

## **RESOLUTION 12-03-22**

**A RESOLUTION OF THE TOWN OF TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE TWO CONTRACTS WITH TMA SYSTEMS, LLC, FOR THE PROVISION OF PROFESSIONAL SERVICES ASSOCIATED WITH A SOFTWARE SUBSCRIPTION SERVICE FOR THE TOWN'S DEPARTMENT OF PUBLIC WORKS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Lake Park, Florida ("Town") is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

**WHEREAS**, the Town provides public services and owns, operates and maintains multiple publicly owned facilities and infrastructure; and

**WHEREAS**, the Town Manager has previously identified the need for a contractor to provide the Town with work orders, asset management professional services, and software subscription service (the Services); and

**WHEREAS**, on September 27, 2021, the Town solicited proposals from firms via an Invitation to Bid for the Services; and

**WHEREAS**, the Town received six responsive bids in response to its solicitation; and

**WHEREAS**, the Town has determined that the bid submitted by TMA Systems, LLC, was the highest scoring proposal to furnish the Services; and

**WHEREAS**, Town Manager has recommended to the Town Commission that it is in the best interest of the Town to enter into two (2) contracts with TMA Systems, LLC, for the Services.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AS FOLLOWS:**

**Section 1.** The foregoing recitals are incorporated herein.

**Section 2.** The Mayor is hereby authorized and directed to execute the two (2) Contracts with the Contractor for the provision of work orders, asset management professional services, and software subscription service, copies of which are attached hereto and incorporated herein as Exhibits "A" and "B".


**Section 3.** This Resolution shall take effect immediately upon its execution.

The foregoing Resolution was offered by Vice-Mayor Glas-Castro, who moved its adoption. The motion was seconded by Commissioner Flaherty and upon being put to a roll call vote, the vote was as follows:

	AYE	NAY
MAYOR MICHAEL O'ROURKE	<u>/</u>	<u>  </u>
VICE-MAYOR KIMBERLY GLAS-CASTRO	<u>/</u>	<u>  </u>
COMMISSIONER ERIN FLAHERTY	<u>/</u>	<u>  </u>
COMMISSIONER JOHN LINDEN	<u>/</u>	<u>  </u>
COMMISSIONER ROGER MICHAUD	<u>/</u>	<u>  </u>

The Town Commission thereupon declared the foregoing Resolution No. 12-03-22 duly passed and adopted this 2 day of March, 2022.

TOWN OF LAKE PARK, FLORIDA

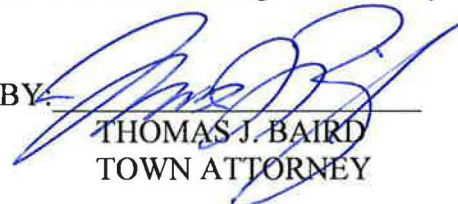
BY:   
MICHAEL O'ROURKE  
MAYOR

ATTEST:

  
VIVIAN MENDEZ  
TOWN CLERK



Approved as to form and legal sufficiency:

BY:   
THOMAS J. BAIRD  
TOWN ATTORNEY

## **Professional Services Agreement**

This Professional Service Agreement is entered into this 2 day of March, 2022 between TMA Systems, LLC ("the Company") and the Town of Lake Park, Florida (the "Town").

The Company agrees to provide the Town a Quotation for a Subscription (the "Quotation") for the use of certain of the Company's software and certain professional services ("Professional Services") based on the following terms and conditions:

1. **Professional Services:** The Company shall provide to the Town the Professional Services described on the Quotation, a copy of which is attached hereto and incorporated herein.
2. **Town Provided Resources:** The Town shall provide or make available to the Company reasonable resources to facilitate the delivery of the Professional Services.
3. **Fees and Reimbursable Expenses:**
  - A. The fees and reimbursable expenses for the Professional Services are listed on the Quotation.
  - B. The Company may invoice the Town for the fees and reimbursable expenses on a monthly basis, as the Professional Services are rendered.
  - C. The Town shall pay the invoices for Professional Service fees and reimbursable expenses within thirty days from receipt.
4. **Manner of Providing Professional Services:** The Company shall provide the Professional Services to the Town:
  - A. In accordance with industry standards;
  - B. In accordance with any specifications listed in the Quotation; and
  - C. As an independent contractor to the Town.
5. **Intellectual Property:**
  - A. To the extent that the Professional Services result in any customization of any of the Company's software products previously licensed for the Town's use ("the Software Customization"), the Software Customization shall be deemed to be included within the Town's license for the software product; provided, however, that the Company shall own and retain all other rights with respect to the Software Modification.

- B. To the extent that the Professional Services consist of the development of intellectual property unrelated to the Company's software products ("Independent Intellectual Property"), the Professional Services shall be deemed work made for hire, and the Town shall own and retain all rights to the Independent Intellectual Property.

**6. Data:**

- A. The Town warrants that as of the date of this Agreement, none of the databases associated with the Professional Services contain protected health information as that term is defined in the Health Insurance Portability and Accountability Act ("PHI").
  - B. Following the execution of this Agreement, the Town shall not enter PHI into any of the databases associated with the Professional Services.
  - C. The Town shall review and validate the accuracy and completeness of data resulting from the performance of Professional Services by the Company.
  - D. The Company disclaims any representation, warranty, or guaranty as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of the data and content resulting from the performance of its services.
- 7. Non-Hire:** From the commencement of the Professional Services through one year from the completion of the Professional Services, neither party shall hire any employee of the other party.
- 8. Limitation of Liability:** The liability of the Company to the Town arising from the Professional Services shall be limited as follows:
- A. The Company shall not be liable for indirect, special, incidental, or consequential damages.
  - B. The aggregate liability shall not exceed the amount the Town paid the Company for the Professional Services.
- 9. Notices:** Notices regarding this Agreement to the Company shall be made via email to [notifications@tmasytems.com](mailto:notifications@tmasytems.com). Notices to the Town shall be emailed to Town Manager, [townmanager@lakeparkflorida.gov](mailto:townmanager@lakeparkflorida.gov) with a copy to the Department of Public Works, [publicworks@lakeparkflorida.gov](mailto:publicworks@lakeparkflorida.gov).


10. **Litigation:** With respect to any litigation arising from this Agreement:

- A. This Agreement shall be governed by the laws of the state of Florida. Venue for any cause of action arising out of this Agreement shall lie in the 15th Judicial District in and for Palm Beach County, Florida, for any state actions, and in the United States District Court for the Southern District of Florida for any federal actions.
- B. This Agreement shall be interpreted in accordance with the laws of the State of Florida.
- C. In the event of litigation arising from this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorney fees.

11. **Entire Agreement:** This Agreement constitutes the entire agreement between the Company and the Town with respect to this Agreement, and may be modified only in writing and signed by both parties.

Dated: 3/2/2022

TMA Systems, LLC

By:   
John Smith  
Director of Sales

Town of Lake Park

By:   
Michael O'Rourke, Mayor



Approved as to legal  
form and sufficiency

  
Town Attorney

## **Subscription Agreement**

This Subscription Agreement is entered into this \_\_\_ day of March between TMA Systems, LLC ("the Company") and the Town of Lake Park, Florida (the "Town").

The Company and the Town agree to the following terms and conditions for the Town's use of the Company's Software as described in the Quotation (the "Subscription"):

### **1. Term:**

- A. The initial term of this Agreement is one year commencing 30 days from the date the Company provides the Town with the log-in credentials to the Software.
- B. This Agreement shall automatically renew for successive one-year Renewal Terms unless one of the parties hereto provides written notice to terminate the Agreement to the other party 30 days prior to the expiration of the initial term or any Renewal Term.

### **2. Subscription Services:** During the term of this Agreement, the Company shall provide the following Subscription Services to the Town:

- A. Access to the use of the Software via internet connection, provided that the Town meets the Company's current system requirements.
- B. Database storage and number of users set forth on the Quotation.
- C. Uptime service level for the use of the Software by the Town as described on the attached Exhibit A.
- D. Updates to the Software that are released during the initial term or any Renewal Term, when the updates become available.
- E. Support for the use of the Software as follows:
  - (1) The support shall be provided at the level set forth in the Quotation.
  - (2) The support shall only be utilized by those Town personnel who have been fully trained on the Software ("Trained Personnel").
  - (3) The support may be provided via telephone, email, fax, or online.

**F. Correction of material errors of the Software as follows:**

- (1) An error or malfunction shall be deemed material if it causes the Software to conflict with the Software documentation.
- (2) Material errors:
  - a. Shall only be reported by Trained Personnel;
  - b. Shall be reported to the Company by email at support@tmasystems.com; and
  - c. The information required shall include sufficient details to enable the Company to identify the error.
- (3) The Company shall use commercially reasonable efforts to correct the error within eight business hours from receipt of the error report.

**3. Use of the Software:**

- A. The Software may only be used to manage the operations of the locations described on the Quotation, or later added with the agreement of the Company.
- B. The use of the Software is limited to the number of concurrent users or named users listed on the Quotation, or later purchased by the Town.
- C. The Town shall not use the Software as a call center or service bureau, or otherwise permit the use of the Software by any third party without the prior express written consent of the Company.

**4. Annual Fees:** The Town shall pay annual fees for the Subscription Services as follows:

- A. The annual fee for the initial term shall be the amount set forth in the Quotation, and shall be paid in accordance with the Quotation.
- B. Upon written notice at least 60 days prior to the expiration of any term, the Company may increase the annual fee for the Renewal Term by an amount not to exceed 5% of the Annual Fee for the current term.
- C. Annual fees shall also be increased based on the Town purchases of additional users, Locations, and / or modules.
- D. The amount of the Annual Fees is based upon a continuous Subscription Service between the Company and the Town, and if Town discontinues this Service and later requests Service, additional fees may be required.



- E. Annual fees for Renewal Terms shall be due and payable 30 days prior to the commencement of the Renewal Term.
- F. Annual fees not paid when due shall bear interest at the rate of 1% per month from the due date, and if payment is not made by the due date:
  - (1) The Company may notify town of the delinquency; and
  - (2) If the Town fails to pay the annual fees within 30 days from the date of the delinquency notice, the Company may suspend the provisioning of the Subscription Services, or terminate this Agreement.

**5. Protection of Intellectual Property Rights:**

- A. Except for the use of the Software as provided in this Agreement, the Company retains the ownership of all copyrights and other intellectual property rights associated with the Software.
- B. The Town shall not modify, translate, reverse engineer, decompile or disassemble the Software provided as a service.
- C. The Town shall not provide access to the Software service to any person other than the Town's employees and agents.
- D. The Town shall use commercially reasonable efforts to prevent access to the Software service by any person other than the Customer's employees and agents.

**6. Data:**

- A. The Company shall take commercially reasonable precautions to prevent unauthorized access to the Town's data and to maintain the confidentiality of the Town's Data.
- B. The Town warrants that as of the date of this Agreement, none of the databases associated with the Subscription Services contain protected health information as that term is defined in the Health Insurance Portability and Accountability Act ("PHI").
- C. Following the execution of this Agreement, the Town shall not enter PHI into any of the databases associated with the Subscription Services.
- D. The Town shall review and validate the accuracy and completeness of the data resulting from the Town's use of the Subscription Services.



- E. The Company disclaims any representation, warranty, or guaranty as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of the data and content resulting from Town's use of the Subscription Services.
- 7. **Indemnification:** The Town shall indemnify and hold the Company harmless from any claims or causes of action that arise from or are associated with the content of the Town's database.
- 8. **Company Warranties:** The Company makes the following warranties and disclaimers to the Town:
  - A. The Company has developed and is the owner of the Software, and has the right to provide Subscription Services to the Town.
  - B. The functionality of the Software reasonably conforms to the standards set forth in the documentation supplied with the Software.
  - C. The Company disclaims all other warranties, express or implied, including merchantability and fitness for use of the Software.
- 9. **The Town's Warranties:** The Town makes the following warranties to the Company:
  - A. The Town has conducted such investigations as to the functionality of the Software as the Customer deemed appropriate.
  - B. The Town has determined that the Software is suitable for the intended uses of the Town.
- 10. **Return of Customer Data:** Upon the termination of this Agreement by non-renewal or by the Company:
  - A. Provided that the Town is not in default of any term of this Agreement, the Company shall provide the Town with a copy of the Town's data.
  - B. If the Town requires the data in a format other than the format provided, the Company may charge the Town a fee to convert the data to the different format at the then current rate charged by the Company for professional services.
  - C. The Company shall have no obligation to archive the Town's data for any period following the termination of this Agreement.
- 11. **Notices:** Notices regarding this Agreement to the Company shall be made via email to [notifications@tmasytems.com](mailto:notifications@tmasytems.com). Notices to the Town shall be emailed to Town Manager, [townmanager@lakeparkflorida.gov](mailto:townmanager@lakeparkflorida.gov) with a copy to the Department of Public Works, [publicworks@lakeparkflorida.gov](mailto:publicworks@lakeparkflorida.gov).
- 12. **Limitation of Liability:** The liability of the Company to the Customer arising from the Customer's use of the Software or the Company's breach of this Agreement shall be limited as

follows:

- A. The Company shall not be liable for indirect, special, incidental, or consequential damages.
- B. The aggregate liability shall not exceed the amount the Customer paid the Company for the Subscription services in the year the damage occurred.

**13. Conflicting Terms and Conditions:**

- A. In the event of a conflict between the terms of the Quotation and this Agreement, the terms of this Agreement shall control.
- B. In the event of a conflict between the terms of this Agreement and a Purchase Order, the terms of this Agreement shall control.


**14. Litigation:** With respect to any litigation arising from this Agreement:

- A. This Agreement shall be governed by the laws of the state of Florida. Venue for any cause of action arising out of this Agreement shall lie in the 15th Judicial District in and for Palm Beach County, Florida, for any state actions, and in the United States District Court for the Southern District of Florida for any federal actions.
- B. This Agreement shall be interpreted in accordance with the Laws of the State of Florida.
- C. The prevailing party shall be entitled to recover all costs, including reasonable attorney fees.

**15. Entire Agreement:** This Agreement constitutes the entire agreement between the Company and the Customer with respect to the Subscription, and may be modified only in writing and signed by both parties.

Dated: 3/2/2022

TMA Systems, LLC

By:   
John Swathard  
Director of Sales

Town of Lake Park

  
By: Michael O'Rourke, Mayor

Approved as to legal  
form and sufficiency  
  
Town Attorney

## Exhibit A – Uptime Service Level

The Company expects the Software to be available for the Customer's use 99.8% of the time during the term of this Agreement, on a twenty-four hour per day, seven day per week basis ("the Uptime Service Level").

The following service interruptions shall be excluded from the calculation of Uptime Service Level:

1. **Scheduled Maintenance:** Interruptions for maintenance of the Software, hardware, network and other service components, provided that:
  - A. The Company shall provide the Customer at least twenty-four hours prior notice of the scheduled maintenance period.
  - B. The Company shall not schedule maintenance on Monday through Friday from 8:00 AM through 5:00 PM Central Time.
2. **Force Majeure:** Interruptions caused by forces outside the control of the Company, including interruptions caused by the Customer.
3. **Minor Interruptions:** Interruptions for less than sixty minutes duration.



## **Town of Lake Park**

**Submitted for consideration to:**

Roberto Travieso  
Director of Public Works  
Town of Lake Park  
640 Old Dixie Highway  
Lake Park, FL 33403  
(561) 881-3345, Ext. 648  
rtravieso@lakeparkflorida.gov

**Proposal for**

**WebTMA SaaS Solution**

**ITB No. 106-2021**

**Proposal Number JB-44588-NC-SaaS-1**

**Proposal Valid Through:**

March 16, 2022

**Submitted By:**

John Burke  
Senior Account Executive  
TMA Systems  
1876 Utica Square, Third Floor  
Tulsa, Oklahoma 74114  
(918) 858-6681 - office  
(918) 858-6655 - fax  
john.burke@tmasystems.com



**TMA Systems**  
1876 Utica Square, Third Floor  
Tulsa, Oklahoma 74114  
800.862.1130  
918.858.6655 fax  
www.tmasystems.com

**Submitted to:**  
Roberto Travieso  
Director of Public Works  
Town of Lake Park  
640 Old Dixie Highway  
Lake Park, FL 33403  
(561) 881-3345, Ext. 648  
rtravieso@lakeparkflorida.gov

**Date** January 27, 2022  
**Valid Until** March 16, 2022  
**Quote Number** JB-44588-NC-SaaS  
**Client Number** NC

**WebTMA AS A SUBSCRIPTION SERVICE (SaaS)**

Item	Description	Quantity	US Dollars
<b>WebTMA</b>	<b>WebTMA - 6 Concurrent User System</b>	1 \$	8,835.00
<b>Additional Modules</b>			
• Executive Dashboard	Executive Dashboard Module	1 \$	2,050.00
• mobileTMA GO	mobileTMA GO Interface - Per 5 Named User Bundle	3 \$	2,265.00
• Service Request	Service Request Module	1 \$	755.00
<b>Annual Subtotal - WebTMA SaaS Software</b>			<b>\$ 13,905.00</b>

**PROFESSIONAL SERVICES**

Item	Description	Quantity	US Dollars
<b>Remote Consulting Services</b>	Allocation of service days finalized upon review with client. Remote service days at \$1,500/day. The following allocation has been estimated.  3 - day(s) of Implementation Services 4 - day(s) of Data Import/Conversion Services 1 - day(s) of Custom Documentation 2 - day(s) of Consulting Services (Needs Assessment for current process and exploratory discussion for Phase II functionality)	10 \$	15,000.00
<b>Additional Services</b>			
• Remote Training	3 - day(s) of Training Services	3 \$	4,500.00
• On-Site Services	3 - day(s) of On-Site Services - Post implementation site visit as a follow up thirty (30) days following the Go Live date (Travel expenses not included)	3 \$	5,250.00
• Not to Exceed Travel Expenses	Estimated Trip(s) at \$2,500/trip - actual travel expenses billed	1 \$	2,500.00
<b>Subtotal - Professional Services</b>			<b>\$ 27,250.00</b>
<b>TOTAL - Subscription, Professional Services</b>			<b>\$ 41,155.00</b>
<b>TOTAL - Each Additional Year Cost (Subscription)</b>			<b>\$ 13,905.00</b>

**Note:**

- TMA professional services to be performed remotely through web services (TMA iPortal, Internet, etc.). TMA consultant will prepare a project schedule identifying necessary allocation of service days upon review with client.
- TMA Consultant will have one half day of travel time allocated for every 5 days of onsite services.
- Travel expenses are not included in the cost of services and are the responsibility of the client.

**TERMS AND CONDITIONS**

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- Software is subject to TMA Systems, LLC Subscription Agreement for the following location(s):  
Town of Lake Park, 640 Old Dixie Highway, Lake Park, FL 33403
- Interface upgrades and compatibility are subject to continued support of associated vendors.
- Travel, shipping and handling expenses not included.
- Payment is due net 30 days after receipt of software.
- Past due invoices will be charged 1% per month.
- These prices do not include applicable sales tax.
- Third party software not included.
- Software is compatible with systems meeting the requirements outlined on the Systems Requirement attachment.
- Additional fees may apply for using client contracts versus TMA Systems' standard agreements.
- WebTMA SaaS includes Gold level support.

**TMA Systems, LLC****John Burke**

Senior Account Executive

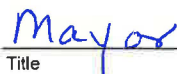
(918) 858-6681 - office

(918) 858-6655 - fax

john.burke@tmasystems.com

**Town of Lake Park**

Name



Title



Date