

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: August 1, 2016

RE: Agreement for Software Consulting Services with Ungerboeck Systems International

Attached hereto, for your consideration is a proposed Agreement with Ungerboeck Systems International (Ungerboeck) for the purchase and acquisition of software and services necessary to support Parks & Recreation and Special Events Review Team's project to replace the existing Facility Rentals software and provide an all-inclusive special events management system for all departments involved in the facilitation of special events. Specifically, this Agreement includes the implementation of Ungerboeck software, product support and training for end-users/support staff.

The current Parks & Recreation software, Facility Rentals, is an in-house solution with limited capabilities and is not designed to meet the requirements to effectively manage and coordinate the growing special events requested by the City. Ungerboeck, a hosted solution, will achieve the goal of a single solution to serve citizens' needs as it relates to special events and the booking of City facilities. Ungerboeck will provide a forward-facing portal consisting of a viewable booking calendar, event requests, as well as an online payment center. In addition, City departments involved in the planning and coordination of special events will have the ability to review, adjust and allocate resources before and during the planned event. Ungerboeck will also provide the ability to accurately track and report on events and other related information.

In May 2016, the City's Purchasing Department issued Request for Proposal (RFP) No. 6117, seeking qualified vendors to provide special event permitting software. However, the City did not receive any responses to the RFP. Upon approval from the Purchasing Department, City staff proceeded to review three (3) established leaders in the venue and event management software business. Accordingly, Ungerboeck was chosen as the vendor to best meet the City's needs by providing an efficient platform to create a centralized point of contract for the City's customers and staff to coordinate/manage events throughout the City. Ungerboeck, which is already being used by The Lakeland Center, is an established business with experience managing venues and events for many different governmental entities including: Orange County, Palm Beach County, City of West Palm Beach and the Tampa Convention Center.

The term of the Agreement, effective upon approval by the City Commission, will continue for a twelve (12) month period, unless canceled upon thirty (30) days prior written notice, to the end of the contract period or otherwise terminated pursuant to the Agreement. The total cost of services associated with this Agreement is estimated to be \$66,560.00, which includes software licenses, set-up/installation services, training and the first year of support. Thereafter, support services will be approximately \$36,060 per year. The total cost has been budgeted for in the Special Event account for Parks & Recreation for FY 2016.

It is recommended that the appropriate City officials be authorized to execute this Agreement with Ungerboeck for software consulting services.

attachment



Ungerboeck Software Master Subscription Terms & Conditions

The following describes the terms (“Terms & Conditions” or “Terms”) under which Ungerboeck Systems International (“we”, “us” or “USI”) provides access to Ungerboeck Software products purchased through any Order Form to you (“you” or “Customer”) through the USI website and USI mobile applications (“the Services”). PLEASE READ THESE TERMS & CONDITIONS CAREFULLY, as they govern your use of the Services, and by ordering and using the Services, you agree to be bound by these Terms. If you are ordering the Services on behalf of an entity, you represent that you have the authority to bind such entity and its affiliates to these Terms & Conditions, in which case the terms “you” and “Customer” refer to such entity and affiliates.

NOTICE: COMPETITORS OF USI MAY NOT ACCESS THE SERVICES WITHOUT USI’S PRIOR WRITTEN CONSENT FOR ANY PURPOSE, INCLUDING MONITORING AVAILABILITY, PERFORMANCE OR FUNCTIONALITY, OR FOR OTHER BENCHMARKING OR COMPETITIVE PURPOSE(S).

These Terms & Conditions were last updated on November 22, 2013. They are effective between you and USI as of the date you place an order for the Services.

1. DEFINITIONS

“**Affiliate**” means any entity which directly or indirectly controls, is controlled by, or is under common control with the Customer.

“**Malicious Code**” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

“**Non-Ungerboeck Applications**” means online applications and offline software products and/or services that are provided by entities or individuals other than USI and are interoperated with the Services.

“**Order Form**” means the documents signed by the Customer or an Affiliate placing an order for the Services, including any addenda or supplements thereto.

“**Services**” refers to any products or services ordered by you and made available to you by USI via the customer login link at <http://ungerboeck.com> and/or any other web pages or mobile sites designated by USI.

“**Users**” means individuals for whom the Services have been ordered and who are authorized by you to use the Services, by virtue of having obtained user identifications and passwords from you, or from USI at your request. Users may include but are not limited to your employees, consultants, contractors and agents and third parties with whom you transact business.

“**We**”, “**us**”, “**our**”, or “**USI**” refers to the Ungerboeck Systems International entity described in Section 13 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction.)

“**You**”, “**your**”, or “**Customer**” refers to the company or legal entity using the Services, and any affiliates of that company or entity.

“**Your data or Customer’s data**” means all electronic data or information submitted by you in the course of your use of the Services.

2. ORDER FORMS

These Terms & Conditions are incorporated by reference into each Order Form submitted by you, the Customer. Together, these Terms and the Order Form comprise a binding agreement between you and USI, effective as of the date specified in the Order Form, and continuing for the term stated in the Order Form. These Terms govern your right to access the Services and use USI’s software and information, which may be updated periodically. USI may amend these Terms at any time in its sole discretion by posting the amended terms at <http://ungerboeck.com/documents/terms/UngerboeckSoftwareMasterSubscriptionTermsConditions.pdf>, or by providing written notice to you. If there is any conflict between these Terms and the provisions of your Order Form, the provisions contained in your Order Form shall control, provided that the appearance of a particular provision in these Terms which is not contained in your Order Form, or vice versa, shall not constitute a conflict for purposes of this section.



Ungerboeck Software Master Subscription Terms & Conditions

3. THE SERVICES

3.1 Provision of the Services. Subject to these Terms, during the term of the applicable Order Form, USI will provide you with a non-exclusive, non-transferable license to access and use the Services as upgraded from time to time. You may use the Services only for purposes of performing your internal business operations. Except for the foregoing license, no other rights in the Services are granted to you, and the Services remain the sole and exclusive property of USI and its licensors, if any, whether the Services are separate or integrated with any other products, services or deliverables.

3.2 Purchase of Services as Currently Configured. You agree that your purchase of the Services is not contingent on the delivery of any future functionality or features, nor is it dependent on any public statements made by USI regarding future functionality or features. However, the Services may be upgraded from time to time, at USI's sole discretion.

4. USE OF THE SERVICES

4.1 USI's Responsibilities.

USI shall:

- (i) Provide our basic support for the Services to you, the Customer, at no additional charge, and/or upgraded support if purchased separately;
- (ii) Use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for:

- (a) Planned downtime (in which case USI shall give at least 48 hours' notice via the Services or email. USI shall schedule planned downtime to the extent practicable during the weekend hours (between 8:00 p.m. Friday and 5:00 a.m. Monday, U.S. Central Time); and

- (b) Any unavailability caused by circumstances beyond USI's reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving USI's employees), Internet service provider failures or delays, or denial of service attacks; and

- (iii) Provide the Services in accordance with applicable laws and government regulations.

4.2. Protection of Customer's Data.

- (i) USI shall maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of your data.

- (ii) USI shall not:

- (a) Modify your data;

- (b) Disclose your data except as compelled by law in accordance with Section 8.3 (Compelled Disclosure) or as expressly permitted in writing by you; or

- (c) Access your data, except in order to provide the Services and prevent or address service or technical problems, or at your request in connection with customer support matters.

4.3 Daily Backups. We shall perform a daily backup of all of your data, but in no event shall USI be liable to you or any third party for loss, destruction, or corruption of your data other than USI's costs for reloading the backup. You agree and acknowledge that you, the Customer, are in a better position to foresee and evaluate any potential damage or loss you may suffer in connection with a loss of your data, and that the fees payable under these Terms have been calculated by taking into account the liability limitation contained in this section.

4.4 Customer's Responsibilities.

You, the Customer, shall:

- (i) Be responsible for the Users' compliance with these Terms;



Ungerboeck Software Master Subscription Terms & Conditions

- (ii) Be responsible for the accuracy, quality and legality of your data and of the means by which you acquired your data;
- (iii) Use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify USI promptly of any unauthorized access or use;
- (iv) Use the Services only in accordance with these Terms and applicable laws and government regulations; and
- (v) Back up your data in conjunction with your use of the Services regularly.

You, the Customer, shall not:

- (i) Make the Services available to anyone other than authorized Users;
- (ii) Sell, resell, rent or lease the Services;
- (iii) Use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights;
- (iv) Use the Services to store or transmit Malicious Code;
- (v) Interfere with or disrupt the integrity or performance of the Services or third-party data contained therein; or
- (vi) Attempt to gain unauthorized access to the Services or their related systems or networks.

4.5. Usage Limitations. USI reserves the right to subject the Services to other limitations, such as limits on disk storage space, restrictions on the number of calls you are permitted to make against USI's application programming interface, and, for Services that enable you to provide public websites, on the number of page views by visitors to those websites.

4.6 System Reports and Non-GA Services. USI's system will report usage data to USI, and USI reserves the right, based upon those reports or other profile data, to offer to you and your Users upgrades and additional services via email or other direct communication. Neither you nor your Users are obligated to purchase any such upgrades or additional services. In addition, from time to time we may invite you to try, at no charge, USI products or services that are not generally available to Customers ("Non-GA Services"). You may accept or decline any such trial in your sole discretion. Any Non-GA Services will be clearly designated as beta, pilot, limited release, developer preview, non-production or by a description of similar import. Non-GA Services are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. We may discontinue Non-GA Services at any time in our sole discretion and may never make them generally available.

5. NON-UNGERBOECK APPLICATIONS

5.1 Acquisition of Non-Ungerboeck Products and Services. USI or third parties may from time to time make available to you third-party products or services, including but not limited to Non-Ungerboeck Applications and implementation, customization and other consulting services. Any acquisition by you of such Non-Ungerboeck Applications, and any exchange of data between you and any Non-Ungerboeck provider, is solely between you and the applicable Non-Ungerboeck provider. USI does not warrant or support Non-Ungerboeck products or services, whether or not they are designated by USI as "certified" or otherwise, except as specified in an Order Form. Subject to Section 5.3 (Integration with Non-Ungerboeck Applications), no purchase of Non-Ungerboeck Applications is required to use the Services. Your use of the Services requires only a supported computing device, operating system, web browser and Internet connection.

5.2 Non-Ungerboeck Applications and Customer Data. If you install or enable Non-Ungerboeck Applications for use with the Services, you acknowledge that USI may allow providers of those Non-Ungerboeck Applications to access your data as required for the interoperation of such Non-Ungerboeck Applications with the Services. USI shall not be responsible for any disclosure, modification or deletion of your data resulting from any such access by Non-Ungerboeck Application providers. The Services will allow you to restrict your Users from installing or enabling such Non-Ungerboeck Applications for use with the Services.



Ungerboeck Software Master Subscription Terms & Conditions

5.3 Integration with Non-Ungerboeck Applications. The Services may contain features designed to interoperate with Non-Ungerboeck Applications (e.g., Facebook or Linked-In). To use such features, you may be required to obtain access to such Non-Ungerboeck Applications from their providers. If the provider of any such Non-Ungerboeck Application ceases to make the Non-Ungerboeck Application available for interoperation with the corresponding Service features on reasonable terms, USI may cease providing such Service features without providing any refund, credit, or other compensation.

6. FEES AND PAYMENT FOR SERVICES

6.1 Fees. You shall pay all fees specified in the applicable Order Form(s). Except as otherwise specified:

- (i) Fees are based on Services purchased and not actual usage;
- (ii) Payment obligations are non-cancellable and fees paid are non-refundable; and
- (iii) The number of Users for whom the Services are purchased cannot be decreased during the relevant term stated on the Order Form(s).

6.2 Invoicing and Payment. You will provide USI with valid and updated credit card information, or with a valid purchase order or alternative document acceptable to USI. If you provide credit card information to USI, you thereby authorize USI to charge such credit card for all Services listed in your Order Form(s) for the initial term and any renewal term(s) as set forth in Section 12 (Term of Service and Termination). Such charges shall be paid in advance. If the applicable Order Form specifies that payment will be by a method other than a credit card, USI will invoice you in advance, or otherwise in accordance with the Order Form. Unless otherwise stated in your Order Form(s), invoiced charges are due within thirty (30) days of the invoice date. You are responsible for providing complete and accurate billing and contact information to USI and for notifying USI of any changes to such information.

6.3 Overdue Charges. If any payments are not received by the due date, at USI's sole discretion, (a) the unpaid balance may accrue interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid; and/or (b) We may condition future Service renewals and Order Form(s) on payment terms shorter than those specified in Section 6.2 (Invoicing and Payment).

6.4 Suspension of Service and Acceleration. If any amount owed by you pursuant to the applicable Order Form or any other agreement for USI services is thirty (30) or more days overdue (or 10 or more days overdue in the case of amounts you have authorized us to charge to your credit card), we may, without limiting our other rights and remedies, accelerate your unpaid fee obligations under this Agreement and any other such agreements so that all of your fee obligations become immediately due and payable. We may suspend all services to you until such amounts are paid in full. We will give you at least 7 days' prior notice (as described in Section 13.2) that your account is overdue before suspending services.

6.5 Payment Disputes. USI shall not exercise its rights under Section 6.3 (Overdue Charges) or 6.4 (Suspension of Service and Acceleration) if such charges are the subject of a good faith dispute which you are cooperating diligently to resolve with USI.

6.6 Taxes. Unless otherwise stated, our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with your purchases of the Services. If we have the legal obligation to pay or collect Taxes for which you are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by you, unless you have provided USI with a valid tax exemption certificate authorized by the appropriate taxing authority. As a matter of clarification, we are solely responsible for taxes based on our income, property and employees.

Ungerboeck Software Master Subscription Terms & Conditions

7. OWNERSHIP, PROPRIETARY RIGHTS AND USE OF DATA

7.1 Reservation of Rights – Services. Subject to the limited rights expressly granted according to these Terms, USI reserves all rights, title and interest in and to the Services and related software, including all related intellectual property rights. No rights are granted to you other than as expressly set forth in these Terms.

7.1.1 Restrictions. You shall not:

- (i) Permit any third party to access the Services except as permitted by these Terms or in an Order Form;
- (ii) Create derivative works based on the Services except as authorized by these Terms;
- (iii) Copy, frame or mirror any part or content of the Services, other than copying or framing on your own intranets or otherwise for your own internal business purposes;
- (iv) Reverse engineer the Services; or
- (v) Access the Services in order to:
 - (a) Build a competitive product or service, or
 - (b) Copy any features, functions or graphics of the Services.

7.2 Customer Data. Subject to the limited rights granted by you, the Customer pursuant to these Terms, we acquire no right, title or interest from you or your licensors under these Terms in or to your data, including any intellectual property rights therein.

7.3 Enhancements. USI shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by you, including your Users, relating to the operation of the Services. Any software modifications or enhancements performed by USI, whether paid for by you or not, remain the property of USI and may at our sole discretion be incorporated into or withheld from the software generally made available to USI's customers.

8. CONFIDENTIALITY

8.1 Definition of Confidential Information.

- (a) As used in these Terms, "Confidential Information" includes all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include your data; USI's Confidential Information shall include the Services; and Confidential Information of each party shall include any and all Order Form(s), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by either party.
- (b) Confidential Information (other than your data) shall not include any information that:
 - (i) Is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party;
 - (ii) Was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party;
 - (iii) Was received from a third party without breach of any obligation owed to the Disclosing Party; or
 - (iv) Was independently developed by the Receiving Party.

8.2. Protection of Confidential Information. The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) and hereby agrees:



Ungerboeck Software Master Subscription Terms & Conditions

- (i) To keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information;
- (ii) Not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of these Terms; and
- (iii) To limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with these Terms and who have signed confidentiality agreements with the Receiving Party containing protections as set forth in these Terms, except as otherwise authorized by the Disclosing Party in writing.

8.3 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

9. WARRANTIES AND DISCLAIMERS

9.1 Our Warranties. THE SERVICES ARE PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND. USI DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, CORRESPONDENCE TO DESCRIPTION, OR FITNESS FOR A PARTICULAR PURPOSE. USI DOES NOT REPRESENT OR WARRANT BUT WILL MAKE COMMERCIALY REASONABLE EFFORTS TO ENSURE THAT THE SERVICES ARE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SERVERS USED FOR THE SERVICES WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. .

9.2 Your Warranties. You warrant that you have validly accepted these Terms & Conditions and any obligations contained in the applicable Order Form(s), and have the legal authority to do so.

9.3 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OUTLINED IN SECTION 9.1 ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9.4 Non-GA Services. NON-GA SERVICES, AS DESCRIBED IN SECTION 4.6 ABOVE ARE NOT CONSIDERED "SERVICES" UNDER THESE TERMS & CONDITIONS AND ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY.

10. MUTUAL INDEMNIFICATION

10.1 Indemnification by USI. We shall defend you against any claim, demand, suit, or proceeding made or brought against you by a third party alleging that the use of the Services infringes or misappropriates the intellectual property rights of said third party, and shall indemnify you for any damages, attorney's fees and costs finally awarded against you as a result of, and for amounts paid by you under a court-approved settlement of such claim, provided that you: (a) promptly give USI written notice of the claim; (b) allow USI sole control of the defense and settlement of the claim (provided that USI may not settle any claim unless the settlement unconditionally releases you of all liability); and (c) provide to USI all reasonable assistance, at USI's expense. In the event of a such claim, or if we reasonably believe the Services may infringe or misappropriate, we may in our sole discretion and at no cost to you: (a) modify the Services so that they no longer infringe or misappropriate, (b) obtain a license for your continued use of the Services in accordance with these Terms, or (c) terminate your use of such Services upon thirty (30) days' written notice and refund to you any prepaid fees covering the remainder of the term.

10.2 Indemnification by the Customer. You shall defend USI against any claim, demand, suit or proceeding made or brought against USI by a third party alleging that your data or your use of the Services infringes or



Ungerboeck Software Master Subscription Terms & Conditions

misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify USI for any damages, attorney's fees and costs finally awarded against USI as a result of, or for any amounts paid by USI under a court-approved settlement of such claim, provided that we (a) promptly give you written notice of the claim; (b) allow your sole control of the defense and settlement of the claim (provided that you may not settle any claim unless the settlement unconditionally releases USI from all liability); and (c) provide to you all reasonable assistance, at your expense.

10.3 Exclusive Remedy. Section 10 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section.

11. LIMITATION OF LIABILITY

11.1 Limitation of Liability. NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY INCIDENT ARISING OUT OF OR RELATED TO USE OF THE SERVICES (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL EXCEED THE AMOUNT PAID BY YOU ACCORDING TO THESE TERMS AND THE APPLICABLE ORDER FORM IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO USE OF THE SERVICES (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY YOU PURSUANT TO THE APPLICABLE ORDER FORM. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 6 (FEES AND PAYMENT FOR SERVICES).

11.2 Exclusion of Consequential and Related Damages. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING, BUT NOT LIMITED TO: (A) ANY DAMAGES CAUSED BY YOUR FAILURE OR THAT OF YOUR USERS, CLIENTS, INVITEES, EMPLOYEES, AGENTS AFFILIATES OR SUPPLIERS TO PERFORM THEIR RESPONSIBILITIES; (B) ANY CLAIMS OR DEMANDS OF THIRD PARTIES (EXCEPT AS PROVIDED IN SECTION 10); OR (C) ANY LOST PROFITS, LOSS OF BUSINESS, BUSINESS INTERRUPTION, COST OF COVER, LOSS OF USE, LOSS OF DATA, LOST SAVINGS OR OTHER CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE SERVICES WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE.

THIS LIMITATION APPLIES TO USI AND ANY PERSON OR ENTITY INVOLVED IN THE CREATION, MANUFACTURE OR DISTRIBUTION OF ANY SOFTWARE, SERVICES OR OTHER MATERIALS PURSUANT TO THE PROVISION OF THE SERVICES.

THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

12. TERM OF SERVICE AND TERMINATION

12.1 Service Term. The application of these Terms commences on the date specified in the applicable Order Form and continues for the term stated therein or until Termination pursuant to this Section.

12.2 User Access. Access for Users purchased by you commences on the start date specified in the applicable Order Form and continues for the term specified therein. Except as otherwise specified in the applicable Order Form, all Services shall automatically renew for additional periods equal to the expiring term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least thirty (30) days before the end of the relevant term. The per-unit pricing during any such renewal term shall be the same as that during the prior term unless we have given you written notice of a pricing increase at least sixty (60) days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter. Any such pricing increase shall not



Ungerboeck Software Master Subscription Terms & Conditions

exceed 7% of the pricing for the relevant Services in the immediately prior term, unless the pricing in such prior term was designated in the applicable Order Form as promotional or one-time.

12.3 Termination for Cause. Either party may terminate for cause: (i) upon thirty (30) days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

12.4 Refund of Payment upon Termination. Upon any termination for cause by you, the Customer, USI shall refund to you any prepaid fees covering the remainder of the term after the effective date of termination. Upon any termination for cause by USI, you shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve you of the obligation to pay any fees payable to USI for any period prior to the effective date of termination.

12.5 Return of Your Data. Upon written request by you made within thirty (30) days after the effective date of termination of the Services, USI will make available to you for download a backup file of your data in the format used by USI. After such 30-day period, USI shall have no obligation to maintain or provide any of your data and shall thereafter, unless legally prohibited, delete all of your data in USI's systems or otherwise in USI's possession or under USI's control.

12.6 Surviving Provisions. Sections 6 (Fees and Payment for Purchased Services), 7 (Ownership, Proprietary Rights and Use of Data), 8 (Confidentiality), 9.3 (Disclaimer), 10 (Mutual Indemnification), 11 (Limitation of Liability), 12.4 (Refund or Payment upon Termination), 12.5 (Return of Your Data), 13 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction) and 13 (General Provisions) shall survive any termination or expiration of this Agreement.

13. WHO YOU ARE CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION

13.1 Who You are Contracting With. Who you are contracting with under these Terms, who you should direct notices to, what law will apply in any lawsuit arising out of or in connection with use of the Services, and which courts can adjudicate any such lawsuit, depend on where you are domiciled.

If you are domiciled in:	You are contracting with:	Notices should be sent to:	The governing law is:	The courts having exclusive jurisdiction are:
The United States, Canada, Mexico, or a country in Central or South America or the Caribbean	Ungerboeck Systems International, Inc., A Missouri Corporation	100 Ungerboeck Park, O'Fallon, MO 63368, USA, Attn: General Counsel Fax: +1-636-300-5607	Missouri state law and applicable United States federal law	St. Charles County, Missouri, USA
A country in Asia (other than China) or the Pacific Region	Ungerboeck Systems International Pty Ltd.	Level 1, Suite 7 924 Gympie Road, Chermside, QLD 4032 Australia	Australian law	Brisbane, Queensland, Australia
China	Ungerboeck Systems International Pty Ltd.	Rm 1207 Tower B, Center Plaza, 161 Linhexi Rd., Guangzhou, 510620 China	P.R. China law	P.R. China



Ungerboeck Software Master Subscription Terms & Conditions

A country in Europe, the Middle East Region or Africa	Ungerboeck Systems International GmbH	Kaiserstrasse 72 76133 Karlsruhe Germany	German law	Germany
---	---------------------------------------	--	------------	---------

13.2 Manner of Giving Notice. Except as otherwise specified in these Terms, all notices, permissions and approvals shall be in writing and shall be deemed to have been given upon:

- (i) personal delivery,
- (ii) the second business day after mailing,
- (iii) the second business day after sending by confirmed facsimile, or
- (iv) the first business day after sending by email (provided email notices shall not be sufficient for notices of termination or an indemnity claim.)

Billing notices to you shall be addressed to the relevant billing contact designated by you. All other notices to you shall be addressed to the relevant Services administrator designated by you.

13.3 Agreement to Governing Law and Jurisdiction. You and USI agree to the designated governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts.

14. GENERAL PROVISIONS

14.1 Export Compliance. The Services, and any derivative content and technology we make available to you may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied party list. You shall not permit Users to access or use any Service or related content in a U.S. embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

14.2 Anti-Corruption. You have not received or been offered any illegal or improper bribe, kickback, payment, gift or thing of value from any of our employees or agents in connection with these Terms. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If you learn of any violation of the above restriction, you will promptly notify USI.

14.3 Entire Agreement. This Agreement constitutes the entire agreement between you, the Customer, and USI regarding your use of the Services, and together they supersede all prior and contemporaneous agreements, proposals, representations, written or oral, between you and USI. No modification, amendment, or waiver of any provision in this Agreement will be effective unless in writing and signed by the party against whom enforcement is sought.

14.4 Assignment. Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such termination, we will refund to you any prepaid fees covering the remainder of the term of this Agreement or any other agreements with USI. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

14.5 Relationship of the Parties. You agree that USI is an independent contractor. No partnership, franchise, joint venture, agency, fiduciary or employment relationship between you and USI is created by virtue of this these Terms.

14.6 Third-Party Beneficiaries. USI's licensors shall have the benefit of the protections and rights reserved herein with respect to the Services and related content. No other third-party beneficiaries are contemplated under this Agreement, and therefore none exist.

14.7 Force Majeure. USI will not be deemed in default of any provision of these Terms or otherwise be held liable for any delay in or failure of its performance under these Terms if such delay or failure arises due to any event beyond its reasonable control, including without limitation acts of God, malicious or criminal acts, acts of the



Ungerboeck Software Master Subscription Terms & Conditions

common enemy, weather conditions, earthquakes, floods, fires, labor disputes, changes in law, regulation or government policy, war, epidemics, riots, failures, difficulties or delays in transportation or communications, acts or omissions of vendors or suppliers, equipment failures, or any act or failure to act by the Customer, its employees, agents or contractors. The parties will promptly inform and consult with each other as to any event which in their judgment, may or could be the cause of a substantial delay in performance under these Terms. USI is not liable for excusable delay.

14.8 No Waiver. No failure or delay by you or USI in exercising any right under these Terms shall constitute a waiver of that right.

14.9 Severability. In the event that a court of competent jurisdiction holds that a particular provision or requirement of these Terms is in violation of any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of such law or is not otherwise unenforceable and all other provisions and requirements contained in these Terms shall remain in full force and effect.

14.10 Attorney's Fees. You agree to pay any and all reasonable attorney's fees and/or collection costs incurred by USI in order to collect any fees or charges due to USI following your breach of Section 6.2 (Invoicing and Payment).

Company Name:	City of Lakeland	Investment Number:	# 32878
Attention:	James Chauncey	Date:	7/26/2016
Email:	james.chauncey@lakelandgov.net	Valid Thru:	8/15/2016
Prepared By:	Jason Hill	All Prices in:	USD
Email:	Jason.Hill@ungerboeck.com	Version Number:	V3.2_20151216

Base Software Licenses	Qty	Units	Per Month	Annual Investment
Ungerboeck for Convention & Exhibition Centers	✓		500	6,000
Ungerboeck Software Professional Users	14	Users	125	21,000
Ungerboeck Software Express Users	11	Users	15	1,980
Total Software Licenses	25	Users		28,980

Optional Upgrades	Qty	Units	Monthly Unit Price	Annual Investment
Sales, Marketing, & Scheduling				
Online space reservations	✓	Reservations	125	1,500
Event Management & Operations				
Receivables, Billing, & Payment				
Online payment portal	✓		75	900
Audit-ready general ledger export*	✓		200	2,400
Credit card processing	✓	Non-Standard Processor	100	1,200
Purchasing & Expense Management				
Reporting & Administration				
Mobile, & Tablet				
Ungerboeck Mobile Venue Bundle	3	Users	75	900
Conference & Exhibition Management				
System Integrations				
Payment Processor	✓		15	180
Hosting Upgrades				
Total Optional Upgrades				7,080

Support	Qty	Units	Monthly Unit Price	Annual Investment
Standard telephone and email support				Included
Unlimited Webinar Training				Included
24x7 emergency "Follow the Sun" Support				Included
Unlimited knowledge base support				Included
Support Upgrades				
Expanded telephone support	0	Contacts		
Premium telephone support	0	Admins		
Developer & SDK/API support	0	Package		
Foreign Language Support	0	Languages		
Test Database	0	Users		
Total Optional Support Upgrades				0

Onboarding & Setup Services*	Qty	Units	Unit Price	Estimated Investment
Setup*	1	Sites	20,000	20,000
Basic setup of additional options*	5.5	Days	1,400	7,700
System integration setup**	2	Days	1,400	2,800
Optional On-boarding Services - Recommended for 10+ users or many optional upgrades				
Specialty Reporting (Advanced Merge, Dashboards, Crystal)	0	Days	1,400	0
Custom Email Templates	0	Days	1,400	0
Additional remote training	0	Days	1,400	0
Additional onsite training	0	Days	1,400	0
Project Management	0	Days	1,400	0
Business Process Optimization Consulting	0	Days	1,400	0
Data migration services	0	Days	1,400	0
Specialty on-boarding services	0	Days	1,400	0
Total Onboarding, Training and Setup Services				30,500

Total Initial Investment	Estimated Investment
Base Software Licenses	28,980
Optional Upgrades	7,080
Support	0
Onboarding & Setup Services*	30,500
Financials Initial Investment	0
Total One-Time Investment	66,560

Annual Investment	Estimated Investment
Software Licenses	28,980
Optional Upgrades	7,080
Financials Annual Investment	0
Support Upgrades	0
Total Recurring Investment	36,060

TERMS AND CONDITIONS. Customer's purchase and use of the Ungerboeck Software products and services listed above are subject to the terms and conditions in the Ungerboeck Software Master Subscription Terms & Conditions. These terms, along with all Order Forms executed under these terms, represent the entire agreement of the parties, and supersede all prior or contemporaneous agreements, proposals or representations, written or oral, concerning their subject matter.

<http://ungerboeck.com/documents/terms/UngerboeckSoftwareMasterSubscriptionTermsConditions.pdf>

Notes: This Agreement shall be subject to applicable Florida Records Law (Florida Statute Chapter 119) as set forth in Appendix A, attached hereto and incorporated herein by this reference. Section 6.2 of the above-referenced Ungerboeck Software Master Subscription Terms & Conditions ("the Terms") shall be amended to reflect that invoices to CLIENT will be due 45 days from the invoice date. Section 6.3 of the Terms shall be amended to provide for interest in the amount of 1% for overdue charges. The following sentence shall be added to Section 6.6 of the Terms: "CLIENT shall provide USI with an applicable use and sales tax exemption certificate upon execution of an Order Form." Section 8.1 of the Terms shall be amended to include a new subsection (b)(v) which reads "is subject to disclosure pursuant to Florida Statute Chapter 119, the Florida Public Records Act or any applicable law." The parties agree that the application of Section 10.2 of the Terms shall only be to the extent permitted by law, and that the governing law of the contract pursuant to Section 13.1 of the Terms shall be Florida law. FEES. The initial invoice amount set forth above, representing the first year's subscription and installation fees, is due and payable upon execution. Subsequent years' fees under this Order Form are due and payable annually in advance. Except as otherwise provided, all payments shall be made in USD, all purchases hereunder are non-cancelable, and all fees are non-refundable.

*Amounts listed represent the estimated level of effort to setup and train CLIENT on Ungerboeck Software using Ungerboeck's best practices. Should CLIENT have unique needs and requirements and/or special requests beyond Ungerboeck's standard setup, Ungerboeck will notify CLIENT and provide written cost estimate for additional onboarding services.

**Systems integrations setup fees are estimates and for budgeting purposes only. All systems integrations will be scoped and a formal quote will be provided prior to any development work beginning.

The prices set forth in this Order Form do not include USI's out-of-pocket expenses. CLIENT shall reimburse USI for any approved out-of-pocket expenses in accordance with CLIENT's Consultant Expense Reimbursement Policy.

	UNGERBOECK SYSTEMS INTERNATIONAL INC.		FOR CLIENT:		Dated:
Signature:	_____		_____		_____
Name:	_____		_____		_____
Title:	_____		_____		_____
Date:	_____		_____		_____

Approved as to form: Timothy J. McCausland, City Attorney

Appendix A

Florida Records Law Compliance

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: KEVIN COOK - DIRECTOR OF COMMUNICATIONS AT: PHONE: 863-834-6264, E-MAIL: KEVIN.COOK@LAKELANDGOV.NET, ADDRESS: ATTN: COMMUNICATIONS DEPARTMENT, 228 S. MASSACHUSETTS AVE., LAKELAND, FLORIDA 33801.

In accordance with Florida Statute §119.0701, the Contractor shall keep and maintain public records required by the City in performance of services pursuant to the contract. Upon request from the City's custodian of public records, Contractor shall provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided pursuant to Florida Statute Chapter 119 or as otherwise provided by law. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City. Contractor shall, upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform services pursuant to the contract. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.