1190)				
Xseries 232 Server (P3-1.13GHz 512kb)	1	SO6051	SO08119	12
Hot Swap Power Conversion Kit	1	SO6051	SO08119	12
20/40GB DLT Tape Drive	1	SO6051	SO08119	12
Backup Exec 8.6 (Back-up Software)	1	SO6051	SO08119	12
U.S. Robotics Modem 56K/14.4K V92	1	SO6051	SO08119	12
15" Monitor (1280X1024)	1	SO6051	SO08119	12
128MB PC133 ECC SDRAM RDIMM	1	SO6051	SO08119	12
250W Redundant Power Supply	1	SO6051	SO08119	12
36.4GB 10K ULTRA160 SCSI Hard Disk Drive	2	SO6051	SO08119	12
CRIMES Server Software (1 - 25,000)	1	SO6051	SO08119	12
Additional Database	1	SO6051	SO08119	12
Image Sync Line Up Utility	1	SO6051	SO08119	12
Crime Web Server Software (10,001 - 25,000)	1	SO6051	SO08119	12
H.T.E. ASCII Interconnect	1	SO6051	SO08119	12
H.T.E. Image Retrieval API	1	SO6051	SO08119	12
Crime Web Lite (5 Concurrent Users)	1	SO6051	SO08119	12
Standard Livescan Interconnect	1	SO6051	SO08119	12
DGRDCAP1				
NETVISTA Workstation (A40P P3-1GHZ 30GB)	1	SO6051	SO08119	12
17" Monitor (1024X768 85Hz)	1	SO6051	SO08119	12
Hitachi KP-D50	1	SO6051	SO08119	12
Reflective Pedestal	1	SO6051	SO08119	12
3-Point Lighting	1	SO6051	SO08119	12
MVPro Flash Bus Card	1	SO6051	SO08119	12
NIST Compliance Capture Software	1	SO6051	SO08119	12
Camera Subsystem Cable Bundle	1	SO6051	SO08119	12
Power Supply #24APCT-2	1	SO6051	SO08119	12
Westlake Pan & Tilt #SS485P	1	SO6051	SO08119	12
Chugai H16Z7516AMSP Lens	1	SO6051	SO08119	12
LES 3.0 Capture Software	1	SO6051	SO08119	12
LES 3.0 Investigative on Full Capture	1	SO6051	SO08119	12
INVESTIGATIVE STATIONS (Software Only)				
STATION D - KRISTEN				
LES 3.0 Investigative	1	SO6051	SO08119	12
PhotoSmart S20xi Slide Scanner USB 300DPI (USB Cable)	1	SO6051	SO08119	12

STATION ID - MMURRAY				
LES 3.0 Investigative	1	SO6051	SO08119	12
OTHER IWS SOFTWARE				
H.T.E. Image Retrieval User Licenses 5 Concurrent Users	1	SO6051	SO08119	12
H.T.E. Image Retrieval User Licenses 20 Concurrent Users	1	SO6051	SO08119	12
Custom Print Format	1	SO6979	SO08436	12
TOTAL MAINTENANCE				
SOFTWARE MAINTENANCE		\$12,367.21		
HARDWARE MAINTENANCE		\$4,496.64		
OTHER MAINTENANCE		\$0.00		
TAX		\$0.00		
TOTAL MAINTENANCE 2008		\$16,863.85		

EXHIBIT B

IWS RESPONSE SCHEDULE

Software – sixty (60) minute call back with status and 24 hour status by email or phone. All updates provided free of charge. Tier II on eight (8) hours response.

Hardware – Next IWS business day on all Critical Hardware Items.

**ADDENDUM TO AGREEMENT BETWEEN IMAGEWARE SYSTEMS AND
VILLAGE OF DOWNERS GROVE**

The following terms shall apply to the Agreement dated 12/01/2008 between
Imageware Systems ("Contractor") and the Village of Downers Grove
("Village"):

A. RENEWAL

This contract may be extended no more than twice for subsequent annual periods (two annual extensions) by mutual agreement of both parties, providing such agreement complies with Village purchasing policies and the availability of funds.

B. INSURANCE REQUIREMENTS

Prior to starting the work, Contractor and any Subcontractors shall procure, maintain and pay for such insurance as will protect against claims for bodily injury of death, or for damage to property, including loss of use, which may arise out of operations by the Contractor or Subcontractor or any Sub-Sub Contractor or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall not be less than the greater of coverages and limits of liability specified below or any coverages and limits of liability specified in the Contract Documents or coverages and limits required by law unless otherwise agreed to by the Village.

Workers Compensation	\$500,000	Statutory
Employers Liability	\$1,000,000	Each Accident
	\$1,000,000	Disease Policy Limit
	\$1,000,000	Disease Each Employee
Comprehensive General Liability	\$2,000,000	Each Occurrence
	\$2,000,000	Aggregate
		<i>(Applicable on a Per Project Basis)</i>
Commercial Automobile Liability	\$1,000,000	Each Accident
Professional Errors & Omissions	\$2,000,000	Each Claim
(pursuant to section .9 below)	\$2,000,000	Annual Aggregate
Umbrella Liability	\$ 5,000,000	

Commercial General Liability Insurance required under this paragraph shall be

written on an occurrence form and shall include coverage for Products/Completed Operations, Personal Injury with Employment Exclusion (if any) deleted, Blanket XCU and Blanket Contractual Liability insurance applicable to defense and indemnity obligations and other contractual indemnity assumed under the Contract Documents. The limit must be on a "Per Project Basis"

Comprehensive Automobile Liability Insurance required under this paragraph shall include coverage for all owned, hired and non-owned automobiles.

Workers Compensation coverage shall include a waiver of subrogation against the Village.

Comprehensive General Liability, Employers Liability and Commercial Automobile Liability Insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by Umbrella and/or Excess Liability policies.

Contractor and all Subcontractors shall have their respective Comprehensive General Liability (including products/completed operations coverage), Employers Liability, Commercial Automobile Liability, and Umbrella/Excess Liability policies endorsed to add the "Village of Downers Grove, officers, officials, employees and volunteers" as "additional insureds" with respect to liability arising out of operations performed; claims for bodily injury or death brought against Village by any Contractor or Subcontractor employees, or the employees of Subcontractor's subcontractors of any tier, however caused, related to the performance of operations under the Contract Documents. Such insurance afforded to the Village shall be endorsed to provide that the insurance provided under each policy shall be *Primary and Non-Contributory*.

Contractor and all Subcontractors shall maintain in effect all insurance coverages required by the Contract Documents at their sole expense and with insurance carriers licensed to do business in the State of Illinois and having a current A. M. Best rating of no less than A- VIII. In the event that the Contractor or any Subcontractor fails to procure or maintain any insured required by the Contract Documents, the Village may, at its option, purchase such coverage and deduct the cost thereof from any monies due to the Contractor or Subcontractor, or withhold funds in an amount sufficient to protect the Village, or terminate this Agreement pursuant to its terms.

All insurance policies shall contain a provision that coverages and limits afforded hereunder shall not be canceled, materially changed, non-renewed or restrictive modifications added, without thirty (30) days prior written notice to the Village. Renewal certificates shall be provided to the Village not less than five (5) prior to the expiration date of any of the required policies. All Certificates of Insurance shall be in a form acceptable to Village and shall provide satisfactory evidence of compliance with all insurance requirements. The Village shall not be obligated to

review such certificates or other evidence of insurance, or to advise Contractor or Subcontractor of any deficiencies in such documents, and receipt thereof shall not relieve the Contractor or Subcontractor from, nor be deemed a waiver the right to enforce the terms of the obligations hereunder. The Village shall have the right to examine any policy required and evidenced on the Certificate of Insurance.

Only in the event that the Work under the Contract Documents includes design, consultation, or any other professional services, Contractor or the Subcontractor shall procure, maintain, and pay for Professional Errors and Omissions insurance with limits of not less than \$2,000,000 per claim and \$2,000,000 annual aggregate. If such insurance is written on a claim made basis, the retrospective date shall be prior to the start of the Work under the Contract Documents. Contractor and all Subcontractors agree to maintain such coverage for three (3) years after final acceptance of the Project by the Village or such longer period as the Contract Documents may require. Renewal policies during this period shall maintain the same retroactive date.

Any deductibles or self-insured retentions shall be the sole responsibility of the Insured. At the option of the Village, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Village, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

C. COPYRIGHT/PATENT INFRINGEMENT

The Contractor agrees to indemnify, defend, and hold harmless the Village against any suit, claim, or proceeding brought against the Village for alleged use of any equipment, systems, or services provided by the Contractor that constitutes a misuse of any proprietary or trade secret information or an infringement of any patent or copyright.

D. CAMPAIGN DISCLOSURE

Contractor shall execute the Campaign Disclosure Certificate, attached hereto.

The Campaign Disclosure Certificate is required pursuant to the Village of Downers Grove Council Policy on Ethical Standards and is applicable to those campaign contributions made to any member of the Village Council.

Said Campaign Disclosure Certificate requires any individual or entity bidding to disclose campaign contributions, as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4), made to current members of the Village Council within the five (5) year period preceding the date of the bid or proposal release.

By signing the bid documents, contractor/Contractor/bidder/vendor agrees to refrain from making any campaign contributions as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4) to any Village Council member and any

challengers seeking to serve as a member of the Downers Grove Village Council.

E. SUBLETTING OF CONTRACT

No contract awarded by the Village shall be assigned or any part sub-contracted without the written consent of the Village Manager. In no case shall such consent relieve the Contractor from their obligation or change the terms of the contract.

F. TERMINATION OF CONTRACT

The Village reserves the right to terminate the whole or any part of this contract, upon written notice to the Contractor, for any reason and/or in the event that sufficient funds to complete the contract are not appropriated by the Village.

The Village further reserves the right to terminate the whole or any part of this contract, upon ten (10) days' written notice to the Contractor, in the event of default by the Contractor. Default is defined as failure of the Contractor to perform any of the provisions of this contract or failure to make sufficient progress so as to endanger performance of this contract in accordance with its terms. In the event that the Contractor fails to cure the default upon notice, and the Village declares default and termination, the Village may procure, upon such terms and in such manner as the Village may deem appropriate, supplies or services similar to those so terminated. The Contractor shall be liable for any excess costs for such similar supplies or services unless acceptable evidence is submitted to the Village that failure to perform the contract was due to causes beyond the control and without the fault or negligence of the Contractor. Any such excess costs incurred by the Village may be set-off against any monies due and owing by the Village to the Contractor.

G. BILLING & PAYMENT PROCEDURES

Payment will be made upon receipt of an invoice referencing Village purchase order number. Once an invoice and receipt of materials or service have been verified, the invoice will be processed for payment in accordance with the Village payment schedule. The Village will comply with the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq., in that any bill approved for payment must be paid or the payment issued to the Contractor within 60 days of receipt of a proper bill or invoice. If payment is not issued to the Contractor within this 60 day period, an interest penalty of 1.0% of any amount approved and unpaid shall be added for each month or fraction thereof after the end of this 60 day period, until final payment is made.

The Village shall review in a timely manner each bill or invoice after its receipt. If the Village determines that the bill or invoice contains a defect making it unable to process the payment request, the Village shall notify the Contractor requesting payment as soon as possible after discovering the defect pursuant to rules promulgated under 50 ILCS 505/1 et seq. The notice shall identify the defect and any additional information necessary to correct the defect.

Please send all invoices to the attention of Village of Downers Grove, Accounts Payable, 801 Burlington, Downers Grove, IL 60515.

H. PATRIOT ACT COMPLIANCE

The Contractor represents and warrants to the Village that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person. The Contractor further represents and warrants to the Village that the Contractor and its principals, shareholders, members, partners, or affiliates, as applicable are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person. The Contractor hereby agrees to defend, indemnify and hold harmless the Village, and its elected or appointed officers, employees, agents, representatives, engineers and attorneys, from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorney's fees and costs) arising from or related to any breach of the foregoing representations and warranties.

I. NONDISCRIMINATION

Contractor shall, as a party to a public contract:

- (a) Refrain from unlawful discrimination in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination;
- (b) By submission of this proposal, the Contractor certifies that he is an "equal opportunity employer" as defined by Section 2000(e) of Chapter 21, Title 42, U.S. Code Annotated and Executive Orders #11246 and #11375, which are incorporated herein by reference. The Equal Opportunity clause, Section 6.1 of the Rules and Regulations of the Department of Human Rights of the State of Illinois, is a material part of any contract awarded on the basis of this proposal.

It is unlawful to discriminate on the basis of race, color, sex, national origin, ancestry, age, marital status, physical or mental handicap or unfavorable discharge for military service. Contractor shall comply with standards set forth in Title VII of the Civil Rights Act of 1964, 42 U.S.C. Secs. 2000 et seq., The Human Rights Act of the State of Illinois, 775 ILCS 5/1-101 et. seq., and The Americans With Disabilities Act, 42 U.S.C. Secs. 12101 et. seq.

J. SEXUAL HARASSMENT POLICY

The Contractor, as a party to a public contract, shall have a written sexual harassment policy that:

- 14.1.1 Notes the illegality of sexual harassment;
- 14.1.2 Sets forth the State law definition of sexual harassment;
- 14.1.3 Describes sexual harassment utilizing examples;
- 14.1.4 Describes the Contractor's internal complaint process including penalties;
- 14.1.5 Describes the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and how to contact these entities; and
- 14.1.6 Describes the protection against retaliation afforded under the Illinois Human Rights Act.

K. EQUAL EMPLOYMENT OPPORTUNITY

In the event of the Contractor's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), the Contractor may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this contract, the Contractor agrees as follows:

That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, sexual orientation, sexual identity or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.

That, if it hires additional employees in order to perform this contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.

That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military services.

That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or

representative of the Contractor's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with such Act and Rules and Regulations, the Contractor will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.

That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.

That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purpose of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.

That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this contract, the Contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, the Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivision or municipal corporations.

L. DRUG FREE WORK PLACE

Contractor, as a party to a public contract, certifies and agrees that it will provide a drug free workplace by:

Publishing a statement: (1) Notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, including cannabis, is prohibited in the Village's or Contractor's workplace. (2) Specifying the actions that will be taken against employees for violations of such prohibition. (3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will: (A) abide by the terms of the statement; and (B) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

Establishing a drug free awareness program to inform employee's about: (1) the dangers of drug abuse in the workplace; (2) the Village's or Contractor's policy of

maintaining a drug free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; (4) the penalties that may be imposed upon employees for drug violations.

Providing a copy of the statement required above to each employee engaged in the performance of the contract or grant and to post the statement in a prominent place in the workplace.

Notifying the contracting or granting agency within ten (10) days after receiving notice of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction from an employee or otherwise receiving actual notice of such conviction.

Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by section 5 of the Drug Free Workplace Act.

Assisting employees in selecting a course of action in the event drug counseling, treatment and rehabilitation is required and indicating that a trained referral team is in place.

Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

M. INDEMNITY AND HOLD HARMLESS AGREEMENT

To the fullest extent permitted by law, the Contractor shall indemnify, keep and save harmless the Village and its agents, officers, and employees, against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses, which may arise directly or indirectly from any negligence or from the reckless or willful misconduct of the Contractor, its employees, or its subcontractors, and the Contractor, its employees, or its subcontractors, and the Contractor shall at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the Village in any such action, the Contractor shall, at its own expense, satisfy and discharge the same. This Agreement shall not be construed as requiring the Contractor to indemnify the Village for its own negligence. The Contractor shall indemnify, keep and save harmless the Village only where a loss was caused by the negligent, willful or reckless acts or omissions of the Contractor, its employees, or its Subcontractors.

CONTRACTOR:

ImageWare Systems, Inc.
Company Name

Date: Nov. 4, 2008

10883 Thornmint Rd.
Street Address of Company

Email Address

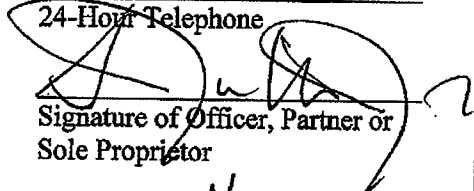
San Diego, CA 92127
City, State, Zip

Contact Name (Print)

(858) 673-8600
Business Phone

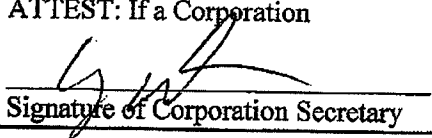
24-Hour Telephone

(858) 673-1770
Fax


Signature of Officer, Partner or
Sole Proprietor

S. James Miller, Jr
Print Name & Title
Chairman & CEO

ATTEST: If a Corporation


Signature of Corporation Secretary

VILLAGE OF DOWNERS GROVE:

Authorized Signature

ATTEST:

Title

Signature of Village Clerk

Date

Date

CAMPAIGN DISCLOSURE CERTIFICATE

Any contractor, Contractor, bidder or vendor who responds by submitting a bid or proposal to the Village of Downers Grove shall be required to submit with its bid submission, an executed Campaign Disclosure Certificate, attached hereto.

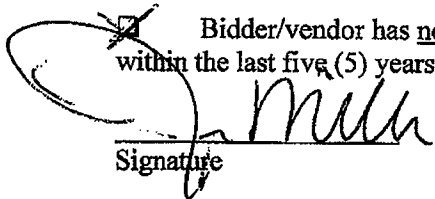
The Campaign Disclosure Certificate is required pursuant to the Village of Downers Grove Council Policy on Ethical Standards and is applicable to those campaign contributions made to any member of the Village Council.

Said Campaign Disclosure Certificate requires any individual or entity bidding to disclose campaign contributions, as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4), made to current members of the Village Council within the five (5) year period preceding the date of the bid or proposal release.

By signing the bid documents, contractor/Contractor/bidder/vendor agrees to refrain from making any campaign contributions as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4) to any Village Council member and any challengers seeking to serve as a member of the Downers Grove Village Council.

Under penalty of perjury, I declare:

Bidder/vendor has not contributed to any elected Village position within the last five (5) years.


Signature

JIM MILLER
Print Name

Bidder/vendor has contributed a campaign contribution to a current member of the Village Council within the last five (5) years.

Print the following information:

Name of Contributor: _____
(company or individual)

To whom contribution was made: _____

Year contribution made: _____ Amount: \$ _____

Signature

Print Name