

RESOLUTION NO. 24468

A RESOLUTION AUTHORIZING THE CHIEF OF THE POLICE DEPARTMENT TO ENTER INTO A MULTIYEAR SOFTWARE SERVICE AGREEMENT WITH VISIONAIR, INC. FOR THE PERIOD JULY 1, 2005 THROUGH JUNE 30, 2009, SUBSTANTIALLY IN THE FORM ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Chief of the Police Department be and is hereby authorized to enter into a multiyear software service agreement with Visionair, Inc. for the period July 1, 2005 through June 30, 2009, substantially in the form attached hereto and incorporated herein by reference.

ADOPTED: June 14, 2005.

WSP

ATTACHMENT "D": SOFTWARE SERVICE AGREEMENT

Chattanooga Police Department
3300 Amnicola Highway
Chattanooga TN 37406

Effective Date: July 1, 2005

This SOFTWARE SERVICE AGREEMENT (hereinafter "Agreement") (incorporated in to the Software License Agreement of April 6, 2003 as Attachment D) hereby replaces and supersedes all other Software Service Agreements and is entered into by and between Chattanooga Police Department (hereinafter "**CLIENT**") and VISIONAIR INC., a North Carolina based company with offices located at 5601 Barbados Blvd., Post Office Box 9000, Castle Hayne, North Carolina 28429-9000 (hereinafter "**VISIONAIR**").

VISIONAIR shall perform maintenance services on the Licensed Software and **CLIENT** shall accept and pay for such services, pursuant to the terms and conditions herein provided. Licensed Software shall mean the **VISIONAIR** software as described in the attached quotation, as such may hereafter be supplemented and as such Licensed Software may hereafter be updated with improvements, enhancements and modifications furnished to **CLIENT** by **VISIONAIR**.

1.0 Initial Term. This agreement shall become effective on the date shown above (hereinafter "Effective Date"), and, unless sooner terminated as hereinafter provided, shall remain in full force and non-cancelable for a period of no less than four years.

2.0 Automatic Renewal. Upon expiration of the Initial Term, this Agreement shall be automatically extended on a year-to-year basis (herein after "Renewal term") unless sixty (60) days prior to the expiration date of the Initial Term, or any Renewal term, a party hereto gives written notice to the other party of its termination of the Agreement as of such expiration date.

3.0 Covered Maintenance

3.1 Commercial Off the Shelf Software (COTS). The term "Covered Maintenance" as used herein means the periodic and on-call remedial maintenance **VISIONAIR** deems reasonably appropriate and necessary to keep the **CLIENT'S** Licensed Software functioning properly. Please see section 3.2 for Custom Solutions

(a) Telephone Support for the Licensed Software, utilizing an 800 line provided by **VISIONAIR**. During the Initial Term, this telephone support will be based on the coverage plan as specified in the Quotation.

(b) Standard upgrades and enhancements that are made to the Licensed Software. **VISIONAIR** issues corrections, upgrades and enhancements to the software on an ongoing basis. All modifications to the Licensed Software and related Documentation will be made available to the **CLIENT** on standard electronic media (**CD-ROM**), remote access through VisionAIR approved remote access products and protocols, dedicated telephone dialup or Website download.

(c) Initial fact-finding (Tier 1) support for 3rd party software embedded or used in conjunction with the application software. Tier 1 support does not include defect resolution or modifications from VisionAIR. VisionAIR will escalate to the appropriate vendor calls for service for 3rd party applications defect resolution or modifications.

(d) Correction of reported malfunctions ("defects") in the application software.

(e) Phone support assistance in updating new releases of the Licensed Software on the **CLIENT's** servers.

(f) Recording **CLIENT's** request for changes to the Software. A **VISIONAIR** Product Manager will document the **CLIENT's** request and submit it for consideration in future releases of the Software. VisionAIR is under no obligation to include the **CLIENT's** request for change in any future releases of the Software.

Client Service personnel are available to answer questions related to the Software and to provide solutions for issues within the Software. If an issue is defined as a defect, Client Service will escalate the issue for resolution and provide the correction when available. A "defect" is defined as an error in the code of the Licensed Software which prevents a Module from operating in accordance with the **VISIONAIR** Documentation in any material respect.

3.2 Custom Solutions (Applications):

(a) Telephone Support for the Licensed Software, utilizing a toll-free 800 telephone number provided by **VISIONAIR**. During the Initial Term, this telephone support will be based on the coverage plan as specified in the Quotation.

- (b) Correction of reported malfunctions ("defects") in the **VISIONAIR** application software.
- (c) Recording **CLIENT's** request for changes to the Software. A **VISIONAIR** Product Manager will document the **CLIENT's** request and submit it for consideration in future releases of the Software.
- (d) Changes to the Custom Solution resulting from changes to VisionAIR products, initiated by VisionAIR, which interfere with the intended functionality of the Custom Solution

4.0 Exclusions from Covered Maintenance.

4.1 Custom off the Shelf (COTS) Products:

- (a) Repair of damage not caused by **VISIONAIR**, including without limitation, damage resulting from accident, transportation, neglect or misuse, lightning, failure or fluctuation of electrical power, air conditioning or humidity control, telephone equipment or communication lines failure, failure of non-**VISIONAIR** interconnect equipment, or causes other than normal operation procedures.
- (b) Service which is impractical for **VISIONAIR** to render because of: alterations in the Licensed Software made by persons other than **VISIONAIR**; the connection of equipment and/or Software by mechanical or electrical means to another machine or device;
- (c) Any repair of any damage to the Licensed Software caused by software or firmware programming that is not provided or supported by **VISIONAIR** under section 3, Covered Maintenance.
- (d) This Agreement does not include professional services (on site training, installation or upgrades of third party software applications used in conjunction with or required by any VisionAIR specifications , data migrations, or project management) deemed necessary by VisionAIR. On site services will be charged separately.
- (e) Platform changes, including, but not limited to, Operating Systems, Hardware, Telecom Equipment, etc.

Custom Solutions (Applications) Exclusions:

- (a) Platform changes, including, but not limited to, Operating Systems, Hardware, Telecom Equipment, etc.
- (b) Government mandated changes
- (c) Changes to third party applications
- (d) Requests for changes in the Custom Solution (Application)
- (e) Biz Talk orchestrations including interfaces that are not associated with VisionCONNECT.
- (f) Other modifications or changes in software, hardware or configuration not related to changes in the VisionAIR product, which are not initiated by VisionAIR.
- (g) This Agreement does not include professional services (on site training, installation or upgrades of third party software applications used in conjunction with or required by any VisionAIR specifications , data migrations, or project management) deemed necessary by VisionAIR. On site services will be charged separately.

7. Charges to CLIENTS:

- (a) Charges for Covered Maintenance: The applicable rates for Covered Maintenance are set forth in the Quotation (Attachment B to the Software License Agreement).
- (b) Charges for Billable Call Maintenance: The hourly rate charges are posted on the Client Service Center Web page for both business hours and non-business hour rates.
- (c) Charges for Travel: Upon prior written authorization, **CLIENT** shall pay for travel time and travel expense in connection with Billable Call Maintenance. Travel time will be charged to the **CLIENT** at one- half the Billable Call Rate. Travel expense will be charged as incurred and includes tolls, parking and other out-of-pocket costs plus mileage at the then current rates. There will be no additional charge to the **CLIENT** for travel expense incurred in connection with Covered Maintenance.
- (d) Charge for Software License Changes: All Covered Maintenance fees hereunder are subject to increase or decrease upon any change in number of concurrent user licenses or software modules licensed.

8.0 Client Responsibilities:

8.1 Remote Connectivity Maintenance Service. Client shall supply remote access to Client's network, servers and workstations in order for VisionAIR to perform Covered Maintenance, Billable Call Maintenance and Internet connection for the purpose of allowing secure access via the Internet and the latest version of Microsoft's Internet browser software (Internet Explorer) to any workstation or server covered by Maintenance Service. VisionAIR may elect to use, at its sole discretion, properly licensed third-party remote connectivity software owned by the client agency and installed on a system with Internet connection. VisionAIR will not bear the burden of procuring and/or licensing any remote connectivity software or loading it on VisionAIR Client Services systems. Client shall

also maintain a dedicated phone line, modem and Microsoft's current remote access software (such as Remote Access Server – RAS) that can be enabled to allow VisionAIR personnel to authenticate to their network for support purposes in the event that there are unforeseen problems with the Internet method of connectivity.

8.2 Backup of data. **CLIENT** is responsible to maintain a proper set of data backups in the event that it becomes necessary to recover from a disaster.

8.3 Reference Site. **CLIENT** shall act as a premier reference site for **VISIONAIR**. The **CLIENT** shall participate in perspective **VISIONAIR** client visits to Chattanooga and offer executive level consultations with potential clients regarding the successful use of **VisionAIR** products.

9.0. Billable Call Maintenance. The term "Billable Call Maintenance" as used herein means services provided by **VISIONAIR** that are not included under Covered Maintenance. The rates for these services from 8:00 am to 5:00 pm and after 5:00 pm and before 8:00 am EST for **CLIENT'S** respective time zone shall be at the then currently published rate. All billable service calls will have a minimum charge of two hours. Billable service will be provided upon receipt of a Purchase Order, letter of authorization or credit card information.

10.0. Changes in Charges. At least 120 days prior to the expiration of the Initial Term or any Renewal term, **VISIONAIR** may make changes to the Covered Maintenance fees and the Billable Call Rate, such changes to be effective at the commencement of the immediately subsequent Renewal term, if any. **CLIENT** may terminate this Agreement within sixty (60) days after receipt of the first invoice with changed charges by giving **VISIONAIR** sixty (60) days written notice of its intention to terminate, and this agreement will terminate as of the date for termination set forth in the **CLIENT's** notice to **VISIONAIR** or at the end of such sixty (60) day period, whichever last occurs.

11.0. Payment. **VISIONAIR** will invoice the **CLIENT** in advance for each year during the Initial Term for Covered Maintenance and **CLIENT** shall pay such invoice on or before July 31st of that year. Such invoices will include pro rata charges or credits for any Covered Maintenance of Licensed Software installed or removed during the previous term or prior to the Effective Date that are not part of this agreement. **VISIONAIR** will invoice **CLIENT** for Billable Call Maintenance as incurred and **CLIENT** shall pay invoices for Covered Maintenance, including any invoices outstanding on the Effective Date of this Agreement, on or prior to the commencement of each term. The attached quote is hereby incorporated by reference. All payments shall be paid by **CLIENT** within thirty (30) days upon receipt of invoice by **CLIENT**. For the Initial Term of this Agreement, there shall be a 3% cap on the maintenance increase for the Licensed Software. Additional purchases and add ons shall be subject to additional maintenance payments but shall be governed by the same terms of this agreement. In the event **VISIONAIR** implements an increase of less than 3% for its general client base, that savings (reduction in maintenance increase) will be passed along to **CLIENT**.

12. Disclaimer of Warranty. **VISIONAIR** makes no warranty of any kind, express or implied, including without limitation, any warranty of merchantability or fitness for a particular purpose with respect to the subject matter hereof, maintenance to be performed by **VISIONAIR** pursuant to the terms hereof, or parts to be supplied hereunder.

13. Limitation of Liability. **VISIONAIR** SHALL NOT BE LIABLE FOR ANY DAMAGES INCURRED, UNLESS SUCH DAMAGES ARE CAUSED BY THE NEGLIGENT OR INTENTIONALLY TORTIOUS ACT OR OMISSION OF **VISIONAIR**, ITS EMPLOYEES OR REPRESENTATIVES. IN NO CASE, HOWEVER, SHALL **VISIONAIR** BE HELD LIABLE FOR INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES. UNDER NO CIRCUMSTANCE SHALL **VISIONAIR'S** LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT ACTUALLY PAID TO **VISIONAIR** BY THE **CLIENT** UNDER THIS AGREEMENT.

14. Hardware and Network Upgrades. **CLIENT** acknowledges that due to the dynamic nature of the information technology industry and frequent product replacements and/or upgrades developed independently by third party hardware and software vendors, **VISIONAIR** has no control over the turnover of product or obsolescence of technology of third party products. **CLIENT** also acknowledges that **VISIONAIR** develops its Network Hardware Specification Document based upon all of the third party product information available at the time of publication. Therefore, with respect to third party hardware and software, **CLIENT** shall retain the responsibility for the costs of purchase and installation of hardware and software upgrades necessary to maintain the functionality of the Licensed Software. **VISIONAIR** develops the Network Hardware Specification document considering that no other software application will be installed. Additional hardware specifications should be considered if the **CLIENT** intends to run other applications. Additionally, the accumulation of data in **CLIENT's** database over a period of time may require expanding the capacity of hard drives and memory of the system servers and workstations in

order to maintain performance at response times acceptable to the **CLIENT**. Subject to all of the affirmative duties and obligations of **VISIONAIR** under this Software Maintenance Agreement, it is the **CLIENT's** sole responsibility to maintain the system to ensure adequate response times.

15. Product revisions and Support. **VISIONAIR'S** obligation to provide support under this agreement diminishes as products are replaced by more current releases. The current, generally available (referred to as GA), version of the software and the version immediately preceding it are fully supported. These two versions qualify for phone support, engineered defect corrections and/or modifications required for the software to operate as designed. Any versions older than the two referenced versions will receive phone support and resolution of Priority 0 defects as they occur. VisionAIR will announce the availability of new software releases to facilitate timely upgrade to avoid product obsolescence.

16. Force Majeure. Neither party shall be liable or deemed in default for any failure in performance hereunder resulting from any cause beyond its reasonable control.

17. Termination for Non-payment. If **CLIENT** is in default due to non-payment, and after **VISIONAIR** has given **CLIENT** written notice and such default is not cured after 15 days then **VISIONAIR** may terminate this agreement at any time upon written notice to **CLIENT**.

18. Confidentiality. **CLIENT** shall not disclose the terms or any other information about this agreement to any public safety agencies. The **CLIENT** shall not disclose to any agency **VISIONAIR'S** willingness to negotiate any maintenance pricing or terms.

19. Notices. Any Notice, request, instruction or other document pertaining to this Agreement shall be sent to the appropriate party's address as set forth above, and shall be deemed to have been duly given or served if delivered in person or deposited in the United States mail, certified mail, return receipt requested.

20. General. This Agreement shall be governed by the laws of the State of North Carolina. This Agreement constitutes the entire agreement between the parties hereto with respect to maintenance of the Licensed Software and shall supersede all previous or contemporaneous negotiations, commitments and writings with respect to matters set forth herein. It may be only modified by writing signed by authorized representatives of both parties. The terms and provisions of this Agreement shall prevail over any conflicting, additional or other terms appearing on any purchase order submitted by the **CLIENT** at any time.

VISIONAIR, INC.

Chattanooga Police Department

Signature: _____

Signature: _____

Name: Mike Lyons

Name: _____

Title: Chief Executive Officer

Title: _____

Date: _____

Date: _____

Chattanooga 4 Year Software Support Attachment

MOBILE	MTC PLAN	
VisionMobile Message Switch:	24 x 7	
Mobile Base Package:	24 x 7	
Mobile Incident Report License: 300 Position	24 x 7	
Mobile Accident Report License: 300 Position	24 x 7	
Mobile Field Interview Report License: 300 Position	24 x 7	
VisionMobile API Interface: 1 Position	24 x 7	
Total VisionMobile:		\$92,700.00
Proposed Coverage 24x7 at 8x5 rate		<u>\$(4,635.00)</u>
		\$88,065.00

RMS	MTC PLAN	
VisionRMS Base: 500 Position	8 x 5	
Administration/Personnel: 40 Position	8 x 5	
Citation: 500 Position	8 x 5	
Bar Coding: 500 Position	8 x 5	
Imaging/Mugshots: 30 Position	8 x 5	
Equipment Maintenance: 500 Position	8 x 5	
Officer Activity Log: 500 Position	8 x 5	
Pawn: 500 Position	8 x 5	
Traffic Accident: 500 Position	8 x 5	
Wants/Warrant: 500 Position	8 x 5	
Towing: 500 Position	8 x 5	
Total VisionRMS: (Includes VinPower)		\$123,538.46

INTERFACES	MTC PLAN	
CJUS	8 x 5	
Pawn	8 x 5	
ACISS	8 x 5	
Positron	8 x 5	
Total Interfaces:		\$39,750.00

3rd PARTY/OTHER	MTC PLAN	
DataMaxx:		\$11,107.25

Maintenance Summary:

RMS, Mobile, DataMaxx & Interfaces n/inc MNHS & Incode:	\$262,460.71
Less \$10,000 Allowance in 05/06 & 06/07	\$(10,000.00)
05/06 Additional Support Allowance	(\$26,246.06)

Total Software Maintenance 05/06 n/inc MNHS & Incode	\$226,214.65
---	---------------------

Total Software Maintenance 06/07 n/inc MNHS & Incode	\$273,457.49
---	---------------------

Total Software Maintenance 07/08 n/inc MNHS & Incode	\$291,567.52
---	---------------------

Total Software Maintenance 08/09 n/inc MNHS & Incode	\$286,797.83
---	---------------------

MNHS 100 Positions 8x5 (Once Live)

Year-1	\$2,575.00
Year-2	\$2,652.25
Year-3	\$2,731.82
Year-4	\$2,813.77

Incode 8x5

July 1, 2005 through June 30, 2006	\$2,250.00
July 1, 2006 through June 30, 2007	\$2,317.50
July 1, 2007 through June 30, 2008	\$2,387.03
July 1, 2008 through June 30, 2009	\$2,458.64