

**AMENDMENT NO. 7 TO THE AGREEMENT BETWEEN
THE CITY OF DELRAY BEACH AND SUPERION, LLC**

THIS AMENDMENT NO. 7 to the Agreement dated June 29, 2010 between the **CITY OF DELRAY BEACH**, a Florida municipal corporation (the "City"), and **Superion LLC**, ("Superion"), as successor in interest to SunGard Public Sector, Inc. ("Bidder"), as amended by Amendment No. 1 between the City and Superion dated August 17, 2010, Amendment No. 2 between the City and Superion dated March 16, 2011, Amendment No. 3 between the City and Superion dated June 30, 2011, Amendment No. 4 between the City and Superion dated October 15, 2013, Amendment No. 5 between the City and Superion dated December 13, 2016, and Amendment No. 6 between the City and Superion dated July 17, 2018, is entered into this ____ day of _____, 2019.

WITNESSETH:

WHEREAS, the **City** and **Superion** seek to amend the Standard Form of Agreement between the **City** and **Superion** 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. The above recitals are true and correct and are incorporated herein.
2. Revisions.
 - a. Exhibit 1 to the License Agreement between the City and Superion is amended to add the following services and terms applicable to these services:

Professional Services

Technical Services

| Product Name | Amount |
|---|--------------------|
| ONESolution All Other Technical Services PS | \$12,000.00 |
| Total | \$12,000.00 |

Project Management

| Product Name | Amount |
|---|--------------------|
| ONESolution All Other Project Management PS | \$3,040.00 |
| Total | \$3,040.00 |
| Total Professional Services | \$15,040.00 |

Summary

| Product/Service | Amount |
|-----------------------|--------------------|
| Professional Services | \$15,040.00 |
| Subtotal | \$15,040.00 |
| Total | \$15,040.00 |

- i. Any interfaces listed above are interfaces only. The City 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 Superion 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 Superion Corporate Travel and Expense Reimbursement Policy.
- v. The date of delivery is the date on which Superion delivers F.O.B. Superion's place of shipment, the Component Systems to the City.
- vi. The Superion 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 the City 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 Superion to the City.
- viii. Should the City terminate this agreement per any "Term of Contract" Section of the Contract and Agreement, as may be applicable for certain customers, the City 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 the City's License.
- ix. Pricing for professional services provided under this agreement is a good faith estimate based on the information available to Superion at the time of execution of this agreement. The total amount that the City 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 Superion'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 the City within fourteen (14) days of the scheduled start date, the City 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. Superion represents, warrants, and covenants to the City that Superion 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 the City reasonably believes that any Professional Services were performed in violation of this warranty, it will notify Superion within twenty (20) days of service performance describing the issue, together with adequate supporting documentation and data. Upon receipt of such notice, Superion's obligation will be to re-perform the particular Professional Services affected as soon as commercially reasonable at no additional charge.

ii. Superion Annual Maintenance: The City 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 Superion 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 Superion receives written notice from the City 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. The City will be invoiced, and payment is due, upon renewal.

c. Maintenance Agreement has not been amended because there are no changes to the Maintenance Agreement when purchasing above noted Professional Services.

d. Professional Services are performed for the purpose of server migration. Migration services per this agreement include:

- CAD Migration
- RMS/JMS Migration
- Message Switch Migration
- Utility Server Migration

- P2P Application Migration
- OpsCenter Server Migration
- P2C Server Migration
- Prep/Follow-up

3. All other terms and conditions of the Agreement and Amendments 1 through 6 not expressly modified by this Amendment No. 7 remain in full force and effect.
4. This Amendment shall not be effective until approved by the City Commission and signed by both of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 7

to be duly executed this _____ day of _____, 2019.

ATTEST:

CITY OF DELRAY BEACH

Katerri Johnson, City Clerk

BY: _____

Shelly Petrolia, Mayor

Approved as to form for legal sufficiency:

Lynn Gelin, City Attorney

SUPERION, LLC

By: _____

Tom Amburgey, General Manager
Printed Name and Title

(SEAL)

STATE OF FLORIDA
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this 26th day of April, 2019, by Tom Amburgey, as General Manager (name of officer or agent, title of officer or agent), of Superion, LLC (name of corporation acknowledging), a Florida (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ (type of identification) as identification.



Rebecca Malave

Notary Public – State of Florida