

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
SEPTEMBER 16, 2014 AGENDA

| SUBJECT: | TYPE: | SUBMITTED BY: |
|--|--|----------------------------------|
| ImageWare Systems Inc. Maintenance Contract | ✓ Resolution Ordinance Motion Discussion Only | Robert Porter Chief of Police |

SYNOPSIS

A resolution has been prepared to approve a one-year maintenance agreement between the Village and ImageWare Systems Inc. of California to provide hardware and software maintenance for the police department's digital booking system. The new agreement will begin December 1, 2014 and end on November 30, 2015. The cost of this agreement is \$16,931.

STRATEGIC PLAN ALIGNMENT

The goals for 2011 – 2018 included *Exceptional Municipal Services*.

FISCAL IMPACT

The FY14 General Fund budget includes \$17,000 for this contract.

RECOMMENDATION

Approval on the September 16, 2014 consent agenda.

BACKGROUND

In November 2002, the Village purchased a Digital Booking and Photo Imaging System, from ImageWare Systems Inc., for use in the police department. This system requires an annual maintenance agreement, which covers maintenance for all hardware components, including the server, capture station, two investigative stations, camera and ID card printer. It covers the software used for booking mug shots (pictures), photo lineups, ID cards and print formats. The maintenance coverage provides on-call support and preventative maintenance for these systems. The IWS system is interfaced the Village's Records arrest system and the Identix Fingerprint System, which allows data to pass from one system to another without redundant entry of data. ImageWare System Inc. owns their system software and no other company is authorized to provide maintenance service to this system. For this reason, ImageWare System Inc. is a sole source vender for their software and hardware maintenance.

ATTACHMENTS

Resolution
 Maintenance Agreement and Addendum

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF A SOFTWARE
AND HARDWARE MAINTENANCE RENEWAL AGREEMENT AND ADDENDUM
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 and Addendum (the “Agreements”), between the Village of Downers Grove (the “Agency”) 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 Agreements 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 Agreements, 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 Agreements.

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 DOWNERS GROVE ("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, 2014** and end on **November 30, 2015** and may be extended in accordance with paragraph 1.3.
- 1.2 Renewal Terms. This Agreement may be extended no more than twice for subsequent annual periods (two annual extensions) by mutual agreement of both parties.
- 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. If the Agreement is extended in accordance with Section 2.1 above, then **Years 2 (2015-2016) and 3 (2016-2017) will include an annual increase not to exceed 2%.** *(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, purchased from **IWS**). 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**).

Agency is required to provide a means of remote connectivity to the server components of the System, at a minimum. Connection to client machines may also be required, on an 'As Needed' basis. Agency will provide these means, in a manner which is acceptable to

both Agency and IWS. Agency will cooperate with IWS in ensuring that connectivity is stable and has adequate bandwidth for remote operation. Secured VPN Connection to the Agency is recommended by 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. Subject to the availability of access through IWS approved System connectivity, IWS representatives will perform Preventive Software Maintenance for System servers purchased directly from IWS, no less frequently than monthly.

If the System server(s) hardware on which the IWS software resides has/have not been purchased directly from IWS, IWS will not be required to provide Hardware Maintenance, either Preventative or Remedial. IWS will carry out Software Maintenance on these servers. AGENCY will cooperate with IWS in addressing issues found on System Server through said Software Maintenance. Furthermore, AGENCY accepts full responsibility for performance, Operating System, or other conditions that may impede or limit the performance of the Software System provided. It is at the discretion of IWS to determine if any impact on System performance is outside the responsibility of IWS, in this case.

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, IWS will not be obligated to provide Remedial Maintenance via remote access software. If, however, AGENCY has installed IWS approved remote access software, IWS, at its sole discretion, may provide assistance in Remedial Maintenance via remote access software.
- 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 where 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 AGENCY. However, a loaned part(s) from IWS's warehouse may be installed into the System prior to the shipping of the item(s) being removed for maintenance at no additional cost to AGENCY.
- 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. AGENCY 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

- 4.1 **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.

- 4.2 **Limitation of Liability:** IWS's maximum liability to the AGENCY arising for any reason Relating to IWS's performance of 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 K 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, 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: The Village reserves the right to terminate the whole or any part of this Agreement, 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 Agreement, upon 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 Agreement or failure to make sufficient progress so as to endanger performance of this Agreement 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 it 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. Any such excess costs incurred by the Village may be set-off against any monies due and owing by the Village to the Contractor.

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

DOWNERS GROVE, IL 60515

TO IWS-
IMAGEWARE SYSTEMS, INC.
JEFF HOTZE, CONTROLLER
10883 THORN MINT RD
SAN DIEGO, CA 92127

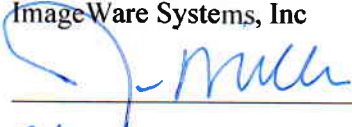
Either party may, by written notice to the other, change its own mailing address.

Any notice or other written communication, if delivered personally to such party or if delivered by certified 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.

- 4.8 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.
- 4.9 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.
- 4.10 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.
- 4.11 Compliance with Laws: Each party to this Agreement will comply with all applicable laws.
- 4.12 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.
- 4.13 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: ImageWare Systems, Inc
Name: 
Title: Chmn + CEO
Date: 9-10-14

By: Village of Downers Grove
Name: _____
Title: _____
Date: _____



ImageWare Systems, Inc.
 10815 Rancho Bernardo Rd., Suite 310
 San Diego, CA 92127
 858-673-8600
 858-673-1770

| Invoice No. | Page |
|-------------|------|
| SI082014B | 1 |

INVOICE

Bill To: 10268
 Village of Downers Grove Police Dept.
 Mary Nelson
 825 Burlington Ave.
 Downers Grove, IL 60615

Ship To: 10268
 Village of Downers Grove Police Dept.
 Mary Nelson
 825 Burlington Ave.
 Downers Grove, IL 60615

| CUSTOMER P.O. | | TERMS | SHIP VIA | ORDER DATE | SHIP DATE | INVOICE DATE | |
|----------------|---------|----------------|------------------------------------|------------|------------|--------------|-----------|
| DEC 2014 MAINT | | Due on Receipt | | 08/20/14 | 12/01/14 | 10/09/13 | |
| QUANTITY | | PRODUCT | DESCRIPTION | UOM | Unit Price | QUANTITY | AMOUNT |
| ORDERED | SHIPPED | CODE | | | | | |
| 1 | 1 | 51.05.01 | Software Maintenance, LE - Renewal | Each | 12,235.66 | 1 | 12,235.66 |
| 1 | 1 | 52.05.01 | Hardware Maintenance, LE - Renewal | Each | 4,694.48 | 1 | 4,694.48 |

MAINTENANCE PERIOD:
 December 1, 2014 - November 30, 2015

Remit To:

| |
|---|
| IMAGEWARE SYSTEMS, INC. 10815 Rancho Bernardo #310, San Diego, CA 92127 Phone: (858) 673-8600 Fax: (858) 673-1770 |
|---|

Subtotal: 16,930.14
 Invoice Discount: 0.00
 Tax: 0.00

| |
|------------------------|
| PAY THIS AMOUNT |
| 16,930.14 |

A 1.5% interest per month will be charged on all past due balances.

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.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/29/2014 12:32

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | | | |
|----------|---|--|-------------------------------|
| PRODUCER | Barney & Barney LLC CA Insurance Lic: 0C03950 9171 Towne Centre Drive, Suite 500 San Diego, CA 92122 858-457-3414 | CONTACT NAME: Malia Gagnon PHONE (A/C, No, Ext): (858) 587-7408 E-MAIL ADDRESS: malia.gagnon@barneyandbarney.com | FAX (A/C, No): (858) 909-9697 |
| | INSURED | INSURER(S) AFFORDING COVERAGE | |
| | ImageWare Systems, Inc. 10815 Rancho Bernardo Road, Suite 310 SAN DIEGO, CA 92127 | INSURER A : Atlantic Specialty Insurance Company | NAIC # 27154 |
| | | INSURER B : OneBeacon America Insurance Company | 20621 |
| | | INSURER C : Underwriters at Lloyd's London | |
| | | INSURER D : | |
| | | INSURER E : | |
| | | INSURER F : | |

Client # 31868

COVERAGES **CERTIFICATE NUMBER:** 730366 **MST NUMBER:** 31335 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|---|--------------------------------------|----------------|-------------------------|-------------------------|--|
| B | GENERAL LIABILITY | | | 7110084920008 | 1/31/2014 | 1/31/2015 | EACH OCCURRENCE \$ 1,000,000 |
| | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 |
| | <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR | | | | | | MED EXP (Any one person) \$ 10,000 |
| | | | | | | | PERSONAL & ADV INJURY \$ 1,000,000 |
| | | | | | | | GENERAL AGGREGATE \$ 2,000,000 |
| | | | | | | | PRODUCTS - COMP/OP AGG \$ 2,000,000 |
| | | | | | | | \$ |
| B | AUTOMOBILE LIABILITY | | | 7110084920008 | 1/31/2014 | 1/31/2015 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 |
| | <input type="checkbox"/> ANY AUTO | | | | | | BODILY INJURY (Per person) \$ |
| | <input type="checkbox"/> ALL OWNED AUTOS | <input type="checkbox"/> SCHEDULED AUTOS | | | | | BODILY INJURY (Per accident) \$ |
| | <input checked="" type="checkbox"/> HIRED AUTOS | <input checked="" type="checkbox"/> NON-OWNED AUTOS | | | | | PROPERTY DAMAGE (Per accident) \$ |
| | | | | | | | \$ |
| B | UMBRELLA LIAB | | | 7110084920008 | 1/31/2014 | 1/31/2015 | EACH OCCURRENCE \$ 2,000,000 |
| | EXCESS LIAB | <input type="checkbox"/> OCCUR | <input type="checkbox"/> CLAIMS-MADE | | | | AGGREGATE \$ 2,000,000 |
| | DED | | RETENTION \$ | | | | \$ |
| A | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | | 4060390270002 | 1/31/2014 | 1/31/2015 | <input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER |
| | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) | <input type="checkbox"/> Y <input type="checkbox"/> N | N/A | | | | E.L. EACH ACCIDENT \$ 1,000,000 |
| | If yes, describe under DESCRIPTION OF OPERATIONS below | | | | | | E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 |
| | | | | | | | E.L. DISEASE - POLICY LIMIT \$ 1,000,000 |
| C | PROFESSIONAL LIABILITY | | | USUCS261864613 | 7/31/2013 | 1/31/2015 | \$1,000,000 LIMIT \$10,000 SIR |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Where required by written contract the certificate holder is additional insured per the attached.

CERTIFICATE HOLDER**CANCELLATION**

| | |
|--|--|
| Village of Downers Grove Police Dept. 825 Burlington Ave Downers Grove, IL 60615 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Malia Gagnon</i> |
|--|--|

Subject

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

The following terms shall apply to the Agreement dated _____, 2014 between Imageware Systems, Inc. ("Contractor") and the Village of Downers Grove ("Village"):

A. 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.

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 Contractor or Subcontractor 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 |
| | \$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, 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 insurance 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 \$1,000,000 per claim and \$1,000,000 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. 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 Agreement, Contractor 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.

D. SUBLETTING OF CONTRACT

This Agreement shall not be assigned or any part sub-contracted without the written consent of the Village Manager. In no case shall such consent relieve Contractor from its obligation or change the terms of the Agreement.

E. STANDARD OF CARE

Services performed by Contractor under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

If Contractor fails to meet the foregoing standard, Contractor will perform at its own cost, and without reimbursement from the Village, the professional services necessary to

correct errors and omissions caused by Contractor's failure to comply with the above standard and reported to Contractor within one (1) year from the completion of Contractor's services.

F. 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.

G. 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.

H. SEXUAL HARASSMENT POLICY

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

Notes the illegality of sexual harassment;

Sets forth the State law definition of sexual harassment;
Describes sexual harassment utilizing examples;
Describes the Contractor's internal complaint process including penalties;
Describes the legal recourse, investigative and complaint process available.

I. 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.

J. 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 employees 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 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.

K. 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 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.

L. WAIVER OF CONTRACT BREACH

The waiver by one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof will be limited to the particular instance and will not operate or be deemed to waive any future breaches of this Agreement and will not be construed to be a waiver of any provision except for the particular instance.

CONTRACTOR:

ImageWare Systems, Inc.
Company Name

10815 Rancho Bernardo Rd., Suite 310
Street Address of Company

San Diego, CA 92127
City, State, Zip

(858) 673-8600
Business Phone

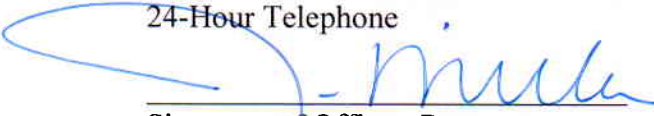
(858) 673-1770
Fax

Date: September 9, 2014

sales@iwsinc.com
Email Address

David Lotze
Contact Name (Print)

858-683-7940
24-Hour Telephone


Signature of Officer, Partner or
Sole Proprietor

Jim Miller - Chairman & CEO
Print Name & Title

ATTEST: If a Corporation


Signature of Corporation Secretary

VILLAGE OF DOWNERS GROVE:

Authorized Signature

Title

Date

ATTEST:

Signature of Village Clerk

Date

EXHIBIT A CAMPAIGN DISCLOSURE CERTIFICATE

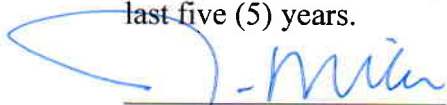
The Campaign Disclosure Certificate is required pursuant to the Village of Downers Grove Council Policy on Ethical Standards and is applicable to those campaign contributions made to any member of the Village Council.

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.

Contractor/proposer/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: _____

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



Signature

Jim Miller

Print Name

Contractor 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