

**AMENDMENT NO. 6 TO THE AGREEMENT BETWEEN
THE CITY OF DELRAY BEACH AND SUPERION, LLC**

THIS AMENDMENT NO. 6 amends the Agreement between the **CITY OF DELRAY BEACH**, a Florida municipal corporation (the "City"), and **SUPERION, LLC**, as successor in interest to SunGard Public Sector, Inc. ("Bidder") dated June 29, 2010, Amendment No. 1 between the City and Bidder dated August 17, 2010, Amendment No. 2 between the City and Bidder dated March 16, 2011, Amendment No. 3 between the City and Bidder dated June 30, 2011, Amendment No. 4 between the City and Bidder dated October 15, 2013 and Amendment No. 5 between the City and Bidder dated December 13, 2016.

W I T N E S S E T H:

WHEREAS, the **City** and **Bidder** are desirous of amending the Standard Form of Agreement between the **City** and to make various adjustments to the Software License and Service Agreement ("License Agreement") and the Software Maintenance Agreement ("Maintenance Agreement").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Incorporation of Recitals.** The parties hereby represent that the above recitals are hereby incorporated as if fully set forth herein.

2. **Revisions.**

a. Exhibit 1 to the License Agreement between the **City** and **Bidder** is amended to add the following products and services:

License Fees & Maintenance

| Product Name | Quantity | License Fee | Maintenance |
|--|----------|-------------|-------------|
| ONESolution CAD Client AVL License * | 1 | \$6,000.00 | \$960.00 |
| ONESolution Motorola Astro 25 System Interface | 1 | \$25,000.00 | \$4,000.00 |
| ONESolution MCT Client AVL License * | 1 | \$17,500.00 | \$2,800.00 |
| ONESolution AVL Server Host License | 1 | \$16,800.00 | \$2,688.00 |
| ONESolution Field Training Online-Cloud | 1 | \$5,000.00 | \$0.00 |
| ONESolution Freedom Base | 10 | \$1,500.00 | \$240.00 |
| ONESolution Freedom Server Software | 1 | \$3,500.00 | \$560.00 |

Products with * are Site Licensed Products.

Total**\$75,300.00****\$11,248.00****Cloud/Hosted Access Fees**

| Product Name | Quantity | Amount |
|---|----------|-------------------|
| ONESolution Field Training Online-Cloud | 1 | \$1,500.00 |
| Total | | \$1,500.00 |

Professional Services**Installation & Configuration**

| Product Name | Amount |
|--|------------|
| ONESolution Computer-Aided Dispatch Installation | \$4,200.00 |

| | |
|--|------------|
| ONESolution Mobiles Management Installation | \$8,400.00 |
| ONESolution Public Safety & Justice Map Audit Services | \$7,000.00 |
| ONESolution Internet Management Installation PS | \$1,400.00 |

Total**\$21,000.00****Training**

| Product Name | Amount |
|---|------------|
| ONESolution Internet Management Training PS | \$1,280.00 |
| ONESolution Mobiles Management Training | \$960.00 |

Total**\$2,240.00****Project Management**

| Product Name | Amount |
|--|------------|
| ONESolution Computer-Aided Dispatch Project Management | \$1,120.00 |
| ONESolution Mobiles Management Project Management | \$2,560.00 |
| ONESolution Public Safety & Justice Map Audit Services | \$960.00 |
| ONESolution Internet Management Project Management PS | \$640.00 |

Total**\$5,280.00****Total Professional Services****\$28,520.00****Summary**

| Product/Service | Amount |
|------------------------------------|---------------------|
| License Fees | \$75,300.00 |
| Cloud/Hosted Annual Access Fees | \$1,500.00 |
| Professional Services | \$28,520.00 |
| Subtotal | \$105,320.00 |
| License/Subscription Fee Discounts | \$22,250.00 |
| Total | \$83,070.00 |
| Net Maintenance | \$11,248.00 |

- i. Any interfaces listed above are interfaces only. Customer shall be responsible for obtaining the applicable software, hardware and system software from the appropriate third party vendor.
- ii. The Component Systems identified above are "Licensed Programs" or "Licensed Systems" licensed by Superior and are provided in and may be used in machine-readable object code form only.
- iii. Applicable taxes are not included, and, if applicable, will be added to the amount in the payment of invoice(s) being sent separately.
- iv. Travel and living expenses may be in addition to the prices quoted above and shall be governed by the Superior Corporate Travel and Expense Reimbursement Policy.
- v. The date of delivery is the date on which Superior delivers, F.O.B. Superior's place of shipment, the Component Systems to Customer.
- vi. The Superior application software warranty shall be for a period of one (1) year after delivery. There is no Testing and Acceptance period on the Licensed System(s) herein.
- vii. Preprinted conditions and all other terms not included in this Amendment or the Contract and Agreement, stated on any purchase order or other document submitted hereafter by Customer are of no force or effect, and the terms and conditions of the Contract and Agreement and any amendments thereto shall control unless expressly accepted in writing by Superior to Customer.
- viii. Should Customer terminate this agreement per any "Term of Contract" Section of the Contract and Agreement, as may be applicable for certain customers, Customer agrees to pay, immediately upon termination, the remaining balance for all hardware, software, and services delivered prior to the termination date together with travel reimbursements, if any, related to the foregoing. Notwithstanding any language in the Contract and Agreement to the contrary, the purchase of support services is NOT necessary for the continuation of Customer's License.
- ix. Pricing for professional services provided under this quote is a good faith estimate based on the information available to Superior at the time of execution of this Quote. The total amount that Customer will pay for these services will vary based on the actual number of hours of services required to complete the services. If required, additional services will be provided on a time and materials basis at hourly rates equal to Superior's then-current rates for the services at issue.
- x. For training and on-site project management sessions which are cancelled at the request of Customer within fourteen (14) days of the scheduled start date, Customer is responsible for price of the training or on-site project management plus incurred expenses as mutually agreed upon by the parties.

b. Payment terms:

i. License, Project Planning, Project Management, Consulting, Technical Services, Conversion, are due upon execution of this Amendment. Training fees are due as incurred monthly. Installation is due upon completion. Unless otherwise provided, other Professional Services are due monthly, as such services are delivered. Additional services, if requested, will be invoiced at then-current rates. Superior represents, warrants, and covenants to Customer that Superior will perform Professional Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement. If Customer reasonably believes that any Professional Services were performed in violation of this warranty, it will notify Superior within twenty (20) days of service performance describing the issue, together with adequate supporting documentation and data. Upon receipt of such notice, Superior's obligation will be to re-perform the particular Professional Services affected as soon as commercially reasonable at no additional charge.

ii. Superior Annual Maintenance: Customer is committed to the initial term of Maintenance and Support Services for which the support fee is included in the License fee(s) and begins upon execution of this Amendment and extends for a twelve (12) month period. Subsequent terms of support will be for twelve (12) month periods, commencing at the end of the prior support period. Support fees shown are for the second term of support for which Superior is committed and which shall be due prior to the start of that term. Fees for subsequent terms of support will be due prior to the start of each term at the then-prevailing rate. Subsequent terms will renew automatically until such time Superior receives written notice from the Customer thirty (30) days prior to the expiration of the then current term. Notification of non-renewal is required prior to the start of the renewal term. Customer will be invoiced, and payment is due, upon renewal.

c. Product notes:

i. ONESolution AVL Server Host License: The option of Turn by Turn functionality is included in the ONESolution AVL Server Host License software however this feature requires specific data elements to be in the agency Maps. If requested, Superior can provide information on that data. Once an agency enters that data, a map audit is required to insure the data is correct before the Turn by Turn

functionality can be used. This map audit consists of Professional Services hours with Project Management and is not included in the base map build.

- ii. **ONESolution Field Training Online-Cloud: Special Terms Relating to ONESolution Field Training Online Cloud.** During the term as described herein, Superior shall provide hosting services (the "Hosting Services") as described below for the FTO Component System/Solution software licensed pursuant to this Add On Quote/Order ("Application"). Such Hosting Services are effective as of the Execution Date and continuing for an initial term of twelve (12) months ("Hosting Term"). There is no Hosted Annual Access Fee charged for the initial Hosting Term. Upon expiration of the initial Hosting Term the term shall automatically renew for successive one (1) year Renewal Terms. The Hosted Annual Access Fee reflected above is for the second Renewal Term. The Hosted Annual Access Fee for subsequent Renewal Term(s) will be at the then current rates. Hosted Annual Access Fees are due prior to the start of the respective Renewal Term(s). Either party may elect to not enter into a Renewal Term by providing the other party with written notice at least sixty (60) days prior to the end of the Hosting Term or then current Renewal Term, as the case may be, and in such event, Customer may elect to purchase annual support/maintenance services at Superior's then current rates.

d. Exhibit 1 of the Maintenance Agreement has been amended to add the following products and annual payment amounts (subject to Section 2(b)(ii)):

| Product Name | Maintenance |
|--|--------------------|
| ONESolution CAD Client AVL License | \$960.00 |
| ONESolution Motorola Astro 25 System Interface | \$4,000.00 |
| ONESolution MCT Client AVL License | \$2,800.00 |
| ONESolution AVL Server Host License | \$2,688.00 |
| ONESolution Field Training Online-Cloud | \$0.00 |
| ONESolution Freedom Base | \$240.00 |
| ONESolution Freedom Server Software | \$560.00 |
| | <hr/> |
| | \$11,248.00 |

3. **Full Force and Effect.** All other terms and conditions of the Agreement not expressly modified by this Amendment No. 6 remain in full force and effect.

4. **Effective Date of Amendment No. 6 to the Agreement.** This Amendment shall not be effective until it is approved by the City Commission and signed by both of the parties.

5. **Public Records.**

IF THE BIDDER (CONTRACTOR) HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BIDDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT PUBLIC RECORDSREQUEST@MYDELRAYBEACH.COM.

- a. Bidder shall comply with public records laws, specifically to:
 - i. Keep and maintain public records required by the City to perform the service.
 - ii. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
 - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Bidder does not transfer the records to the City.
 - iv. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Bidder or keep and maintain public records required by the City to perform the service. If the Bidder transfers all public records to the City upon completion of the Agreement, the Bidder shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure

requirements. If the Bidder keeps and maintains public records upon completion of the Agreement, the Bidder shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

- v. If the Bidder does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

6. **Indemnity/Hold Harmless Agreement:** Bidder shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend City, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Bidder, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of any order including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against City by reason of any such claim, cause of action, or demand, Bidder shall, upon written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City or, at City's option, pay for an attorney selected by the City Attorney to defend City. The obligations of this section shall survive the expiration or earlier termination of any order. To the extent considered necessary by the Chief Purchasing Officer and the City Attorney, any sums due Bidder under any order may be retained by City until all of City's claims for indemnification pursuant to any order have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by the City.

7. **Office of The Inspector General.** Bidder is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Contractor and its subcontractors and lower tier subcontractors. Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor or its subcontractors and lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 6 to be duly executed this _____ day of _____, 2018.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

Katerri Johnson, City Clerk

By: _____
Shelly Petrolia, Mayor

Approved as to Form and
legal sufficiency:

R. Max Lohman City Attorney

WITNESSES:

SUPERION, LLC

Haley Oyarzabal
Haley Oyarzabal
(Print or Type Name)

Melanie Estrada
Melanie Estrada
(Print or Type Name)

By: _____
Name: Tom Amburgey
Title: General Manager

STATE OF FLORIDA
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this 6th day of July, 2018, by Tom Amburgey, General Manager of **Superion, LLC**, a Delaware limited liability company. He is personally known to me and did not take an oath.

Rebecca Malave

Signature of Notary Public
State of Florida

