

RESOLUTION NO. 24-71

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH FORWARD THINKING SYSTEMS, LLC FOR GPS FLEET MANAGEMENT SOFTWARE AND RELATED SERVICES IN THE ESTIMATED ANNUAL AMOUNT OF \$41,989.00.

BE IT RESOLVED that the appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain Agreement with Forward Thinking Systems, LLC for GPS fleet management software setup, installation, support, and maintenance in the estimated annual amount of Forty-One Thousand Nine Hundred Eighty-Nine Dollars and No Cents (\$41,989.00), in substantially the form **attached** as Exhibit A and presented to the Council today, with such changes, insertions, or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED, APPROVED AND ADOPTED in regular session this 11th day of January, 2024.

CITY OF PANAMA CITY BEACH

By: 
Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk

AGREEMENT FOR GPS FLEET MANAGEMENT SYSTEM

THIS AGREEMENT is made this _____ day of _____, 2024 by and between the **CITY OF PANAMA CITY BEACH, FLORIDA**, (hereinafter called "City"), whose principal address is 17007 Panama City Beach Parkway, Panama City, FL 32413 and **FORWARD THINKING SYSTEMS, LLC.**, whose principal address is 574 Jericho Turnpike, Suite 301, Jericho, NY 11753 (hereinafter called "Vendor"), for the implementation of GPS Fleet Management System which includes GPS hardware, installation, software and services ("Services").

In consideration of the mutual promises contained herein, the City and the Vendor agree as follows:

1. Scope of Agreement

The City agrees to purchase specified GPS hardware, and to subscribe to the software and receive the services detailed in the Request for Proposals, PCB24-09 ("RFP"). Vendor agrees to provide the Services, subject to the terms and conditions stated in this Agreement including all Exhibits and subject to the costs outlined in the RFP and Vendor's response to the RFP.

2. Incorporation by Reference

The Vendor shall supply Services adequate to accomplish the requirements as set forth in the RFP PCB24-09 and the Vendor's response to the RFP, which are incorporated herein by reference. Parties agree that where there is a conflict between terms of this Agreement and the information in RFP, Vendor's Response to the RFP, or any attachments to this Agreement, this Agreement shall take precedence. The parties also agree that where there is not a conflict between this Agreement and the attached Exhibits, that all terms, conditions and offers presented in the Vendor's proposal shall be incorporated into this Agreement and shall be binding upon all parties to the Agreement.

3. Incorporation of Forward Thinking System EULA

To the extent that the terms are not inconsistent with this Agreement, the City agrees to the terms of the Vendor's End User License Agreement ("EULA") as modified by the parties and attached as **Exhibit 1**.

4. Entire Agreement Clause

This Agreement, including all incorporated documents and Exhibits constitutes the entire Agreement between the City and Vendor and supersedes all proposals, presentations, representations, and communications, whether oral or in writing, between the parties on this subject.

5. Applicable and Governing Law Clause

This Agreement shall be governed by Florida law. The parties agree there is no requirement to arbitrate any disputes. The parties agree that the venue for any legal proceedings shall be filed in Bay County, Florida. Except as otherwise provided in this Agreement, each party shall bear its own attorney's fees and costs.

6. Term and Termination Clause

- a) **Term.** Unless terminated sooner pursuant to the provision of the termination clauses contained in this section, and subject to the availability of funds appropriated for this purpose, this Agreement shall take effect on the executed date of award and be valid for a period of three (3) years with an option to renew by mutual consent of each party for two additional one (1) year terms.
- b) **Termination For Cause other than for Non-Performance.** If either party shall fail to maintain or keep in force any of the terms and conditions of this Agreement, the aggrieved party may notify the other party in writing via certified mail of such failure and demand that the same be remedied within 20 business days. Should the defaulting party fail to remedy the same within said period, the other party shall thereupon have the right to terminate this Agreement by giving the other party 90 days written notice.
- c) **Termination For Cause: Non-Performance.** In the event that the City determines that Vendor is not performing in a manner consistent with the intent and spirit of this Agreement or in a manner consistent with commonly accepted business practices, then the City shall have the right to, in the sequence shown: (a) formally notify Vendor of non-performance, (b) reserve the right to withhold any and all payments pending, including support and maintenance fees, until the non-performance is corrected, (c) request a joint meeting of Vendor and City decision makers to attempt to resolve the non-performance, (d) require a Vendor employee to be on-site at the City's location until the non-performance is resolved, (e) request mediation of the non-performance dispute in to be held within the City's jurisdictional limits; (f) invoke the Termination clause herein if the non-performance issues is not resolved to the City's sole satisfaction within 60 days of placing the Vendor on notice of the issue.
- d) **Termination for No Cause.** Notwithstanding the foregoing, the City may, at any time and for any reason, terminate this Agreement by giving 60 days' notice in writing via certified mail to Vendor. Vendor shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for those services that have been timely and adequately performed by the Vendor considering the actual costs incurred by the Vendor in performing work to date of termination, the value of the work that is nonetheless usable to the City, the cost to the City of employing another Vendor to complete the work

required and the time required to do so, and other factors that affect the value to the City of the work performed at time of termination. Termination under this paragraph shall not relieve the Vendor of any obligation or liability that has occurred prior to cancellation.

- e) **Failure to Fund.** If the City's governing body does not appropriate funds to make any payment for a fiscal year after the City's fiscal year in which the contract becomes effective and there are no proceeds available for payment from the sale of bonds or other debt instruments, then this Agreement shall automatically terminate at the beginning of the first day of the successive fiscal year.

7. Indemnification and Mediation

- a) **Indemnity.** Vendor shall indemnify, save harmless and defend the City, its officers, agents, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees and any and all other costs or fees (whether grounded in Constitutional law, Tort, Contract, or Property Law, or raised pursuant to local, state or federal statutory provision), arising out of the performance of the resulting agreement and/or arising out of a willful or negligent act or omission of the Vendor, its officers, agents, and employees. It is understood and agreed that the Vendor and any employee or sub-Vendor of Vendor shall not be considered an employee of the City. The Vendor shall not be within the protection or coverage of the City's workers' compensation insurance, health insurance, liability insurance or any other insurance that the City from time to time may have in force and effect. The City specifically reserves the right to reject any and all of Vendor's employees, representatives or sub-Vendors and/or their employees for any cause, should the presence of any such person on City property or their interaction with City employees be found not in the best interest of the City, harassing, or is found to interfere with the effective and efficient operation of the City's workplace.
- b) Vendor shall assume the defense of the City pursuant to the provisions of the paragraph above within twenty (20) days of receipt of written notice. Any legal cost or expense, including attorney's fees, incurred by the City for enforcement of its rights under the paragraph above between the time by which Vendor should have assumed the City defense and the time when Vendor assumes the City's defense shall be reimbursed by Vendor. Any legal cost or expense, including attorney's fees, incurred by the City in the successful prosecution of any litigation or arbitration seeking to enforce the provisions of the paragraph above or in negotiating a settlement of such claim, shall also be reimbursed by Vendor.
- c) The parties agree that, before resorting to litigation, they will engage in nonbinding mediation to resolve any dispute regarding enforcement of the

provisions of this paragraph. The parties shall share the cost of mediation equally.

8. Insurance

Vendor shall meet the insurance requirements attached as **Exhibit A** of the RFP.

9. Public Information Act

Vendor acknowledges that the City is subject to the Government in the Sunshine Law. Vendor shall comply with the Sunshine Law in all respects and shall not restrict or otherwise inhibit the City from complying. Any provision in the Agreement that attempts to prevent the City's disclosure of information that is subject to public disclosure under federal or Florida law or regulation, or court or administrative decision or ruling, is invalid.

10. Notices Clause

All notices or communications required or permitted as a part of the Agreement shall be in writing (unless another verifiable medium is expressly authorized) and shall be deemed delivered when actually received, or upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the party, or if not actually received, 10 days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the respective other party. The addresses of the parties to this Agreement are as follows:

Forward Thinking Systems, LLC
Att: _____
574 Jericho Turnpike, Suite 301
Jericho, NY 11753

City of Panama City Beach, FL
Purchasing Manager
17007 Panama City Beach Parkway
Panama City Beach, FL 32413

11. Amendments

The Agreement may be amended only upon the written agreement between the City and the Vendor.

12. Survival Clause

All duties and responsibilities of any party that, either expressly or by their nature, extend into the future, shall extend beyond and survive the end of the contract term or termination of this Agreement.

13. Effect of Regulation

Should any local, state, or national regulatory authority having jurisdiction over the City enter a valid and enforceable order upon the City which has the effect of changing or superseding any term or condition of this Agreement, such order shall be complied with, but only so long as such order remains in effect and only to the extent actually necessary under the law. In such event, this Agreement shall remain in effect, unless the effect of the order is to deprive the City of a material part of its Agreement with the Vendor. In the event this order results in depriving the City of material parts or raising their costs beyond that defined in this Agreement, the City shall have the right to rescind all or part of this Agreement (if such a rescission is practical) or to end the Agreement term upon ninety (90) days written prior notice to the Vendor. Should the Agreement be terminated under such circumstances, The City shall be absolved of all penalties and financial assessments related to cancellation of the Agreement.

14. Advertisement

Vendor shall not use, in its external advertising, marketing programs, or other promotional efforts, any data, pictures, or other representation of the City unless Vendor receives specific written authorization in advance from the City. Vendor will limit and direct any of its advertising on the City's premises and shall make arrangements for such advertising through the City. Vendor shall not install any signs or other displays within or outside of the City's premises unless in each instance the prior written approval of the City has been obtained. However, nothing in this clause shall preclude Vendor from listing the City on its routine City list for matters of reference.

15. Right to Withhold Payment

If the Vendor breaches any provision of this Agreement, the City shall have a right to withhold all payments due to the Vendor until such breach has been fully cured.

16. Non-Collusion

Vendor hereby represents and agrees that it has in no way entered any contingent fee arrangement with any firm, employee of the City, or other person or entity concerning the obtaining of this Agreement. In addition, Vendor agrees that a duly authorized Vendor representative will sign a non-collusion affidavit, in a form acceptable to the City that Vendor has not received from the City any incentive or special payments, or considerations not related to the provision of the Software and Services described in this Agreement.

17. Conflict of Interest

The Vendor shall not employ as a director, officer, employee, agent, or subcontractor any elected or appointed official of the City or any member of his/her immediate family.

18. Vendor Merger or Acquisition

In the event that the Vendor is merged or acquired, the acquiring entity shall honor all of the terms of the existing contract.

19. Abandonment or Default

If Vendor abandons or defaults the work on the contract and causes the City to purchase the services elsewhere, Vendor may be charged for any increased cost of goods, materials and/or services related thereto and shall be considered disqualified in any re-advertisement of the service and may not be considered in future bids for the same type of work for a period of three years for the same scope of work, goods or services.

20. Tax Exemption

The City is not liable to Vendor for any federal, state, or local taxes for which the City is not liable by law, including state and local sales and use taxes and federal excise tax. Accordingly, those taxes may not be added to any item. Vendors shall not charge for said taxes. If billed, the City will remit payment less sales tax.

21. Software Warranty

- a) Vendor represents and warrants that it has the right to grant all software licenses necessary for this Agreement. Vendor further represents and warrants that it has good and marketable title to any Software sold hereunder free and clear from all liens, encumbrances, and claims of infringement of patent, copyright, trade secret or other proprietary rights of third parties. Vendor further represents and warrants that neither the Software in the form delivered by Vendor to City, nor any modifications, enhancements, updates or upgrades thereto, nor the normal use thereof by City, will infringe any patent, copyright, trademark, trade secret or other proprietary right of any third party.
- b) If any third party makes a claim or files a lawsuit challenging City's right to use the Software, Vendor shall defend and indemnify City and hold it harmless for any and all losses, liabilities, judgments, damages, awards and costs (including legal fees and expenses) arising out of said claim or lawsuit, and for any monies paid in settlement thereof. Provided, however, that Vendor shall have the sole and exclusive right to select and retain counsel for the City in connection with the defense thereof and shall make all decisions relating to

the conduct of the City's defense and any settlement made on behalf of the City. In resolving any such infringement claim, Vendor shall, in its reasonable discretion, either procure a license to enable City to continue to use the Software or develop or obtain a non-infringing substitute acceptable to City at Vendor's cost.

- c) Vendor represents and warrants that the Software and related products as described with this Agreement will perform in accordance with all Documentation, Contract Documents, Vendor marketing literature, and any other communications attached to or referenced in this Agreement.
- d) Vendor represents and warrants that the Software and related products, including all modifications contracted under the terms of this Agreement, will meet the requirements of City as set forth in the RFP and Vendor's Response to the RFP.
- e) City has: (i) presented detailed technical specifications of the particular purpose for which the Services are intended, (ii) provided detailed descriptions and criteria of how the Services can be defined to accomplish particular purpose, and (iii) defined the exact procedures and techniques to be employed in testing whether the Service has achieved the defined performance of this particular purpose. Given this advanced preparation concerning, and documentation about, City's particular purpose, Vendor, at the time this Agreement is in force, has reason and opportunity to know the particular purpose for which the Services are required, that City is relying on Vendor's experience and knowledge of the Services needed and to identify those components which are most suitable and appropriate, and that City is relying on Vendor's experience and knowledge to identify the appropriate services that will assist in complying with the RFP. Therefore, Vendor warrants that the Services including all products included in this Agreement are fit for the purposes for which they are intended.
- f) Vendor represents and warrants that all services, software, and products provided under this Agreement are compatible with and certified for use and operation in City's operating environment.

22. Patents, Copyrights, and Proprietary Rights Indemnification

The Vendor, at its own expense, shall completely and entirely defend the City from any claim or suit brought against the City arising from claims of violation of United States patents or copyrights resulting from the Vendor or the City's use of any equipment, technology, documentation, and/or data developed in connection with the Services and described in this Agreement. The City will provide the Vendor with written notice of any such claim or suit. The City will also assist the Vendor, in all reasonable ways, in the preparation of information helpful to the Vendor in defending the City against this suit.

If the City is required to pay monies in defending such claims, resulting from the Vendor being uncooperative or unsuccessful in representing the City's interest, or in the event that the City is ordered to pay damages as a result of a judgment arising out of an infringement of patents and/or copyrights, Vendor agrees to fully reimburse the City for all monies expended in connection with these matters. The City retains the right to offset against any amounts owed Vendor any such monies expended by the City in defending itself against such claims.

Should a court order be issued against the City restricting the City's use of any portion of the Services related to the claim and should the Vendor determine not to further appeal the claim issue, at The City's sole option the Vendor shall provide, at the Vendor's sole expense, the following:

- g) Purchase for the City the rights to continue using any contested software or portions thereof which may include purchase of a third-party software product, or provide substitute software products and related services to the City which are, in the City's sole opinion, of equal or greater quality, or refund all monies paid to the Vendor for the Software and Services subject to the court action. The Vendor shall also pay to the City all reasonable losses related to the Software and Services and for all reasonable expenses related to the installation, implementation and conversion to the new Software and Services.

23. Right to Outsource

If software is licensed to the City, such software may be used by a third-party vendor hired by the City to perform outsource services on the City's behalf.

24. Use of Software by Personnel Who Are Not Employees

The City's consultants, Vendors, external customers, and business partners may access and use any software, application, or hardware under the City's direction.

25. Software Maintenance and Support/Extended Services

For as long as the City pays the service fees ("Annual Fees") delineated in the RFP and Vendor's response to the RFP, Vendor will provide the City with maintenance and support services ("Extended Services") with respect to the Services. Such Extended Services shall consist of the following:

- A. Vendor shall provide maintenance necessary to ensure its operation in material conformance with all documentation, Contract Documents and all representations and warranties set forth herein.

- B. Vendor shall provide the City with any revisions, updates, and enhancements of any software, hardware, or applications together with related documentation, during the period in which enhancement and support services under this Agreement are furnished.
- C. Vendor agrees that the rates specified for Extended Services shall remain in effect for a period of minimally two (2) years from initial contract signing.
- D. Vendor agrees not to assign its Extended Services obligations as contemplated herein, without prior written authorization of the City, which will not be unreasonably withheld. Vendor will not utilize subcontractors for any Extended Services provided herein without the express written authorization of the City.
- E. The City may cancel Extended Services upon ninety (90) day notification to the Vendor.
- F. Extended Services may be reinstated by the City at an amount not to exceed the back fees that would have been due if Extended Services had not been dropped. In the event of reinstatement of Extended Services, the City shall not be forced to move to a new subscription model.
- G. The Vendor shall give The City at least six (6) months' notice before unilaterally canceling Extended Services. In addition, the Vendor shall continue to support the Software as long as it is supporting such Software for other customers of Vendor.

26. Federally Mandated Changes

Vendor shall supply the City with all federally mandated changes to Vendor's software. Vendor will make a good faith effort to provide The City with these changes within ninety (90) days of their enactment dates prescribed by the aforementioned bodies. If Vendor is unable to supply these changes within ninety (90) days of the enactment, the City will be credited a prorated share of fees for every week Vendor is tardy in delivering the required change.

27. Future Releases/Upgrades

The City shall be entitled to future releases and upgrades, whether of a "minor" or major" nature, of Software for no additional cost beyond the fees included in the SOW and Pricing Schedule.

28. Solution Longevity

The Vendor certifies that the Software will remain available and fully supported by Vendor for a minimum of five (5) years from the date the Agreement is signed and that any material changes to Vendor's company or products will not

affect the City's implementation or Extended Services as long as the City pays its fees.

29. Successor Software Products

In the event Vendor makes available successor software products with substantially similar functionality as the software which may be based on a new technical architecture ("Successor Products") within 10 years of contract signing, City may transfer any subscriptions to the Successor Products for no additional fees. In such event, City shall pay the then-current fees for the Successor Products, in addition to any services and/or third-party fees associated with the Successor Products.

30. Functionality Replacement

The City maintains the rights to the software functionality that is subscribed to herein, even if that functionality later gets renamed or bundled by Vendor as a new product.

31. Payment Terms

The City's payments under the Agreement, including the time of payment and the payment of interest on overdue amounts, are subject to the City's payment policies. The City reserves the right to modify any amount due to Vendor presented by invoice to the City if necessary, to conform the amount to the terms of the Agreement.

Vendor shall invoice the City in accordance with this Agreement, the RFP and Vendor's response to the RFP. Vendor shall submit to the City an invoice in a form agreeable to The City. The invoice shall be accompanied by such supporting documentation as required by the City.

32. Intellectual Property

All information, data, programs, publications, and media created specifically for and paid for by the City or as a result of the Services identified in this Agreement is the property of the City unless otherwise noted, copyright protected, or defined or agreed to by both parties to this Agreement. See attached amended EULA for City owned data.

33. Subcontractors

Vendor may use subcontractors in connection with the work performed under this Agreement. In using subcontractors, the Vendor agrees to be responsible for all of their acts and omissions to the same extent as if the subcontractors were employees of the Vendor.

34. Professional Services Warranty

- a) Vendor agrees at all times to maintain an adequate staff of experienced and qualified employees for efficient performance under this Agreement. Vendor agrees that, at all times, the employees of Vendor furnishing or performing any services shall do so in a proper, workmanlike, and dignified manner.
- b) Vendor agrees that all persons working for or on behalf of Vendor whose duties bring them upon the City's premises shall obey the rules and regulations that are established by the City and shall comply with the reasonable directions of the City's officers. The City may, at any time, require the removal and replacement of any of Vendor's employees for good cause.
- c) Vendor shall be responsible for the acts of its employees and agents while on the City's premises. Accordingly, Vendor agrees to take all necessary measures to prevent injury and loss to persons or property located on the City's premises. Vendor shall be responsible for all damages to persons or property caused by Vendor or any of its agents or employees. Vendor shall promptly repair, to the specifications of the City, any damage that it, or its employees or agents, may cause to the City's premises or equipment; on Vendor's failure to do so, the City may repair such damage and Vendor shall reimburse the City promptly for the cost of repair.
- d) Vendor agrees that, in the event of an accident of any kind, Vendor will immediately notify the City's contact person and thereafter, if requested, furnish a full written report of such accident.
- e) Vendor shall perform the services contemplated in the Agreement without interfering in any way with the activities of the City's staff or visitors.
- f) Vendor and its employees or agents shall have the right to use only those facilities of the City that are necessary to perform services under this Agreement and shall have no right to access any other facilities of the City. The City shall also extend parking privileges to properly identified members of Vendor's full-time staff on the same basis as they are extended to the City's staff.
- g) The City shall have no responsibility for the loss, theft, mysterious disappearance of, or damage to equipment, tools, materials, supplies, and other personal property of Vendor or its employees or subcontractors.

35. Force Majeure Clause

Timely performance is essential to the successful initial implementation and ongoing operation of the network described herein. However, neither party will be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by force majeure. Force majeure shall be defined as unexpected or uncontrollable events, including those caused by nature that can impact the contract's price, terms, and conditions. These events are not the result

of contractor negligence and may excuse contractor performance during the events and under certain conditions caused by them. Acts of God or disruptive conditions for which a contractor or carrier will not be held responsible.

36. Force Majeure Requisites

Force majeure shall not be allowed unless:

- a) Within ten (10) calendar days of the occurrence of force majeure, the party whose performance is delayed thereby shall provide the other party or parties with written notice explaining the cause and extent thereof, as well as a request for a time extension equal to the estimated duration of the force majeure events.
- b) Within twenty (20) calendar days after the cessation of the force majeure event, the party whose performance was delayed shall provide the other party written notice of the time at which force majeure ceased and a complete explanation of all pertinent events pertaining to the entire force majeure situation.

37. 120 Day Maximum

Under no circumstances shall delays caused by a force majeure extend beyond hundred-twenty (120) days from the scheduled delivery or completion date of a task, unless by prior [to the end of the hundred-twenty (120) day period] written approval is received from the other party. Failure to secure this written prior permission, even in the case of force majeure, shall constitute default by the party failing to meet the requirement.

38. Video and Audio Recording

The City reserves the right to record video and/or audio of any and all training sessions, whether held at a City site, Vendor site, or via teleconference. Use of such recordings shall be strictly for City staff training purposes.

39. Disaster Recovery

Vendor has developed and implemented a business continuity/disaster recovery plan that aligns with government standards and requirements and will continue to maintain a commercially reasonable business continuity/disaster recovery plan for the term of this Agreement. As part of Vendor's business continuity/disaster recovery program, Vendor has fully-redundant telecommunications access, electrical power, and the required hardware to provide access to the Services in the event of a component or system failure or any other unplanned interruption whether caused by a disaster or otherwise. In the event any of the City data has been lost or damaged due to an act or omission of Vendor or its sub-vendors or due to a defect in Software, Vendor will use best commercial efforts to restore all the data on servers in accordance with the architectural design's capabilities and with the goal of

minimizing any data loss as greatly as possible. In no case shall the recovery point objective (“RPO”) exceed a maximum of twenty-four (24) hours from declaration of disaster. For purposes of this subsection, RPO represents the maximum tolerable period during which the City data may be lost, measured in relation to a disaster Vendor declares, said declaration will not be unreasonably withheld. The Force Majeure provisions herein shall not limit Vendor’s obligations under this section, meaning that, a Force Majeure event does not relieve Vendor of its obligation to implement its business continuity/disaster recovery plan to the extent it is able to do so in light of the Force Majeure event.

Vendor will test the business continuity/disaster recovery plan on an annual basis. Vendor’s standard test is not The City-specific. If The City requests a City-specific disaster recovery test, Vendor will work with The City to schedule and execute such a test on a mutually agreeable schedule.

40. Back-up and Recovery

Vendor will (i) execute nightly database backups to a backup server in a secure offsite location and (ii) save the last ten (10) nightly database backups in a secure offsite location. The City will have the ability to download any of the backups to The City’s location. The Software shall be configured to perform incremental backups every eight (8) hours, such that the database can be restored to the last committed transaction and/or point in time of the last incremental backup, which will have occurred up to two-hours earlier, in the event of a system failure.

41. Secure Data Transmission

Vendor will provide secure data transmission paths for City data; all data transmission between Vendor’s hosted environment and the City’s environment shall be encrypted.

Vendor guarantees that all the City data that Vendor hosts will always be located within the United States

42. City Notification if Third-Party Request for Data

Unless the notification is specifically precluded by such law, lawful order, or government authority, as applicable, Vendor shall notify the City in the event that Vendor is required by law, lawful order of a court (including, without limitation, request for production of documents), or governmental authority to disclose the City data. In the event that Vendor is required to produce or disclose City/Customer Data, unless prohibited as set forth above, then Vendor shall provide the City with written notice of the request sufficiently in advance of the data specified for the production of the records so that the City can act to protect its data by, for example, seeking a protective order. In addition, to the extent permitted by law, Vendor shall

not release the data pending the outcome of any measures taken by the City to contest, otherwise oppose, or seek to limit disclosure by Vendor.

43. Provision of City Data upon Termination

Upon termination or non-renewal of this Agreement, Vendor will promptly provide upon request any City/Customer Data. Such data will be provided no later than sixty (60) days prior to the date of expiration or termination, as applicable, (provided at least 10 days advance notice by The City) and again seven (7) days after date of expiration or termination, as applicable.

44. Transition Services

Upon expiration or termination of this Agreement, upon The City's request, Vendor will cooperate with the City and provide services that are reasonably necessary to effectuate an orderly transition to a new system, solution, or provider; provided that The City shall pay Vendor's then-current rates for such services. Such cooperation and services shall include assistance with data conversion and, at Vendor's option, may include the provision of file layouts to the City on a confidential basis for the purpose of identifying the data Vendor provided to The City.

Data should be returned to the customer in Vendor's native data format with appropriate data schemas and dictionaries. Once a successful hand-off of the City's data has been confirmed, all City/Customer data should be permanently removed from all vendor servers.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized officials, this Agreement on the date first written above.

CITY:

The City of Panama City Beach

Attest:

By: Drew Whitman, City Manager

City Clerk

Approved as to Form:

City Attorney

VENDOR:

Forward Thinking Systems, LLC.

By:

Its:

Forward Thinking Systems End User License Agreement

This End User License Agreement (this "Agreement") applies to you ("you" and "your") as a user of any Forward Thinking Systems software, service, equipment, or other solution, including without limitation, FleetCam (collectively, the "Services") provided by Forward Thinking Systems LLC ("FTS" or "we"). By using any of the Services, you accept all and agree to the terms and conditions of this Agreement.

You acknowledge that your use of the Services is: (a) allowed by express authorization from an FTS customer ("Customer"); and (b) subject to the terms and conditions of any and all agreements between FTS and Customer (the "Customer Contract").

1. Software License. "Software" means any software product delivered by FTS to Customer in, including without limitation, any of the following: web-based software; scripts/code loaded on Hardware; applications for use on mobile devices; and all other web-based services provided to Customer. Subject to the terms of this Agreement and Customer's payment of all service fees when due under this Agreement, FTS hereby grants you a limited, non-transferable, non-exclusive right and license to access and use the Software solely in conjunction with Customer's access and use of the services, solely for Customer's internal business purposes. The Software is only licensed pursuant to the terms contained in this Agreement and the Customer Contract, not sold. The foregoing license shall not include any right to: (i) copy, reproduce, modify or create any derivative work of any Software; (ii) sell, rent, lease, loan, license, sublicense, provide, distribute or otherwise transfer Software to any third party; (iii) use the Software for third-party training, commercial time-sharing or service bureau use; (iv) cause or permit the disassembly, decompilation, or reverse engineering of any Software or otherwise attempt to gain access to the source code of any Software; (v) grant access to the Software to any third party or other user without the authorization and requisite license from FTS or (vi) cause or permit any third

party to do any of the foregoing. Customer receives no title or ownership rights to any Software. Except for the license granted in this Section, all right, title and interest in the Software shall remain the exclusive property of FTS or its licensors.

2. Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, FTS MAKES, AND YOU RECEIVE, NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE EQUIPMENT, THE SERVICES, AND/OR THE SOFTWARE, AND FTS SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NONINFRINGEMENT, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE.

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ARISE FROM OR RELATE TO CUSTOMER'S USE OF THE EQUIPMENT OR
(B) ANY THIRD-PARTY CLAIMS AGAINST CUSTOMER OR YOU.

4. Compliance; Security. You shall comply with all applicable laws in connection with your use of the Services. You are solely responsible for your failure to keep all user identifications and passwords (your "Login Credentials") secure. If you believe the security of your Login Credentials has been compromised, or you suspect unauthorized use, you will promptly notify us. We will be entitled to treat all communications, instructions and transactions as authorized by you if your Login Credentials are used unless you have notified us of compromise or unauthorized use of your Login Credentials. If we suspect, in our reasonable opinion, fraudulent or unauthorized activity on your account, we reserve the right to terminate or suspend your access to our website or any applicable services or both and will contact you prior to terminating or suspending your access to advise of this decision.

We maintain reasonable technical and organizational security and data storage policies and measures for facilities within our control. You shall not provide third parties with access to any software and non-public information in and regarding the Products and any other confidential information that we provide without our prior written consent, except to your own employees or legally compelled to do so. We will not disclose your Individual Vehicle Data or any Driver Data to any third party.

5. Data Collection.

We claim no ownership of any vehicle data that you generate and associate with our Devices installed in your vehicle(s) ("**Individual Vehicle Data**") or any information about any particular driver of a vehicle which you generate and associate with our Devices installed in your vehicles ("**Driver Data**"), either of which you transmit or process using our Products. Individual Vehicle Data may include information about the location of the Device and the vehicle it is installed

in. We will process and transmit Individual Vehicle Data and Driver Data to provide, maintain and improve our Products and perform obligations under this Agreement and applicable law. You may request copies of Individual Vehicle Data and Driver Data from us during the term of this Agreement.

FTS compiles, stores and uses aggregated data, system usage information, and elements of Individual Vehicle Data from which it is not reasonably possible to identify you to monitor and improve the Products and for the creation of new products. The aggregated and unidentifiable data that we use in this manner is not associated with an individual vehicle or a driver and as such is not Individual Vehicle Data or Driver Data. FTS will not attempt to disaggregate the data or re-associate it with a vehicle or driver without your written consent or unless legally compelled to do so or unless required for safety or troubleshooting purposes.

6. TERMINATION.

We reserve the right to terminate this Agreement in whole or in part with or without notice if: you materially breach or otherwise materially fail to comply with any provision of this Agreement.

Upon any termination of this Agreement and upon written request we will transmit to you a copy of the Individual Vehicle Data and Driver Data stored on our systems as of the date of termination. We will not retain or use any of the Individual Vehicle Data or Driver Data 30 days after the termination date of this Agreement.

**PC824-09
GPS FLEET MANAGEMENT SYSTEM**

Per the RFP, scoring for each responding firm was determined using the assigned points for each of the referenced criteria elements:

Criteria Element	AAT Inc.		Forward Thinking Systems		Verizon Connect		LB Technology, Inc.		Zonar Systems	
	Average Score	Total Possible Points	Average Score	Points Scored	Average Score	Points Scored	Average Score	Points Scored	Average Score	Points Scored
I. Specifications and Functionality as outlined in the Scope of Services - Proposer to complete Form 1.02	3.25	35	4.25	29.75	2.25	35	3.88	35	3.75	35
II. Project Approach - Proposer's work plan for the project, installation and expected date of completion.	3.00	15	4.00	12.00	2.38	15	3.00	15	3.38	15
III. Qualifications - Proposer's experience, training, installers and call centers	2.63	15	4.00	12.00	3.13	15	3.38	15	3.00	15
IV. Past Performance and References	2.50	15	4.00	12.00	2.38	15	3.88	15	2.88	15
V. Cost Analysis - A/B + C - D		20		20.00		20		20		20
	TOTAL	100	TOTAL	85.75	TOTAL	100	TOTAL	100	TOTAL	60.99

Scoring Legend

Superior:	4.1 - 5
Excellent:	3.1 - 4
Good:	2.1 - 3
Fair:	1.1 - 2
Poor:	0 - 1

Purchasing Completes for scoring for the price element

Company	Points
Summary	
AAT Inc.	55.24 #DIV/0!
Forward Thinking Systems	85.75 #DIV/0!
Verizon Connect	51.95 #DIV/0!
LB Technology Inc.	72.85 #DIV/0!
Zonar Systems	60.99 #DIV/0!
Samtara	60.03 #DIV/0!
TALONIS Inc.	51.92 #DIV/0!
Precise MRM	59.91 #DIV/0!
Warren Installations	58.34 #DIV/0!
goFleet Corporation	64.33 #DIV/0!
Digital Ally, Inc.	39.74 #DIV/0!
CalAmp	60.08 #DIV/0!
Iler Group/Fleetistics	53.75 #DIV/0!
Motive Technologies	#DIV/0! #DIV/0!
T-Mobile - FL	57.32 #DIV/0!

Samsara			TALOSYS Inc.			PreCise MRM			Warren Installations			goFleet Corporation			Digital Ally, Inc.			CalAmp		
Average Score	Total Possible Points	Points Scored	Average Score	Total Possible Points	Points Scored	Average Score	Total Possible Points	Points Scored	Average Score	Total Possible Points	Points Scored	Average Score	Total Possible Points	Points Scored	Average Score	Total Possible Points	Points Scored	Average Score	Total Possible Points	Points Scored
3.00	35	21.00	2.50	20	10.00	3.88	20	15.50	2.85	20	11.40	3.75	20	15.00	1.75	20	7.00	2.75	20	11.00
3.00	15	9.00	3.00	25	15.00	2.75	25	13.75	3.25	25	16.25	3.38	25	16.88	2.13	25	10.63	3.13	25	15.63
3.00	15	9.00	2.50	10	5.00	3.13	10	6.25	3.25	10	6.50	3.50	10	7.00	2.00	10	4.00	3.15	10	6.30
3.38	15	10.13	2.13	25	10.63	3.13	25	15.63	3.50	25	17.50	3.13	25	15.63	1.75	25	8.75	3.50	25	17.50
	20	10.90		20	11.29		20	8.78		20	6.69		20	9.83		20	9.37		20	9.66
TOTAL	100	60.03	TOTAL	100	51.92	TOTAL	100	59.91	TOTAL	100	58.34	TOTAL	100	64.33	TOTAL	100	39.74	TOTAL	100	60.08

Iler Group/Fleetistics			Motive Technologies			T-Mobile - FL		
Average Score	Total Possible Points	Points Scored	Average Score	Total Possible Points	Points Scored	Average Score	Total Possible Points	Points Scored
3.10	20	12.40	0.00	20	0.00	3.25	20	13.00
3.00	25	15.00	0.00	25	0.00	2.63	25	13.13
2.88	10	5.75	0.00	10	0.00	2.88	10	5.75
2.75	25	13.75	0.00	25	0.00	1.88	25	9.38
	20	6.85		20	#DIV/0!		20	16.07
TOTAL	100	53.75	TOTAL	100	#DIV/0!	TOTAL	100	57.32

	A	B	C	D
	Lowest Price/	Proposer Price x	Max Points	= Cost Score
AAT Inc.	\$ 145,767.00	\$359,460.00	20	8.11
Forward Thinking Systems	\$ 145,767.00	\$145,767.00	20	20.00
Verizon Connect	\$ 145,767.00	\$231,885.00	20	12.57
LB Technology Inc.	\$ 145,767.00	\$194,735.00	20	14.97
Zonar Systems	\$ 145,767.00	\$416,980.52	20	6.99
Samsara	\$ 145,767.00	\$267,352.60	20	10.90
TALOSYS Inc.	\$ 145,767.00	\$258,163.75	20	11.29
PreCise MRM	\$ 145,767.00	\$331,903.00	20	8.78
Warren Installations	\$ 145,767.00	\$435,680.00	20	6.69
goFleet Corporation	\$ 145,767.00	\$296,596.00	20	9.83
Digital Ally, Inc.	\$ 145,767.00	\$311,256.30	20	9.37
CalAmp	\$ 145,767.00	\$301,816.00	20	9.66
iller Group/Fleetistics	\$ 145,767.00	\$425,648.00	20	6.85
Motive Technologies	\$ -	\$0.00	20	#DIV/0!
T-Mobile - FL	\$ 145,767.00	\$181,405.20	20	16.07