

**MINUTES OF THE REGULAR MEETING
OF THE MAYOR AND BOARD OF ALDERMEN
OF THE CITY OF STARKVILLE, MISSISSIPPI
July 21, 2020**

Be it remembered that the Mayor and Board of Alderman met in a Recess Meeting on July 21, 2020 at 5:30 p.m. in the Courtroom of City Hall, located at 110 West Main Street, Starkville, MS. Present were Mayor Lynn Spruill, Aldermen Ben Carver, Sandra Sistrunk, Hamp Beatty and Henry Vaughn, Sr. as well as City Clerk / CFO Lesa Hardin and City Attorney Chris Latimer. Aldermen David Little, Jason Walker, and Roy A'. Perkins attended telephonically or by videoconference. Alderman Little was absent.

Mayor Lynn Spruill opened the meeting with the Pledge of Allegiance followed by a moment of silence.

Mayor Lynn Spruill asked for any revisions to the Official Agenda.

REQUESTED REVISIONS TO THE OFFICIAL AGENDA:

There being no changes, the Mayor called for a motion to approve the agenda with consent items.

1. A MOTION TO APPROVE THE AGENDA WITH CONSENT ITEMS.

Alderman Vaughn offered a motion, duly seconded by Alderman Beatty, to approve the July 21, 2020 Agenda as amended. Mayor Spruill then read the consented items after which the Board voted as follows:

Alderman Ben Carver	Voted: Yea
Alderman Sandra Sistrunk	Voted: Yea
Alderman David Little	Voted: Absent
Alderman Jason Walker	Voted: Yea
Alderman Hamp Beatty	Voted: Yea
Alderman Roy A'. Perkins	Voted: Yea
Alderman Henry Vaughn, Sr.	Voted: Yea

Having received a majority affirmative vote, the Mayor declared the motion carried.

**OFFICIAL AGENDA OF
THE MAYOR AND BOARD OF ALDERMEN
OF THE
CITY OF STARKVILLE, MISSISSIPPI
REGULAR MEETING OF TUESDAY, JULY 21, 2020
5:30 P.M., COURT ROOM, CITY HALL
110 WEST MAIN STREET**

CONSENT AGENDA ITEMS ARE HIGHLIGHTED

- I. CALL THE MEETING TO ORDER**
- II. PLEDGE OF ALLEGIANCE AND A MOMENT OF SILENCE**
- III. APPROVAL OF THE OFFICIAL AGENDA INCLUDING CONSENTED ITEMS**
- IV. APPROVAL OF THE BOARD OF ALDERMEN MINUTES**

V. ANNOUNCEMENTS AND COMMENTS

A. MAYOR’S COMMENTS:

B. BOARD OF ALDERMEN COMMENTS:

VI. CITIZEN COMMENTS

VII. PUBLIC APPEARANCES

VIII. PUBLIC HEARING

SECOND PUBLIC HEARING AND CONSIDERATION OF THE ADOPTION OF A TEMPORARY LEISURE AND ENTERTAINMENT DISTRICT ORDINANCE FOR THE CITY OF STARKVILLE.

FIRST PUBLIC HEARING ON AMENDING THE CITY OF STARKVILLE CODE OF ORDINANCES, ARTICLE III. SECTION 82-51 ET SEQ. ASSEMBLIES, PARADES AND PROCESSIONS.

IX. MAYOR’S BUSINESS

A. VIDEO INTERVIEW FOR MR. BRANDON DOHERTY

B. CONSIDERATION OF HIRING MR. BRANDON DOHERTY AS THE PARKS AND RECREATION DIRECTOR FOR THE CITY OF STARKVILLE.

X. BOARD BUSINESS

XI. DEPARTMENT BUSINESS

A. AIRPORT

THERE ARE NO ITEMS FOR THIS AGENDA

B. COMMUNITY DEVELOPMENT DEPARTMENT

1. CODE ENFORCEMENT

a. CONSIDERATION OF CALLING FOR A PUBLIC HEARING UNDER MISS. CODE ANN. § 21-19-11 TO DETERMINE WHETHER THE PROPERTIES LOCATED AT 1249 MS HWY 182 W; 310 LINDBERGH BOULEVARD; 307 WEST MAIN STREET; 321 CRITZ STREET; AND 722 VINE STREET ARE MENACES TO THE PUBLIC HEALTH, SAFETY, AND WELFARE OF THE COMMUNITY.

2. PLANNING

a. CONSIDERATION OF SOLE APPLICANT, DR. GEORGE FORD, FOR APPOINTMENT TO THE VACANCY IN WARD 1 OF THE STARKVILLE BOARD OF ADJUSTMENTS AND APPEALS FOR A FULL 4-YEAR TERM SET TO EXPIRE ON JUNE 30, 2024.

b. CONSIDERATION OF FP 20-01 REQUEST FOR FINAL PLAT APPROVAL FOR SUBDIVIDING AND RECONFIGURING SEVERAL LOTS INTO 4 LOTS LOCATED

NORTH OF THE INTERSECTION OF UNIVERSITY DRIVE AND PAGE AVENUE IN A T-5U ZONING DISTRICT WITH THE PARCEL NUMBERS 101C-00-002.00, 101C-00-001.00, 101D-00-001.00, 101D-00-002.00, 101D-00-003.00, AND 101D-00-004.00 INCLUDING AN ENCROACHMENT AGREEMENT AND THE MAINTENANCE AGREEMENT FOR THE PEDESTRIAN BRIDGES ASSOCIATED WITH THE VISTA DEVELOPMENT AND AUTHORIZATION FOR THE MAYOR TO SIGN ON THE CITY'S BEHALF.

- c. CONSIDERATION OF FP 20-02 REQUEST FOR FINAL PLAT APPROVAL FOR SUBDIVIDING AND RECONFIGURING 2 LOTS THAT ARE A COMBINED +/-0.69-ACRE INTO 2 LOTS AT 400 AND 402 NORTH JACKSON STREET IN A TN-E ZONE WITH THE PARCEL NUMBER 118I-00-103.00 AND 118I-00-104.00.

- d. CONSIDERATION OF THE APPROVAL OF THE MEMORANDUM OF AGREEMENT WITH THE HISTORIC PRESERVATION DIVISION, MISSISSIPPI DEPARTMENT OF ARCHIVES AND HISTORY (MDAH) TO MOVE AND PRESERVE THE HISTORIC GILLESPIE-JACKSON HOUSE, LOCATED CURRENTLY ON 701 LOUISVILLE STREET WITH PARCEL NUMBER 102G-00-036.00 AND TO RECEIVE \$20,000 THROUGH THE CERTIFIED LOCAL GOVERNMENT (CLG) GRANT PROGRAM.

C. COURTS

THERE ARE NO ITEMS FOR THIS AGENDA

D. ENGINEERING

- 1. CONSIDERATION OF ACCEPTANCE OF THE LOWER BID OF \$989,747.80 FOR THE 2020 STREET IMPROVEMENT PROJECT FROM FALCON CONTRACTING COMPANY, INC. AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT.

E. FINANCE AND ADMINISTRATION

- 1. REQUEST APPROVAL OF THE CITY OF STARKVILLE CLAIMS DOCKET FOR ALL DEPARTMENTS INCLUDING STARKVILLE UTILITIES DEPARTMENT AS OF JULY 14, 2020 FOR FISCAL YEAR ENDING 9/30/20, ACKNOWLEDGING THAT THE CITY CLERK HAS ATTESTED AND CERTIFIED ON THE COVER OF THE CLAIMS DOCKET THAT ALL CLAIMS ON THE DOCKET ARE TRUE, ACCURATE, LAWFUL AND PROPER TO THE BEST OF HER KNOWLEDGE, FOR PAYMENT PURSUANT TO HER DUTIES UNDER MISS. CODE SECTIONS 21-39-5, 21-39-7, 21-39-9, 21-39-17 AND 21-15-21.

- 2. ACCEPTANCE OF THE JUNE 2020 FINANCIAL STATEMENTS.

F. FIRE DEPARTMENT

THERE ARE NO ITEMS FOR THIS AGENDA

G. HUMAN RESOURCES

- 1. REQUEST AUTHORIZATION TO HIRE JONATHAN LINDSEY, DYLAN ROCKWELL AND MARQUANDRIC STARKS AS ENTRY LEVEL FIREFIGHTERS IN THE STARKVILLE FIRE DEPARTMENT.

2. REQUEST AUTHORIZATION TO HIRE QUINTIN ALEXANDER AS AN ENTRY LEVEL POLICE OFFICER AND MOULTRIE B. LACEY AS A CERTIFIED POLICE OFFICER IN THE STARKVILLE POLICE DEPARTMENT.
3. REQUEST AUTHORIZATION TO HIRE THOMAS DAVIS AS A SEWER OPERATOR IN THE STARKVILLE UTILITIES DEPARTMENT.
4. REQUEST AUTHORIZATION TO HIRE MALCOM COLLINS AS A SEWER MAINTENANCE WORKER IN THE STARKVILLE UTILITIES DEPARTMENT.
5. REQUEST AUTHORIZATION TO HIRE LUKE BURNETT AS A SEWER INSPECTOR IN THE STARKVILLE UTILITIES DEPARTMENT.
6. REQUEST AUTHORIZATION TO HIRE TWO PART-TIME CUSTOMER SERVICE REPRESENTIVES IN THE STARKVILLE UTILITIES DEPARTMENT.

H. INFORMATION TECHNOLOGY

1. REQUEST APPROVAL OF AN AGREEMENT (WITH ADDENDUM) WITH SECURAMAX REQUIRED TO PARTICIPATE IN A 30 DAY TEST AND EVALUATION OF A NEW POLICE BODY CAMERA SYSTEM.

I. PARKS

1. REQUEST AUTHORIZATION FOR RFP FOR CORNERSTONE SPORTS FIELD LIGHTING, (8) BASEBALL/SOFTBALL FIELDS 225', TWO (2) BASEBALL FIELDS 250', ONE (1) T-BALL AREA (2 FIELDS). ALTERNATE #1 INCLUDES TWO (2) BASEBALL/SOFTBALL FIELDS 225' AND ALTERNATE #2 IS PER FIELD COST FOR AUTOMATED SPORTS BROADCASTING CAMERA SYSTEM FOR A 225' AND 250' FIELDS.
2. REQUEST APPROVAL OF RFP COMMITTEE TO REVIEW THE CORNERSTONE LIGHTING RFP AND TO PROVIDE A RECOMMENDATION ON THE SYSTEM TO THE MAYOR AND BOARD OF ALDERMEN WITH THE COMMITTEE TO CONSIST OF ALDERMAN WARD 4 JASON WALKER, PARK ATHLETIC SUPERVISOR NICK CALLAHAN, AND CITY ENGINEER EDWARD KEMP.

J. POLICE DEPARTMENT

THERE ARE NO ITEMS FOR THIS AGENDA

K. SANITATION DEPARTMENT

THERE ARE NO ITEMS FOR THIS AGENDA

L. UTILITIES DEPARTMENT

1. REQUEST AUTHORIZATION TO ACCEPT THE LOWEST AND BEST BID FROM CONSOLIDATED PIPE & SUPPLY TO PURCHASE A TRENCH BOX ASSEMBLY SET IN THE AMOUNT OF \$8,790.00.

XII. CLOSED DETERMINATION SESSION

XIII. OPEN SESSION

XIV. EXECUTIVE SESSION

- Personnel

XV. OPEN SESSION

XVI. ADJOURN UNTIL AUGUST 4, 2020 @ 5:30 IN THE COURT ROOM AT 110 WEST MAIN STREET.

The City of Starkville is accessible to persons with disabilities. Please call the ADA Coordinator, Dr. Simon Kim, at (662) 323-2525, at least forty-eight (48) hours in advance for any services requested.

Consent items 2 – 16:

2. CONSIDERATION OF CALLING FOR A PUBLIC HEARING UNDER MISS. CODE ANN. § 21-19-11 TO DETERMINE WHETHER THE PROPERTIES LOCATED AT 1249 MS HWY 182 W; 310 LINDBERGH BOULEVARD; 307 WEST MAIN STREET; 321 CRITZ STREET; AND 722 VINE STREET ARE MENACES TO THE PUBLIC HEALTH, SAFETY, AND WELFARE OF THE COMMUNITY.

Upon the motion of Alderman Vaughn, duly seconded by Alderman Beatty, and adopted by the Board to approve the July 21, 2020 Official Agenda, and to accept items for consent, whereby the “approval of calling for a Public Hearing under Miss. Code Ann. § 21-19-11 to determine whether the properties located at 1249 MS Hwy 182 W; 310 Lindbergh Boulevard; 307 West Main Street; 321 Critz Street; and 722 Vine Street are menaces to the public health, safety, and welfare of the community” is enumerated, this consent item is thereby approved.

3. CONSIDERATION OF SOLE APPLICANT, DR. GEORGE FORD, FOR APPOINTMENT TO THE VACANCY IN WARD 1 OF THE STARKVILLE BOARD OF ADJUSTMENTS AND APPEALS FOR A FULL 4-YEAR TERM SET TO EXPIRE ON JUNE 30, 2024.

Upon the motion of Alderman Vaughn, duly seconded by Alderman Beatty, and adopted by the Board to approve the July 21, 2020 Official Agenda, and to accept items for consent, whereby the “approval of appointing Dr. George Ford as the Ward 1 member of the Board of Adjustments and Appeals with a 4 year term expiring on June 30, 2024” is enumerated, this consent item is thereby approved.

4. CONSIDERATION OF APPROVAL OF THE MEMORANDUM OF AGREEMENT WITH THE HISTORIC PRESERVATION DIVISION, MISSISSIPPI DEPARTMENT OF ARCHIVES AND HISTORY (MDAH) TO MOVE AND PRESERVE THE HISTORIC GILLESPIE-JACKSON HOUSE, LOCATED CURRENTLY ON 701 LOUISVILLE STREET WITH PARCEL NUMBER 102G-00-036.00 AND TO RECEIVE \$20,000 THROUGH THE CERTIFIED LOCAL GOVERNMENT (CLG) GRANT PROGRAM.

Upon the motion of Alderman Vaughn, duly seconded by Alderman Beatty, and adopted by the Board to approve the July 21, 2020 Official Agenda, and to accept items for consent, whereby the “approval of the Memorandum of Agreement with the Historic Preservation Division, Mississippi Department of Archives and History (MDAH) to move and preserve the Historic Gillespie-Jackson House, located currently on 701 Louisville Street with Parcel Number 102G-00-036.00 and to receive \$20,000 through the Certified Local Government (CLG) Grant Program” is enumerated, this consent item is thereby approved.

Memorandum of Agreement

THIS AGREEMENT between the Historic Preservation Division, **Mississippi Department of Archives and History**, hereinafter called MDAH, by and through the State Historic Preservation Officer, and the **City of Starkville**, hereinafter called the Grantee, relates to a project to be undertaken by the Grantee, assisted by MDAH with a matching Certified Local Government grant-in-aid established under the National Historic Preservation Act of 1966, as amended, and administered through the National Park Service, US Department of the Interior.

MDAH and the Grantee agree as follows:

1. Work Program

This grant is for a rehabilitation project to be conducted on the Gillespie-Jackson House in Starkville, Oktibbeha County. The Grantee shall carry out project work as specified in the "Work Program" for this project, which is hereby incorporated into and made a part of the Memorandum of Agreement as **Attachment A**.

The approved work program, products, and performance/reporting milestones may not be altered without prior written approval from the Certified Local Government Grants Administrator of the Historic Preservation Division, Department of Archives and History.

All products produced with assistance of this grant must be in compliance with the applicable Secretary of the Interior's *Standards for Archaeology and Historic Preservation*.

2. Period of Performance

All work carried out as part of this grant-assisted project shall be conducted between the latest date of the signature of either the State Historic Preservation Officer or the Mayor of Starkville and **August 1, 2021**. **Extensions will not be given to late or incomplete projects.**

3. Compensation

Anticipated Project Cost: **\$ 120,000.00**

The Grantee is expected to be able to cover all costs incurred during the course of the project, prior to reimbursement of the grant funds. Compensation to the Grantee shall be on a **matching basis**. The Grantee is required to provide **at least** a 50% of match of the final project cost.

Subject to receipt of funds from the National Park Service and to successful completion of all project work activities, MDAH, agrees to **reimburse** the Grantee **\$ 20,000.00** or 50% of eligible final project costs, **whichever is less**, based on the following conditions:

- a. Submission of all project completion materials to MDAH, as outlined in Section 9 below no later than **August 1, 2021**. A Project Completion Report shall accompany the completed materials.
- b. **Two (2)** copies of an acceptable reimbursement request and auditable records, as specified in the Historic Preservation Fund Grants Manual, must be submitted to MDAH no later than **August 31, 2021**. Acceptable federal and nonfederal share supporting documentation needed to substantiate billing (i.e., timesheets, copies of front and back of canceled checks, etc.) must be submitted by Grantee prior to reimbursement.

- c. The Grantee agrees to maintain all financial and administrative documents and records pertaining to the full life-cycle of the grant, for a period of not less than five years after completion of the project. The State Department of Audit, the State Historic Preservation Officer, the National Park Service, the Department of the Interior, the Comptroller of the United States, and any of their duly authorized representatives shall have access to grant records for audit purposes.

4. Allowable Costs

Allowable costs are those costs documented to the satisfaction of MDAH, that conform to the approved project budget and that are determined by MDAH to:

- a. Meet federal requirements for the program;
- b. Be necessary and reasonable to the completion of project work;
- c. Have been incurred for project work during the period of the grant.

5. Personnel Selection

Project personnel shall have qualifications appropriate to the major work elements of the project, and may include Grantee staff members, private consultants, or university students and non-paid volunteers, if under the supervision of a qualified principal investigator who must have qualifications in the areas of history and architectural history, preferably with historic preservation experience.

The Grantee may utilize small purchase procedures (as specified in NPS-49, Chapter 17-Procurement Standards, H. 1.) when projects do not exceed \$100,000. Grantees shall further comply with state and local small purchase dollar limits. When the project exceeds the federal, state, or local amount, the Grantee must utilize competitive negotiation procedures (competitive sealed bids) for procurement of architectural/engineering professional services, whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Resumes, references, and past work experience may be evaluated to assess professional qualifications.

The Grantee shall maintain records sufficient to detail the significant history of procurement. These records shall include, but are not necessarily limited to, information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejections, and the basis for the cost or price. Prior to reimbursement for expenditures, the Grantee must forward to the Department of Archives and History evidence of compliance with federal competitive procurement requirements for professional services and subcontracts.

6. Contracts

In addition to provisions defining a sound and complete procurement contract, any recipient of federal grant funds shall include the following contract provisions or conditions in all procurement contracts and subcontract as required by these provisions, Federal law or the National Park Service:

- a. Contracts other than small purchases shall contain provisions or conditions that will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanction and penalties as may be appropriate.
- b. All contracts shall contain suitable provisions for termination by the Grantee, including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

- c. All contracts awarded by the Grantee shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
- d. All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

The Grantee shall retain the possibility of reprinting any publications by including in any consultant contract a requirement that the consultant waive any claim to a copyright.

7. Professional Supervision

The Grantee agrees to appoint a **project coordinator** whose professional qualifications have received prior approval of the Historic Preservation Division to ensure that the work conforms to the approved work program and to provide the necessary standard of professional conduct required for this project under the federal program regulations. The project coordinator will be responsible for completing the grant reports as outlined in Section 8 below and for ensuring that all project materials are submitted. The staff of the Historic Preservation Division will maintain regular contact with the project coordinator and will provide necessary and reasonable amounts of training, advice, or technical assistance as required for the successful completion of project work.

8. Reports

The Grantee will be required to submit Grant Progress Reports (both programmatic and fiscal) on **October 30, 2020; January 29, 2021; and April 30, 2021** as well as the Project Completion Report on **August 1, 2021** and the Reimbursement Request (with supporting materials) by **August 31, 2021**.

The Grantee shall contact MDAH's Certified Local Government Grants Administrator **immediately** if any situation should arise which will affect the timely or successful completion of this project and/or the final report of materials.

9. Project Completion Materials

The Grantee agrees to submit final completion materials and a summary narrative **Project Completion Report** by **August 1, 2021**, in a format consistent with the Secretary of the Interior's *Standards for Archaeology and Historic Preservation* and as specified by the Historic Preservation Division. Final competition materials for this project are as follows:

- Photos of completed work
- A fully executed Preservation and Conservation Easement (submitted with Reimbursement Request)

The Grantee shall submit any materials or reports requiring review or revision by MDAH in a timely manner so as to ensure that final materials are submitted no later than **August 1, 2021**.

A final expense summary, due **August 31, 2021**, shall be detailed by each budget category and indicate which items were charged to each source of funding (federal and non-federal).

Any Grantee that is required to have an audit conducted in accordance with the Single Audit Act (A-128) shall submit to MDAH a copy of the audit (or audits) for the time period covered by this grant, within three months following completion of the audit(s).

10. Acknowledgment of Federal Assistance

Federal grant assistance shall be acknowledged in any public announcements, news releases, articles, publications, audio-visual materials, and pertinent presentations that the Grantee produces or initiates. The acknowledgment format is detailed in the **Attachment B** and shall substantially state that the project has been funded with the assistance of a matching grant-in-aid from the National Park Service of the US Department of the Interior, through the Mississippi Department of Archives and History, under provisions of the National Historic Preservation Act of 1966.

The copyright for any publication resulting from this agreement shall be available to the Grantee. The Grantee agrees to, and awards to the United States Government and its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive, and irrevocable license throughout the world for Government purposes, to publish, translate, reproduce, and use all subject data or copyrightable material based on such data covered by the copyright.

11. General Provisions

The Grantee agrees to comply with all federal and state laws and regulations concerning equal opportunity, affirmative action, and fair employment practices. The Grantee further agrees to comply with all applicable regulations, laws, policies, guidelines, and requirements of this federal grant program, including the Single Audit Act of 1984 for state and local governments or the audit requirements of OMB Circular A-110 for universities and nonprofit organizations. In addition to the terms detailed in this agreement, all federal requirements governing grants (OMB Circulars A-87 or A-122, A-102 or A-110, and A-128) are applicable. The Grantee agrees to abide by all assurances made part of this agreement as **Attachments C**.

Grant funds shall not be disbursed for any project of activity that does not evidence that:

- a. Planned work has been accomplished within the scope of the subgrant or contractual agreement summarized in the Work Program (**Attachment A**)
- b. Work was done according to the applicable Secretary's *Standards for Archaeology and Historic Preservation*.
- c. Work was done in accordance with the terms and conditions of the applicable Historic Preservation Fund grant.

In circumstances where funds are disbursed for ineligible activities, such costs shall be returned to the MDAH by the Grantee.

12. Termination of Agreement

This agreement may be terminated short of conclusion due to one of the following situations:

- a. Termination for Cause - MDAH may terminate any grant, in whole or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the terms and conditions of the grant. MDAH will promptly notify the Grantee in writing of the termination and the reasons for the termination, together with the effective date. Payments made to Grantees or recoveries by MDAH under grants terminated for cause will be in accordance with the legal rights and liabilities of the parties.

- b. Termination for Convenience - MDAH or the Grantee may terminate grants of subgrant projects in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties will agree upon the termination conditions, including the effective date, and in the case of partial terminations, the portion to be terminated.
- c. Termination by Grantee - The Grantee may unilaterally cancel the grant at any time prior to the first payment on the grant, although MDAH must be notified in writing. Once initiated, no grant finance with HPF assistance shall be terminated by a Grantee prior to satisfactory completion without the approval of MDAH. After the initial payment, the project may be terminated, modified, or amended by the Grantee only by mutual agreement of the Grantee and MDAH. Requests for termination prior to completion must fully explain the reasons for the action and detail the proposed disposition of the uncompleted work.

When a grant is terminated, the Grantee will not incur new obligations for the terminated portion after the effective date of termination. The Grantee will cancel as many outstanding obligations as possible. The MDAH will allow full credit to the Grantee for the federal share of the noncancelable obligations properly incurred by the Grantee prior to the termination. Costs incurred after the effective date of the terminations will be disallowed.

THIS AGREEMENT becomes effective upon signature of the parties below.

BY

Katie Blount
State Historic Preservation Officer

Date

BY

Honorable Lynn Spruill
Mayor of Starkville

Date

Return to:

Lydia Charles
Certified Local Government Grant Administrator
Historic Preservation Division
Mississippi Department of Archives and History
P. O. Box 571
Jackson, MS 39205-0571

ATTACHMENT A: WORK PROGRAM

1. This project will include the relocation of the Gillespie-Jackson House in Starkville, MS. The project will have two parts: (1) adhering to the specific requirements in dealing with changes to properties listed in the National Register (2) communicating with MDAH on methodology to relocate the house.
2. All requirements defined in CFR 60.14 (b) on relocation of properties listed in the National Register must be complete prior to the relocation of the building. The Grantee will work directly with MDAH on this process. Should you have questions, contact the Grants Administrator or the National Register Coordinator. For more information, refer to section (b) on the following website <<https://www.law.cornell.edu/cfr/text/36/60.14>>.
3. Prior to the start of the physical relocation, MDAH requires a detailed plan from the chosen contractor that will explain the scope of work, materials used, estimated cost, and project timeframe. All proposed materials and methods will need official approval from MDAH via a cultural resource assessment.*

*In compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966 a cultural resource assessment is required for this project. To initiate a Section 106 review, please use the Request for Cultural Resource Assessment located on MDAH's website at < <https://www.mdah.ms.gov/sites/default/files/2020-04/REQUEST-FOR-CULTURAL-RESOURCE-ASSESSMENT-2012.pdf>>.

4. A Preservation and Conservation Easement for the Gillespie-Jackson House must be fully executed and submitted with the Reimbursement Request.

ATTACHMENT B: Acknowledging Federal Assistance

Project Signage

There shall be erected at every grant assisted structure rehabilitation project a sign displayed in a prominent location while project work is in progress. The cost of signage, whether temporary or permanent, is an allowable project expenditure. Signs shall be maintained in good condition until work is completed. EXAMPLE:

**THE MANSHIP HOUSE
RESTORATION**

**MISSISSIPPI STATE BUILDING COMMISSION, OWNER
THIS PROPERTY IS ADMINISTERED BY
THE MISSISSIPPI DEPARTMENT OF ARCHIVES AND HISTORY**

**RESTORATION OF THIS PROPERTY WHICH IS LISTED ON THE NATIONAL REGISTER OF HISTORIC
PLACES, AND IS A MISSISSIPPI LANDMARK, HAS BEEN FUNDED WITH THE ASSISTANCE OF A
MATCHING GRANT-IN-AID FROM THE DEPARTMENT OF THE INTERIOR, CERTIFIED LOCAL
GOVERNMENT PROGRAM UNDER THE PROVISIONS OF THE NATIONAL HISTORIC PRESERVATION
ACT AMENDMENTS OF 1980.**

**WILLIAM LAMPTON GILL, ARCHITECT CLYDE V. MAXWELL, STRUCTURAL ENGINEER
JAMES W. STOREY, MECHANICAL ENGINEER WINDSOR ENGINEERING, ELECTRICAL ENGINEER
O.L. ELLIS, JR., GENERAL CONTRACTOR**

Attachments C: ASSURANCES - CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application,
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED	

5. CONSIDERATION OF ACCEPTANCE OF THE LOWER BID OF \$989,747.80 FOR THE 2020 STREET IMPROVEMENT PROJECT FROM FALCON CONTRACTING COMPANY, INC. AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT.

Upon the motion of Alderman Vaughn, duly seconded by Alderman Beatty, and adopted by the Board to approve the July 21, 2020 Official Agenda, and to accept items for consent, whereby the “approval of the low Bid for the 2020 Street Improvement Project from Falcon Contracting Company, Inc. and authorizing the Mayor to execute a construction contract” is enumerated, this consent item is thereby approved.

Three Bids received Wednesday, July 15:

Falcon Contracting Company, Inc.	\$ 989,747.80
APAC- Mississippi, Inc.	\$1,015,027.49
Murphree Paving	\$1,249,053.55

6. ACCEPTANCE OF THE JUNE 2020 FINANCIAL STATEMENTS.

Upon the motion of Alderman Vaughn, duly seconded by Alderman Beatty, and adopted by the Board to approve the July 21, 2020 Official Agenda, and to accept items for consent, whereby the “acceptance of the June 2020 financial statements” is enumerated, this consent item is thereby approved.

7. AUTHORIZATION TO HIRE JONATHAN LINDSEY, DYLAN ROCKWELL AND MARQUANDRIC STARKS AS ENTRY LEVEL FIREFIGHTERS IN THE STARKVILLE FIRE DEPARTMENT, EFFECTIVE AUGUST 3, 2020.

Upon the motion of Alderman Vaughn, duly seconded by Alderman Beatty, and adopted by the Board to approve the July 21, 2020 Official Agenda, and to accept items for consent, whereby the “approval to hire Jonathan Lindsey, Dylan Rockwell and Marquandric Starks as Entry Level Firefighters in the Starkville Fire Department, effective August 3, 2020” is enumerated, this consent item is thereby approved.

8. AUTHORIZATION TO HIRE QUINTIN ALEXANDER AS AN ENTRY LEVEL POLICE OFFICER AND MOULTRIE B. LACEY AS A CERTIFIED POLICE OFFICER IN THE STARKVILLE POLICE DEPARTMENT, EFFECTIVE AUGUST 3, 2020.

Upon the motion of Alderman Vaughn, duly seconded by Alderman Beatty, and adopted by the Board to approve the July 21, 2020 Official Agenda, and to accept items for consent, whereby the “approval to hire Quintin Alexander as an Entry Level Police Officers and hire Moultrie B. Lacey as a Certified Police Officer, effective August 3, 2020” is enumerated, this consent item is thereby approved.

9. AUTHORIZATION TO HIRE THOMAS DAVIS AS A SEWER OPERATOR IN THE STARKVILLE UTILITIES DEPARTMENT, EFFECTIVE AUGUST 3, 2020.

Upon the motion of Alderman Vaughn, duly seconded by Alderman Beatty, and adopted by the Board to approve the July 21, 2020 Official Agenda, and to accept items for consent, whereby the “approval to hire Thomas Davis as a Sewer Operator in the Starkville Utilities Department, effective August 3, 2020” is enumerated, this consent item is thereby approved.

10. AUTHORIZATION TO HIRE MALCOM COLLINS AS A SEWER MAINTENANCE WORKER IN THE STARKVILLE UTILITIES DEPARTMENT, EFFECTIVE AUGUST 3, 2020.

Upon the motion of Alderman Vaughn, duly seconded by Alderman Beatty, and adopted by the Board to approve the July 21, 2020 Official Agenda, and to accept items for consent, whereby the “approval to hire Malcom Collins as a Sewer Maintenance worker in the Starkville Utilities Department, effective August 3, 2020” is enumerated, this consent item is thereby approved.

11. AUTHORIZATION TO HIRE LUKE BURNETT AS A SEWER INSPECTOR IN THE STARKVILLE UTILITIES DEPARTMENT.

Upon the motion of Alderman Vaughn, duly seconded by Alderman Beatty, and adopted by the Board to approve the July 21, 2020 Official Agenda, and to accept items for consent, whereby the “approval to hire Luke Burnett as a Sewer Inspector in the Starkville Utilities Department” is enumerated, this consent item is thereby approved.

12. AUTHORIZATION TO HIRE TWO PART-TIME CUSTOMER SERVICE REPRESENTATIVES IN THE STARKVILLE UTILITIES DEPARTMENT.

Upon the motion of Alderman Vaughn, duly seconded by Alderman Beatty, and adopted by the Board to approve the July 21, 2020 Official Agenda, and to accept items for consent, whereby the “approval to hire two part-time Customer Service Representatives in the Starkville Utilities Department” is enumerated, this consent item is thereby approved.

13. CONSIDERATION OF AN AGREEMENT (WITH ADDENDUM) WITH SECURAMAX REQUIRED TO PARTICIPATE IN A 30 DAY TEST AND EVALUATION OF A NEW POLICE BODY CAMERA SYSTEM.

Upon the motion of Alderman Vaughn, duly seconded by Alderman Beatty, and adopted by the Board to approve the July 21, 2020 Official Agenda, and to accept items for consent, whereby the “approval of an agreement (with addendum) with SecuraMax required to participate in a 30 day test and evaluation of a new police body camera system” is enumerated, this consent item is thereby approved.

14. CONSIDERATION OF AUTHORIZATION FOR AN AGREEMENT AND ADDENDUM RFP FOR CORNERSTONE SPORTS FIELD LIGHTING, (8) BASEBALL/SOFTBALL FIELDS 225’, TWO (2) BASEBALL FIELDS 250’, ONE (1) T-BALL AREA (2 FIELDS). ALTERNATE #1 INCLUDES TWO (2) BASEBALL/SOFTBALL FIELDS 225’ AND ALTERNATE #2 IS PER FIELD COST FOR AUTOMATED SPORTS BROADCASTING CAMERA SYSTEM FOR A 225’ AND 250’ FIELDS.

Upon the motion of Alderman Vaughn, duly seconded by Alderman Beatty, and adopted by the Board to approve the July 21, 2020 Official Agenda, and to accept items for consent, whereby the “approval for an agreement and addendum RFP for Cornerstone sports field lighting, (8) baseball/softball fields 225’, two (2) baseball fields 250’, one (1) t-ball area (2 fields) with Alternate #1 to include two (2) baseball/softball fields 225’ and Alternate #2 is per field cost for automated sports broadcasting camera system for a 225’ and 250’ fields” is enumerated, this consent item is thereby approved.

15. CONSIDERATION OF THE APPROVAL OF AN RFP COMMITTEE TO REVIEW THE CORNERSTONE LIGHTING RFP AND TO PROVIDE A RECOMMENDATION ON THE SYSTEM TO THE MAYOR AND BOARD OF ALDERMEN WITH THE COMMITTEE TO CONSIST OF ALDERMAN WARD 4 JASON WALKER, PARK ATHLETIC SUPERVISOR NICK CALLAHAN, PARK DIRECTOR BRANDON DOHERTY AND CITY ENGINEER EDWARD KEMP.

Upon the motion of Alderman Vaughn, duly seconded by Alderman Beatty, and adopted by the Board to approve the July 21, 2020 Official Agenda, and to accept items for consent, whereby the “approval of an RFP Committee to review the Cornerstone Lighting RFP and to provide a recommendation on the system to the Mayor and Board of Aldermen with the committee to consist of Alderman Ward 4, Jason Walker, Athletic Supervisor Nick Callahan, Park Director Brandon Doherty and City Engineer Ed Kemp” is enumerated, this consent item is thereby approved.

16. REQUEST AUTHORIZATION TO ACCEPT THE LOWEST AND BEST QUOTE FROM CONSOLIDATED PIPE & SUPPLY TO PURCHASE A TRENCH BOX ASSEMBLY SET IN THE AMOUNT OF \$8,790.00.

Upon the motion of Alderman Vaughn, duly seconded by Alderman Beatty, and adopted by the Board to approve the July 21, 2020 Official Agenda, and to accept items for consent, whereby the “approval to accept the lowest and best quote from Consolidated Pipe & Supply to purchase a trench box assembly set in the amount of \$8,790.00” is enumerated, this consent item is thereby approved.

2 Quotes Received: Consolidated Pipe \$8,790.00 and Trench Plate Rental Co. \$8,960.00

SecuraMax™
SERVICE CONTRACT

This is a Service Contract (the "Service Contract") between City of Starkville
("LICENSEE") at Address

and Pro-Vision, Inc., a Michigan corporation having its principal place of business at 8625-B Byron Commerce Drive SW, Byron Center, Michigan 49315, ("PRO-VISION"). This Service Contract provides a start date and term of agreement, the initial fee structure, identification of the services to be provided, and identification of the devices ("PRO-VISION Devices") for which the services are associated, wherein the identified services are to be provided under the terms and conditions specified herein and in a Software Service and Hosting Agreement to which the LICENSEE will agree to in order to use the Software Service as specified therein. This Service Contract is voidable at the sole option of PRO-VISION unless and until LICENSEE executes the Software Service and Hosting Agreement.

The undersigned representative of LICENSEE represents that he/she is authorized to enter into this Service Contract on behalf of the LICENSEE and hereby agrees to the following terms and conditions on behalf of the LICENSEE.

PRO-VISION and LICENSEE agree as follows:

LICENSEE will accept and be bound by the terms and conditions offered by PRO-VISION, which are set forth in the Software Service and Hosting Agreement. Each end user of LICENSEE will be required to agree to End User Terms and Conditions. Further, LICENSEE will need to agree to separate Uploader Licenses for the uploader software. The terms of deployment will be established in a separate Remote Deployment Agreement.

Various details referenced in the Software Service and Hosting Agreement are set forth below.

LICENSEE INFORMATION:		
COMPANY / ORGANIZATION NAME: City of Starkville		BUSINESS TAX ID (TIN/EIN/FEIN): exempt
CONTACT NAME: Scott Grice		CONTACT TITLE: Principal Systems Administrator
BILLING ADDRESS: 110 West Main Street		
CITY: Starkville	STATE: MS	ZIP: 39759

Contract No. 202006120322

PRO-VISION DEVICE(S):

MODEL: BC-300	QUANTITY: 1
MODEL: PV-DVR	QUANTITY: 1

RECURRING ITEMS:

Items listed in this section are billed on a recurring monthly basis.

PART NUMBER	PART DESCRIPTION	QUANTITY	MONTHLY UNIT PRICE	SUB TOTAL	SEE NOTE
SMX-M2M-100	SecuraMax-Month to Month Plan [100GB]	2	0	0	
				0	
TOTAL				0	

FIXED COST ITEMS:

Items listed in this section have a one-time unit cost, monthly billing will not occur.

PART NUMBER	PART DESCRIPTION	QUANTITY	UNIT PRICE	SUB TOTAL	SEE NOTE
				0	
				0	
				0	
TOTAL				0	

The above fees are subject to change. Although monthly fees are listed above, LICENSEE will be responsible for payment of such fees for the entire Subscription Term and, in the event of early termination, the full amount of fees remaining shall become immediately due and payable. Fee payment will be made monthly by LICENSEE by ACH or credit card only. Terms and conditions as to how the monthly fees are to be paid are set forth in the Software Service and Hosting Agreement to which LICENSEE hereby acknowledges and agrees. All capitalized terms not otherwise defined in this Agreement shall have the meanings attributed to them in the Self-Hosted Software Service Agreement.

As set forth in the Self-Hosted Software Service Agreement, LICENSEE will be charged for data storage overages at the then-existing rates.

By applying our signatures below, we hereby accept the terms and conditions set forth above.

PRO-VISION:

LICENSEE:

SIGNATURE

SIGNATURE

Scott Grice

NAME

NAME

DATE

DATE

SOFTWARE SERVICE AND HOSTING AGREEMENT

This is a Software Service and Hosting Agreement (the "Agreement") under which LICENSEE may use the Software Service. This Agreement supplements the terms set forth in a previously-agreed upon Service Contract, Number 202006120322 between LICENSEE and PRO-VISION ("the Service Contract"), including any Protection Plan listed in the Service Contract ("Protection Plan").

By clicking ACCEPT, you represent that you are authorized to enter into this Agreement on behalf of the Licensee "LICENSEE" listed in the Licensee field of the Service Contract and hereby agree to the following terms and conditions of use of this website ("Software Service") of behalf of the LICENSEE. The licensor of this website is Pro-Vision, Inc., a Michigan corporation having its principal place of business at 8625-B Byron Commerce Drive SW, Byron Center, Michigan 49315, ("PRO-VISION").

PRO-VISION and LICENSEE agree as follows:

1. DEFINITIONS

1.1 "Documentation" means all generally available printed and electronic user and system documentation included in or accompanying an associated PRO-VISION camera and/or the Software Service, as updated from time-to-time by PRO-VISION.

1.2 "Intellectual Property" shall mean all PRO-VISION products related inventions (whether or not protected under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protected under copyright laws), Moral Rights, mask works, trademarks, trade names, trade dress, trade secrets, publicity rights, know-how, ideas (whether or not protected under trade secret laws), and all other subject matter protected under patent (or which is not patented, but is subject matter that is protected under patent law), copyright, moral right, mask work, trademark, trade secret, or other laws, including without limitation all new or useful art, combinations, discoveries, formulae, manufacturing techniques, technical developments, systems, computer architecture, artwork, software, programming, applets, scripts, designs, processes, and methods of doing business. "Moral Rights" means any right to claim authorship of a work, any right to object to any distortion or other modification of a work, and any similar right, existing under the law of any country, or under any treaty.

1.3 "LICENSEE'S Data" is data originating from LICENSEE that is stored using the Software Service on behalf of LICENSEE, and includes media files such as text, videos, photos, and audio .

1.4 "PRO-VISION Device" means any device provided by PRO-VISION and listed in the Service Contract, from which the Software Service uploads LICENSEE'S Data, and any replacement of such device that is provided by PRO-VISION under PRO-VISION's Limited Warranty or the Protection Plan.

1.5 "Software Service" means the cloud-based computerized camera interface and media storage service (known as SecuraMax™) and related Documentation and any updates, corrections, enhancements or subsequent releases or versions thereto made available to LICENSEE by PRO-VISION under this Agreement.

1.6 "Start Date" shall mean the Start Date listed in Start Date field of the Service Contract.

1.7 "Subscription Term" shall mean the period of time beginning on the Start Date and ending after the number of years (3 or 5 years) set forth in the Subscription Term field of the Service Contract, unless renewed as provided in this Agreement. Subscription Term includes any Renewal Term.

1.8 "Trial Term" shall mean the length of the trial period and begins on the Start Date and ends after the period of time set forth in the Trial Term field (if any) of the Service Contract.

2. SOFTWARE SERVICE LICENSE

2.1 Grant of Software Service License. Subject to the terms and conditions of this Agreement and payment of the Software Service Fees, PRO-VISION grants and LICENSEE accepts a non-transferable, non-assignable, non-exclusive license to use the Software Service solely for its own purposes for the Term as set forth herein. LICENSEE shall be responsible for maintaining its computer equipment and Internet access needed so as to enjoy the Software Service.

SOFTWARE SERVICE AND HOSTING AGREEMENT

2.2 License Restrictions.

- (a) LICENSEE will not lend, lease, sublicense, transfer, or otherwise distribute the Software Service to any third party;
- (b) Unless specifically agreed otherwise by PRO-VISION in writing, LICENSEE will not use the Software Service in any manner to provide computer services to third parties;
- (c) LICENSEE will not adapt, translate or otherwise create any program, documentation or other work that is based on or incorporates any part of the Software Service without the express written consent of PRO-VISION;
- (d) Except as may be permitted by law, LICENSEE will not reverse engineer the Software Service; and
- (e) LICENSEE will keep the Software Service free and clear of all liens, security interests and other encumbrances and will provide PRO-VISION with immediate notice of any lien, security interest or encumbrance affecting the Software Service.

2.3 Ownership.

2.3.1 The Software Service. PRO-VISION owns all right, title, and interest in and to the Software Service including all Intellectual Property rights therein. LICENSEE does not acquire any rights, express or implied, in the Software Service, other than those specified in this Agreement.

2.3.2 LICENSEE'S Data. LICENSEE shall own all right, title, and interest in and to LICENSEE'S Data. PRO-VISION does not acquire any rights, express or implied, in LICENSEE'S Data. LICENSEE is solely responsible for controlling access to LICENSEE'S Data and is solely responsible for deletion, modification, downloading, uploading, sharing, copying, moving, and management of LICENSEE'S Data. PRO-VISION does not view the content of LICENSEE'S Data.

2.4 Storage and Access.

2.4.1 Location.

PRO-VISION may store LICENSEE'S Data at any location within the United States. LICENSEE agrees to allow PRO-VISION to transfer LICENSEE'S Data to third parties contracted by PRO-VISION for purposes of storage of LICENSEE'S Data.

2.4.2 Storage Space.

- (a) PRO-VISION agrees to provide the storage space set forth in the Service Contract for one-month periods in exchange for prepayment of the Software Service Fee applicable to the requested storage space and particular time period.
- (b) The requested storage space provided with each PRO-VISION Device may be pooled with the requested storage space for all PRO-VISION Devices. However, such storage space may only be used for data uploaded from such PRO-VISION Devices. All other forms of

LICENSEE'S Data that is stored is considered to be stored in excess storage, which will be subject to an additional charge at PRO-VISION's then prevailing Storage Overage Fee per excess gigabyte used.

- (c) Storage space used or required in excess of that set forth in the Service Contract for a particular time period (regardless of whether it is used to store data from PRO-VISION Devices) will result in an additional charge at PRO-VISION's then prevailing Storage Overage Fee per excess gigabyte used.

SOFTWARE SERVICE AND HOSTING AGREEMENT

2.4.3 Download Limitations.

- (a) PRO-VISION agrees to allow data downloads (in gigabytes) set forth in the Service Contract by the LICENSEE for one-month periods in exchange for prepayment of the Software Service Fee applicable to the requested download limits and particular time period.
- (b) Data downloads used or required in excess of that set forth in the Service Contract for a particular time period will result in an additional charge at PRO-VISION's then prevailing Excess Data Download Fee per excess gigabyte downloaded.

2.4.4 Access Rights. Subject to any Suspension of Services per Section 3.4, during the Term of this Agreement, LICENSEE will have access and use of the Software Service for the storage and management of LICENSEE'S Data. Other than collecting usage statistics per Section 14, PRO-VISION will not access LICENSEE'S Data or view the content of LICENSEE'S Data. LICENSEE will be responsible for determining and managing access to LICENSEE'S Data. PRO-VISION will not disclose the content or existence of LICENSEE'S Data or any information about LICENSEE except as compelled by court order or otherwise required by law. PRO-VISION will attempt to provide advance notice of any compelled disclosure in an effort to permit LICENSEE opportunity to object to the court or administrative body.

2.4.5 Data Security. PRO-VISION will implement commercially reasonable and appropriate measures for securing and encrypting LICENSEE'S Data against unauthorized access. LICENSEE is responsible for maintaining security of end user's login credentials and security by the end users of LICENSEE'S Data. LICENSEE may not transfer or sublicense the log-in credentials to any other entity. Audit tracking is provided to track access to LICENSEE'S Data originating from PRO-VISION Devices based on log-in credentials. LICENSEE will contact PRO-VISION immediately if LICENSEE believes any third party has used LICENSEE'S account or accessed LICENSEE'S Data without authorization.

2.5 Software Service Availability. PRO-VISION shall use commercially reasonable efforts to make the Software Service generally available. PRO-VISION's Software Service may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. PRO-VISION is not responsible for any delays, failures, or other damages resulting from such problems.

2.6 Backup, Disaster Recovery, Bandwidth and Data Security. Backup, disaster recovery, bandwidth and data security are provided by third parties referenced in Section 2.4 above. PRO-VISION takes no responsibility for backup, disaster recovery, bandwidth and data security.

3. FEES AND TAXES

3.1 Software Service Fee. LICENSEE shall pay PRO-VISION a monthly Software Service Fee in effect at the time of payment. The Software Service Fee includes the Data Plan Fee and the Protection Plan Fee (if applicable). Such monthly Software Service Fees are due in advance of the month in which the Software Service is desired. LICENSEE shall pay all Software Service Fees by electronic funds transfers through an automated clearinghouse ("ACH") or through pre-authorized credit card charges only, in accordance with the payment instructions PRO-VISION provides to LICENSEE. PRO-VISION will provide a notice via e-mail of the amount to be withdrawn through ACH or charged via credit card five (5) days in advance of the withdrawal/charge. PRO-VISION may change the amount of the Software Service Fee at any time during the Subscription Term, including, without limitation, by changing the amount of a component of the Software Service Fee or by adding or removing a component, in PRO-VISION's reasonable discretion.

3.2 Storage Overage Fees. Storage Overage Fees will be charged in the next month following the month in which the overage occurred.

3.3 Additional PRO-VISION Devices. LICENSEE may add additional PRO-VISION Devices during the Term of this Agreement. However, any additional PRO-VISION Devices may be added only upon LICENSEE entering into a new Service Contract and an associated new Software Service and Hosting Agreement.

3.4 Suspension of Service. In addition to any other rights and remedies, PRO-VISION reserves the right to suspend the Software Service provided to the LICENSEE, including the right to access LICENSEE'S Data, under any one or more of the following conditions:

- (a) if Licensee is in breach of this Agreement, including if LICENSEE's account is five (5) days or more overdue (except with respect to charges then under reasonable and good faith dispute);
- (b) if any security risk is created by LICENSEE's use of the Software Service;

- (c) if LICENSEE's use of the Software Service creates or threatens to create any adverse effect on the Software Service or any use or data of any other licensee of the Software Service;
- (d) if PRO-VISION may be exposed to liability through LICENSEE's use of the Software Service; or
- (e) if LICENSEE becomes subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

In the event that the Software Service is suspended due to any condition stated in (a) above, PRO-VISION will maintain the suspension until such time that all delinquent amounts are paid in full, LICENSEE'S breach is cured or the Software Service is otherwise terminated. LICENSEE will remain liable for payment of the Software Service Fees throughout the duration of the suspension of services. LICENSEE'S Data will not be deleted as a result of the suspension of services. However, per Section 4.2, PRO-VISION may terminate this Agreement at which point LICENSEE'S Data may be deleted 60 days following written notice of termination.

3.5 Taxes and Other Charges. LICENSEE will be responsible for the amount of any and all sales, use, ad valorem, personal property, excise, other taxes or governmental charges associated with this Agreement (excluding taxes in respect of PRO-VISION's income) and/or any other taxes due for LICENSEE's use or receipt of the Software Service or support, consulting and training services provided by PRO-VISION. Such amounts, and any other charges which LICENSEE has agreed to pay and are not otherwise specifically provided for herein shall be due to the appropriate governmental authority upon payment or receipt of PRO-VISION's invoice. LICENSEE agrees that should any tax liability on the Software Service or other items included under this Agreement be established by any taxing unit, the LICENSEE agrees to pay such taxes arising out of this Agreement.

3.6 Late Payments. All amounts to be paid by LICENSEE hereunder shall be due and payable within the times prescribed. All payments not made by LICENSEE when due shall be subject to late charges of the lesser of (i) one and a half percent (1.5%) per month of the overdue amount or (ii) the maximum amount permitted under applicable law. In addition, LICENSEE shall pay all of PRO-VISION's reasonable costs and attorneys' fees in any legal action to collect overdue amounts and/or enforce PRO-VISION's rights under this Agreement.

4. TERM AND TERMINATION

4.1 Term. The Term of this Agreement will be determined based upon the Start Date and will remain in effect throughout the Subscription Term (or the Trial Term, if applicable), unless earlier terminated as provided herein. Upon completion of the initial Subscription Term, this Agreement will automatically renew for successive 1 year terms (each a "Renewal Term") at the monthly Software Service Fee then in effect unless LICENSEE provides written notice of termination at least sixty (60) days in advance of the end of the then existing Subscription Term or Renewal Term.

4.2 Termination

- (a) **Termination with Cause.** Either party may terminate this Agreement for cause: (i) Upon 30 days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) if the other party becomes subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. A "material breach" by LICENSEE includes, without limitation, a violation by LICENSEE of any term of the End User Terms and Conditions.
- (b) **Termination upon Sale of PRO-VISION Device.** PRO-VISION will have the right to terminate this Agreement if LICENSEE sells any PRO-VISION Device that uses the Software Service.
- (c) **Early Termination.** In the event LICENSEE terminates this agreement without cause prior to the completion of the Subscription Term or any Renewal Term, LICENSEE must immediately pay PRO-VISION all unpaid invoices and interest and an amount equal to 100% the Software Services Fees in effect multiplied times the number of months remaining in the Subscription Term immediately prior to such termination.

4.3 Effect of Termination. Termination of this Agreement or any Software Service license will not limit either party from pursuing other remedies available to it, including injunctive relief, nor will such termination relieve LICENSEE of its obligation to pay all fees and charges that have accrued or are otherwise owed by LICENSEE under this Agreement. Termination of this Agreement will terminate any Support Services and will immediately terminate LICENSEE'S right to access LICENSEE'S Data other than for purposes of download per Section 4.5 below.

4.4 Outstanding Fees. Termination shall not relieve LICENSEE of the obligation to pay any fees accrued or payable to PRO-VISION prior to the effective date of termination.

SOFTWARE SERVICE AND HOSTING AGREEMENT

4.5 Return of LICENSEE Data. Except as otherwise provided in this Agreement, after termination of the Agreement by either party, and provided LICENSEE has paid all amounts due under this Agreement, then upon request by LICENSEE and payment of the then-applicable Transfer Fee (which may be found at www.SecuraMax.com), PRO-VISION will make available to LICENSEE a function that allows the LICENSEE to download LICENSEE'S Data for a period of ninety (90) days following termination. Otherwise, after sixty (60) days following termination, PRO-VISION shall have no obligation to maintain or provide access to any LICENSEE'S Data and may thereafter, unless prohibited by law, delete all LICENSEE'S Data in PRO-VISION's possession or under its control.

4.6 Survival. The rights and obligations of the parties contained in Sections 2.2 (License Restrictions), 2.3 (Ownership), 3 (Fees and Taxes), 4.3 (Effect of Termination), 4.5 (Return of LICENSEE Data), 7 (Confidential Information and Operational Data), 8.3 (Support Services Exclusions), 8.4 (Intellectual Property Ownership in Software Service), 8.5, 8.6, 10.1 (Warranty of Authority), 11 (Disclaimer), 12 (Indemnities), 13 (Limitation of Liability), and 15 (General Terms), together with all other provisions of this Agreement which by their nature are necessary or useful to effectuate their enforcement, will survive the termination of this Agreement or any other license for the Software Service.

5. DEPLOYMENT

5.1 Remote Deployment

Unless otherwise provided in the Service Contract or per Section 5.2 below, all deployment of the Software Service will be performed by remote assistance at no additional charge according to the terms and conditions set forth in a separate Remote Deployment Agreement. Provided the applicable Software Service Fee has been paid in advance by LICENSEE for the current month and provided that payment has been made for all PRO-VISION Devices, PRO-VISION will provide access to the Software Service to LICENSEE on or after the Start Date and will provide assistance setting up an account and helping LICENSEE to assign users as provided in the Remote Deployment Agreement

5.2 On-Site Deployment

PRO-VISION will not provide on-site deployment services unless requested by LICENSEE and agreed to in advance and upon LICENSEE's payment of the agreed upon fees.

6. TRAINING SERVICES

PRO-VISION will provide reasonable training in the use of the Software Service for the Training Fees in effect at the time of LICENSEE's request for such training services. Each party will be solely responsible for any expenses incurred by its personnel in connection with such training, except that LICENSEE will reimburse PRO-VISION for any travel and other reasonable expenses incurred by PRO-VISION's personnel in providing training at LICENSEE's site. All training will be scheduled at a mutually agreeable time, subject to the availability of PRO-VISION's personnel and facilities.

7. CONFIDENTIAL INFORMATION AND OPERATIONAL DATA

7.1 Definition. For the purposes of the Agreement, "Confidential Information" means: (a) the Software Service, Work Product, and other related technical information disclosed by PRO-VISION to LICENSEE; (b) LICENSEE'S Data; (c) any non-public business or technical information of PRO-VISION or LICENSEE, including but not limited to any information relating to PRO-VISION's or LICENSEE's product plans, designs, costs, product prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how, that is designated by the disclosing party as "confidential" or "proprietary" at the time of disclosure, and, if orally disclosed, is reduced to writing by the disclosing party within thirty (30) days of such disclosure; or that ought reasonably be understood to be confidential by virtue of its nature or the circumstances of its disclosure and (c) terms of this Agreement (including, without limitation, the amount of fees or other charges specified under this Agreement).

7.2 Obligations. Each party will not use the other party's Confidential Information and will not disclose such Confidential Information to any third party except to employees and consultants as are reasonably required in connection with the exercise of its rights and performance of its obligations under this Agreement, provided that such disclosure to employees or consultants is subject to binding use and disclosure restrictions at least as protective as those set forth herein. Each party will take all reasonable measures to maintain the confidentiality of all such Confidential Information in its possession or control, which will in no event, be less than the measures it uses to maintain the confidentiality of its own information of equal importance. Each party shall promptly notify the other party of any suspected or actual unauthorized disclosure of the other party's Confidential Information.

7.3 Compelled Disclosures. To the extent required by applicable law or by lawful order or requirement of a court or governmental authority having competent jurisdiction over a party, the party may disclose Confidential Information of the other party in accordance with such law or order or requirement, subject to the following conditions: As soon as possible after becoming aware of such law, order or requirement and prior to disclosing Confidential Information, the party will so notify the other party in writing and, if reasonable, provide the other party notice not less than five (5) business days prior to the required disclosure. The party that is the subject of the

SOFTWARE SERVICE AND HOSTING AGREEMENT

order or requirement will use reasonable efforts not to release Confidential Information, pending the outcome of any measures taken by the other party to contest, otherwise oppose or seek to limit such disclosure. Notwithstanding any such compelled disclosure, the disclosure will not otherwise affect the party's obligations hereunder with respect to Confidential Information so disclosed.

7.4 Exclusions. Confidential Information will not include information that (a) is in or enters the public domain through no fault or breach of this Agreement by the receiving party; (b) is known to the receiving party at the time of disclosure without an obligation of confidentiality; or (c) the receiving party rightfully receives from a third party without restriction on use or disclosure. It will be presumed that any Confidential Information in a party's possession is not within exceptions (b) or (c) above, and the burden will be upon the party asserting the exception to prove otherwise by records and documentation.

7.5 Non-Exclusive Equitable Remedy. Each party acknowledges and agrees that due to the unique nature of the Software Service and Confidential Information as defined herein, there can be no adequate remedy at law for any breach of its obligations hereunder, and therefore, that upon any such breach or any threat thereof, each party will be entitled to appropriate equitable relief from a court of competent jurisdiction in addition to whatever remedies either of them might have at law or equity.

8. SUPPORT SERVICES

8.1 PRO-VISION will provide Support Services for Software Service, which consist of the following:

8.1.1 Enhancements and Updates. PRO-VISION will implement any updates, corrections, and enhancements to the Software Service that PRO-VISION provides to its current customers generally without an additional charge. If PRO-VISION provides any update, correction or enhancement as a new Software Service for which it charges an additional fee, it will make such Software Service available to LICENSEE on the same terms as it offers other current customers for the Software Service.

8.1.2 Online/Telephone Support. PRO-VISION will provide reasonable online, telephone, or email support to assist LICENSEE in the identification, verification and resolution of problems associated with the Software Service in exchange for payment of PRO-VISION's Support Service Fees that are then in effect. Such support will be provided during PRO-VISION's normal business hours, excluding PRO-VISION's regularly scheduled holidays. PRO-VISION reserves the right to charge LICENSEE for any telephone call or email which in PRO-VISION's judgment, constitutes end-user training.

8.1.3 Program Corrections. If the Software Service does not perform substantially as described in the Documentation when used in the manner specified in the Documentation and if LICENSEE notifies PRO-VISION of the issue through PRO-VISION's online, telephone, or email support service, PRO-VISION will use its commercially reasonable efforts to resolve the issue.

SOFTWARE SERVICE AND HOSTING AGREEMENT

8.2 Conditions to Support Services. LICENSEE acknowledges that PRO-VISION may provide the Support Services specified in this Section 8 for PRO-VISION's then prevailing Support Service Fees. If LICENSEE requests Support Services, LICENSEE will: (a) perform such procedures as may be described in the Documentation for the identification and resolution of problems; and (b) provide PRO-VISION with sufficient information and assistance to enable PRO-VISION to duplicate problems reported by LICENSEE, to determine whether the problem results from an error or other issue in the Software Service, and to confirm that the problem has been corrected. LICENSEE shall be solely responsible for all costs and fees associated with maintaining and updating hardware and software provided by other vendors. All Support Services are contingent on LICENSEE's payment of applicable Software Service Fees and PRO-VISION's then prevailing Support Service Fees.

8.3 Exclusions. Notwithstanding the foregoing, PRO-VISION shall have no obligations for Software Service problems caused by LICENSEE's negligence, abuse or misapplication, LICENSEE's use of Software Service other than as specified in the Documentation, or by other factors beyond the control of PRO-VISION. Services available under this Section do not include services set forth in Section 6 ("Training Services") or in Section 5 ("Deployment").

8.4 Intellectual Property Ownership in Software Service. LICENSEE and PRO-VISION agree that PRO-VISION shall be the exclusive owner of all right, title, and interest in and to all software, programming, tools, documentation, materials, and other Intellectual Property (collectively, the "Work Product") of any kind used, developed, or delivered by PRO-VISION to LICENSEE in connection with performing the Software Service, that such Work Product shall not constitute a work-made-for-hire under U.S. Copyright Law, and that PRO-VISION shall have the exclusive right to protect the Work Product by patent, copyright, or any other means. Such Work Product shall expressly exclude LICENSEE'S Data and LICENSEE Confidential Information. In the event, by operation of law or otherwise, LICENSEE is deemed to be the owner of all or any portion of the Intellectual Property rights in the Work Product, LICENSEE hereby assigns all such Intellectual Property rights to PRO-VISION and agrees to cooperate with PRO-VISION in confirming PRO-VISION's sole and exclusive ownership of the Work Product.

SOFTWARE SERVICE AND HOSTING AGREEMENT

8.5 In consideration of the performance of any Support Services hereunder, LICENSEE will pay PRO-VISION the Support Service Fees that are then in effect. PRO-VISION shall have the right to immediately cease all performance of Support Services if LICENSEE fails to timely pay PRO-VISION as required hereunder.

8.6 LICENSEE will reimburse PRO-VISION for (i) travel and living expenses associated with on-site training and other Support Services, and (ii) any special or unusual expenses incurred at LICENSEE's specific request. Payment for all expenses to be reimbursed by LICENSEE under this Agreement will become due twenty (20) days after LICENSEE's receipt of PRO-VISION's itemized invoice, which PRO-VISION will prepare monthly, at PRO-VISION's option. LICENSEE should contact its PRO-VISION sales representative for details regarding any on-site support.

9. OTHER SUPPORT TERMS

9.1 In addition to the support and services described above, at LICENSEE's request and upon PRO-VISION's written agreement, PRO-VISION may also perform additional Support Services for LICENSEE to correct difficulties or defects caused by LICENSEE's errors, interactions with other software of LICENSEE, or any authorized changes or customizing made to the Software Service. Such additional Support Services may be provided in exchange for the Support Service Fees at PRO-VISION's then applicable rates.

10. LIMITED WARRANTIES

10.1 Warranty of Authority. Each party warrants to the other that it has sufficient rights to enter into this Agreement and to perform their respective obligations hereunder. LICENSEE further warrants:

- (a) that LICENSEE, as well as the agent accepting this Agreement, is legally authorized by the laws of its jurisdiction, or by any required resolution by its governing body, to enter into this Agreement and to perform all of LICENSEE'S obligations under this Agreement;
- (b) that LICENSEE is a U.S. person, as defined in 22 C.F.R. §120.15;
- (c) that LICENSEE is not an educational institution;
- (d) that LICENSEE is a U.S. Government Entity (including a Federal Agency, a State/Local Entity or a Tribal Entity acting in its governmental capacity, where: a "Federal Agency" is a bureau, office, agency, department or other entity of the United States Government; "State/Local Entity" is
 - i. any agency of a state or local government in the United States,
 - ii. any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state's jurisdiction and geographic boundaries, or
 - iii. the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Northern Mariana Islands; and a "Tribal Entity" is a federally recognized tribal entity eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe, or, in Alaska, a Native village or Alaska Regional Native Corporation);
- (e) that LICENSEE has funds appropriated and available to pay for the Software Service Fees for the duration of the Term of this Agreement (the entire Trial Term and/or Subscription Term and any Renewal Terms agreed upon by not providing notice under Section 4.1);
- (f) that LICENSEE will only use the Software Service for essential governmental or proprietary purposes consistent with the scope of LICENSEE'S authority and that LICENSEE will not use the Software Service in a business or trade of any person or other entity, or for any personal use;
- (g) that LICENSEE shall be responsible for its end user's use of the Software Service including any and all activities performed under LICENSEE's account including all use by LICENSEE'S employees and agents;
- (h) that LICENSEE shall be responsible for any breach of this Agreement by its end users including any and all of LICENSEE'S employees and agents;
- (i) that LICENSEE shall be responsible for any claims that the content of LICENSEE'S Data infringes or misappropriates any third party's rights;
- (j) that LICENSEE shall be responsible for any dispute between LICENSEE and any third party with respect to LICENSEE'S collection or use of LICENSEE'S Data;
- (k) that LICENSEE shall be responsible for any dispute between LICENSEE and any end user including any and all of LICENSEE'S employees and agents; and
- (l) that LICENSEE will acquire and maintain insurance coverage up to the amount allowed by all applicable laws and regulations that would cover any claims, liabilities, damages, losses, expenses and costs arising out of or related to any third-party claim in this Section 10.1.

LICENSEE further agrees to adhere to this Agreement and all laws, rules, regulations, and policies applicable to the use of the Software Service and the content of LICENSEE'S Data, and that all of LICENSEE's end users agree to the same. If LICENSEE becomes aware of any violation by an end user, LICENSEE will immediately terminate that end user's access to LICENSEE'S Data and the Software Service.

SOFTWARE SERVICE AND HOSTING AGREEMENT

10.2 Support Services Warranty. PRO-VISION warrants that any Support Services performed by PRO-VISION under this Agreement will be performed in a manner consistent with generally accepted industry standards. This warranty will be valid for thirty (30) days from performance of the Support Services. As LICENSEE's exclusive remedy and PRO-VISION's entire liability for any breach of the foregoing warranty, PRO-VISION will, at its expense, use its commercially reasonable efforts to re-perform the Support Services to correct any defects therein.

11. DISCLAIMER

11.1 PRO-VISION Services. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 10, THE SOFTWARE SERVICE, THE SUPPORT SERVICES AND ALL OTHER SERVICES PROVIDED HEREUNDER ARE PROVIDED TO LICENSEE "AS IS" AND "AS-AVAILABLE," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. PRO-VISION EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY OF INFORMATION AND QUIET ENJOYMENT. PRO-VISION DOES NOT WARRANT THAT THE SOFTWARE SERVICE, THE SUPPORT SERVICES AND/OR ANY OTHER SERVICES PROVIDED HEREUNDER WILL MEET LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE SERVICE WILL BE CORRECTED. PRO-VISION DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE SERVICE IN TERMS OF ITS CORRECTNESS, ACCURACY, QUALITY, RELIABILITY, APPROPRIATENESS FOR A PARTICULAR TASK OR APPLICATION, OR OTHERWISE. LICENSEE ACKNOWLEDGES THAT IT WILL HAVE SOLE AND COMPLETE RESPONSIBILITY FOR ANY DECISIONS MADE OR ACTIONS TAKEN BY IT IN RELIANCE UPON THE SOFTWARE SERVICE. No employee or agent of PRO-VISION is authorized to make any different or additional warranties to LICENSEE and PRO-VISION will not be bound by any such purported warranties. The warranties provided by PRO-VISION are personal to LICENSEE and may not be extended to any third party. There are NO third party beneficiaries of PRO-VISION's obligations under this Agreement.

11.2 Third Party Products and/or Services. PRO-VISION MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED WITH REGARD TO ANY SOFTWARE, COMPUTER HARDWARE, DEVICES, OR SERVICES OF ANY NATURE OBTAINED FROM THIRD PARTIES (COLLECTIVELY, THE "THIRD PARTY ITEMS"). PRO-VISION EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY OF INFORMATION, QUIET ENJOYMENT, FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE THIRD PARTY ITEMS. LICENSEE SHOULD CONSULT THE RESPECTIVE VENDORS/MANUFACTURERS OF THE THIRD PARTY ITEMS FOR WARRANTY AND PERFORMANCE INFORMATION. NOTHING IN THIS AGREEMENT SHALL BE INTERPRETED AS A WARRANTY, EITHER EXPRESS OR IMPLIED, BY PRO-VISION THAT WOULD EXPAND IN ANY WAY A VENDOR/MANUFACTURER'S STANDARD END-USER WARRANTY.

11.3 LICENSEE Responsibilities. LICENSEE ACKNOWLEDGES THAT IT HAS INSPECTED THE SOFTWARE SERVICE AND CONFIRMS BY ENTERING INTO THIS AGREEMENT THAT THE SOFTWARE SERVICE MEETS LICENSEE'S REQUIREMENTS. LICENSEE ACKNOWLEDGES AND ACCEPTS THAT PRO-VISION DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE SERVICE WILL, IN FACT, MEET THE SPECIFIC NEEDS AND REQUIREMENTS OF LICENSEE. LICENSEE ASSUMES FULL RESPONSIBILITY FOR THE CHOICE AND ADEQUACY OF THE SOFTWARE SERVICE AND ACKNOWLEDGES THAT LICENSEE WILL BE EXCLUSIVELY RESPONSIBLE FOR THE SUPERVISION, MANAGEMENT AND CONTROL OF ACCESS TO THE SOFTWARE SERVICE INCLUDING, BUT NOT LIMITED TO: (I) ASSURING PROPER MACHINE CONFIGURATION, AUDIT CONTROLS AND OPERATION METHODS; (II) IMPLEMENTING SUFFICIENT PROCEDURES AND CHECK POINTS TO SATISFY LICENSEE'S REQUIREMENTS FOR SECURITY AND ADEQUACY OF INPUT AND OUTPUT; (III) ASSURING LOGIN CREDENTIALS AND PASSWORDS ARE ESTABLISHED FOR EACH END USER AND THAT SUCH CREDENTIALS ARE NOT SHARED; AND (IV) ENSURING THAT LICENSEE'S USE OF THE SOFTWARE SERVICE MEETS ANY REQUIREMENTS OF ALL APPLICABLE LAWS. PRO-VISION WILL NOT BE RESPONSIBLE FOR ANY USE OF THE SOFTWARE SERVICE BY LICENSEE THAT DOES NOT COMPLY WITH APPLICABLE LAWS AND DISCLAIMS ANY RESPONSIBILITY FOR DATA CORRUPTION, LOSS, MODIFICATION, OR ERRORS EXISTING IN LICENSEE'S DATA PRIOR TO UPLOAD AS WELL AS ANY DATA CORRUPTION, LOSS, MODIFICATION, OR ERRORS EXISTING IN LICENSEE'S DATA AFTER ANY UPLOAD OR DOWNLOAD.

SOFTWARE SERVICE AND HOSTING AGREEMENT

12. INDEMNITIES

12.1 Infringement Indemnity. PRO-VISION agrees to defend, indemnify and hold LICENSEE and its affiliates, subsidiaries, officers, directors, employees, and agents harmless from and against any and all claims, suits, proceedings, losses, liabilities, damages, costs, and expenses, including reasonable attorneys' fees made against LICENSEE by third parties alleging that the Software Service infringes any patent or copyright or misappropriates a trade secret. LICENSEE shall provide PRO-VISION with prompt written notice of such claim and with information, reasonable assistance, and sole authority to defend or settle the claim. In the defense or settlement of the claim, PRO-VISION may obtain for LICENSEE the right to continue using the Software Service, replace or modify the Software Service so that it becomes non-infringing, without loss of substantial functionality, or, if such remedies are not reasonably available, terminate LICENSEE's right with respect to the infringing Software Service and refund to LICENSEE the Software Service Fees paid, prorated over the payment period in the event of an injunction. PRO-VISION will have no liability and shall not provide such indemnification if the alleged infringement is based on (a) the combination, use or operation of the Software Service with software, equipment or devices not provided by PRO-VISION, if such a claim would have been avoided but for such combination; (b) the use of the Software Service other than in accordance with the Documentation; (c) the use of the Software Service after notice of the alleged or actual infringement from PRO-VISION or any appropriate authority; or (d) a matter which is the subject of indemnification by LICENSEE under Section 12.2. THE FOREGOING STATES LICENSEE'S SOLE AND EXCLUSIVE REMEDIES, AND PRO-VISION'S ENTIRE LIABILITY, FOR INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION.

12.2 Indemnification by LICENSEE. LICENSEE shall defend and indemnify PRO-VISION and hold it and its affiliates, subsidiaries, officers, directors, employees, agents, and suppliers (including any third party used to store licensee's data) harmless from any and all claims, losses, deficiencies, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees and all related costs and expenses) incurred by PRO-VISION as a result of any claim, judgment, or adjudication related to or arising from (i) LICENSEE's use of the Software Service including, but not limited to, management, deletion, or alteration of LICENSEE'S Data or LICENSEE's failure to store or maintain data (except to the extent indemnified by PRO-VISION under Section 12.1 or to the extent such claims are solely the result of PRO-VISION's gross negligence or willful misconduct), or (ii) LICENSEE's third party service providers and their designees or any other third party to whom LICENSEE provides access to or use of the Software Service, or the data contained therein.

13. LIMITATION OF LIABILITY

13.1 Exclusion of Damages. EXCEPT AS EXPRESSLY PROVIDED HEREIN, IN NO EVENT WILL PRO-VISION OR ITS AFFILIATES, SUBSIDIARIES, AGENTS, AND THIRD PARTY SUPPLIERS (INCLUDING ANY THIRD PARTY USED TO STORE LICENSEE'S DATA) BE LIABLE TO LICENSEE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR THE USE OR INABILITY TO USE ANY SOFTWARE SERVICE OR ANY SERVICES PROVIDED HEREUNDER FOR ANY PERIOD OF TIME (INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUES OR LOSS OF DATA), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, PRO-VISION AND ITS AFFILIATES, SUBSIDIARIES, AGENTS, AND THIRD PARTY SUPPLIERS (INCLUDING ANY THIRD PARTY USED TO STORE LICENSEE'S DATA) WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY DAMAGES ARISING FROM: (1) ANY UNAUTHORIZED ACCESS TO LICENSEE'S DATA; (2) ANY MODIFICATION, DELETION, DAMAGE, OR OTHER LOSS OF LICENSEE'S DATA; (3) FAILURE TO PROPERLY STORE LICENSEE'S DATA; (4) FAILURE TO PROPERLY IDENTIFY LICENSEE'S DATA; (5) SUSPENSION OR TERMINATION OF THE SOFTWARE SERVICE; (6) LICENSEE'S USE OF THE SOFTWARE SERVICE; (7) THIRD PARTY CLAIMS PERTAINING TO EXISTENCE, NON-EXISTENCE, DELETION, AND/OR MODIFICATION OF LICENSEE'S DATA; OR (8) DISCONTINUANCE OF ANY PORTION OF THE SOFTWARE SERVICE.

13.2 Total Liability. EXCEPT FOR PRO-VISION'S INFRINGEMENT OBLIGATIONS SET FORTH IN SECTION 12.1 AND CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 7, THE TOTAL LIABILITY OF PRO-VISION AND ITS RESPECTIVE AFFILIATES, SUBSIDIARIES, AGENTS AND SUPPLIERS TO LICENSEE OR ANY THIRD PARTIES (INCLUDING ANY THIRD PARTY USED TO STORE LICENSEE'S DATA) ARISING FROM THE SOFTWARE SERVICE, SERVICES OR THIS AGREEMENT FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) WILL IN NO EVENT EXCEED IN THE AGGREGATE THE AMOUNTS PAID BY LICENSEE FOR THE SOFTWARE SERVICE OR SERVICES TO WHICH THE CLAIM RELATES PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE CLAIM. THIS LIMITATION OF LIABILITY SHALL APPLY EVEN IF THE EXPRESS WARRANTIES SET FORTH ABOVE FAIL OF THEIR ESSENTIAL PURPOSE.

13.3 Allocation of Risk. The provisions of this Agreement allocate the risks between PRO-VISION and LICENSEE. PRO-VISION's pricing reflects this allocation of risk and the limitation of liability specified herein. The parties have agreed that the limitations specified in this Section 13 (Limitation of Liability) will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

SOFTWARE SERVICE AND HOSTING AGREEMENT

14. LICENSEE USAGE STATISTICS

To help enable PRO-VISION to provide and improve its Software Service, LICENSEE hereby agrees to allow PRO-VISION to acquire and use LICENSEE's usage statistics including cloud storage space used, frequency of uploads, amount of data downloaded, amount of storage consumed by any of LICENSEE'S Data that is not data uploaded from PRO-VISION Devices, number of active users and/or PRO-VISION Devices, and any other information needed to enforce this Agreement, conduct any troubleshooting requested by LICENSEE, and to analyze and diagnose any systems on which the Software Service software resides.

15. GENERAL TERMS

15.1 Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

15.2 Modification and Waiver. This Agreement may not be amended except by a written instrument signed by duly authorized representatives of both parties. No waiver will be effective unless in writing and signed by a duly authorized representative of the party sought to be charged therewith. The failure of PRO-VISION to insist upon strict performance of any of the provisions of this Agreement will not be construed as a waiver of PRO-VISION's rights arising out of any subsequent default of that or any other provision.

15.3 Assignment. This Agreement and the rights hereunder will be assignable by PRO-VISION. LICENSEE will have no right to assign this Agreement or any of its rights hereunder without PRO-VISION's prior written consent. Any attempt to assign this Agreement without such consent will be void. PRO-VISION may reasonably require, as a condition to its consent, payment of a license transfer fee in such amount as PRO-VISION may specify in its sole discretion. No permitted assignment by LICENSEE will be effective without the express written consent of PRO-VISION. Provided that PRO-VISION has consented to such assignment, LICENSEE may not retain any copy of the Software Service or Documentation following the assignment.

15.4 Failure or Delay in Performance. PRO-VISION will not be liable for or be deemed in default under this Agreement, or any other agreement between PRO-VISION and LICENSEE, as a result of any failure or delay in the performance of any obligation owed LICENSEE if such delay or failure results from any cause beyond PRO-VISION's reasonable control.

15.5 Notices. All notices required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by courier, overnight delivery service, certified mail, or by email and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth above or to such other address as may be specified by either party to the other in accordance with this Section. Either party may change its address for notices to the other party by the means specified in this Section.

15.6 Applicable Law; Limitation of Actions. This Agreement will be construed, interpreted, governed and enforced by and in accordance with the laws of Michigan, and the laws of the United States of America, without regard to conflicts of laws principles. No action, regardless of form, arising out of any of the transactions under this Agreement may be brought by LICENSEE more than one (1) year after such action accrued. Any dispute regarding this Agreement or arising out of any of the transactions under this Agreement shall be determined in the federal courts of the United States within the jurisdiction of the United States District Court for the Western District of Michigan, or the courts of the State of Michigan sitting in Kent County, Michigan, and the parties hereby stipulate and agree to jurisdiction and venue in such courts. Each party hereby further irrevocably waives any claim that any such court lacks jurisdiction over it, and agrees not to plead or claim such a lack of jurisdiction, or that such court is an inconvenient forum.

15.7 Entire Agreement. This Agreement is binding on the parties and their permitted assignees. With the exception of any Service Contracts, Remote Deployment Agreements, Protection Plan Agreements, Uploader Licenses, End User Terms and Conditions, additional Software Service and Hosting Agreements, any policies and restrictions on the SecuraMax.com website, and the possible exception of a Beta Test Agreement, this Agreement is the entire agreement between the parties relating to its subject matter, and supersedes all prior or contemporaneous agreements, representations or understandings, written or oral, with respect to such subject matter. In the case of a conflict between a Beta Test Agreement and the terms and conditions of this Agreement, the terms of this Agreement will control with the exception of any Confidentiality terms of such Beta Test Agreement, which will control until such time that the Beta Test Agreement is terminated. Purchase orders or other similar documents issued by LICENSEE will have no effect on this Agreement.

15.8 Audit. At its own expense, PRO-VISION may perform an audit of LICENSEE's usage of the Software Service to confirm use of the software in accordance with the terms of this Agreement. The audit may be conducted (i) once every calendar year and (ii) as required in the event PRO-VISION has reason to believe LICENSEE is utilizing the Software Service in an unauthorized manner.

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15.9 Force Majeure. Except for LICENSEE's payment obligations, neither party will be liable for any failure or delay in performance under this Agreement which is due to any event beyond the reasonable control of such party, including without limitation, fire, explosion, unavailability of utilities or raw materials, unavailability of components, labor difficulties, war, riot, act of God, export control regulation, laws, judgments, or government instructions.

15.10 Relationship of the Parties. LICENSEE and PRO-VISION agree that PRO-VISION shall perform its duties under this Agreement as an independent contractor. Nothing contained herein shall be deemed to establish a partnership, joint venture, association, or employment relationship between the parties. Personnel employed or retained by PRO-VISION who perform duties related to this Agreement shall remain under the supervision, management, and control of PRO-VISION. In order to assist it in carrying out its duties and responsibilities pursuant to this Agreement and any Statement(s) of Work, PRO-VISION may subcontract with or otherwise engage the services of one or more third parties.



RECURRING PAYMENT AUTHORIZATION

Questions about how to complete this form?
Call: 1.800.576.1126 (8 a.m. to 5 p.m EST)

AGREEMENT:

The agreement below should be read and signed, by the primary billing contact in the organization listed below ("CUSTOMER").
This person must be authorized to complete and sign any applicable paperwork on behalf of the organization.

- CUSTOMER authorizes PRO-VISION, Inc. to make regularly scheduled charges to the checking/savings, or credit card account per the terms of the service contract between CUSTOMER and PRO-VISION.
- Payments that are returned, declined, or late will incur an additional fee
- An email receipt will be sent to the billing contact(s) on file and a corresponding charge will appear on CUSTOMER'S bank or credit card statement from PRO-VISION, INC.
- Email notification for charges will be provided by PRO-VISION to CUSTOMER five days prior to billing indicating the amount due for the billing period and date of payment collection

DATE OF FIRST PAYMENT:	On Scheduled Deployment Date	INITIAL PAYMENT AMOUNT*: * Subsequent payment amounts will be equal to the first payment, plus any overages or fees incurred.	0
SIGNATURE:		DATE (DD/MM/YYYY):	

PAYMENT METHOD:

Select payment method below. The signee must be authorized to complete and sign any applicable paperwork on behalf of the organization.

ACH/BANK WITHDRAWAL ☒ **CREDIT CARD**

ACCOUNT INFORMATION:

CHECKING / SAVINGS	CHECKING	SAVINGS	ROUTING NUMBER:		ACCOUNT NUMBER:	
	BANK NAME:			BANK ADDRESS:		
	BANK CITY:			BANK STATE:	BANK ZIP:	
	NAME(S) ON ACCOUNT:					
	AUTHORIZATION: PRO-VISION, Inc. is authorized to process debit entries to this account. This authority will remain in effect until customer provides PRO-VISION, Inc. with reasonable notification to terminate the authorization.					
	AUTHORIZED SIGNATURE:				DATE	
CREDIT CARD	☒ VISA	MASTERCARD	AMERICAN EXPRESS		DISCOVER CARD	
	CREDIT CARD NUMBER:				EXPIRATION DATE (MM/YYYY):	
	NAME AS IT APPEARS ON CARD:					CVV:
	BILLING ADDRESS:					
	CITY:				STATE:	ZIP:
	AUTHORIZATION: PRO-VISION, Inc. is authorized to charge this credit card account in accordance with the information above.					
	AUTHORIZED SIGNATURE:				DATE (DD/MM/YYYY):	



CUSTOMER SETUP

Questions about how to complete this form?
Call: 1.800.576.1126 (8 a.m. to 5 p.m EST)

Email completed form to: smxadmin@provisionusa.com
Or fax form to: 616.583.1522

ORGANIZATION INFORMATION:

☒**DOES NOT REQUIRE CJIS-COMPLIANT STORAGE**

ALL organizations, including government, that DO NOT require CJIS-Compliant storage
IF YOU ARE UNSURE, SELECT THIS OPTION

**U.S. GOVERNMENT AGENCY and
REQUIRES CJIS-COMPLIANT STORAGE**

ONLY U.S. local, state, or government agencies requiring CJIS-Compliant storage qualify

COMPANY / ORGANIZATION NAME:

City of Starkville

CITY:

Starkville

STATE:

MS

ZIP:

BILLING CONTACTS:

PRIMARY CONTACT

FIRST NAME:

Scott

LAST NAME:

Grice

TITLE:

Sysadmin

EMAIL:

s.grice@cityofstarkville.org

PHONE:

6624187272

FAX::

SECONDARY CONTACT

FIRST NAME:

LAST NAME:

TITLE:

EMAIL:

PHONE:

FAX::

DEPLOYMENT INFORMATION:

DEPLOYMENT CONTACT:

This is the primary contact for scheduling and coordinating deployment. This person must be authorized to complete and sign any applicable paperwork on behalf of the organization.

☒**CHECK BOX IF PRIMARY & DEPLOYMENT CONTACT ARE THE SAME**

FIRST NAME:

LAST NAME:

TITLE:

EMAIL:

PHONE:

FAX::

**YOU WILL BE CONTACTED TO SCHEDULE A DEPLOYMENT DATE ONCE ALL COMPLETED CONTRACTUAL
DOCUMENTS AND FORMS HAVE BEEN RECEIVED.**

DEPLOYMENT:

Remote deployment is standard
On-site requires Sales Manager approval

☒**REMOTE****ON-SITE****CONFIGURATION:**

Adjusts default SecuraMax™ settings
to fit specific customer type

☒**LAW ENFORCEMENT****NON-LAW ENFORCEMENT****EQUIPMENT:**

Purchasing new BC cameras /
Have BC cameras

☒**NEW HARDWARE**

QTY: 2

TYPE: BC-300/PV-DVR

EXISTING HARDWARE

QTY:

TYPE:

Remote Deployment Agreement

This is a Remote Deployment Agreement ("RDA") between City of Starkville ("LICENSEE") and Pro-Vision Inc., a Michigan corporation having its principal place of business at 8625-B Byron Commerce Drive SW, Byron Center, Michigan 49315, United States of America ("PRO-VISION"). This RDA provides the terms upon which PRO-VISION may install and activate Uploader Software and Remote Access Software on LICENSEE'S computers. This RDA is being entered into by the parties solely in furtherance of and subject to all terms of a Software Service and Hosting Agreement ("SSHA") previously entered into by and between the parties; LICENSEE'S rights and PRO-VISION'S obligations under this RDA are conditioned upon LICENSEE previously entering into the SSHA. All capitalized terms not otherwise defined in this RDA shall have the meanings attributed to them in the SSHA.

The undersigned representative of LICENSEE represents that he/she is authorized to enter into this RDA on behalf of the LICENSEE and hereby agrees to the following terms and conditions on behalf of the LICENSEE.

PRO-VISION and LICENSEE agree as follows:

1. DEFINITIONS

- 1.1. "Input and Output" means all data that is received, captured, saved, recorded, transmitted, generated, emitted, and/or displayed on, by, or through LICENSEE'S local computer, including, without limitation, keyboard keypresses, mouse cursor motions, and mouse clicks made by the user of the local computer (including a user controlling the local computer via remote access software); text and images displayed on or transmitted to the video monitor of the local computer; and sounds generated by or transmitted to the local computer; regardless of whether the data is detectible by the human senses of an observer of the local computer.
- 1.2. "Remote Access Software" means software that enables access to, and control of, a computer by a user at a remote location through a network connection, including through the internet.
- 1.3. "Uploader Software" means the SECURAMAX™ Uploader Software which is the subject of a separate software license between LICENSEE and PRO-VISION.

2. GRANT OF ACCESS AND CONTROL

LICENSEE grants PRO-VISION access to, and control of, LICENSEE'S computers, using Remote Access Software selected by PRO-VISION, for the purpose of remotely installing and activating the Uploader Software. LICENSEE acknowledges and agrees that Remote Access Software must first be installed and activated on LICENSEE'S computers, by LICENSEE or by PRO-VISION. LICENSEE agrees to install and activate, or to permit PRO-VISION to install and activate, Remote Access Software selected by PRO-VISION, on each of LICENSEE'S computers upon which LICENSEE desires to have the Uploader Software remotely installed and activated. LICENSEE acknowledges and agrees that PRO-VISION'S obligations under this RDA are conditioned upon the proper installation, activation, and operation of Remote Access Software selected by PRO-VISION.

3. INSTALLATION AND ACTIVATION

- 3.1. Subject to the other terms and conditions of this RDA, PRO-VISION will remotely install and activate up to three licensed copies of the Uploader Software on LICENSEE'S computers, for a duration of up to two hours of installation and activation time, regardless of the number of Uploader Software licenses or the number of BODYCAM® units that LICENSEE owns. It will be LICENSEE'S obligation to install and activate any additional copies of the Uploader Software, subject to the number of licenses that LICENSEE holds for the Uploader Software.
- 3.2. LICENSEE will attend the computers on which the Uploader Software is being remotely installed and activated by PRO-VISION during the entire length of the installation and activation processes, and LICENSEE will observe and participate at LICENSEE'S computers, and reasonably assist PRO-VISION, during the installation and activation processes.
- 3.3. LICENSEE acknowledges and agrees that any part of the Input and Output of LICENSEE'S computers may be recorded by PRO-VISION during the remote installation and activation of the Uploader Software, and retained by PRO-VISION indefinitely. LICENSEE acknowledges and agrees that PRO-VISION has no obligation to record or retain any portion of the Input and Output, or to provide LICENSEE with a copy of any portion of the Input and Output.
- 3.4. After PRO-VISION completes the installation and activation of the Uploader Software on one of LICENSEE'S computers, LICENSEE or PRO-VISION will remove the Remote Access Software from that computer.

4. NO WARRANTY

THE REMOTE ACCESS SOFTWARE IS OFFERED ON AN "AS-IS" BASIS AND NO WARRANTY, EITHER EXPRESSED OR IMPLIED, IS GIVEN. PRO-VISION EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. LICENSEE ASSUMES ALL RISK ASSOCIATED WITH THE QUALITY, PERFORMANCE, INSTALLATION AND USE OF THE REMOTE ACCESS SOFTWARE INCLUDING, BUT NOT LIMITED TO, THE RISKS OF PROGRAM ERRORS, DAMAGE TO EQUIPMENT, LOSS OF DATA OR SOFTWARE PROGRAMS, OR UNAVAILABILITY OR INTERRUPTION OF OPERATIONS. LICENSEE IS SOLELY RESPONSIBLE FOR DETERMINING THE APPROPRIATENESS OF USE THE REMOTE ACCESS SOFTWARE AND ASSUMES ALL RISKS ASSOCIATED WITH ITS USE.

5. INDEMNIFICATION

- 5.1. By accepting this RDA, LICENSEE agrees to indemnify and otherwise hold harmless PRO-VISION, its officers, employers, agents, subsidiaries, affiliates and other partners from any direct, indirect, incidental, special, consequential or exemplary damages arising out of, relating to, or resulting from the remote access software or any other matter relating to the Remote Access Software.

6. LIMITATION OF LIABILITY

- 6.1. LICENSEE EXPRESSLY UNDERSTANDS AND AGREES THAT PRO-VISION SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF PRO-VISION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO LICENSEE. IN NO EVENT WILL PRO-VISION'S TOTAL CUMULATIVE DAMAGES EXCEED THE FEES LICENSEE PAID TO PRO-VISION UNDER THIS RDA IN THE MOST RECENT TWELVE-MONTH PERIOD.

7. GENERAL TERMS

- 7.1. **Severability.** If for any reason a court of competent jurisdiction finds any provision of this RDA invalid or unenforceable, that provision of this RDA will be enforced to the maximum extent permissible and the other provisions of this RDA will remain in full force and effect.
- 7.2. **Modification and Waiver.** This RDA may not be amended except by a written instrument signed by duly authorized representatives of both parties. No waiver will be effective unless in writing and signed by a duly authorized representative of the party sought to be charged therewith. The failure of PRO-VISION to insist upon strict performance of any of the provisions of this RDA will not be construed as a waiver of PRO-VISION'S rights arising out of any subsequent default of that or any other provision.
- 7.3. **Failure or Delay in Performance.** PRO-VISION will not be liable for or be deemed in default under this RDA, or any other agreement between PRO-VISION and LICENSEE, as a result of any failure or delay in the performance of any obligation owed LICENSEE if such delay or failure results from any cause beyond PRO-VISION'S reasonable control.
- 7.4. **Applicable Law; Limitation of Actions.** This RDA will be construed, interpreted, governed and enforced by and in accordance with the laws of the State of Michigan in the United States of America, and the federal laws of the United States of America, without regard to conflicts of laws principles. No action, regardless of form, arising out of any of the transactions under this RDA may be brought by LICENSEE more than one (1) year after the cause of action accrued. Any dispute regarding this RDA or arising out of any of the transactions under this RDA shall be determined in the federal courts of the United States within the jurisdiction of the United States District Court for the Western District of Michigan, or the courts of the State of Michigan sitting in Kent County, Michigan, and the parties hereby stipulate and agree to jurisdiction and venue in such courts. Each party hereby further irrevocably waives any claim that any such court lacks jurisdiction over it, and agrees not to plead or claim such a lack of jurisdiction, or that such court is an inconvenient forum.
- 7.5. **Force Majeure.** Except for LICENSEE'S payment obligations, if any, neither party will be liable for any failure or delay in performance under this RDA which is due to any event beyond the reasonable control of such party, including without limitation, fire, explosion, unavailability of utilities or raw materials, unavailability of components, labor difficulties, war, riot, act of God, export control regulation, laws, judgments, or government instructions.
- 7.6. **Relationship of the Parties.** LICENSEE and PRO-VISION agree that PRO-VISION shall perform its duties under this

Contract No. 202006120322**PRO-VISION DEVICE(S):**

MODEL: BC-300	QUANTITY: 1
MODEL: PV-DVR	QUANTITY: 1

RECURRING ITEMS:

Items listed in this section are billed on a recurring monthly basis.

PART NUMBER	PART DESCRIPTION	QUANTITY	MONTHLY UNIT PRICE	SUB TOTAL	SEE NOTE
SMX-M2M-100	SecuraMax-Month to Month Plan [100GB]	2	0	0	
				0	
TOTAL				0	

FIXED COST ITEMS:

Items listed in this section have a one-time unit cost, monthly billing will not occur.

PART NUMBER	PART DESCRIPTION	QUANTITY	UNIT PRICE	SUB TOTAL	SEE NOTE
				0	
				0	
				0	
TOTAL				0	

The above fees are subject to change. Although monthly fees are listed above, LICENSEE will be responsible for payment of such fees for the entire Subscription Term and, in the event of early termination, the full amount of fees remaining shall become immediately due and payable. Fee payment will be made monthly by LICENSEE by ACH or credit card only. Terms and conditions as to how the monthly fees are to be paid are set forth in the Software Service and Hosting Agreement to which LICENSEE hereby acknowledges and agrees. All capitalized terms not otherwise defined in this Agreement shall have the meanings attributed to them in the Self-Hosted Software Service Agreement.

As set forth in the Self-Hosted Software Service Agreement, LICENSEE will be charged for data storage overages at the then-existing rates.

By applying our signatures below, we hereby accept the terms and conditions set forth above.

PRO-VISION:

SIGNATURE

NAME

DATE

LICENSEE:

SIGNATURE

Scott Grice

NAME

DATE

END USER TERMS AND CONDITIONS

This is a Software Service License (the "License") setting forth end user terms and conditions under which you, the "END USER," are licensed to access and use the SecuraMax.com website ("Software Service").

By clicking ACCEPT, you hereby agree to the following terms and conditions of use of the Software Service. The licensor of this Software Service is Pro-Vision, Inc., a Michigan corporation having its principal place of business at 8625-B Byron Commerce Drive SW, Byron Center, Michigan 49315, ("PRO-VISION").

PRO-VISION and END USER agree as follows:

1. DEFINITIONS

1.1 "Affiliated" means employed by, contracted with, or otherwise expressly authorized by.

1.2 "Documentation" means all generally available printed and electronic user and system documentation included in or accompanying an associated PRO-VISION camera and/or the Software Service, as updated from time-to-time by PRO-VISION.

1.3 "END USER'S Data" is data originating from END USER that is stored using the Software Service on behalf of the END USER or the AGENCY, and includes media files such as text, videos, photos, and audio.

1.4 "Intellectual Property" shall mean all PRO-VISION products related inventions (whether or not protected under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protected under copyright laws), Moral Rights, mask works, trademarks, trade names, trade dress, trade secrets, publicity rights, know-how, ideas (whether or not protected under trade secret laws), and all other subject matter protected under patent (or which is not patented, but is subject matter that is protected under patent law), copyright, moral right, mask work, trademark, trade secret, or other laws, including without limitation all new or useful art, combinations, discoveries, formulae, manufacturing techniques, technical developments, systems, computer architecture, artwork, software, programming, applets, scripts, designs, processes, and methods of doing business. "Moral Rights" means any right to claim authorship of a work, any right to object to any distortion or other modification of a work, and any similar right, existing under the law of any country, or under any treaty.

1.5 "PRO-VISION Device" means any device provided by PRO-VISION and listed in the Service Contract from which the Software Service uploads END USER'S Data.

1.6 "Software Service" means the cloud-based computerized camera interface and media storage service (known as SecuraMax™) and related Documentation and any updates, corrections, enhancements or subsequent releases or versions thereto made available to END USER by PRO-VISION under this License.

1.7 "Software Service and Hosting Agreement" means the Software Service and Hosting Agreement, related to Service Contract Number 202006120322, made between PRO-VISION and the U.S. Government Entity as described herein ("AGENCY") with which the END USER is affiliated, where the Software Service and Hosting Agreement pertains to the Agency's use of the SecuraMax™ Software Service.

2. SOFTWARE SERVICE LICENSE

2.1 Grant of Software Service License. Subject to the terms and conditions of this License, the terms and conditions of the Software Service and Hosting Agreement, and payment of the Software Service Fees by the AGENCY, PRO-VISION grants, and END USER accepts, a non-transferable, non-assignable, non-exclusive license to use the Software Service solely for END USER's own purposes for the Term as set forth herein.

2.2 License Restrictions.

- (a) END USER will not lend, lease, sublicense, transfer, or otherwise distribute the Software Service to any third party;
- (b) Unless specifically agreed otherwise by PRO-VISION in writing, END USER will not use the Software Service in any manner to provide computer services to third parties;
- (c) END USER will not adapt, translate or otherwise create any program, documentation or other work that is based on or incorporates any part of the Software Service without the express written consent of PRO-VISION;
- (d) Except as may be permitted by law, END USER will not reverse engineer the Software Service; and
- (e) END USER will keep the Software Service free and clear of all liens, security interests and other encumbrances and will provide PRO-VISION with immediate notice of any lien, security interest or encumbrance affecting the Software Service.

2.3 END USER Log In Credentials

END USER will be prompted to create personal END USER log in credentials including a user identification and password. END USER will be responsible for maintaining secrecy of END USER's log in credentials. END USER hereby agrees not to share END USER's log in credentials.

2.4 Ownership.

2.4.1 The Software Service. PRO-VISION owns all right, title, and interest in and to the Software Service including all Intellectual Property rights therein. END USER does not acquire any rights, express or implied, in the Software Service, other than those specified in this License.

2.4.2 END USER'S Data. PRO-VISION does not acquire any rights, express or implied, in END USER'S Data. END USER is responsible for controlling access to END USER'S Data and is responsible for deletion, modification, downloading, uploading, sharing, copying, moving, and management of END USER'S Data. PRO-VISION does not view the content of END USER'S Data.

2.5 Storage and Access.

2.5.1 Location. PRO-VISION may store END USER'S Data at any location within the United States. END USER agrees to allow PRO-VISION to transfer END USER'S Data to third parties contracted by PRO-VISION for purposes of storage of END USER'S Data.

2.5.2 Access Rights. Subject to any Suspension of Services per Section 3.2, during the Term of this License, END USER will have access and use of the Software Service for the storage and management of END USER'S Data. Other than collecting usage statistics per Section 14, PRO-VISION will not access END USER'S Data or view the content of END USER'S Data. PRO-VISION will not disclose the content or existence of END USER'S Data or any information about END USER except as compelled by court order or otherwise required by law. PRO-VISION will attempt to provide advance notice of any compelled disclosure in an effort to permit END USER opportunity to object to the court or administrative body, except when prohibited by law.

2.5.3 Data Security. PRO-VISION will implement commercially reasonable and appropriate measures for securing and encrypting END USER'S Data against unauthorized access. END USER may not transfer or sublicense the log-in credentials to any other entity. Audit tracking is provided to track access to END USER'S Data originating from PRO-VISION Devices based on log-in credentials. END USER will contact PRO-VISION immediately if END USER believes any third party has used END USER'S account or accessed END USER'S Data without authorization.

2.6 Software Service Availability. PRO-VISION shall use commercially reasonable efforts to make the Software Service generally available to END USER. PRO-VISION's Software Service may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. PRO-VISION is not responsible for any delays, failures, or other damages resulting from such problems.

2.7 Backup, Disaster Recovery, Bandwidth and Data Security. Backup, disaster recovery, bandwidth and data security are provided by third parties referenced in Section 2.5 above. PRO-VISION takes no responsibility for backup, disaster recovery, bandwidth and data security.

3. FEES AND SUSPENSION OF SERVICES

3.1 Software Service Fee. Per the Software Service and Hosting Agreement, the AGENCY shall pay PRO-VISION a monthly Software Service Fee in order to allow END USER access and use of the Software Service. No fees are separately owed by END USER in association with this License.

3.2 Suspension of Service. In addition to any other rights and remedies, PRO-VISION reserves the right to suspend the Software Service provided to the END USER, including the right to access END USER'S Data, under any one or more of the following conditions:

- (a) if END USER or the AGENCY is in breach of this License;
- (b) if any security risk is created by END USER's or AGENCY's use of the Software Service;
- (c) if END USER's or AGENCY's use of the Software Service creates or threatens to create any adverse effect on the Software Service or any use or data of any other end user or licensee of the Software Service;
- (d) if PRO-VISION may be exposed to liability through END USER's or AGENCY's use of the Software Service;
- (e) if AGENCY becomes subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors; or
- (f) the Software Service licensed to AGENCY is otherwise suspended per the Software Service and Hosting Agreement.

In the event that the Software Service is suspended due to any condition stated in (a) above, PRO-VISION will maintain the suspension until such time that END USER's or AGENCY's breach is cured or the Software Service is otherwise terminated. END USER'S Data will not be deleted as a result of the suspension of services. However, per Section 4.2, PRO-VISION may terminate this License, at which point END USER'S Data may be deleted 60 days following written notice of termination.

4. TERM AND TERMINATION

4.1 Term. This License commences on the date of acceptance and will remain in effect until termination of the Software Service and Hosting Agreement unless this License is otherwise terminated per Section 4.2 below.

4.2 Termination

- (a) **Termination of the Software Service and Hosting Agreement.** This License will terminate if the Software Service and Hosting Agreement is terminated for any reason.
- (b) **Termination for Breach.** PRO-VISION may terminate this License if END USER breaches any of the terms or conditions of this License or of the Software Service and Hosting Agreement.
- (c) **Termination for Discontinuance of Affiliation with the AGENCY.** This License will be terminated if and when END USER is no longer affiliated with the AGENCY.
- (d) **Termination by the AGENCY.** Pursuant to the Software Service and Hosting Agreement, if the Agency becomes aware of any violation by END USER of the terms and conditions of this License or of the Software Service and Hosting Agreement, the AGENCY will immediately terminate END USER's access to END USER's Data and the Software Service.

4.3 Effect of Termination. Termination of this License or the Software Service and Hosting Agreement will not limit either party from pursuing other remedies available to it, including injunctive relief. Termination of this License will immediately terminate END USER'S right to access END USER'S Data.

4.4 Survival. The rights and obligations of the parties contained in Sections 2.4 (Ownership), 4.3 (Effect on Termination), 5 (Confidential Information and Operational Data), 7 (Disclaimer), 8 (Indemnities), 9 (Limitation of Liability), and 11 (General Terms), together with any other provisions of this License which by their nature must survive in order to effectuate their enforcement, will survive the termination of this License or any other license for the Software Service.

5. CONFIDENTIAL INFORMATION AND OPERATIONAL DATA

5.1 Definition. For the purposes of the License, “Confidential Information” means: (a) the Software Service, Work Product, and other related technical information disclosed by PRO-VISION to END USER; (b) END USER’S Data; (c) any non-public business or technical information of PRO-VISION, including but not limited to any information relating to PRO-VISION’s product plans, designs, costs, product prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how, that is designated by the disclosing party as “confidential” or “proprietary” at the time of disclosure, and, if orally disclosed, is reduced to writing by the disclosing party within thirty (30) days of such disclosure; or that ought reasonably be understood to be confidential by virtue of its nature or the circumstances of its disclosure and (c) terms of this License (including, without limitation, the amount of fees or other charges specified under this License).

5.2 Obligations. Each party will not use the other party’s Confidential Information and will not disclose such Confidential Information to any third party except to employees and consultants as reasonably required in connection with the exercise of the party’s rights and performance of its obligations under this License, provided that such disclosure to employees or consultants is subject to binding use and disclosure restrictions at least as protective as those set forth herein. Each party will take all reasonable measures to maintain the confidentiality of all such Confidential Information in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of equal importance. Each party shall promptly notify the other party of any suspected or actual unauthorized disclosure of the other party’s Confidential Information.

5.3 Compelled Disclosures. To the extent required by applicable law or by lawful order or requirement of a court or governmental authority having competent jurisdiction over a party, a party may disclose Confidential Information of the other party in accordance with such law or order or requirement, subject to the following conditions: As soon as possible after becoming aware of such law, order or requirement, and prior to disclosing Confidential Information, the party will so notify the other party in writing and, if reasonable, provide the other party notice not less than five (5) business days prior to the required disclosure. The party that is the subject of the order or requirement will use reasonable efforts not to release Confidential Information, pending the outcome of any measures taken by the other party to contest, oppose, or otherwise limit such disclosure. Notwithstanding any such compelled disclosure, the disclosure will not otherwise affect the disclosing party’s obligations hereunder with respect to Confidential Information so disclosed.

5.4 Exclusions. Confidential Information will not include information that (a) is in or enters the public domain through no fault or breach of this License by the receiving party; (b) is known to the receiving party at the time of disclosure without an obligation of confidentiality; or (c) the receiving party rightfully receives from a third party without restriction on use or disclosure. It will be presumed that any Confidential Information in a party’s possession is not within exceptions (b) or (c) above, and the burden will be upon the party asserting the exception to prove otherwise by records and documentation.

5.5 Non-Exclusive Equitable Remedy. Each party acknowledges and agrees that due to the unique nature of the Software Service and Confidential Information as defined herein, there can be no adequate remedy at law for any breach of its obligations hereunder, and therefore, that upon any such breach or any threat thereof, each party will be entitled to appropriate equitable relief from a court of competent jurisdiction in addition to whatever remedies either of them might have at law or equity.

6. LIMITED WARRANTIES

6.1 Warranty of Authority. Each party warrants to the other that it has sufficient rights to enter into this License and to perform their respective obligations hereunder. END USER further warrants:

- (a) that END USER is legally authorized by the laws of its jurisdiction, or by any required resolution by its governing body, to enter into this License and to perform all of END USER’S obligations under this License;
- (b) that END USER is a U.S. person, as defined in 22 C.F.R. § 120.15;
- (c) that the AGENCY with which the END USER is affiliated is a U.S. Government Entity (including a Federal Agency, a State/Local Entity or a Tribal Entity acting in its governmental capacity, where: a “Federal Agency” is a bureau, office, agency, department or other entity of the United States Government; “State/Local Entity” is
 - i. any agency of a state or local government in the United States,
 - ii. any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer’s state and located within Customer’s state’s jurisdiction and geographic boundaries, or
 - iii. the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Northern Mariana Islands; and a “Tribal Entity” is a federally recognized tribal entity eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe, or, in Alaska, a Native village or Alaska Regional Native Corporation);
- (d) that END USER will only use the Software Service for essential governmental or proprietary purposes consistent with the scope of END USER’S authority and that END USER will not use the Software Service in a business or trade of any person or other entity, or for any personal use;

- (e) that END USER or the AGENCY shall be responsible for any claims that the content of END USER'S Data infringes or misappropriates any third party's rights; and
- (f) that END USER or the AGENCY shall be responsible for any dispute between END USER or the AGENCY and any third party with respect to END USER'S collection or use of END USER'S Data. END USER further agrees to adhere to this License and all laws, rules, regulations, and policies applicable to the use of the Software Service and the content of END USER'S Data.

7. DISCLAIMER

7.1 PRO-VISION Services. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 6, THE SOFTWARE SERVICE, THE SUPPORT SERVICES AND ALL OTHER SERVICES PROVIDED HEREUNDER ARE PROVIDED TO END USER "AS IS" AND "AS-AVAILABLE," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. PRO-VISION EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY OF INFORMATION AND QUIET ENJOYMENT. PRO-VISION DOES NOT WARRANT THAT THE SOFTWARE SERVICE, THE SUPPORT SERVICES AND/OR ANY OTHER SERVICES PROVIDED HEREUNDER WILL MEET END USER'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE SERVICE WILL BE CORRECTED. PRO-VISION DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE SERVICE IN TERMS OF ITS CORRECTNESS, ACCURACY, QUALITY, RELIABILITY, APPROPRIATENESS FOR A PARTICULAR TASK OR APPLICATION, OR OTHERWISE. END USER ACKNOWLEDGES THAT IT WILL HAVE SOLE AND COMPLETE RESPONSIBILITY FOR ANY DECISIONS MADE OR ACTIONS TAKEN BY IT IN RELIANCE UPON THE SOFTWARE SERVICE. No employee or agent of PRO-VISION is authorized to make any different or additional warranties to END USER and PRO-VISION will not be bound by any such purported warranties. The warranties provided by PRO-VISION are personal to END USER or the AGENCY and may not be extended to any third party. There are NO third party beneficiaries of PRO-VISION's obligations under this License.

7.2 Third Party Products and/or Services. PRO-VISION MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED WITH REGARD TO ANY SOFTWARE, COMPUTER HARDWARE, DEVICES, OR SERVICES OF ANY NATURE OBTAINED FROM THIRD PARTIES (COLLECTIVELY, THE "THIRD PARTY ITEMS"). PRO-VISION EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY OF INFORMATION, QUIET ENJOYMENT, FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE THIRD PARTY ITEMS. END USER SHOULD CONSULT THE RESPECTIVE VENDORS/MANUFACTURERS OF THE THIRD PARTY ITEMS FOR WARRANTY AND PERFORMANCE INFORMATION. NOTHING IN THIS LICENSE SHALL BE INTERPRETED AS A WARRANTY, EITHER EXPRESS OR IMPLIED, BY PRO-VISION THAT WOULD EXPAND IN ANY WAY A VENDOR/MANUFACTURER'S STANDARD END-USER WARRANTY.

7.3 END USER Responsibilities. END USER ACKNOWLEDGES AND ACCEPTS THAT PRO-VISION DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE SERVICE WILL, IN FACT, MEET THE SPECIFIC NEEDS AND REQUIREMENTS OF END USER. PRO-VISION WILL NOT BE RESPONSIBLE FOR ANY USE OF THE SOFTWARE SERVICE BY END USER THAT DOES NOT COMPLY WITH APPLICABLE LAWS AND DISCLAIMS ANY RESPONSIBILITY FOR DATA CORRUPTION, LOSS, MODIFICATION, OR ERRORS EXISTING IN END USER'S DATA PRIOR TO UPLOAD AS WELL AS ANY DATA CORRUPTION, LOSS, MODIFICATION, OR ERRORS EXISTING IN END USER'S DATA AFTER ANY UPLOAD OR DOWNLOAD.

8. INDEMNITIES

END USER shall defend and indemnify PRO-VISION and hold it and its affiliates, subsidiaries, officers, directors, employees, agents, and suppliers (including any third party used to store END USER's data) harmless from any and all claims, losses, deficiencies, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees and all related costs and expenses) incurred by PRO-VISION

as a result of any claim, judgment, or adjudication related to or arising from END USER's use of the Software Service including, but not limited to, management, deletion, or alteration of END USER'S Data or END USER's failure to store or maintain data (except to the extent such claims are solely the result of PRO-VISION's gross negligence or willful misconduct).

9. LIMITATION OF LIABILITY

9.1 Exclusion of Damages. EXCEPT AS EXPRESSLY PROVIDED HEREIN, IN NO EVENT WILL PRO-VISION OR ITS AFFILIATES, SUBSIDIARIES, AGENTS, AND THIRD PARTY SUPPLIERS (INCLUDING ANY THIRD PARTY USED TO STORE END USER'S DATA) BE LIABLE TO END USER FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS LICENSE OR THE USE OR INABILITY TO USE ANY SOFTWARE SERVICE OR ANY SERVICES PROVIDED HEREUNDER FOR ANY PERIOD OF TIME (INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUES OR LOSS OF DATA), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, PRO-VISION AND ITS AFFILIATES, SUBSIDIARIES, AGENTS, AND THIRD PARTY SUPPLIERS (INCLUDING ANY THIRD PARTY USED TO STORE END USER'S DATA) WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY DAMAGES ARISING FROM: (1) ANY UNAUTHORIZED ACCESS TO END USER'S DATA; (2) ANY MODIFICATION, DELETION, DAMAGE, OR OTHER LOSS OF END USER'S DATA; (3) FAILURE TO PROPERLY STORE END USER'S DATA; (4) FAILURE TO PROPERLY IDENTIFY END USER'S DATA; (5) SUSPENSION OR TERMINATION OF THE SOFTWARE SERVICE; (6) END USER'S USE OF THE SOFTWARE SERVICE; (7) THIRD PARTY CLAIMS PERTAINING TO EXISTENCE, NON-EXISTENCE, DELETION, AND/OR MODIFICATION OF END USER'S DATA; OR (8) DISCONTINUANCE OF ANY PORTION OF THE SOFTWARE SERVICE.

9.2 Total Liability. EXCEPT FOR PRO-VISION'S CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 5, THE TOTAL LIABILITY OF PRO-VISION AND ITS RESPECTIVE AFFILIATES, SUBSIDIARIES, AGENTS AND SUPPLIERS (INCLUDING ANY THIRD PARTY USED TO STORE END USER'S DATA) TO END USER OR ANY THIRD PARTIES ARISING FROM THE SOFTWARE SERVICE, SERVICES OR THIS LICENSE FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) WILL IN NO EVENT EXCEED IN THE AGGREGATE OF THE ALL AMOUNTS PAID FOR THE SOFTWARE SERVICE OR SERVICES TO WHICH THE CLAIM RELATES PURSUANT TO THIS LICENSE IN THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE CLAIM. THIS LIMITATION OF LIABILITY SHALL APPLY EVEN IF THE EXPRESS WARRANTIES SET FORTH ABOVE FAIL OF THEIR ESSENTIAL PURPOSE.

10. END USER USAGE STATISTICS

To help enable PRO-VISION to provide and improve its Software Service, END USER hereby agrees to allow PRO-VISION to acquire and use END USER's usage statistics including cloud storage space used, frequency of uploads, amount of data downloaded, amount of storage consumed by any of END USER'S Data that is not data uploaded from PRO-VISION Devices, and any other information needed to enforce this License, conduct any troubleshooting requested by END USER or the AGENCY, and to analyze and diagnose any systems on which the Software Service software resides.

11. GENERAL TERMS

11.1 Severability. If for any reason a court of competent jurisdiction finds any provision of this License invalid or unenforceable, that provision of the License will be enforced to the maximum extent permissible and the other provisions of this License will remain in full force and effect.

11.2 Modification and Waiver. This License may not be amended except by a written instrument signed by duly authorized representatives of both parties. No waiver will be effective unless in writing and signed by a duly authorized representative of the party sought to be charged therewith. The failure of PRO-VISION to insist upon strict performance of any of the provisions of this License will not be construed as a waiver of PRO-VISION's rights arising out of any subsequent default of that or any other provision.

11.3 Assignment. This License and the rights hereunder will be assignable by PRO-VISION. END USER will have no right to assign this License or any of its rights hereunder without PRO-VISION's prior written consent. Any attempt to assign this License without such consent will be void. PRO-VISION may reasonably require, as a condition to its consent, payment of a license transfer fee in such amount as PRO-VISION may specify in its sole discretion. No permitted assignment by END USER will be effective without the express written consent of PRO-VISION. Provided that PRO-VISION has consented to such assignment, END USER may not retain any copy of the Software Service or Documentation following the assignment.

11.4 Failure or Delay in Performance. PRO-VISION will not be liable for or be deemed in default under this License, or any other agreement between PRO-VISION and END USER, as a result of any failure or delay in the performance of any obligation owed END USER if such delay or failure results from any cause beyond PRO-VISION's reasonable control.

11.5 Notices. All notices required or permitted under this License will be in writing and delivered by confirmed facsimile transmission, by courier, overnight delivery service, certified mail, or by email and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth above or to such other address as may be specified by either party to the other in accordance with this Section. Either party may change its address for notices to the other party by the means specified in this Section.

11.6 Applicable Law; Limitation of Actions. This License will be construed, interpreted, governed and enforced by and in accordance with the laws of Michigan, and the laws of the United States of America, without regard to conflicts of laws principles. No action, regardless of form, arising out of any of the transactions under this License may be brought by END USER more than one (1) year after such action accrued. Any dispute regarding this License or arising out of any of the transactions under this License shall be determined in the federal courts of the United States within the jurisdiction of the United States District Court for the Western District of Michigan, or the courts of the State of Michigan sitting in Kent County, Michigan, and the parties hereby stipulate and agree to jurisdiction and venue in such courts. Each party hereby further irrevocably waives any claim that any such court lacks jurisdiction over it, and agrees not to plead or claim such a lack of jurisdiction, or that such court is an inconvenient forum.

11.7 Entire Agreement. With the exception of any Uploader License and any policies and restrictions on the SecuraMax.com website, this License is the entire agreement between PRO-VISION and END USER relating to its subject matter, and supersedes all prior or contemporaneous agreements, representations or understandings between PRO-VISION and END USER, written or oral, with respect to such subject matter. However, this License does not supersede the Software Service and Hosting Agreement, or any other Agreements, between PRO-VISION and the AGENCY.

11.8 Audit. At its own expense, PRO-VISION may perform an audit of END USER's usage of the Software Service to confirm use of the software in accordance with the terms of this License. The audit may be conducted (i) once every calendar year and (ii) as required in the event PRO-VISION has reason to believe END USER is utilizing the Software Service in an unauthorized manner.

11.9 Force Majeure. Neither party will be liable for any failure or delay in performance under this License which is due to any event beyond the reasonable control of such party, including without limitation, fire, explosion, unavailability of utilities or raw materials, unavailability of components, labor difficulties, war, riot, act of God, export control regulation, laws, judgments, or government instructions.

11.10 Relationship of the Parties. END USER and PRO-VISION agree that PRO-VISION shall perform its duties under this License as an independent contractor. Nothing contained herein shall be deemed to establish a partnership, joint venture, association, or employment relationship between the parties. Personnel employed or retained by PRO-VISION who perform duties related to this License shall remain under the supervision, management, and control of PRO-VISION. In order to assist it in carrying out its duties and responsibilities pursuant to this License and any Statement(s) of Work, PRO-VISION may subcontract with or otherwise engage the services of one or more third parties.

Signature

Scott Grice

Name

Principal Systems Administrator

Title

Date

UPLOADER LICENSE

This is a software license (the "Agreement") under which LICENSEE may install and use the SecuraMax™ Uploader Software ("Uploader Software"). This Agreement follows execution of Service Contract Number 202006120324 ("the Service Contract") and the related Software Service and Hosting Agreement between the parties. This Agreement is subject to all terms of the Software Service and Hosting Agreement. All capitalized terms not otherwise defined in this Agreement shall have the meanings attributed to them in the Software Service and Hosting Agreement.

By clicking ACCEPT, you represent that you are authorized to enter into this Agreement on behalf of the Licensee identified in the Service Contract ("LICENSEE") and hereby agree to the following terms and conditions of use of the Uploader Software on behalf of the LICENSEE. The licensor of the Uploader Software is Pro-Vision, Inc., a Michigan corporation having its principal place of business at 8625-B Byron Commerce Drive SW, Byron Center, Michigan 49315, United States of America ("PRO-VISION").

PRO-VISION and LICENSEE agree as follows:

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This Agreement pertains only to the license of the Uploader Software and does not replace or modify the terms of any Service Contract, or any Software Service and Hosting Agreement between PRO-VISION and LICENSEE. In the event of any conflict between the terms of this Agreement and the terms of any Software Service and Hosting Agreement, the terms of the Software Service and Hosting Agreements shall control.

UPLOADER LICENSE

Version Upgrades

This Agreement allows LICENSEE to receive free minor version updates. Minor version updates (e.g., version 4.0 to 4.1) may include security updates, bug fixes or feature enhancements. Major version upgrades (e.g., version 4.0 to 5.0) may be available for license for a fee.

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Term, Termination, and Modification

LICENSEE may use the Uploader Software under this Agreement until either party terminates this Agreement as set forth in this paragraph or such time that the Software Service and Hosting Agreement is terminated. Either party may terminate the Agreement at any time, upon written notice to the other party. Upon termination, all licenses granted to LICENSEE will terminate, and LICENSEE will immediately uninstall and cease all use of the Uploader Software. The Sections entitled "No Warranty," "Indemnification," and "Limitation of Liability" will survive any termination of this Agreement.

PRO-VISION may modify the Uploader Software with notice to LICENSEE, including but not limited to, changing the functionality or appearance of the Uploader Software, and such modification will become binding on LICENSEE unless LICENSEE terminates this Agreement.

Indemnification

By accepting the Agreement, LICENSEE agrees to indemnify and otherwise hold harmless PRO-VISION, its officers, employers, agents, subsidiaries, affiliates and other partners from any direct, indirect, incidental, special, consequential or exemplary damages arising out of, relating to, or resulting from LICENSEE's use of the Uploader Software or any other matter relating to the Uploader Software.

Limitation of Liability

LICENSEE EXPRESSLY UNDERSTANDS AND AGREES THAT PRO-VISION SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF PRO-VISION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO LICENSEE. IN NO EVENT WILL PRO-VISION'S TOTAL CUMULATIVE DAMAGES EXCEED THE FEES LICENSEE PAID TO PRO-VISION UNDER THIS AGREEMENT IN THE MOST RECENT TWELVE-MONTH PERIOD.

General Terms

Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

Modification and Waiver. This Agreement may not be amended except by a written instrument signed by duly authorized representatives of both parties. No waiver will be effective unless in writing and signed by a duly authorized representative of the party sought to be charged therewith. The failure of PRO-VISION to insist upon strict performance of any of the provisions of this Agreement will not be construed as a waiver of PRO-VISION's rights arising out of any subsequent default of that or any other provision.

Assignment. This Agreement and the rights hereunder will be assignable by PRO-VISION. LICENSEE will have no right to assign this Agreement or any of its rights hereunder without PRO-VISION's prior written consent. Any attempt to assign this Agreement without such consent will be void. PRO-VISION may reasonably require, as a condition to its consent, payment of a license transfer fee in such amount as PRO-VISION may specify in its sole discretion. No permitted assignment by LICENSEE will be effective without the express written consent of PRO-VISION. Even if PRO-VISION has consented to such assignment, LICENSEE may not retain any copy of the Uploader Software or associated documentation following the assignment.

UPLOADER LICENSE

Failure or Delay in Performance. PRO-VISION will not be liable for or be deemed in default under this Agreement, or any other agreement between PRO-VISION and LICENSEE, as a result of any failure or delay in the performance of any obligation owed LICENSEE if such delay or failure results from any cause beyond PRO-VISION's reasonable control.

Notices. All notices required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by courier, overnight delivery service, certified mail, or by email, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth above or to such other address as may be specified by either party to the other in accordance with this Section. Either party may change its address for notices to the other party by the means specified in this Section.

Applicable Law; Limitation of Actions. This Agreement will be construed, interpreted, governed and enforced by and in accordance with the laws of the State of Michigan in the United States of America, and the federal laws of the United States of America, without regard to conflicts of laws principles. No action, regardless of form, arising out of any of the transactions under this Agreement may be brought by LICENSEE more than one (1) year after the cause of action accrued. Any dispute regarding this Agreement or arising out of any of the transactions under this Agreement shall be determined in the federal courts of the United States within the jurisdiction of the United States District Court for the Western District of Michigan, or the courts of the State of Michigan sitting in Kent County, Michigan, and the parties hereby stipulate and agree to jurisdiction and venue in such courts. Each party hereby further irrevocably waives any claim that any such court lacks jurisdiction over it, and agrees not to plead or claim such a lack of jurisdiction, or that such court is an inconvenient forum.

Audit. At its own expense, PRO-VISION may perform an audit of LICENSEE's usage of the Uploader Software to confirm use of the software in accordance with the terms of this Agreement. The audit may be conducted (i) once every calendar year and (ii) as required, in the event PRO-VISION has reason to believe LICENSEE is utilizing the Uploader Software in an unauthorized manner.

Force Majeure. Except for LICENSEE's payment obligations, neither party will be liable for any failure or delay in performance under this Agreement which is due to any event beyond the reasonable control of such party, including without limitation, fire, explosion, unavailability of utilities or raw materials, unavailability of components, labor difficulties, war, riot, act of God, export control regulation, laws, judgments, or government instructions.

Relationship of the Parties. LICENSEE and PRO-VISION agree that PRO-VISION shall perform its duties under this Agreement as an independent contractor. Nothing contained herein shall be deemed to establish a partnership, joint venture, association, or employment relationship between the parties. Personnel employed or retained by PRO-VISION who perform duties related to this Agreement shall remain under the supervision, management, and control of PRO-VISION. In order to assist it in carrying out its duties and responsibilities pursuant to this Agreement and any Statement(s) of Work, PRO-VISION may subcontract with or otherwise engage the services of one or more third parties.

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Status: Sent

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Administration Team

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Scott Grice

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s.grice@cityofstarkville.org

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Sales Admin

smxadmin@provisionusa.com

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Andrew Beach

smxmanager@provisionusa.com

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:

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Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	6/15/2020 11:52:49 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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How to contact PRO-VISION, Inc:

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: jeff.lehnert@provisionusa.com

To advise PRO-VISION, Inc of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at jeff.lehnert@provisionusa.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address.. In addition, you must notify DocuSign, Inc. to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in the DocuSign system.

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Operating Systems:	Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X
Browsers:	Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari®, 3.0 or above (Mac only)
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	Allow per session cookies

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- Until or unless I notify PRO-VISION, Inc as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by PRO-VISION, Inc during the course of my relationship with you.

ATTACHMENT A

Addendum to Contract
With
The City of Starkville, Mississippi

The City of Starkville, Mississippi ("City"), a corporation existing under the laws of the State of Mississippi, despite any contrary provision contained in any contract to which the City is a party, does not, among other things, waive any rights, benefits, limitations or prohibitions that may be provided under any law, statute(s), regulation(s), or policies. All provisions to the contrary in any contract to which the City is a party are hereby null, void, and deleted. Not intended to be an exhaustive list, the following are examples of such matters and certain authority related to such matters, and shall be exceptions to any contrary provision(s) in any contract to which the City is a party:

1. The City does not indemnify or hold harmless any party.
Miss. Const. Art. 4, § 100
Miss. AG Op., Chamberlin (Oct. 18, 2002)
Miss. AG Op., Paul B. Watkins, Jr., (Oct. 5, 2011)
2. The City does not make any warranty.
Miss. Const. Art. 4, § 100
Miss. AG Op., Chamberlin (Oct. 18, 2002)
3. The City does not waive any claim: past, present, or future.
Miss. Const. Art. 4, § 100
Miss. AG Op., Clark (June 7, 2002)
Miss. AG Op., Chamberlin (Oct. 18, 2002)
4. The City does not waive its sovereign immunity. The City shall only be responsible for liability resulting from the actions of its officers, agents, and employees acting within the course and scope of their official duties. Liability of the City is determined and controlled by the Miss. Code Ann. § 11-46-1, et seq., including all defenses and exceptions contained therein.
Miss. Code Ann. § 11-46-1, *et seq.*
Miss. AG Op., Paul B. Watkins, Jr., (Oct. 5, 2011)
5. The City does not waive its Constitutional Eleventh (11th) Amendment immunity.
U.S. Const. amend. XI
6. The City does not agree to the application of the laws of another state or venue in a foreign jurisdiction.
U.S. Const. amend XI
Miss. Code Ann. 11-11-3
Miss. Code Ann. 11-45-1
Miss. Const. Art. 4, § 100

City of Jackson v. Wallace, 196 So. 223 (1940)
Miss. AG Op., Nowak (Nov. 18, 2005)

7. The City does not limit the liability of another party to the amount of the contract or to any other set amount.

Miss. Const. Art. 4, § 100
Miss. AG Op., Chamberlin (Oct. 18, 2002)
Miss. AG Op., Clark (June 7, 2002)
Miss. AG Op., Hathorn (May 28, 1992)

8. The City does not agree to waive warranties of merchantability, fitness for a particular purpose, or any common law or statutory warranties to which it is entitled.

Miss. Const. Art. 4, § 100
Miss. Code Ann. § 75-2-719
Miss. AG Op., Chamberlin (Oct. 18, 2002)
Miss AG Op., Long (Feb. 27, 2009)

9. The City may not bind a subsequent administration to contracts made by the former municipal officers.

Humble Oil and Refining v. State, 41 So.2d 765 (Miss. 1949)
In re Municipal Boundaries of City of Southaven, 864 So.2d 912 (Miss. 2003)
Miss. AG Op., Paul B. Watkins, Jr., (Oct. 5, 2011)

10. Provisions that limit the time for the City to pursue legal actions are deleted and void.

Miss. Const. Art 4, § 104
Miss. Const. Art. 4 § 100
Miss. Code Ann. § 15-1-5
Miss. AG Op., Chamberlin (Oct. 18, 2002)
Miss. AG Op., Thomas (Dec. 2, 2003)

11. The City does not agree to submit to binding arbitration.

Miss. AG Op., Clark (June 7, 2002)
Miss. AG Op., Chamberlin (Oct. 18, 2002)
Miss. AG Op., Paul B. Watkins, Jr., (Oct. 5, 2011)

12. The City will make payments for all amounts owed under a contract agreement in accordance with state law and is not subject to late fees or penalties otherwise.

Miss. Code Ann. § 31-7-305.
Miss. AG Op., Meadows (August 18, 2008)
Miss. AG Op., Pearson (November 22, 1993)

13. The City does not limit or waive its lawful right to damages of any type, including but not limited to, punitive, consequential or special.

Miss. Const. Art. 4, § 100
Miss. AG Op., Chamberlin (Oct. 18, 2002)

Miss. AG Op., Hathorn (May 28, 1992)
Miss. AG Op., Thomas (Dec. 2, 2003)

14. The City may not be a subscriber or stockholder to stock of any corporation or association; control must be under the power of public through public agents responsibly accountable to government.

Miss. Const. Art. 7, § 183

Miss. Const. Art. , § 258

Miss. AG Op., Oldmixon (April 24, 1991)

Bister v LeFlore County, 125 So. 816, 818 (Miss. 1930)

15. The City does not agree to waive rights and remedies conferred to it by virtue of any UCC provision.

Miss. AG Op., Chamberlin (Oct. 18, 2002)

16. The City is governed by the Mississippi Public Records Act of 1983 regarding the release of information, and by the policies, procedures, definitions, exemptions and protections contained therein, supersedes any applicable contractual non-disclosure or confidentiality obligations of the City.

Miss. Code Ann. § 25-61-1, et. seq.

17. Any Contractor/Seller of the City shall ensure compliance with the Mississippi Employment Protection Act, Miss. Code Ann. § 71-11-1, et seq. The provisions and requirements of the Mississippi Employment Protection Act supersede all conflicting contract provisions and requirements.

The undersigned hereby acknowledge that they have read, reviewed, understood and agreed to this Addendum.

Signature

By: Name

Its: Title

ANNOUNCEMENTS AND COMMENTS:

MAYOR'S COMMENTS:

Mayor Spruill encouraged everyone to take a few minutes to complete the 2020 Census if they have not done so already and noted the importance of everyone being counted.

She then noted that trash pickup will return to twice a week routes the week of August 3.

BOARD OF ALDERMEN COMMENTS:

Alderman Sistrunk stated that everyone interested in current Covid information go to the MS Department of Health website.

Alderman Walker thanked Jeffery Simmons, the park staff and the Mayor for the recent football camp held in Starkville.

Alderman Beatty expressed concern with students beginning to return that social distancing regulations may not be adhered to as they should. The Mayor asked the Police Chief to have officers frequently patrol areas that may be of concern.

Alderman Perkins noted there are regulations and penalties in the Seventh Covid-19 Resolution passed by the City at the July 7, 2020 meeting which the police department should strictly enforce.

Alderman Vaughn asked that newly hired employees not begin working prior to the return of furloughed employees.

CITIZEN COMMENTS:

Alvin Turner, Ward 7, noted that daily news of Covid is starting to cause mental stress on many individuals and asked that positive news and events also be shared.

PUBLIC APPEARANCES: None

PUBLIC HEARINGS:

SECOND PUBLIC HEARING AND CONSIDERATION OF THE ADOPTION OF A TEMPORARY LEISURE AND ENTERTAINMENT DISTRICT ORDINANCE FOR THE CITY OF STARKVILLE.

Mayor Spruill opened the Public Hearing and called for public comments.

Alvin Turner stated more alcohol is not the answer to the current Covid situation.

There being no additional comments from the public the Mayor announced the public hearing closed.

17. CONSIDERATION OF THE ADOPTION OF A LEISURE AND ENTERTAINMENT DISTRICT ORDINANCE FOR THE CITY OF STARKVILLE.

Alderman Sistrunk, duly seconded by Alderman Beatty, offered a motion to approve the adoption of a Leisure and Entertainment District Ordinance for the City of Starkville. The Board voted as follows:

Alderman Ben Carver	Voted: Nay
Alderman Sandra Sistrunk	Voted: Yea
Alderman David Little	Voted: Absent
Alderman Jason Walker	Voted: Yea
Alderman Hamp Beatty	Voted: Yea
Alderman Roy A'. Perkins	Voted: Nay
Alderman Henry Vaughn, Sr.	Voted: Nay

Having received a tie vote, the Mayor voted yea and declared the motion passed.

ORDINANCE NO. 2020-04

**AN ORDINANCE TO ESTABLISH A LEISURE AND RECREATION DISTRICT
WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF STARKVILLE,
MISSISSIPPI, AND DESIGNATE THE GEOGRAPHIC AREAS INCLUDED WITHIN
THE BOUNDARIES OF SAID DISTRICT; AND TO AMEND ORDINANCE
NUMBER 2017-5, ADOPTED 09-19-17 AND CHAPTER 10, ALCOHOLIC
BEVERAGES, OF THE CODE OF ORDINANCES, AMENDING THE
REGULATIONS FOR POSSESSION OR CONSUMPTION OF ALCOHOLIC
BEVERAGES, BEER OR LIGHT WINE IN CERTAIN PLACES; AND FOR
RELATED PURPOSES**

**BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE
CITY OF STARKVILLE, MISSISSIPPI:**

WHEREAS, the City of Starkville, Mississippi, is a municipal corporation, organized and existing according to the laws of the State of Mississippi; and

WHEREAS, during the 2016 Legislative Session, the Mississippi Legislature enacted House Bill 1223, effective July 1, 2016, and codified in Miss. Code Ann § 67-1-101, which permits and authorizes municipalities in the State of Mississippi to establish “Leisure and Recreation Districts” and to designate the geographic areas to be included within the district; and

WHEREAS, Miss. Code Ann. § 67-1-101 requires that an Ordinance which establishes a Leisure and Recreation District include a detailed description of the area or areas within the district, the boundaries of the district, and a georeferenced map of the district, as well as a description of the manner in which the municipality will provide for adequate law enforcement and other public safety measures and services within the district; and

WHEREAS, municipalities which create Leisure and Recreation Districts authorize business entities that hold alcoholic beverage permits issued by the Department of Revenue, and that are located within the boundaries of the designated Leisure and Recreation District, to allow patrons to leave the licensed premises with an open container of alcohol and to carry and consume alcoholic beverages within the designated Leisure and Recreation District; and

WHEREAS, the governing authority of the City of Starkville, Mississippi, has determined and hereby finds that the City of Starkville would benefit from the establishment of a Leisure and Recreation District by enhancing pedestrian-oriented areas, including outdoor dining; and

WHEREAS, the governing authority of the City of Starkville, Mississippi, has further determined that the establishment of a Leisure and Recreation District would be in the best interests of the City of Starkville; and

WHEREAS, the governing authority of the City of Starkville has found and determined that the manner of current law enforcement is adequate and sufficient for the area to be designated as a Leisure and Recreation District, and the Mayor therefore has agreed to direct that the Starkville Police Department continue to provide adequate and sufficient law enforcement and other public safety measures and services as stated herein in the city’s Leisure and Recreation District; and

WHEREAS, nothing herein is intended to confer any rights or entitlement as the sale of alcohol within an area designated as a Leisure and Recreation District is a privilege and not a right and is subject at all times to reasonable regulation; and

WHEREAS, subject to Miss. Code Ann. § 67-1-101 and this Ordinance, the City of Starkville hereby establishes a Leisure and Recreation District as more fully set forth herein.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND BOARD OF

ALDERMEN OF THE CITY OF STARKVILLE, MISSISSIPPI AS FOLLOWS:

SECTION 1. ADOPTION OF FINDINGS: The matters, facts and things recited in the above and foregoing Preamble to this Ordinance are hereby adopted as official findings of the Governing Authority of the City of Starkville.

SECTION 2. TITLE: This ordinance shall be known as **STARKVILLE LEISURE AND RECREATION DISTRICT ORDINANCE.**

SECTION 3. CREATION AND ESTABLISHMENT OF DISTRICTS: Under the authority granted in Miss. Code Ann. § 67-1-101, the City of Starkville does hereby establish Leisure and Recreation District(s) within the City of Starkville, hereafter known as the DISTRICT, within the geographic areas and within such boundaries as are set forth and designated herein and as represented on the geo-referenced Map which is incorporated herein and attached hereto:

- a. DISTRICT description is attached as Exhibit 1;
- b. DISTRICT map is attached as Exhibit 2;
- c. Additional districts may be created in the future as deemed beneficial and upon further action by the Board of Aldermen for the City of Starkville.

SECTION 4. OUTSIDE CONSUMPTION OF ALCOHOLIC BEVERAGES PERMITTED; CONDITIONS. Any on-premises retail alcoholic beverage permittee (hereinafter, “permittee”) located within the DISTRICT shall comply with all laws, rules and regulations which govern its license type, except that a patron, guest or member of that permittee may remove an open container of alcoholic beverage, beer, or wine from the licensed premises, and may possess and consume such beverage outside of the licensed premises anywhere within the boundaries of the District subject to the following regulations:

1. Nothing in this Ordinance permits a patron to possess or consume an alcoholic beverage, beer or wine in an open container that was not purchased from an on-premises retail alcohol beverage permittee located within the DISTRICT.
2. A person may not enter a licensed premises with an alcoholic beverage, whether acquired at that licensed premises or elsewhere.
3. A permittee located in the DISTRICT shall allow alcoholic beverages to be removed from the licensed premises only in a plastic, paper, or styrofoam cup not larger than 16 fluid ounces, and no such alcoholic beverages shall be removed from the licensed premises in a can, bottle, glass container or other container, except as otherwise allowed by law.
4. No permittee shall allow a patron, guest or member to exit its licensed premises with more than one open container of an alcoholic beverage, and it shall be unlawful for any person to exit such licensed premises with more than one such open container.
5. Nothing in this ordinance shall require a permittee located in the DISTRICT to allow its patrons to remove alcoholic beverages in open containers from the licensed premises.
6. Each permittee shall be required to place a trash receptacle, consistent with the specified design approved by the City for the DISTRICT, at the exit door of the premises.
7. Permittees located in the DISTRICT shall post, at all points of egress from the licensed premises, a map of the boundaries of the DISTRICT in which it is located. The map shall be provided, either in electronic or paper form, to those permittees upon their request.
8. The purpose of this ordinance being primarily to allow pedestrians to participate in outdoor dining and to carry open containers as described in this ordinance

within a Leisure and Recreation District, nothing in this ordinance shall be construed to allow patrons, guests, or members of a permittee to drive a motor vehicle or non-motor vehicle while carrying an open container of alcoholic beverage onto or into such vehicle, and it shall be a violation of this ordinance for any person to drive a motor vehicle or non-motor vehicle while carrying an open container, as described in this ordinance, containing an alcoholic beverage within the DISTRICT in which it was purchased. Similarly, nothing in this ordinance shall be construed to allow patrons, guests or members of a permittee to leave the DISTRICT as a pedestrian or passenger in a motor vehicle or non- motor vehicle of any kind while carrying an open container of an alcoholic beverage.

9. Nothing in this ordinance shall allow patrons, guests or members of a licensee or permittee to impede traffic on a public street or within private or public parking lots, unless approved by order of the Starkville Board of Aldermen.

SECTION 5. HOURS IN EFFECT. A person shall only possess an alcoholic beverage in the above prescribed container dispensed by a duly permitted establishment within the DISTRICT boundaries between the hours of 4:00 p.m. and midnight Monday through Wednesday, 4:00 p.m. Thursday to 1:00 a.m. Friday, 4:00 p.m. Friday to 1:00a.m. Saturday, 12:00 p.m. Saturday to 1:00 a.m. Sunday, and 12:00 p.m. to 12:00 midnight Sunday. Hours may be amended on specific days only on order of the Starkville Board of Aldermen.

SECTION 6. DRINKING IN PUBLIC PLACES; AMENDMENTS TO ORDINANCE NUMBERS 2017-02 AND TO THE CODE OF ORDINANCES: AND CHAPTER 10, ALCOHOLIC BEVERAGES, ARTICLE II, SECTIONS 10-36, 10-38; 10-39, 10-41, 10-43 AND 10-103, AS FOLLOWS:

a. It shall be unlawful for any person, group, association, or any and all legal entities recognized by law to possess or consume alcoholic beverages, beer or wine, as defined by any statute of this state, in the city hall, municipal school buildings, stadiums, public playgrounds, or public parks, or clubhouses situated therein, or any fire station, or on any and all other public grounds, buildings, parks, and places owned, maintained or operated by the city; except, that this section shall not apply to any individuals, groups or associations utilizing any municipally owned building under a written lease or rental agreement granted by the city that specifically addresses the possession and/or consumption of alcoholic beverages, beer, or wine.

b. It shall be unlawful for any person to consume any alcoholic beverage, beer, or wine on any public street, sidewalk or alley owned, maintained or operated by the City; except that it shall not be unlawful for any person to consume an alcoholic beverage, beer or wine on streets in an established LEISURE AND RECREATION DISTRICT.

c. It shall remain lawful for any person to possess an open container of beer or light wine on public property within the boundaries of an outdoor special event or festival expressly approved by the Starkville Board of Aldermen upon written application; provided, however, that during such City-approved special events, no beer or light wine may be possessed or consumed from containers other than plastic, paper, or styrofoam cups.

SECTION 7. PUBLIC SAFETY MEASURES: The City of Starkville, by and through its Police and Fire Departments, shall provide for adequate law enforcement and other public safety measures and services within the DISTRICT as required by State Law. In addition, the Police and Fire Departments shall provide public safety services within the District in the same manner it provides those services in the remainder of the City. Nothing in this ordinance shall amend or change any other ordinance pertaining to amplified music, noise, litter, loitering, or nuisances.

SECTION 8. RESERVATION OF RIGHTS : The City reserves the right to modify or repeal this ordinance, and any district designation created hereunder, at any time, with or without notice, by order of the Board of Aldermen.

SECTION 9. REPEAL AND CONFLICTS. All ordinances or parts thereof that

address alcohol consumption in conflict with this ordinance are hereby repealed within the geographic boundaries of the DISTRICT created herein.

SECTION 10. POST-ORDINANCE COMPLIANCE: Following the establishment and/or modification of a leisure and recreation district, the municipality shall provide the Department of Revenue with the following:

- a. a copy of any ordinance or resolution relating to the establishment or modification of the District;
- b. verification from the police department indicating how the department will provide adequate law enforcement and other public safety measures and services within the District; and
- c. a list of persons or other entities that hold permits issued under Section 67-1-51(c), (e), (f), (g), (l), (n), or (o) and are located and/or doing business under permits in the District at the time the District is established.

SECTION 11. EFFECTIVE DATE: This ordinance shall be effective upon approval as required by law, execution and publication.

The above and foregoing Ordinance, having been first reduced to writing, was introduced by Alderman Sistrunk, seconded by Alderman Beatty and adopted by the following roll call vote:

Alderman Ben Carver	Voted:	Nay
Alderman Sandra Sistrunk	Voted:	Yea
Alderman David Little	Voted:	Absent
Alderman Jason Walker	Voted:	Yea
Alderman Hamp Beatty	Voted:	Yea
Alderman Roy A’. Perkins	Voted:	Nay
Alderman Henry Vaughn, Sr.	Voted:	Nay

The Mayor voted Yea which thereby broke the tie and declared the motion carried and the Resolution adopted, this the 18th day of July, 2020.

ATTEST:

ADOPTED

Lesia Hardin

CITY CLERK

D. Lynn Spruill

MAYOR



Legend

Proposed District Boundary

BOUNDARY DESCRIPTION OF THE CITY OF STARKVILLE'S TEMPORARY LEISURE AND ENTERTAINMENT DISTRICT

The boundary of the Temporary Leisure and Entertainment District shall include the entire right-of-way of several streets within the corporate boundary of the City of Starkville, Mississippi. The portions of the streets included in the Temporary Leisure and Entertainment District are described as follows:

Dr. Martin Luther King Jr. Drive West and Dr. Martin Luther King Jr. Drive East: Starting from the east side of the right-of-way of D. L. Conner Drive on Dr. Martin Luther King Jr. Drive West and Ending on the east side of the right-of-way of Old West Point Road on Dr. Martin Luther King Jr. Drive East.

West Main Street, East Main Street, and University Drive: Starting one hundred and forty-four feet (144') west of the intersection of the south side of the right-of-way of West Main Street and the west side of the right-of-way of South Washington Street on West Main Street and Continuing east through East Main Street and Ending at the west side of the right-of-way of Highway 12 on University Drive.

East Lampkin Street: Starting at the west side of the right-of-way of North Jackson Street on East Lampkin Street and Ending at the west side of the right-of-way of Fellowship Street on East Lampkin.

Russell Street: Starting at the south side of the right-of-way of East Lampkin Street on Russell Street and Ending at the west side of the right-of-way of Highway 12 on Russell Street.

Cotton Row: Starting at the east side of the right-of-way of Holtsinger Avenue on Cotton Row and Ending on the west side of the right-of-way of Maxwell Street on Cotton Row.

Lummas Drive: Starting from the east side of the right-of-way of Maxwell Street on Lummas Drive and Ending one hundred feet (100') east of the intersection of the south side of the right-of-way of Lummas Drive and east side of the right-of-way of Maxwell Street on Lummas Drive.

Page Avenue: Starting from the south side of the right-of-way of University Drive on Page Avenue and Ending at the east side of the right-of-way of Maxwell Street on Page Avenue.

South Washington Street: Starting from the south side of the right-of-way of East Main Street on South Washington Street and Ending two hundred and forty-two feet (242') south of the intersection of the south side of the right-of-way of West Main Street and the west side of the right-of-way of South Washington Street and including fifty feet (50') of the western most portion of the alley way on the east side of South Washington Avenue south of East Main Street

North Jackson Street and South Jackson Street: Starting from the south side of the right-of-way of Dr. Martin Luther King Jr. Drive West on North Jackson Street and Ending one hundred and thirty-six feet (136') south of the south side of the railroad right of way on the west side of South Jackson Street.

North Montgomery Street and South Montgomery Street: Starting from the south side of the right-of-way for Dr. Martin Luther King Jr. Drive East on North Montgomery Street and Ending on the north side of the right-of-way line of Hogan Street on South Montgomery Street.

Old West Point Road: Starting from the south side of the right-of-way from Dr. Martin Luther King Jr. Drive East on Old West Point Road and Ending at the north right-of-way of University Drive on Old West Point Road.

Fellowship Street: Starting from the south side of the right-of-way of University Drive on Fellowship Street and Ending on the north side of the right-of-way Russell Street on Fellowship Street.

Mill Street: Starting from the south side of the right-of-way of Russell Street on Mill Street and Ending on the south side of the right-of-way of Mercantile Street on Mill Street.

Mercantile Street: Starting from the south side of the right-of-way of Russell Street on Mercantile Street and Ending on the east side of the right-of-way of Mill Street on Mercantile Street.

Colonel Muldrow Avenue: Starting from the south side of the right-of-way of University Drive on Colonel Muldrow Avenue and ending one hundred and thirteen feet (113') south of the intersection of the south side of the right-of-way of University Drive and west side of the right-of-way of Colonel Muldrow Avenue on Colonel Muldrow Avenue.

FIRST PUBLIC HEARING ON AMENDING THE CITY OF STARKVILLE CODE OF ORDINANCES, ARTICLE III. SECTION 82-51 ET SEQ. ASSEMBLIES, PARADES AND PROCESSIONS.

Mayor Spruill opened the Public Hearing and called for public comments.

Alvin Turner expressed support but urged caution in enforcement of the proposed Ordinance.

There being no additional comments from the public or from the Board, the Mayor announced the public hearing closed.

18. CONSIDERATION OF HIRING MR. BRANDON DOHERTY AS THE PARKS AND RECREATION DIRECTOR FOR THE CITY OF STARKVILLE.

Alderman Walker, duly seconded by Alderman Sistrunk, offered a motion to hire Mr. Brandon Doherty as the Parks and Recreation Director for the City of Starkville at a salary of \$75,000 starting August 14, 2020.

The Board voted as follows:

Alderman Ben Carver	Voted: Yea
Alderman Sandra Sistrunk	Voted: Yea
Alderman David Little	Voted: Absent
Alderman Jason Walker	Voted: Yea
Alderman Hamp Beatty	Voted: Yea
Alderman Roy A'. Perkins	Voted: Yea
Alderman Henry Vaughn, Sr.	Voted: Yea

Having received a majority affirmative vote, the Mayor declared the motion passed.

The Board thanked Mr. David D'Quilla for his work in the interim during some difficult times.

19. CONSIDERATION OF INCLUDING MR. BRANDON DOHERTY IN THE RFP COMMITTEE NAMED IN ITEM 15 EARLIER IN THIS MEETING.

Alderman Walker, duly seconded by Alderman Sistrunk, offered a motion to include Mr. Brandon Doherty in the RFP Committee named in item 15 earlier in this meeting. The Board voted as follows:

Alderman Ben Carver	Voted: Yea
Alderman Sandra Sistrunk	Voted: Yea
Alderman David Little	Voted: Absent
Alderman Jason Walker	Voted: Yea
Alderman Hamp Beatty	Voted: Yea
Alderman Roy A'. Perkins	Voted: Yea
Alderman Henry Vaughn, Sr.	Voted: Yea

Having received a majority affirmative vote, the Mayor declared the motion passed.

20. CONSIDERATION OF FP 20-01 REQUEST FOR FINAL PLAT APPROVAL FOR SUBDIVIDING AND RECONFIGURING SEVERAL LOTS INTO 4 LOTS LOCATED NORTH OF THE INTERSECTION OF UNIVERSITY DRIVE AND PAGE AVENUE IN A T-5U ZONING DISTRICT WITH THE PARCEL NUMBERS 101C-00-002.00, 101C-00-001.00, 101D-00-001.00, 101D-00-002.00, 101D-00-003.00, AND 101D-00-004.00 INCLUDING AN ENCROACHMENT AGREEMENT AND THE MAINTENANCE AGREEMENT FOR THE PEDESTRIAN BRIDGES ASSOCIATED WITH THE VISTA DEVELOPMENT AND AUTHORIZATION FOR THE MAYOR TO SIGN ON THE CITY'S BEHALF.

Dr. Kim presented FP 20-01 Request for Final Plat approval for subdividing and reconfiguring several lots into 4 lots located north of the intersection of University Drive and Page Avenue in a T-5U zoning district. The applicant Adam Ingram of TTL, Inc. on behalf of The Vista - Starkville is requesting Final Plat approval for subdividing 7.34 acres into 4 lots. The proposed subdivision is named "The Vista" and is located in a T-5U zoning district. The gross acreage is +/- 7.34 with a total of 4 lots. The acreage for each proposed lot is as follows: Lot 1 (0.84 ac), Lot 2 (1.29 ac), Lot 3 (1.23 ac), and Lot 4 (1.19 ac). The roadways will be dedicated to the City. Existing Camp Avenue has been improved and expanded. Two new roads, North Page Avenue and Vista Avenue, have been constructed. Golden Triangle Planning and Development has reviewed proposed road name and has no issues. A maintenance agreement and encroachment agreement have been submitted for review and approval. The Board of Aldermen approved the preliminary plat on October 17, 2017.

Jackson Wallace, representative of the development company, thanked the City for their work and cooperation. He felt the time and effort it took to complete the development was worth the end product.

Alderman Walker, duly seconded by Alderman Sistrunk, offered a motion to approve FP 20-01 Request for Final Plat approval for subdividing and reconfiguring several lots into 4 lots located north of the intersection of University Drive and Page Avenue in a T-5U zoning district with the parcel numbers 101C-00-002.00, 101C-00-001.00, 101D-00-001.00, 101D-00-002.00, 101D-00-003.00, and 101D-00-004.00 with two conditions:

1. All remaining punch list items related to the subdivision and infrastructure, shall be completed to the City's satisfaction prior to the Final Plat being executed by city staff.
2. The Maintenance Agreement as shown in Attachment 6 (and attached hereto) and the Encroachment Agreement as shown in Attachment 7 (and attached hereto) shall be executed and filed in the land records with the Final Plat.

The Board voted as follows:

Alderman Ben Carver	Voted: Yea
Alderman Sandra Sistrunk	Voted: Yea
Alderman David Little	Voted: Absent
Alderman Jason Walker	Voted: Yea
Alderman Hamp Beatty	Voted: Yea
Alderman Roy A'. Perkins	Voted: Yea
Alderman Henry Vaughn, Sr.	Voted: Yea

Having received a majority affirmative vote, the Mayor declared the motion passed.

**RIGHT OF WAY ENCROACHMENT AGREEMENT FOR NON-UTILITY
ENCROACHMENT ON CITY STREET**

**CITY OF STARKVILLE AND
THE VISTA-STARKVILLE, LLC**

THIS AGREEMENT is made and entered into this the 21 day of July, 2020, by and between the City of Starkville, MS, a municipal corporation (the "City"); and The Vista-Starkville, LLC, a Delaware limited liability company ("Vista"),

WITNESSETH

THAT WHEREAS, Vista desires to encroach on the right-of-way of a City street as follows:

Two enclosed pedestrian bridges crossing over Camp Avenue to connect Building 2000, Building 3000 and Building 4000 (collectively, the "Encroaching Improvements");

WHEREAS, it is to the material advantage of Vista to effect this encroachment, and the City in the exercise of authority conferred upon it by law, is willing to permit the construction and continued existence of the Encroaching Improvements within the limits of the right of way as indicated, subject to the conditions of this Agreement;

NOW THEREFORE, IT IS AGREED that the City hereby grants to Vista the right and privilege to make this encroachment as shown on attached plan sheet(s), specifications and special provisions which are made a part hereof (Attachment A), together with all repairs, replacements and improvements thereto, and the right to use, operate, maintain, repair and replace the Encroaching Improvements, upon the following conditions, to wit:

That Vista binds and obligates itself to install and maintain the Encroaching Improvements in such safe and proper condition that it will not interfere with or endanger travel upon said street, nor obstruct nor interfere with the proper maintenance thereof, and to reimburse the City for the reasonable cost incurred for any repairs or maintenance to its street and structures necessary due to the installation and existence of the Encroaching Improvements.

That Vista agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and other warning devices for the protection of traffic in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and Amendments or Supplements thereto. Information as to the above rules and regulations may be obtained from the City Engineer of the City.

That Vista hereby agrees to defend, indemnify, and hold harmless the City from any and all damages and claims for any damage whatsoever that may arise by reason of the installation, maintenance and/or use of the Encroaching Improvements.

That Vista agrees to restore all areas disturbed during installation and maintenance of the Encroaching Improvements to the reasonable satisfaction of the City Engineer of the City. Vista agrees to exercise reasonable precautions during construction and maintenance of the Encroaching Improvements to prevent eroding of soil; silting or pollution of rivers, streams, lakes, reservoirs, other water impoundments, ground surfaces or other property; or pollution of the air. When any installation or maintenance operation disturbs the ground surface and the existing ground cover, Vista agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the reasonable satisfaction of the City Engineer of the City.

Vista agrees to have available at the encroaching site, at all times during construction, a copy of this Agreement showing evidence of approval by the City. The City reserves the right to stop all work unless evidence of approval can be shown.

Vista is required to perform a bridge inspection on the pedestrian bridges every 24 months or sooner by a professional engineer licensed in the state of Mississippi. A copy of the inspection reports should be provided to the City Engineer of the City of Starkville. If any deficiencies are found or noted, the developer has 60 days to complete the deficiencies unless otherwise approved by the Mayor and Board of Alderman of the City of Starkville.

Provided the work contained in this Agreement is being performed on a completed street open to traffic, Vista agrees to give written notice to the City Engineer of the City when all work contained herein has been completed. Unless specifically requested by the City, written notice of completion of work on street projects under construction will not be required.

The City hereby agrees that it shall not require Vista to relocate or remove the Encroaching Improvements from the City streets or rights-of-way, or any other City property.

That in the case of noncompliance with the terms of this Agreement by Vista, the City reserves the right to stop all work until the Encroaching Improvements have been brought into compliance.

This Agreement shall run with the land and be binding upon and inure to the benefit of Vista and its successors and assigns as the owner of the Vista property, and the City and its successors and assigns. There are no intended third party beneficiaries of this Agreement.

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, each of the parties to this Agreement has caused the same to be executed the day and year first above written.



CITY:

CITY OF STARKVILLE, MISSISSIPPI

By: [Signature]

Mayor

ATTEST: [Signature]

City Clerk

ACKNOWLEDGEMENT

STATE OF MISSISSIPPI

COUNTY OF Webster

Personally appeared before me, the undersigned authority in and for the said county and state, on this 22nd day of July, 2020, within my jurisdiction, the within named D. Lynn Spruill, who acknowledged that (he) (she) is Mayor of CITY OF STARKVILLE, MISSISSIPPI, a municipal corporation, and that for and on behalf of the said corporation, and as its act and deed, (he) (she) executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.



[Signature]
NOTARY PUBLIC

My commission expires: 8-8-2021

DEVELOPER:

THE VISTA-STARKVILLE, LLC

By: [Signature]
Its: Manager

ACKNOWLEDGEMENT

Alabama
STATE OF ~~MISSISSIPPI~~
COUNTY OF Tuscaloosa

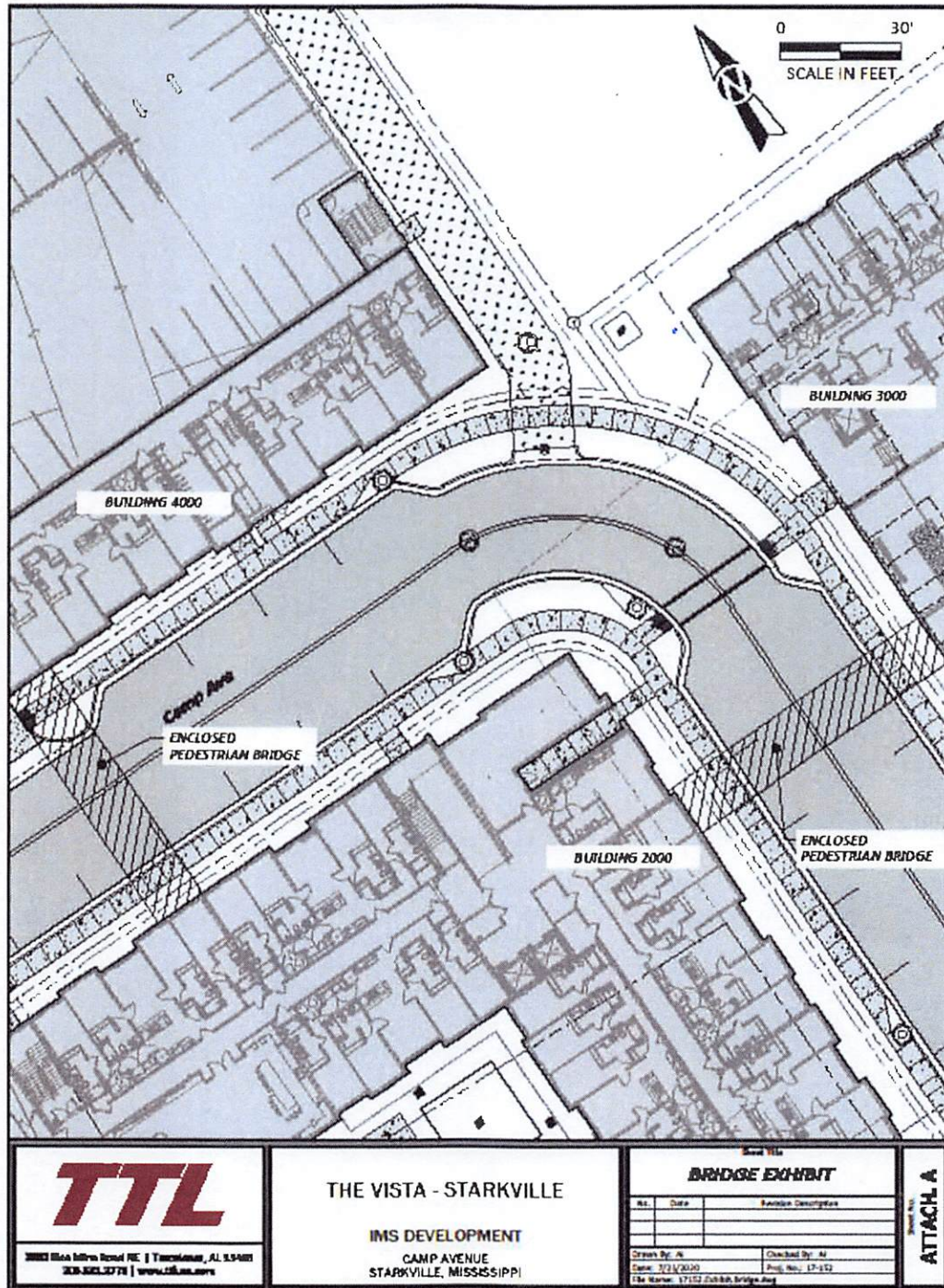
Personally appeared before me, the undersigned authority in and for the said county and state, on this 22 day of July, 2020, within my jurisdiction, the within named H. Jackson Wallace, who acknowledged that (he) (she) is Manager of **THE VISTA-STARKVILLE, LLC**, a Delaware limited liability company, and that for and on behalf of the said Limited Liability Company, and as its act and deed, (he) (she) executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.



[Signature: Laura Green]
NOTARY PUBLIC
My commission expires: 9/4/2022

ATTACHMENT A

Description of Encroaching Improvements



Surveyed locations of improvements are shown on the Final Plat
 ATTACHMENT A

Attachment 6- Maintenance Agreement (Revised on 7-15-20)

MAINTENANCE AGREEMENT

This **MAINTENANCE AGREEMENT** ("**Agreement**") is made and entered into as of the ____ day of _____, 2020 between the **CITY OF STARKVILLE, MISSISSIPPI**, a Mississippi municipal corporation (the "**City**"), and **THE VISTA-STARKVILLE, LLC**, a Delaware limited liability company (the "**Developer**").

RECITALS

Developer is the owner and developer of a student housing development known as "The Vista - Starkville" (the portion thereof owned by Developer referred to herein as the "**Project**") located within the City's corporate limits, which Project consists of improvements commonly referred to as "Building 1000, Building 2000, Building 3000 & Building 4000" (collectively, the "**Buildings**").

The City has requested that the Developer confirm certain obligations related to the Project.

NOW, THEREFORE, for and in consideration of the premises, and the mutual covenants and agreements herein contained, the City and the Developer hereby covenant and agree as follows:

ARTICLE 1 AGREEMENTS

(a) **Buildings.** Developer hereby agrees that any sale of the Project shall include all the Buildings, it being understood and agreed that none of the Buildings shall be sold separately from the other Buildings.

(b) **Bridges.** Developer agrees to maintain the overhead pedestrian bridges located within the Project in good working order, ordinary wear and tear excepted, and in compliance with all applicable laws and regulations. Developer is required to perform a bridge inspection on the pedestrian bridges every 24 months or sooner by a professional engineer licensed in the state of Mississippi. A copy of the inspection reports should be provided to the City Engineer of the City of Starkville. If any deficiencies are found or noted, the developer has 60 days to complete the deficiencies unless otherwise approved by the Mayor and Board of Alderman of the City of Starkville.

(c) **Stormwater Facilities.** Developer agrees to maintain the stormwater detention pond and related stormwater facilities located within the Project in good working order, ordinary wear and tear excepted, and in compliance with all applicable laws and regulations.

(d) **Grounds and Amenities.** Developer agrees to maintain the grounds and amenities located within the Project in a manner consistent with similar commercial developments in the area, ordinary wear and tear excepted.

(e) **Parking.** Developer agrees that all parking spaces located within a public right-of-way adjacent to the Project shall be available to the public and shall not be reserved, metered or otherwise restricted for private use by Developer absent prior written consent of the City.

(f) **Applicable Codes.** All work by Developer pursuant to this Agreement shall be performed in accordance with applicable codes of the City.

(g) **Excluded Areas.** Notwithstanding anything contained in this Agreement to the contrary, Developer shall have no obligations as regards any portion of the Project located on property not owned by Developer, or located within public utilities, roadways or rights-of-way.

ARTICLE 2 TERM

The obligations of the City and the Developer hereunder shall arise on execution of this Agreement, and shall continue until the Project is sold by Developer.

ARTICLE 3 DEFAULT

(a) Upon any default in the performance, or breach, of any agreement of Developer in this Agreement, and the continuance of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the Developer by the City, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “notice of default” hereunder, provided that if such default is of a kind which cannot reasonably be cured within such 60 day period, as extended to the extent of any applicable force majeure, the Developer shall have a reasonable period of time within which to cure such default, provided that it begins to cure the default promptly after its receipt of such written notice and proceeds in good faith, and with due diligence, to cure such default.

(b) All rights, remedies and powers provided by this Agreement may be exercised only to the extent the exercise thereof does not violate any applicable provision of law regarding the Project, and all the provisions of this Agreement are intended to be subject to all applicable mandatory provisions of law which may be controlling in the Project and to be limited to the extent necessary so that the same will not render this Agreement invalid or unenforceable.

ARTICLE 4 GENERAL PROVISIONS

(a) The provisions of this Agreement shall be severable. In the event any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the remaining provisions hereof.

(b) This Agreement shall completely and fully supersede all other prior agreements, both written and oral, among the parties hereto relating to the matters contained herein. None of the parties hereto shall hereafter have any rights under any of such prior agreements but shall look to this Agreement for definition and determination of all of their respective rights, liabilities and responsibilities relating to the matters contained herein.

(c) This Agreement may be executed in counterparts, each of which shall constitute but one and the same agreement.

(d) This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns except as otherwise provided herein. The City hereby agrees that the Developer may assign this Agreement to any purchaser of the Project and upon such assignment, Developer shall be automatically released from any further obligation under this Agreement without the need for further action or documentation. There are no intended third party beneficiaries of this Agreement.

(e) This Agreement shall be governed exclusively by the laws of the State of Mississippi.

(f) All notices, demands, consents, certificates or other communications hereunder shall be in writing, shall be sufficiently given and shall be deemed given when delivered personally to the party or to an officer of the party to whom the same is directed, or mailed by registered or certified mail, postage prepaid, or sent by overnight courier, addressed as follows:

Developer:

The Vista-Starkville, LLC
5690 Watermelon Rd., Suite 400
Northport, AL 35473

City:

(g) Any such notice or other document shall be deemed to be received as of the date delivered, if delivered personally, or as of three (3) days after the date deposited in the mail, if mailed, or the next business day, if sent by overnight courier. Any such notice or other document delivered by mail must be sent with return receipt required.

(h) The City shall not have any authority or power to, and shall not, assign to any person any right of the City hereunder or any interest of the City herein.

(i) This Agreement may be amended or supplemented only by an instrument in writing duly authorized, executed and delivered by each party hereto.

(j) The parties represent and warrant to each other that they have the power and authority to enter into this Agreement, to carry out their obligations hereunder, that they have duly authorized the execution, delivery and performance of this Agreement, and that this Agreement is enforceable against the parties in accordance with its terms.

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its name, under seal, and the same attested, all by officers thereof duly authorized thereunto, and the Developer has executed this Agreement under seal, and the parties have caused this Agreement to be dated the date and year first above written.

CITY:

CITY OF STARKVILLE, MISSISSIPPI

SEAL

By: _____
Mayor

ATTEST: _____
City Manager/Clerk

DEVELOPER:

THE VISTA-STARKVILLE, LLC

By: _____

Its: _____

[Signature Page to Maintenance Agreement]

21. CONSIDERATION OF FP 20-02 REQUEST FOR FINAL PLAT APPROVAL FOR SUBDIVIDING AND RECONFIGURING 2 LOTS THAT ARE A COMBINED +/-0.69-ACRE INTO 2 LOTS AT 400 AND 402 NORTH JACKSON STREET IN A TN-E ZONE WITH THE PARCEL NUMBER 118I-00-103.00 AND 118I-00-104.00.

Dr. Kim presented FP 20-02 Request for Final Plat approval for subdividing and reconfiguring 2 lots that are a combined +/-0.69-acre into 2 lots at 400 and 402 North Jackson Street in a TN-E zone. The applicant Joshua Davis of Neel-Schaffer on behalf of Double B Properties is requesting Final Plat approval for subdividing and reconfiguring 2 lots with a combined acreage of 0.69 into 2 lots. The 2 lots are located at 400 and 402 North Jackson Street. The proposed subdivision is named "Double B Properties" and is located in a TN-E zoning district. The subdivision process was started prior the effective date of the Unified Development Code. Therefore, the subdivision is being reviewed under the previous code with the previous zoning designation was R-3. The Board of Aldermen approved the preliminary plat on January 21, 2020. Joshua Davis was present for questions.

Alderman Walker, duly seconded by Alderman Beatty, offered a motion to approve FP 20-02 Request for Final Plat approval for subdividing and reconfiguring 2 lots that are a combined +/-0.69-acre into 2 lots at 400 and 402 North Jackson Street in a TN-E zone with the parcel number 118I-00-103.00 and 118I-00-104.00 and adding the additional road names to the final plat with two conditions:

1. No temporary or permanent certificate of occupancy shall be issued for any structure on either lot before all infrastructure is completed to the satisfaction of all city departments.
2. The surety for all remaining required improvements shall remain in effect until the City has inspected and approved.

The Board voted as follows:

Alderman Ben Carver	Voted: Yea
Alderman Sandra Sistrunk	Voted: Yea
Alderman David Little	Voted: Absent
Alderman Jason Walker	Voted: Yea
Alderman Hamp Beatty	Voted: Yea
Alderman Roy A'. Perkins	Voted: Yea
Alderman Henry Vaughn, Sr.	Voted: Yea

Having received a majority affirmative vote, the Mayor declared the motion passed.

22. CONSIDERATION OF THE CITY OF STARKVILLE CLAIMS DOCKET

Upon the motion of Alderman Carver, duly seconded by Alderman Sistrunk, to approve the City of Starkville Claims Docket for all departments including Starkville Utilities, as of May 26, 2020 for fiscal year ending 9/30/20, acknowledging that the City Clerk has attested and certified on the cover of the claims docket that all claims on the docket are true, accurate, lawful and proper to the best of her knowledge, for payment pursuant to her duties under Miss. Code Sections 21-39-5, 21-39-7, 21-39-9, 21-39-17 and 21-15-21. The Board voted as follows:

Alderman Ben Carver	Voted: Yea
Alderman Sandra Sistrunk	Voted: Yea
Alderman David Little	Voted: Absent
Alderman Jason Walker	Voted: Yea
Alderman Hamp Beatty	Voted: Yea
Alderman Roy A'. Perkins	Voted: Nay
Alderman Henry Vaughn, Sr.	Voted: Nay

Having received a majority affirmative vote, the Mayor declared the motion passed.

General Fund	001	\$ 200,677.34
Airport Fund	015	5,017.90
Sanitation	022	71,103.69
Public Improvement Bonds-2018	319	274.00
Park and Rec, Tourism	375	62,500.00
Park Bonds	380	13,247.00
Sub Total Before Utilities		\$ 352,819.93
Utilities Dept.	SED	3,032,770.83
Total Claims	Total	\$ 3,385,590.76

23. A MOTION TO ENTER INTO A CLOSED SESSION TO DETERMINE IF THERE IS PROPER CAUSE FOR EXECUTIVE SESSION.

There came for consideration the matter of entering a closed session to determine if there is a proper cause for executive session. Upon the motion of Alderman Vaughn, seconded by Alderman Sistrunk, to enter into a Closed Session to determine if there is proper cause for Executive Session, the Board voted as follows:

Alderman Ben Carver	Voted: Yea
Alderman Sandra Sistrunk	Voted: Yea
Alderman David Little	Voted: Absent
Alderman Jason Walker	Voted: Yea
Alderman Hamp Beatty	Voted: Yea
Alderman Roy A'. Perkins	Voted: Yea
Alderman Henry Vaughn, Sr.	Voted: Yea

Having received a majority affirmative vote, the Mayor declared the motion passed.
The Board entered closed session.

24. CONSIDERATION OF A MOTION TO RETURN TO OPEN SESSION.

Alderman Perkins offered a motion to return to open session. Alderman Carver seconded the motion and the Board voted as follows to return to open session:

Alderman Ben Carver	Voted: Yea
Alderman Sandra Sistrunk	Voted: Yea
Alderman David Little	Voted: Absent
Alderman Jason Walker	Voted: Yea
Alderman Hamp Beatty	Voted: Yea
Alderman Roy A'. Perkins	Voted: Yea
Alderman Henry Vaughn, Sr.	Voted: Yea

Having received a majority affirmative vote, the Mayor declared the motion passed.

The Mayor invited the public back in and then announced that the Board had chosen not to enter into Executive Session.

25. CONSIDERATION OF DISCIPLINE OF A POLICE OFFICER.

Alderman Perkins offered a motion to accept the recommendation of Police Chief Ballard to suspend Police Officer Valeeka Nash for 5 days without pay, place her on 1 year probation and suspend her take home car privileges for six months. Alderman Carver seconded the motion and the Board voted as follows:

Alderman Ben Carver	Voted: Yea
Alderman Sandra Sistrunk	Voted: Yea
Alderman David Little	Voted: Absent
Alderman Jason Walker	Voted: Yea
Alderman Hamp Beatty	Voted: Yea
Alderman Roy A'. Perkins	Voted: Yea
Alderman Henry Vaughn, Sr.	Voted: Yea

Having received a majority affirmative vote, the Mayor declared the motion passed.

26. MOTION TO RECESS UNTIL AUGUST 4, 2020 @ 5:30 IN THE COURT ROOM AT 110 WEST MAIN STREET.

Upon the motion of Alderman Vaughn, duly seconded by Alderman Beatty, for the Board of Aldermen to recess the meeting until August 4, 2020 @ 5:30 at 110 West Main Street in the Court Room of City Hall, the Board voted as follows:

Alderman Ben Carver	Voted: Yea
Alderman Sandra Sistrunk	Voted: Yea
Alderman David Little	Voted: Absent
Alderman Jason Walker	Voted: Yea
Alderman Hamp Beatty	Voted: Yea
Alderman Roy A'. Perkins	Voted: Yea
Alderman Henry Vaughn, Sr.	Voted: Yea

Having received a majority affirmative vote, Mayor Spruill declared the motion passed.

SIGNED AND SEALED THIS THE _____ DAY OF _____ 2020.

Attest:

D. LYNN SPRUILL, MAYOR

LESA HARDIN, CITY CLERK

(SEAL)