



The CITY OF DAYTONA BEACH

— "THE WORLD'S MOST FAMOUS BEACH" —

Office of the City Manager

August 6, 2018

Mrs. Jean S. Redman, President
Redman Consulting Group, Inc.
7017 South Atlantic Avenue
New Smyrna Beach, Florida 32169

RE: Contract for Solid Waste Administrative Services

Dear Mrs. Redman:

This letter shall serve as the City's written notice of renewal of the subject contract for four (4) years. The contract was approved by City Commission Resolution 14-83 granting the city the option to renew the contract term for an additional term of four (4) years upon the expiration of the first renewal term, to wit: August 26, 2014. The contract will expire on August 25, 2018. This letter is notice of the City's intent to renew.

The City looks forward to continuing to work with Redman Consulting Group on its solid waste issues. Please contact Joanne Flick, Purchasing Agent, at 386.671.8082.

Sincerely,

James V. Chisholm, City Manager

C: David Waller, Deputy Public Works Director

COPY

DATE _____

**REDMAN CONSULTING GROUP, INC.
Municipal Tracking System User Agreement**

This Municipal Tracking System User Agreement (this "*Agreement*") is made and entered into this June 30, 2008 by and between Redman Consulting Group, Inc., a Florida Corporation ("RCG, Inc."), and The City Of Daytona Beach, Florida, a Florida Municipal District hereinafter know as *Licensee*.

RCG hereby grants to the Licensee, for the term of this Agreement, a limited non-exclusive, non-transferable right and the use of Licensee's RCG System for the term of Licensee's as stated below, pursuant to the Terms and Conditions below, in consideration of payment of the monthly fee set forth below:

Commencement Date: October 1, 2008
Municipality: The City of Daytona Beach, Florida
Initial Term: One Year; renewable at the City's option for up to three additional Terms of One Year each. City shall exercise option by sending RCG, Inc., within 30 days prior to the expiration of the Term. Renewal shall be automatic unless the City sends RCG, Inc. notice at least 30 days prior to the expiration date of the current Term.
Monthly Fee excluding taxes \$400.00
<u>Additional Conditions.</u> The City shall have the right to place any department within the City on the tracking system at the City's discretion as well as an unlimited amount of users within the City departments who are employed by the City at no additional cost to the City.

Address for Notices to Licensee:

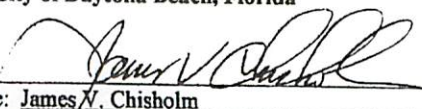
301 S. Ridgewood Ave.
Daytona Beach, Florida 32115
Fax no: 386-671-8015
Attention: James V. Chisholm, City Manager

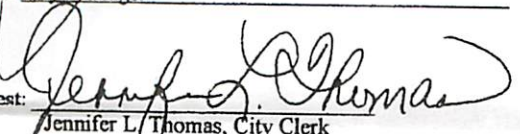
Address for Notices to RCG, Inc.:

7017 S. Atlantic Avenue
New Smyrna Beach, FL 32169
Fax no.: 386-427-4549
Attn: Jean S. Redman, President


The Terms and Conditions on the reverse side hereof, and Jean S. Redman's July 29, 2008 letter to James Chisholm, City Manager, are incorporated herein as if fully set forth on the face of this Agreement; provided however that this agreement shall prevail if in conflict with said Terms and Conditions or letter. By execution below, the undersigned certifies that he/she is authorized to execute this Agreement as a legally binding obligation of Licensee, effective as of the Commencement Date above.

The City of Daytona Beach, Florida

By: 
Name: James V. Chisholm
Title: City Manager

Attest: 
Jennifer L. Thomas, City Clerk

RCG, Inc.

By: 
Name: Jean S. Redman
Title: President

Approved as to legal form:

By: 
Marie Hartman, City Attorney

TERMS AND CONDITIONS

1. **Definitions.** As used herein, the terms "Agreement," "Monthly Fee," "Commencement Date," "Licensee," and "RCG" shall have the meanings indicated on the first page of this Agreement, and the following terms shall have the following meanings:

1.1 **"Proprietary Rights"** means patent rights, copyrights, trade secret rights, Confidential Information and all other intellectual and industrial property rights of any sort throughout the world.

1.2 **"System"** means RCG's proprietary application program that functions to provide a municipal departmental tracking system for complaints, compliments and requests for services, and which is accessible by subscription at RCG's internet website: traceonline.com.

2. **License Grant.** RCG hereby grants Licensee a non-transferable, non-exclusive license during the Term only to use the System for its intended purpose and in accordance with the terms and conditions herein for the benefit of Licensee and its business purposes (the "License"). Unless otherwise provided to Licensee or agreed upon in writing, Licensee has no right to receive, use or examine any source code or design documentation relating to the System. The License shall be non-transferable.

3. **Restrictions on License.** Any use of the System not expressly authorized in this Agreement is strictly prohibited, and Licensee shall not (and shall not allow any third party to): (i) sublicense or sell, grant or permit access to the System to any third party; (ii) use the System for the purpose of compiling, enhancing, verifying, supplementing, adding to or deleting from any mailing list, geographic or trade directories, business directories, classified directories, classified advertising, or other compilation of information which is sold, rented, published, furnished or in any manner provided to a third party; (iii) use the System in any service or product not specifically authorized in this Agreement; or (iv) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or derive any source code (or underlying ideas, algorithms, structure or organization) from the System or from any other information by any means whatsoever.

4. **Technical Support.** RCG shall provide Licensee with technical support, via telephone or e-mail, concerning Licensee's use of the System, for correction of defects, and to enable Licensee to use the System under this Agreement.

5. **RCG's Retention of Rights.** RCG retains exclusive ownership of all rights, title and interest including, without limitation, all Proprietary Rights, in and to the System, all modifications (by whomever made) thereof. The License does not constitute a sale of the System or any portion thereof. Each party recognizes that RCG grants no licenses, by implication, estoppel or otherwise, except for the License expressly set forth in this Agreement.

6. Charges and Payment.

6.1 In consideration of the License, Licensee will make payment(s) to RCG the Monthly Fee set forth on the first page of this Agreement pursuant to the provisions set forth herein. The Monthly Fee is based on the number of homes in Licensee's residential and/or commercial area according to the most current U.S. population census (the "Base Home Count"). For every ten percent (10%) increase in the Base Home Count, the Monthly Fee will, without notice to Licensee, be increased by ten percent (10%).

6.2 In addition to the increase in the Monthly Fee provided for in Section 6.1, RCG may also increase the Monthly Fee for each succeeding year of the Agreement, without notice to Licensee, by the increase in the U.S. Consumer Price Index for All Urban Consumers in the Atlanta Metropolitan Statistical Area during the one (1) year period prior to such increase.

6.3 The Monthly Fee is due and payable within twenty (20) days of RCG's invoice therefore.

7. Term and Termination.

7.1 Term.

This Agreement and the License granted herein shall be effective from the Commencement Date through the term of seven years including any renewal terms or extensions as stated in the paragraph labeled term above (the "Term"). Licensee may, however, terminate this Agreement by providing written notice to RCG within thirty (30) days of the Commencement Date. If Licensee does terminate this Agreement within 30 days of the Commencement Date, the provisions of Section 7.3 shall apply.

7.2 **Termination for Cause.** If either party should materially breach this Agreement, the other party may terminate this Agreement upon thirty (30) days' written notice (or ten (10) days in the case of nonpayment) unless the breach is cured within the notice period, or, if the breach does not relate to payment and cannot reasonably be so cured, diligent efforts to effect such cure are commenced during that period and are continued until the cure is completed, which shall be within a reasonable time and may extend beyond such thirty (30) day period.

7.3 **Rights Upon Termination.** Following the expiration or termination of this Agreement for any reason, the License granted herein shall simultaneously and automatically terminate, and Licensee's access to the System shall cease.

8. Warranties.

8.1 **Limited Warranty.** RCG shall use all reasonable efforts to ensure that the System performs the functions as described herein. RCG does not guarantee that the System will meet Licensee's requirements or expectations. In the event Licensee discovers that the System fails to conform with the foregoing warranty, Licensee's sole remedy and RCG's sole obligation shall be as follows: (i) RCG shall first undertake reasonable commercial efforts to repair the System in order to correct such non-conformance; and (ii) if RCG is unable to repair the System, this Agreement shall terminate and the provisions of Section 7.3 shall apply.

8.2 **Disclaimer.** Except for the express limited warranties set forth in this agreement and to the extent allowed by applicable law, RCG hereby disclaims all other warranties, whether express, implied, statutory or otherwise, regarding the system or any support related thereto. RCG specifically disclaims any implied warranties of merchantability, fitness for a particular use or purpose and non-infringement, and those arising from a course of dealing or usage of trade. Further, RCG does not warrant, guarantee or make any representations that the system will be free from defects or that its use will be uninterrupted, or regarding the use, or the results of the use, of the system in terms of accuracy, reliability or otherwise.

9. **Limitation on Liability.** Neither party shall be responsible or liable with respect to any subject matter of this agreement under any contract, negligence, strict liability, warranty, or other theory: (a) for interruption of use, for loss or inaccuracy or corruption of any system or data, or for cost of procurement of substitute goods, services or technology; (b) for any indirect, incidental or consequential damages, even if such party has been otherwise advised that such damages are available, or for any exemplary or punitive damages including, but not limited to, loss of profits; or (c) for any amounts in excess of the aggregate of fees paid or payable to it (in the case of RCG) or (in the case of Licensee) paid or owed by it hereunder. The foregoing limitations shall not apply to (i) damages included in an award against either party resulting from a claim for which a party is indemnified hereunder (ii) any claims for personal injury or death (iii) any claims based upon a party's gross negligence or willful misconduct; (iv) any claims based on a willful violation of either party's proprietary rights; or (v) either party's breach of its obligations under section 10 above. The limitations of liability set forth herein shall apply notwithstanding and failure of essential purpose of any limited remedy provided herein.

10. General Provisions.

10.1 **Assignment.** Licensee shall not assign, transfer or sublicense this Agreement or any of its rights, obligations or benefits under this Agreement without the prior written consent of RCG. Any assignment prohibited by this Section 10.1 shall be null and void.

10.2 **Controlling Law.** This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of, the State of Florida without regard to any conflicts of laws principles. In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

10.3 **Entire Agreement.** Upon execution by both parties, this Agreement shall constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous proposals (oral or written), negotiations, conversations, or discussions between or among the parties relating to the subject matter of this Agreement and all past dealing or industry custom.

10.4 **Force Majeure.** Neither party hereto shall be responsible for any failure to perform its obligations under this Agreement (other than obligations to pay money under Section 6 above) if such failure is caused by acts of God, war, revolutions, lack or failure of transportation facilities, failure of telecommunications suppliers, fire, laws or governmental regulations or other causes which are beyond the reasonable control of such party.