

Certificate Of Completion

Envelope Id: BC1AADE3491B4F1CB94C55BF7FF3D691

Status: Completed

Subject: DataVoice Proposal

Source Envelope:

Document Pages: 16

Signatures: 3

Envelope Originator:

Certificate Pages: 5

Initials: 0

Steve Maynard

AutoNav: Enabled

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Apex, NC 27502-0250

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Steve.Maynard@apexnc.org

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Status: Original

Holder: Steve Maynard

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8/20/2024 2:16:21 PM

Steve.Maynard@apexnc.org

Signer Events

Kelli Froman

kelli@datavoiceint.com

Director of Operations

Security Level: Email, Account Authentication
(None)**Signature**Signed by:

669469E600314FE...Signature Adoption: Drawn on Device
Using IP Address: 172.58.145.96
Signed using mobile**Timestamp**

Sent: 8/20/2024 2:20:52 PM

Viewed: 8/21/2024 1:11:43 AM

Signed: 8/21/2024 1:12:47 AM

Electronic Record and Signature Disclosure:

Accepted: 8/21/2024 1:11:43 AM

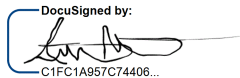
ID: 866f0304-d74b-4380-9fcd-0be6e2e2ff27

Antwan Morrison

Antwan.Morrison@apexnc.org

Finance Director

Town of Apex

Security Level: Email, Account Authentication
(None)DocuSigned by:

C1FC1A957C74406...Signature Adoption: Drawn on Device
Using IP Address: 96.10.1.162

Sent: 8/21/2024 1:12:50 AM

Viewed: 8/21/2024 8:03:14 AM

Signed: 8/21/2024 8:03:34 AM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Randal E. Vosburg

Randy.Vosburg@apexnc.org

Town Manager

Security Level: Email, Account Authentication
(None)DocuSigned by:

4F2B7C4B5FA3479...Signature Adoption: Pre-selected Style
Using IP Address: 98.122.166.220

Sent: 8/21/2024 10:42:33 AM

Viewed: 8/25/2024 10:44:56 PM

Signed: 8/25/2024 10:45:11 PM

Electronic Record and Signature Disclosure:

Accepted: 4/22/2024 2:50:44 PM

ID: 7dc2f3d5-45fe-4205-86c5-bc0f9c8d3178

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp**

Certified Delivery Events	Status	Timestamp
Shawn Purvis Shawn.Purvis@apexnc.org Deputy Town Manager Town of Apex Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 8/2/2023 6:44:25 PM ID: a3b12eff-cabd-42c8-8821-55242077afad	VIEWED Using IP Address: 96.10.1.162	Sent: 8/21/2024 8:03:39 AM Viewed: 8/21/2024 10:42:33 AM
Carbon Copy Events	Status	Timestamp
Allen Coleman allen.coleman@apexnc.org Town of Apex Attn: Amber Bobbitt Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 8/26/2024 10:23:16 AM ID: 5c21f2bd-f99c-4d8a-9511-dcb06115fcb5	COPIED	Sent: 8/21/2024 8:03:37 AM Viewed: 8/27/2024 11:32:31 AM
Allen Coleman allen.coleman@apexnc.org Town of Apex Attn: Amber Bobbitt Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 8/26/2024 10:23:16 AM ID: 5c21f2bd-f99c-4d8a-9511-dcb06115fcb5	COPIED	Sent: 8/25/2024 10:45:14 PM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	8/20/2024 2:20:52 PM
Certified Delivered	Security Checked	8/25/2024 10:44:56 PM
Signing Complete	Security Checked	8/25/2024 10:45:11 PM
Completed	Security Checked	8/25/2024 10:45:14 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Town of Apex (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Town of Apex:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: troy.salahuddin@apexnc.org

To advise Town of Apex of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at troy.salahuddin@apexnc.org and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Town of Apex

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to troy.salahuddin@apexnc.org and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Town of Apex

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to troy.salahuddin@apexnc.org and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Town of Apex as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Town of Apex during the course of your relationship with Town of Apex.



Proposal

To provide:
Change order for quote 15970

For:
Apex, Town of
Apex, NC

Presented to:
Troy Salahuddin

Issued:
Friday 10th of May 2024 02:26:50 PM

Contact:
Kendra Banton
Account Manager

DataVoice International
800 N. Watters Road, Ste 130
Allen, TX 75013
(972)390-8808

Statement of Work:

DataVoice will install and configure the product modules pursuant to the scope set forth in the Product Description section of the proposal. Products listed as Optional at the time of signing are not included in any installation and configuration until they are purchased by the customer. Any material changes or deviations from the standard configuration may, in DataVoice's sole discretion, result in additional fee(s). It is specifically understood that non-disclosed or misrepresented material facts and issues revealed during the discovery process may require additional fees.

In review of the items that are part of quote 15970, it is agreed that the following items need to be changed.

Remove from Quote 15970	Net Invoice	Annual Cost
Not Needed- Payment Provider Migration for IVR Not	\$2,445.00	\$267.50
Needed-Payment Portal Migration for SmartCE app.	\$550.00	\$0
Not Needed- Smart CE Usage Data	\$4,554.00	\$1,070

These items have not been billed in full at this time as the work is not done. They will be credited off the Work Order (\$7,549 License and PS, \$1,337.5 Maint and the new items will be applied. The other two items that are part of the original quote will apply.

Remain on Quote 15970	Net Invoice	Annual Cost
Account Balance/Payment Information	\$3,769.30	\$1,736.08
CIS Vendor Integration To OMS	\$8,519.50	\$1,029.88

Balance of Net Invoice \$12,288.80 and Maint \$2,765.96 remaining from the original invoice will be billed upon completion. Project Management fees for a 90 day project implementation have been included. If the project delays beyond the 90 period, DataVoice reserves the right to submit a change order for additional project management fees as necessary.

QUOTATION COST SUMMARY

NON-RECURRING, INITIAL COSTS

OMS	
License Fees:	\$0.00
Professional Services:	\$0.00
Subtotal:	\$0.00
Total non-recurring costs	\$ 0.00

RECURRING FEES, ANNUAL COST

Total annual cost of recurring fees	\$0.00
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Product Descriptions

The OMS portion of the proposal includes the following modules:

Credit for Modules removed.

1. PRICING

Prices quoted here are good for ninety(90) days from the date of this document. Price includes software, license fees, unlimited seat licenses, database administration fees, installation, configuration, testing and training.

2. PAYMENT AND TERMS

In consideration for the software provided and services delivered by DataVoice, Customer agrees that DataVoice will only charge \$12,288.80 from Quote #15970. A Certificate of Installation and a Certificate of Completion will be issued as defined in the Section titled ACCEPTANCE TESTING. The payment terms will be 'net 30 days' on all invoices. Recurring fees and maintenance will be billed immediately following final milestone payment and will be due in 30 days.

Milestone	Contingent On	Terms	Amount
BU Amount from Sale	None		\$0.00
Contract Signing	None		\$0.00
Start Project - Project Kickoff Meeting	None		\$0.00
Installation Complete	None	50%	\$0.00
Project Completed Ready for final testing	None	50%	\$0.00
Project Completed -Final Billing	None		\$0.00
Training	None		\$0.00
Go Live	None		\$0.00

3. FEES

- a. License, Maintenance and Other Fee Rates: DataVoice may revise rates at any annual renewal date. Customer will be advised in writing of the revised rates 60 days prior to the renewal date.
- b. Auto-Renewal: At the end of the License Term, the services may be renewed for an additional term of twelve months by a writing signed by both parties.
- c. Prices are for quoted products and services only based on discovery and customers disclosures to date. Pricing for future and additional purchased products or pursuant to any Cooperative Purchasing Agreement will be at DataVoice then-current pricing and not based upon pricing in this Agreement.

5. DELIVERY METHOD FOR SOFTWARE AND MAINTENANCE SERVICES

Software will be delivered electronically. If required, Customer shall make available a standard office environment on Customer's premises for on-site maintenance or other services. If upon arrival to site, DataVoice is not able to start work due to lack of access or preparation on the part of the Customer, work stoppage time is billable.

4. CONDITIONS

All software and services provided within the scope of this document have been priced accordingly and

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listed above. Any additional system requirements, software modules, software changes or configuration changes deemed necessary by the utility will be performed under a separate 'Change Order'. Any such changes may affect the annual maintenance. It is specifically understood by the parties that this Agreement, once negotiated, can and will serve as a Cooperative Purchasing Agreement pursuant to which affiliated entities may purchase products and services from DataVoice.

6. ACCEPTANCE TESTING

DataVoice will:

- Electronically deliver the software on server.
- Setup, configure and test the system.
- Provide Management a system presentation and issue a Certificate of Installation.
- Customer will be allowed 10 business days for System Testing and to report of any issues to DataVoice in writing, or the Certificate of Installation will be deemed accepted.
- Should an event occur that inhibits the Customer from performing System Testing during this time period, the Customer may submit a written request for an extension, which extension is subject to approval in DataVoice's sole discretion.
- DataVoice will correct valid issues identified by Customer, then allow customer 5 business days to verify corrections.
- The above process will repeat until all issues are resolved or the 5 day period has expired.
- DataVoice will then issue a Certificate of Completion and the final invoice.

7. RESPONSIBILITIES OF DATAVOICE INTERNATIONAL, INC

During the term of this agreement, DataVoice take commercially reasonable measures to:

- a. Under normal conditions, keep the DataVoice Software and covered hardware (if applicable) in good operating condition and shall provide maintenance when the covered hardware is inoperative and/or software fixes in a timely fashion.
- b. Software fixes will be provided in a timely fashion.
- c. Provide remote maintenance software for DataVoice System.
- d. Provide software for 24 hour system monitoring to detect material and relevant software and hardware issues
- e. Install, maintain and upgrade all third party software applications such as PostGreSQL, Post GIS, Apache2, PHP, etc.
- f. Provide emergency technical support 24 hours a day.
- g. Install, configure and upgrade DataVoice supplied system software at DataVoice's discretion when patches or upgrades are available.
- h. Provide backup prior to any upgrade
- i. PCI Compliance Requirements: DataVoice's PCI compliance is limited to the communication between the caller and the credit card provider once the call has been transferred to the PCI IVR. If the call or any data is still resident on the utility's network, it is the responsibility of the utility to maintain the compliance for any hardware that is involved.

8. RESPONSIBILITIES OF CUSTOMER

At all times during the term of this agreement, Customer shall:

- a. **Customer will designate a project manager responsible for keeping the project on schedule and ensuring delivery of requirements as specified.**

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- b. If applicable, Customer will maintain the room in which the DataVoice System is located in a clean and appropriate fashion which includes adequate air conditioning and lighting and adequate power outlets.
- c. Provide an Internet connection to each DataVoice System for remote maintenance software. Customer shall keep this connection activated at all times.
- d. Customer is responsible for all backups of programs and operating system.
- e. Customer responsible for monitoring the health of the PC (including but not limited to the monitoring of disk space, memory utilization, etc.)
- f. Customer will designate a responsible individual and one alternate as the Customer contact for IT service coordination.
- g. Customer will be responsible for notifying DataVoice of any password changes, upgrades, or IP address changes to any third party systems (if needed).
- h. Customer will provide a UPS system for the equipment.
 - i. For non-hosted solutions, Customer will be responsible for running and maintaining anti-malware software on any server running DataVoice software.
 - j. Customer will not permit real time scanning of network traffic on any servers hosting DataVoice software.
- k. Customer will not disclose to any third parties any confidential information provided by DataVoice, except as required by N.C.G.S. Chp. 132, unless agreed upon in writing by DataVoice. This includes, but is not limited to, DataVoice training guidance, software, hardware, and any other data or information provided by DataVoice during a demonstration of services to Customer and/or during the term of this agreement. This provision shall survive the expiration or termination of this agreement.
- l. For non-hosted solutions, Customer will not install any software without written DataVoice approval.
- m. Customer understands and acknowledges that failure to maintain up-to-date systems in reasonable compliance with DataVoice IT specifications may result in additional support and other charges on a time and material basis.
- n. For non-hosted solutions, Customer will not run any OS that has been deprecated by its vendor, and failure to do so may result in significant additional support and other charges on a time and material basis.

8.1 SECURITY RESPONSIBILITIES OF CUSTOMER

Customer agrees to comply:

- a. **Passwords.** Customer agrees to comply with all DataVoice's security policies and procedures as provided to it and amended from time to time. Customer and its Users shall be responsible for keeping any and all passwords, user ID's, log-in credentials and private keys assigned to its Users secret and confidential. User ID's, passwords, login-in credentials and private keys are for Customer's internal use only and Customer may not sell, transfer or sub-license them to any other entity or person except that Customer may disclose its private key to its agents performing work on its behalf. Customer agrees that it is and shall remain solely and completely liable for any communications or other uses that are made using Customer's or its Users' passwords and user ID's or log-in credentials and private keys, as well as any obligation that may result from such use. Customer agrees to notify DataVoice in writing if it believes that a password has been stolen or might otherwise be misused. Customer agrees to notify DataVoice immediately of any unauthorized use of any password or user ID or any other breach of security suspected by Customer.
- b. **Compliance with Laws.** Customer represents and warrants to DataVoice that it and its

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Users will at all times be in compliance with all applicable local, state, provincial, federal and international laws, rules and regulations including but not limited to, those laws regarding restrictions on exports, defamation, libel, harm to reputation, invasion of privacy, misuse or failure to protect personal information, violation of secrecy, confidentiality, unfair competition and other situations which could generate liability.

- c. **Data Security.** Customer acknowledges and agrees that use of or connection to the Internet is inherently insecure and provides opportunity for unauthorized access by a third party to Customer's and its Users' (as well as DataVoice's) computer systems, networks and any and all information stored therein. Customer is solely responsible for ensuring that (i) Customer's computer systems are secure and protected from unwanted interference (such as "hackers" and viruses), (ii) all transmissions are screened for viruses or other harmful code prior to transmission to DataVoice's servers; and (iii) Data is encrypted. Some content or Data may be subject to governmental regulations or may require security measures beyond those specified by DataVoice. Customer will not input or provide such content or Data unless DataVoice has first agreed in writing to implement additional required security measures.
- d. DATAVOICE AND ITS SERVICE PROVIDERS DO NOT GUARANTEE THE PRIVACY, SECURITY, AUTHENTICITY, AND NON-CORRUPTION OF ANY INFORMATION TRANSMITTED OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET. DATAVOICE AND ITS SERVICE PROVIDERS SHALL NOT BE RESPONSIBLE FOR ANY ADVERSE CONSEQUENCES WHATSOEVER OF CUSTOMER'S OR ITS USERS' CONNECTION TO OR USE OF THE INTERNET, AND DATAVOICE SHALL NOT BE RESPONSIBLE FOR ANY USE BY CUSTOMER OR ANY USER OF CUSTOMER'S INTERNET CONNECTION IN VIOLATION OF ANY LAW, RULE OR REGULATION. FURTHER, CUSTOMER DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD PARTY SERVICE PROVIDER.

9. RESTRICTIONS ON USE

Customer agrees that:

- a. Customer may not give away, rent, lease or otherwise sell, re-sell, sub-license, distribute or transfer the rights granted under this Agreement except as expressly permitted by this Agreement without the prior written consent of DataVoice.
- b. Customer will not reverse engineer, de-compile, translate or otherwise attempt to derive, or permit or help others to derive the source code relating to all or any part of the DataVoice's Software or Services or any other software included, or attempt to otherwise convert or alter the Software into human readable code, except to the extent applicable law expressly prohibits the foregoing restriction.
- c. Customer may not modify, translate, adapt, alter, or create derivative works of the Documentation or DataVoice Content; however, Customer may duplicate Documentation and content, at no additional charge, for Customer's internal use so long as all required proprietary markings are retained on all duplicated copies.
- d. No third party, other than duly authorized agents or employees of Customer authorized herein, shall have access to or use of the Software.
- e. Customer shall not copy, frame or mirror any part or content of the DataVoice Software and services, other than copying or framing on Customer's own intranets or otherwise for Customer's own internal business purposes.
- f. Customer shall not access DataVoice Software or services in order to (i) build a competitive product or service; (ii) copy any features, functionality or graphics of the Software; or (iii)

knowingly allow access to any competitor of DataVoice.

10. WARRANTY

DataVoice warrants the covered hardware against defective parts and workmanship for the date period determined on warranty options selection page. Upon notification of a defect, DataVoice shall have the option to repair or replace the defective part of the hardware (if covered), and such repair or replacement shall be Customer's sole and exclusive remedy. All replaced parts will become the property of DataVoice. All warranty parts shall be FOB Allen, Texas.

10.1 WARRANTY DISCLAIMER

- i. EXCEPT AS EXPRESSLY PROVIDED HEREIN, TO THE GREATEST EXTENT PERMITTED BY LAW, THE LICENSE, THE SOFTWARE, AND ANY OTHER PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED TO CUSTOMER "AS IS" AND THERE ARE NO OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, REGARDING THEM OR ANY OTHER PRODUCT, SERVICE OR MATERIAL PROVIDED HEREUNDER OR IN CONNECTION HERewith.
- ii. DATAVOICE, ITS LICENSORS AND SUPPLIERS DISCLAIM ANY IMPLIED WARRANTIES OR CONDITIONS REGARDING THE SOFTWARE, THE SERVICES AND ANY OTHER PRODUCTS, SERVICES AND MATERIALS PROVIDED HEREUNDER OR IN CONNECTION HERewith, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY, SATISFACTORY QUALITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, TITLE OR NON-INFRINGEMENT. DATAVOICE DOES NOT REPRESENT OR WARRANT THAT THE SERVICES OR THE SOFTWARE SHALL OPERATE ERROR FREE OR UNINTERRUPTED, FREE OF HARMFUL COMPONENTS, SHALL MEET ANY OR ALL OF CUSTOMER'S PARTICULAR REQUIREMENTS, THAT ALL ERRORS OR DEFECTS IN THE HOSTING SERVICES OR SOFTWARE CAN BE FOUND OR CORRECTED AND THAT ANY DATA WILL BE SECURE OR NOT OTHERWISE LOST OR ALTERED.
- iii. WITHOUT LIMITING THE FOREGOING, DATAVOICE DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH REGARD TO PRODUCTS OR SERVICES FROM THIRD PARTIES (INCLUDING WITHOUT LIMITATION THE THIRD PARTY COMPONENTS, THE HARDWARE, THE OPERATION OF THE INTERNET, NETWORK OR OTHER COMMUNICATION SERVICES) AND ASSUMES NO RESPONSIBILITY OR LIABILITY WITH RESPECT TO THE FOREGOING OR THE APPROPRIATENESS OF YOUR DATA MANAGEMENT SYSTEM OR THE ACCURACY OF DATA CONTAINED IN SUCH SYSTEM.
- iv. NO AGREEMENTS VARYING OR EXTENDING ANY EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT SHALL BE BINDING ON EITHER PARTY UNLESS IN WRITING AND SIGNED BY AN AUTHORIZED SIGNING OFFICER OF DATAVOICE.

11. SUPPORT AND MAINTENANCE SERVICES

Definitions relevant to Support and Maintenance Services:

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- i. **“Release”** means an Update and an Upgrade.
 - ii. **“Update”** means any published changes, additions or corrections to the Software that primarily include a minor modification or enhancement to the Software related to a bug fix, minor additional functionality or legislative changes. An Update is designated by a change in the right-most digit in the version number (for example, a change from X.1 to X.2).
 - iii. **“Upgrade”** means a major overhaul of the Software which is a complete new published version of the Software that modifies, revises or alters the Software and adds features, functionality or enhancements to such Software. An Upgrade is designated by a change in the number to the left of the decimal point in the version number (for example, a change from 1.X to 2.X).
- 1. DataVoice shall supply all Upgrades at no additional charge other than the payment of the Support and Maintenance Fee. Upgrades may require additional services to be performed by DataVoice outside of the scope of those services provided by DataVoice including additional training not covered by any agreement(s) for the installation and implementation of the Upgrade that will be subject to the DataVoice’s then-prevailing policies, terms and fees related to pricing and hourly rates.
 - 2. For non-hosted solutions, when a Customer upgrades its OS, DataVoice will provide software Updates and Upgrades as part of its support and maintenance services. However, when Customer migrates from one OS to another, there may be additional license or other fees.

12. DEFAULT AND DELAY

If Customer breaches any provision of this Agreement, including, without limitation, its payment obligation, Customer shall in default hereunder, and all unpaid amounts shall at DataVoice’s option, become immediately due and payable. Upon Customer’s default, DataVoice shall have all the rights and remedies of a secured party under the Uniform Commercial Code, and any other applicable laws. Additionally, once the initial project schedule is delivered, it is anticipated that the project to be completed within that agreed-upon timeframe. Any additional delay not solely attributable to DataVoice will entitle DataVoice to issue a change order for project management fees to extend the project beyond its original scheduled delivery. In the event of a Customer breach, refunds by DataVoice will not be provided under any circumstances.

13. LIMITATIONS OF LIABILITY

The Customer and DataVoice recognize that circumstances may arise entitling the Customer to damages for breach or other fault on the part of the DataVoice arising from this Agreement. The parties agree that in all such circumstances the Customer’s remedies and DataVoice’s liabilities will be limited as set forth below and that these provisions will survive notwithstanding the termination or other discharge of the obligations of the parties under this Agreement.

- i. **BOTH PARTIES AGREE THAT THE DataVoice’s LIABILITY (UNDER BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), IF ANY, FOR ANY DAMAGES RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID TO DataVoice BY CUSTOMER TO DataVoice DURING THE LAST TWELVE MONTHS OF THE THEN CURRENT TERM OF THIS AGREEMENT.**
- ii. **IN ADDITION TO THE FOREGOING NEITHER PARTY SHALL BE LIABLE FOR**

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CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR OTHER DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED LOST REVENUE OR LOSS OF PROFITS, EVEN IF SUCH OTHER PARTY HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. CLAUSES (i) AND (ii) SHALL APPLY IN RESPECT OF ANY CLAIM, DEMAND OR ACTION BY A PARTY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIM, DEMAND OR ACTION, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT OR TORT.

14. FORCE MAJEURE

Performance by either party of any obligation required of it hereunder will be excused if prevented by public enemy, lightning strike, commercial power outage, war, riot, embargo, fire, explosion, sabotage, flood, accident; or without limiting the foregoing, any circumstances of like or different character beyond its reasonable control; or interruption of, or delay in transportation, shortage of failure of supply of raw materials or finished merchandise; labor trouble from whatever cause arising or compliance with an order, direction or request from any government officer, department or agency.

15. MEDIATION

Except for termination by DataVoice for non-payment of fees due under this Agreement, the parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement or the relationship created by this Agreement to non-binding mediation before bringing a claim, controversy or dispute in a court or before any other tribunal. The mediation is to be conducted by either an individual mediator or a mediator appointed by mediation services mutually agreeable to the parties. The mediation shall take place at a time and location which is also mutually agreeable; provided; however, in no event shall the mediation occur later than ninety (90) days after either party notifies the other of its desire to have a dispute be placed before a mediator. Such mediator shall be knowledgeable in software system agreements. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorneys' fees incurred by either party), is to be shared by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after the date either party provides the other notice of mediation, then either party may bring and initiate a legal proceeding to resolve the claim, controversy or dispute unless the time period is extended by a written agreement of the parties.

16. SEVERABILITY

In the event of invalidity of any portion of this Agreement, the parties agree that such invalidity shall not affect the validity of the remaining portions of this Agreement, and DataVoice and Customer agrees to substitute for the invalid provision, a valid provision which must closely approximate the economic effect and intent of the invalid provision.

17. ASSIGNMENT

This Agreement may not be assigned by Customer without DataVoice's prior written consent. DataVoice and Customer hereby agree that there are no intended or incidental third party beneficiaries to this agreement. Customer shall provide 30 days written notice prior to Customer's dissolution, merger, or transfer in ownership.

Friday 10th of May 2024 02:26:50 PM

18. ENTIRE AGREEMENT AND CHOICE OF LAW

This Agreement represents the entire agreement between DataVoice and Customer and supersedes any prior agreement negotiations between the parties. Both parties acknowledge they are not relying on any statements or representations (including pre- contractual presentations and product demonstrations) made during the contractual negotiations other than those expressly set out in this document, and therefore they effectively waive their rights to rely subsequently on anything said before the formation of this contract. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. Venue for any disputes hereunder or related in any way to the subject matter of this agreement shall be a federal or state court or arbitration tribunal of competent jurisdiction in Wake County, North Carolina. This Agreement will not be interpreted for or against a party on account of drafting.

19. NO WAIVER

No modification of this Agreement shall be effective unless made in writing and signed by duly authorized representatives of the parties. None of the provisions herein shall be deemed waived because of previous failure to insist upon strict performance thereof. DataVoice and Customer each represent that they have the power and authority to enter into this Agreement and that this agreement constitutes a valid and binding obligation of each party.

20. SOVEREIGN IMMUNITY This paragraph is intentionally deleted.

~~To the extent Customer is provided immunity from suit and/or liability, Customer expressly waives any such immunity protection at law or in equity.~~

21. E-VERIFY

DataVoice shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). DataVoice shall require all of DataVoice's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

22. ANTI-HUMAN TRAFFICKING

DataVoice warrants and agrees that no labor supplied by DataVoice or DataVoice's subcontractors in the performance of this Agreement shall be obtained by means of deception, coercion, intimidation or force, or otherwise in violation of North Carolina law, specifically Article 10A, Subchapter 3 of Chapter 14 of the North Carolina General Statutes, Human Trafficking.

23. NON-DISCRIMINATION

Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, DataVoice hereby warrants and agrees that DataVoice will not discriminate against a protected class in employment, subcontracting practices, or the solicitation or hiring of vendors, suppliers, or commercial customers in connection with this Agreement. For the purposes of this Agreement "protected class" includes age, race, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status.

24. NONAPPROPRIATION

Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from Customer are from appropriations and monies from the Town of Apex Town Council and any other governmental entities. In the event sufficient appropriations or monies are not made available to Customer to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of Customer.

Apex, Town of - Quote #18798
Friday 10th of May 2024 02:26:50 PM

ACCEPTANCE OF AGREEMENT

Customer warrants and represents that the price and conditions are satisfactory and are hereby accepted through Customer's authorized signature below.

Customer's authorized signature below is authorization for DataVoice International, Inc. to perform under the conditions contained herein and expressly made a part of this agreement. This Agreement may be executed in counterparts.

Customer Signature:

Apex, Town of

By: 
4F2B7C4B5FA3479...

Printed Name: Randal E. Vosburg

Title: Town Manager

Date: 8/25/2024 | 10:45 PM EDT

DataVoice International

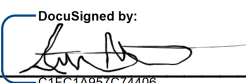
By: 
669469E600314FE...

Printed Name: Kelli Froman

Title: Vice President

Date: 8/21/2024 | 1:12 AM EDT

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.


C1FCTA957C74406... Antwan Morrison, Finance Director

Ship To

TOWN OF APEX
TOWN HALL
73 HUNTER ST
APEX, NC 27502

Bill To

TOWN OF APEX
ACCOUNTS PAYABLE
PO BOX 250
APEX, NC 27502

Purchase Order
No. 2024-00000157
DATE 07/14/2023

VENDOR NO. 6562

Reprint Purchase Order

Vendor

DATAVOICE INTERNATIONAL
62130 Collections Center Drive
CHICAGO, IL 60693-0621



PURCHASE ORDER NUMBER MUST APPEAR ON ALL INVOICES, SHIPPERS, BILL OF LADING AND CORRESPONDENCE

DELIVER BY
FREIGHT TERMS FOB APEX
PAGE 1 of 1
ORIGINATOR: Steve Maynard

REFERENCE #

QUANTITY	UNIT	DESCRIPTION	STATUS	UNIT COST	TOTAL COST
15,054.8600	Each	Computer Software/Supply - ERP Integration for Utility Billing 61-9225-0114-47300 - Capital Outlay - Improvements 15,054.86	Open	1.0000	\$15,054.86

Purchase Order terms and conditions: <http://www.apexnc.org/terms>.


Finance Director


Purchasing Manager

SUBTOTAL	\$15,054.86
SALES TAX	\$0.00
TOTAL DUE	\$15,054.86

Special Instructions

THIS INSTRUMENT HAS BEEN PREAUDITED IN THE MANNER REQUIRED BY THE LOCAL GOVERNMENT BUDGET AND FISCAL CONTROL ACT.

View results

Respondent
366 Troy Salahuddin

10:41
Time to complete

1. DEPARTMENT *

IT

2. CONTRACTOR/VENDOR NAME *

Data Voice

3. CONTRACTOR/VENDOR ADDRESS *

800 N. Watters Road STE 130 Allen, TX 75013

4. CONTRACTOR/VENDOR CONTACT INFO (Provide FULL NAME and EMAIL of vendor/contractor/person recipient who will sign contract) *

Kelli Froman , kelli@datavoiceint.com

5. PURPOSE OF CONTRACT *

Update SOW for Data Voice ERP Integration for Utility Billing

6. AMOUNT *

~~11,504.86~~ 15,054.86

7. BUDGET CODE *

~~N/A~~ 61-9225-0114-47300

8. TYPE OF CONTRACT *

- ☐ NEW
- ☐ RENEW
- ☒ AMENDMENT

9. HAS LEGAL REVIEWED AND IF SO, WHO? *

- ☐ Yes, Christopher Welch
- ☐ Yes, Laurie Hohe
- ☒ Yes, Brian Meyer
- ☐ No, Legal has NOT reviewed
- ☐ Other

10. SUMMARY OF CONTRACT BEING SUBMITTED *Required for Town Manager* *

SOW being updated to reflect changes in integration for ERP for Data voice to Milsoft integration

11. MISC. COMMENTS?

12. ATTACHMENTS/EXHIBITS/CONTRACTS INCLUDED *(reminder to attach all files IF needed such as SSA, MSA, Certificate of Insurance and if new vendor attach application with W9)* *

- ☒ YES
- ☐ N/A

13. UPLOAD ALL FILES HERE, PLEASE ENSURE THE NEW TOWN MANAGER IS LISTED ON THE SSA OR MSA *

 [Apex-18798 \(rev\) Troy Salahuddin.pdf](#)