



## PremierPro Support and Maintenance Agreement:

This Support and Maintenance Agreement (this "Agreement") is entered into upon commencement of the Service Date between Selectron Technologies, Inc. ("Company") and the City of Santa Fe, New Mexico ("Customer").

For the fees specified below, Company will provide to Customer support and maintenance for the Products, as outlined below and as set forth in Exhibit A, for the term of the Agreement.

### 1. Term:

a) The Term of this Agreement shall commence upon the issuance of the Second Invoice (as that term is defined in the Professional Services Agreement, Exhibit A) of the Company product(s) to which this Agreement relates (the "Products"), and shall end on the last day of the twelfth month. A list of the Products is attached as Exhibit A.

b) If this Agreement is entered into after the commencement of the Service Date or subsequent support periods, the Customer will be charged for the entire Term beginning on the Service Date.

### 2. Renewal:

a) The Customer shall maintain continuous coverage of its support contracts in order to be eligible for telephone support, and other services provided hereunder. If this Agreement is not renewed and the Customer later decides to reinstate support services, the Customer must pay all fees that would otherwise have been paid had this Agreement been renewed without interruption.

b) The Customer may request concurrent expiration dates for support agreements purchased at different times of the year. The Customer must work directly with Company to adjust (prorate) their support coverage so the terms of all such agreements expire concurrently.

### 3. Termination:

This Agreement may be terminated by either party upon ninety (90) days written notice to the other party. Upon termination by Company without cause or by Customer for material breach, Company will refund any fees paid for months subsequent to termination.

### 4. Fees:

The Customer shall prepay Company an annual fee for the support services as set forth in Exhibit A.

### 5. Support Services:

Company shall provide customer support for technical problems that occur when using the Products. This

Agreement does not include support of the following items:

- a) Altered or modified Software not performed by Company.
- b) Errors caused by the Customer's negligence, or other causes beyond Company's reasonable control.
- c) Version Upgrades of Host or backend database software.
- d) Direct support for the required Application Program Interface either purchased or procured as part of the integrated solution.
- e) Enhancements, replacements, or modifications to current versions performed at the Customer's request and not intended to resolve a product failure.
- f) Services, support, and configuration of passive fail-over server (unless expressly purchased and listed in Exhibit A).

These professional services may be provided based on current published rates for Time and Material or fixed bid quote. Customers with Support Agreements in which all fees are current receive preferred rates for both standard and after hours professional services.

Company will directly handle the Customer issues outlined in the following levels of support.

### 6. Support and Maintenance:

The fee for PremierPro Support includes:

- a. Telephone Support for general use questions during normal business hours (6:00 a.m. to 5:00 p.m. Pacific Time, Monday through Friday).
- b. Use of Company's Toll Free Number
- c. On-Line technical diagnostic support
- d. Software correction upgrades
- e. 1 business day relief goal
- f. 24 Hours, 7 days per week, 365 days per year support for emergency (system down or inoperable) calls
- g. Development work necessary to support standard updates to your Host database (i.e. land management software, utility billing software, etc...) and back-end database. This requires two (2) weeks notice prior to planned

system upgrade in order to accommodate scheduling of resources. Please contact support@STIgov.com to schedule.

- h. Quarterly Proactive System Review. Selectron will perform the following system diagnostics and create a history file and notify the primary Customer contact with the results of these actions:
  - 1. Assess the current machine resources including memory, processor, and disk-space utilization
  - 2. Examine log files including error logs to identify any anomalous entries
  - 3. Apply current validated software updates to the operating system, device drivers, and database server software.
- i. 'Out-of-cycle' critical updates. Updates that meet these criteria are failures that might be likely to cause hardware damage, system unavailability, data corruption, or severe data vulnerability.

Non-emergency calls made after normal business hours will be billed at an hourly rate of 1.5 times the current day labor rate, with a two hour minimum charge.

#### **7. Hardware Maintenance:**

Company, at its sole discretion, may use new or refurbished parts for the repair of any Company provided Hardware.

#### **8. Customer Warranty:**

Customer shall perform all necessary preventative maintenance as outlined in Company's Administrative Guide. If Customer's failure to perform the required preventative maintenance is determined, in Company's reasonable discretion, to be the cause of any support call, Customer will be billed at the current hourly rate.

#### **9. Response Times:**

Non-emergency support calls will be responded to within one business day, however most calls are handled within two hours of receipt. For Premier Support during non-business hours, an answering service takes all support calls. Calls that are placed as an emergency (system down or inoperable) will be dispatched to the on-call support staff for response within four hours. Non-emergency calls will be directed to support personnel, and will be responded to the next business day.

#### **10. Customer Contacts:**

Three customer support contacts are allowed. Additional contacts may be added at any time for an additional \$500.00 per contact. Only Customer's customer support contacts may contact Company for support services.

Customer's customer support contacts are as set forth on Exhibit A. Customer may change its customer support contacts upon 30 days written notice to Company.

#### **11. Warranty Disclaimer:**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PRODUCTS AND SERVICES PROVIDED HEREUNDER ARE PROVIDED TO CUSTOMER "AS IS" AND COMPANY AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. This limitation on liability is made regardless of whether Company knows or had a reason to know of Customer's particular needs. No employee, agent, dealer or distributor of Company is authorized to modify this limited warranty, or make any additional warranties.

#### **12. Limitation of Liability:**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL COMPANY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT. COMPANY'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE SERVICES PROVIDED HEREUNDER, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO COMPANY HEREUNDER. CUSTOMER ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT COMPANY WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

#### **13. Customer Remedies:**

If Company materially fails to perform its obligations under this Agreement, and such failure results in downtime of the relevant hardware and software that exceeds 48 hours, Customer's sole remedy, and Company's entire liability, shall be a pro rata refund for the services ("Downtime Credit"). In order to receive a Downtime Credit, the Customer must notify Company in writing within 7 days from the time of Downtime. In no event shall any Downtime Credit or the total cumulative damages for a breach of this Agreement by Company be more than the amounts previously paid by Customer under this Agreement in the 12 month period immediately preceding the Downtime Credit or breach.

#### **14. Severability:**

If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Without

limiting the generality of the foregoing, Customer agrees that Sections 12 and 13 will remain in effect notwithstanding the unenforceability of any provision in Section 11.

**15. Force Majeure:**

Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible.

**16. Independent Contractors:**

The relationship between Customer and Company is that of an independent contractor, and neither party is an agent or partner of the other. Customer or Company will not have, and will not represent to any third party that it has, any authority to act on behalf of either party.

**17. Governing Law and Venue:**

This Agreement will be governed by the laws of the State of New Mexico. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any action or proceeding arising

from or relating to this Agreement must be brought in the federal or state court located in Santa Fe County, New Mexico.

**18. Attorney's Fees:**

In the event of litigation between Customer and Company concerning this Agreement, the prevailing party in the litigation shall be entitled to recover attorneys' fees and expenses from the losing party.

**19. Survival.**

Sections 11, 12, 13, 14, 16, 17, 18, 19 and 20 will survive expiration or termination of this Agreement

**20. Entire Agreement:**

This Agreement and the attached Addendum, which are incorporated herein by reference, constitute the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties. The terms on any purchase order or similar document submitted by Customer to Company will have no effect.

In Witness Whereof, the parties have caused this Professional Services Agreement to be executed by their duly authorized representative.

## EXHIBIT A

### VoicePermits

#### Pricing

Effective Dates: 12-Month PremierPro Support and Maintenance Services begin at the completion of on-site installation

Extended Maintenance Estimate:

Item	Dates covered	Amount	Payment Due Date
VoicePermits	September 1, 2017 through August 31, 2018	\$23,130	August 15, 2017

#### Notes:

- Maintenance amounts for future periods are estimates, and do not include increases to reflect additional functionality purchased.
- Maintenance estimates for future periods are not a guarantee that annual support agreements will be offered. You will receive a minimum of 12 months notice of discontinuance of annual support agreements.

#### Products and Licenses

##### Hardware

- **Production Server:**
  - HP Proliant DL380 G7 with Windows 2003
  - 16 GB RAM
  - 6 146-GB SAS Hard Drives
  - Intel Dialogic DMG2030 Media Gateway (T1)
  - 20 Licensed Ports
- **Failover Server:**
  - HP Proliant ML350 G5 with Windows 2003
  - 4 Licensed Ports

##### Software

- **CommunitySelect**
  - English & Spanish

- **VoicePermits™ Interactive Voice Response Base Solution (8 Ports)**
  - **Included Functionality:**

Schedule Inspections	Speak Site Address
Cancel Inspections	Permit Based Messaging
Obtain Inspection Results	<b>VoicePermits</b> Reporting Module
Post Inspection Results	Remote Access Software
  - **English Professional Voice Recording**
    - Base System Call Flow & Prompts
    - Correction Codes
    - Street Names
  - **Spanish Language**
    - Translation & Professional Voice Recording of Base System Call Flow & Prompts
    - Correction Codes
  - **SmartDelivery** (2 Ports)
  - **Correction Codes**
  - **Inspection Prerequisite Logic**
  - **Inspection Combination Logic**
  - **Outbound Delivery Services**
  - **Outbound Notifications:**
    - Automatic Results Notification
    - Expired Permits Notification
  - **Plan Review**
  - **Utility Notification** (*SmartDelivery Required*)
  - **2 Additional Remote Admin Licenses**

## Selectron ProMonitor Service

For the fees specified below, Company will provide to Customer the specified Selectron ProMonitor Service as outlined below:

- a. Monitoring of Event Logs, Disk Space, database application, CPU and Memory utilization
- b. Places a call once per hour to the IVR application to ensure:
  - a. The IVR System answers the call
  - b. Prompts are being played
- c. Notification to Selectron Support Personnel in the event of any anomalies detected
- d. Optional notification to agency personnel based on the severity of the issue
- e. Pro Monitor system reporting

The Selectron ProMonitor Service requires the Customer to have a current Selectron Support and Maintenance Agreement in place. Customer or Company may terminate this additional service at any time with 30 day notice entitling Customer to a prorated refund for the unused period of service.

Effective Dates: Begins upon initiation of service

Extended Maintenance Estimate:

Monitored Application(s)	Dates covered	Amount	Payment Due Date
VoicePermits	September 1, 2017 to December 31, 2017	Paid	
VoicePermits	January 1, 2018 to August 31, 2018	\$1,900	August 15, 2017

Notes:

- Fees for future periods are estimates, and do not include increases to reflect additional functionality purchased.
- Fee estimates for future periods are not a guarantee that the Selectron ProMonitor Service will be offered. You will receive a minimum of 12 months notice of discontinuance of the service.

## SELECTRON/CITY OF SANTA FE ADDENDUM

### INDEMNIFICATION

To the extent permitted by law, and to the extent provided for under this Agreement, for claims related to bodily injury, death and damage to real property and tangible personal property, as well as fines, assessments and penalties imposed by any authority, Contractor shall indemnify and hold harmless the City from and against all direct damages and costs of any kind, including but not limited to reasonable attorney fees, arising out of or resulting from any gross negligent acts, or gross negligent omissions of Contractor, regardless of whether such claims are caused in part by any party indemnified hereunder, but not to the extent that the City is legally liable for such damages and costs. In no event, however, will Contractor be liable for any consequential damages, including lost profits, savings or reprocurement costs, even if Contractor has been advised of their possibility

### NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

### APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

### THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or

interest in or for the benefit of any person other than the City and Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. Contractor and its agents and employees are independent Contractors performing professional services for the CITY and are not employees of the CITY. CONTRACTOR, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of CITY vehicles, or any other benefits afforded to employees of the CITY as a result of this Agreement.

B. CONTRACTOR shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. Contractor shall comply with CITY's Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

CONFLICT OF INTEREST

Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

ASSIGNMENT; SUBCONTRACTING

Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

RELEASE

Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. Contractor agrees not to



purport to bind the City to any obligation not assumed herein by the City unless Contractor has express written authority to do so, and then only within the strict limits of that authority.

### INSURANCE

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

B. Contractor shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the City with evidence of its compliance with such requirement.

C. Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

### RECORDS AND AUDIT

The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

#### APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

#### AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

#### NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

#### SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

THIS SECTION INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

CITY OF SANTA FE:

CONTRACTOR:  
Selectron Technologies, Inc.

  
ALAN WEBBER, MAYOR

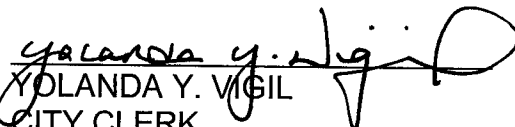
  
NAME AND TITLE

DATE: 5/14/18

DATE: 5/1/2018

CRS# 03-032148-00-04  
City of Santa Fe Business  
Registration #00110464

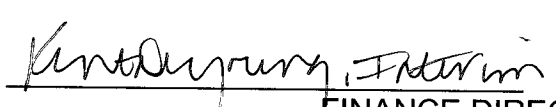
ATTEST:

  
YOLANDA Y. VIGIL  
CITY CLERK  
cc mtg. 5/9/18

APPROVED AS TO FORM:

 3/36  
CITY ATTORNEY

APPROVED:

  
KENT YOUNG, FINANCE DIRECTOR

Business Unit Line Item:

12252, 530710 Various Subcodes