# Lee County Board Of County Commissioners
## Agenda Item Summary

**Blue Sheet No. 20060679**

## 1. ACTION REQUESTED/PURPOSE:
Approve execution of the Mutual Nondisclosure Agreement, Maintenance and Professional Services Agreement, Software and License Agreement & Software Escrow Agreement associated with CN-05-06, Toll Violation Enforcement System (VES).

## 2. WHAT ACTION ACCOMPLISHES:
Provides Lee County the ability to move forward with implementation of the Violation Enforcement System.

## 3. MANAGEMENT RECOMMENDATION: Approval

| 4. Departmental Category: 09 *C9B* | 5. Meeting Date: **06-13-2006** |
|---|---|

| 6. Agenda: | 7. Requirement/Purpose: *(specify)* | 8. Request Initiated: |
|---|---|---|
| X     Consent | _____ Statute | Commissioner _____ |
| _____ Administrative | _____ Ordinance | Department _____ |
| _____ Appeals | _____ Admin. Code | Division          Transportation |
| _____ Public | _____ Other | By:   Scott M. Gilbertson |
| _____ Walk-On | | |

## 9. Background:

On January 31, 2006 the board approved award of the Service Provider Agreement under CN-05-09 Toll Violation Enforcement System, Blue Sheet number 20060050 to VESystems Corporation. To date the design and documentation phase is well under way. Installation at Midpoint Memorial Toll Plaza has begun with acceptance testing and implementation scheduled for August 2006.

The attached documents have been developed based on the design of the Violation Enforcement System and will provide for the on going security of the software, on going maintenance and service of the system.

## 10. Review for Scheduling:

| Department Director | Purchasing or Contracts | Human Resources | Other | County Attorney | Budget Services | | | | County Manager/P.W. Director |
|---|---|---|---|---|---|---|---|---|---|
| | | NA | | | Analyst | Risk | Grants | Mgr. | |
| *Amilcar H. Davies* S.Gilbertson Date 5-18 | *signature* 5/23 | | | X 5/24/06 | RK 5/26 | 5/24/06 | 5/24/06 | 6/1/26 | *Lavender* Date 5-18-06 |

## 11. Commission Action:

_____ Approved
_____ Deferred
_____ Denied
_____ Other

REC'D by CO. ATTY.
5/24/06
10:15AM
CO. ATTY.
FORWARDED TO:
5/26/06
5:30 A.M.

RECEIVED BY COUNTY ADMIN:
5-26-06  11:30

COUNTY ADMIN
FORWARDED TO:
6/1/06

**ESCROW AGREEMENT BETWEEN
VESYSTEMS CORPORATION
AND LEE COUNTY**

**THIS ESCROW AGREEMENT** is made and entered into by and among VESystems Corporation ("VES"), a California Corporation, with principal offices at 125 Pacifica, Suite 290, Irvine, California 92618; Derivation Systems, Inc. ("Agent"), a California Corporation with principal offices at 5963 LePlace Court, Suite 208, Carlsbad, California 92008; and Lee County ("County"), a political subdivision of the State of Florida, with principal offices located at 2115 Second Street, Fort Myers, Florida 33901.

**WHEREAS**, VES has entered into a Standard Software Licensing Agreement dated _____, 2006, with the County (hereinafter referred to as the "License Agreement") under the terms of which VES granted to County a license to use Licensed Software; and,

**WHEREAS**, VES has agreed to deposit into escrow with the Agent, one set of the Licensed Software as defined in Exhibit "B" of this Escrow Agreement, including a source code, on industry standard media, and source code listings in human readable form of the Licensed Software hereinafter referred to as the "Licensed Software"; and,

**WHEREAS**, the Agent has consented to act as escrow agent and to receive and hold the current version and any future versions of the Licensed Software.

**NOW THEREFORE**, it is agreed as follows:

**ARTICLE 1.  CAPITALIZED TERMS**

Capitalized terms used in this Escrow Agreement that are not otherwise defined shall have the meanings assigned to such terms in the License Agreement.

## ARTICLE 2.    DESPOSIT OF LICENSED SOFTWARE

2.1     Within thirty (30) days following execution of this Agreement, VES Shall deposit the then current version of the Licensed Software with the Agent.

2.2     If VES modifies, adds to, enhances or corrects any of the Licensed Software, it shall deposit with the Agent, a revised version of the Licensed Software within thirty (30) days of completion of such modifications, additions, enhancements and corrections.

2.3     Each time VES deposits revised or replacement Licensed Software with the Agent, VES will also produce an inventory of the materials (Exhibit "B"), as well as a new inventory of all items in escrow.  The inventory (Exhibit "B") will accompany the shipment of the revised Licensed Software to the Agent and copies of Exhibit "B" will be made and sent to County by the Agent.

## ARTICLE 3.    DISPOSITION OF ESCROW

3.1     A "Release Event" shall mean any of the following:

If VES ceases its business operations or becomes subject to any bankruptcy, reorganization, liquidation or insolvency proceedings, or makes an assignment for the benefit of creditors.

3.2     Filing for Release of Licensed Software by County:

Upon notice to Agent by County that a Release Event has occurred and payment by County of the Supplementary fee entitled "Process instructions for release of escrow materials", the Agent shall notify VES by certified mail or commercial express mail service with a copy of the notice from County.  If VES provides the Agent with a

Contrary Instruction within ten (10) days after the mailing of the notice to VES, the Agent shall not deliver the Licensed Software to County. As used herein, "Contrary Instruction" is the filing of an instruction with the Agent by VES in good faith stating that a Contrary Instruction is in effect. Such Contrary Instruction means an officer of VES warrants that a release conditions has not occurred or has been cured.

3.3     Contrary Instruction:

The Agent shall send a copy of the Contrary Instruction by certified mail or commercial express mail service to County. The Agent shall notify both VES and County that there is a dispute to be resolved. Upon receipt of the Contrary Instruction, the Agent shall continue to store the Licensed Software pending VES's and County's joint instruction, resolution of dispute through arbitration, order by a court of competent jurisdiction, or termination by non-renewal of the Escrow Agreement.

3.4     Release of Licensed Software to County:

Pursuant to the above, if the Agent does not receive the Contrary Instruction from VES, within the ten (10) day period, the Agent shall immediately release the Licensed Software in escrow to County.

3.5     Resolution of Disputes:

Any dispute, controversy, claim or difference arising out of, or in connection with, or resulting from this Escrow Agreement, its application or interpretation, or a breach thereof, which cannot be settled amicably by the parties, will be brought in a court of competent jurisdiction within the State of Florida.

3.6       Failure to Pay:

In the event VES fails to pay the Agent any fee due hereunder, the Agent shall so notify County and VES.

3.7       Distribution by Consent:

The Agent shall promptly make distribution of all or any part of the Licensed Software at any time and from time to time upon receipt of written instructions signed by both County and VES.

3.8       Distribution Pursuant to Court Order:

The Agent shall distribute the Licensed Software at any time as directed by a final judgment of a court of competent jurisdiction with respect to which no appeal has been taken or allowed within the time provided by law. Said final judgment will be accompanied by an opinion of counsel for County to the effect that said judgment is final and unappealable and the Agent may rely on such legal opinion.

3.9       License:

Licensed Software released to County pursuant to this Escrow Agreement shall be subject to a license to use the Licensed Software as provided in the terms of the Software License Agreement.

## ARTICLE 4.      THE AGENT

4.1       County and VES hereby engage the Agent and the Agent hereby accepts such engagement subject to the terms and conditions of this Escrow Agreement.

4.2     The Agent shall accept and hold the Licensed Software in a fireproof vault or similar facility and administer the Licensed Software from its offices, until released as provided by this Escrow Agreement.

4.3     VES and County pursuant to Florida Law (§768.28, F.S.) agree to defend and indemnify Agent and hold Agent harmless from and against any and all claims, actions and suits, whether in contract or in tort, and from and against any and all liabilities, losses, damages, costs, charges, penalties, counsel fees and other expenses of any nature (including, without limitation, settlement costs) incurred by Agent as a result of performance of this Escrow Agreement except in the event of a judgment which specifies that Agent acted with negligence or willful misconduct.

4.4     All of the terms and conditions in connection with the Agent's duties and responsibilities and the rights of VES and County are contained in this instrument, and the Agent is not expected or required to be familiar with the provisions of any other instrument or agreement except for the provisions of this Escrow Agreement, and shall not be charged with any responsibility or liability in connection with the observance or non-observance by any one of the provisions of any other such instrument or agreement.

4.5     The Agent may rely on and shall be protected in acting upon any paper or other document which may be submitted to it in connection with its duties hereunder and which is believed by it to be genuine and to have been signed or presented by the proper party or parties and shall have no liability or responsibility with respect to the form, execution or validity thereof.

4.6     The Agent shall not be bound or in any way affected by any modification of this Escrow Agreement, unless it has received written notice satisfactory to it of such modification, signed by all of the other parties to this Escrow Agreement.

4.7     If VES and County shall be in disagreement about the interpretation of this Escrow Agreement, or about the rights and obligations, or the propriety of any action contemplated by the Agent hereunder, any of the parties to this Escrow Agreement may initiate proceedings as set forth in Section 3(e) Resolution of Disputes herein to resolve the said disagreement.  The Agent shall be indemnified by VES and County, pursuant to Florida Law, for all costs, including reasonable attorneys' fees in connection with the aforesaid action.

## ARTICLE 5.     TERM OF THE ESCROW AGREEMENT

5.1     This Escrow Agreement shall commence upon execution of this Escrow Agreement (hereinafter referred to as the "Effective Date") and shall automatically renew annually for as long as the Software License Agreement shall remain in effect or, if earlier, the release of the Licensed Software to County, unless terminated sooner by joint written instruction to the Agent by County and VES.

5.2     Upon the termination of this Escrow Agreement, the Agent shall deliver to VES any and all Licensed Software contained in the escrow.  However, nothing contained herein shall preclude the parties from continuing this Escrow Agreement upon mutual written consent.

5.3     Notwithstanding any other provision contained herein, this Escrow Agreement shall automatically terminate if County determines that the useful life of the

Licensed Software is concluded and that the need for the Licensed Software no longer exists, as evidenced by written notice from County to the Agent. In such event, the Agent shall deliver the Licensed Software to VES as if this Escrow Agreement period had naturally expired.

5.4 In the event of termination of this Escrow Agreement for any reason other than pursuant to Section 5(c), VES and County shall promptly enter into a substantially similar agreement with another entity willing and able to perform the functions of the Agent hereunder.

5.5 Except where this Escrow Agreement expressly provides otherwise, County shall be responsible for paying all fees and expenses of the Agent due under this Escrow Agreement. In the event of the nonpayment of fees owed to Agent, Agent shall provide written notice of delinquency to all parties to the Agreement. Any party to the Agreement shall have the right to make the payment to Agent to cure the default. If the past-due payment is not received in full by Agent within one (1) month after the date of such notice, then Agent shall have the right to terminate the Agreement any time thereafter by sending written notice of termination to all parties. Agent shall have no obligation to deliver the deposited Licensed Software or to take any other action under this Agreement so long as any payment which is due to Agent remains unpaid. Upon termination and receipt of payment, Agent shall return the deposited Licensed Software as in the case of Subsection 5(c) above.

## ARTICLE 6.    AMENDMENTS

This Escrow Agreement may not be modified without the written consent of the

affected parties hereto.

## ARTICLE 7.    JURISDICTION

This Escrow Agreement shall be governed by the laws of the State of Florida in all respects, including matters on construction, validity and performance.

## ARTICLE 8.    SUCCESSORS

The rights created by this Escrow Agreement shall inure to the benefit of, and the obligations created hereby shall be binding upon, the successors and permitted assigns of the Agent, VES and County.

## ARTICLE 9.    NO ASSIGNMENTS

Neither the Agent, nor County may assign this Escrow Agreement without the prior written consent of VES, nor may the Agent assign this Escrow Agreement without the prior written consent of County.

## ARTICLE 10.    NOTICES

All notices, demands, waivers, and other communications, fees, and returns of escrow materials hereunder shall be in writing and shall be mailed, registered or certified (first class, postage paid, return receipt requested) or telecopied or sent by messenger or overnight courier with a method for verification and tracking delivery to the parties at the address shown on Exhibit "A" attached, or to such other address as a party may specify by written notice given in accordance with this section.

## ARTICLE 11.    GENERAL

11.1    Representation:

The Agent hereby represents that to the best of its knowledge neither it nor any

of its personnel has been the subject of any investigation or been convicted or indicted for commission of any crime involving misconduct, corruption, bribery, or fraud in connection with any public contract in the State of Florida, the State of California, or any other jurisdiction, except as has been specifically disclosed in writing to County, and that, should any such conviction or indictment be obtained or any such investigation commenced prior to the expiration of the term hereof, regardless of the date of the occurrence giving rise to the subject matter of such conviction, indictment or investigation, it will be disclosed in writing to County and VES upon request.

11.2    Personal Liability:

No member, officer, or employee of County, VES, or Agent shall be liable personally hereunder or by reason hereof.

11.3    Inspection:

County and VES shall be entitled, during normal business hours, to inspect, under the supervision of an officer of the Agent and at the Agent's facilities, the physical and technical status and condition of the Licensed Software.  The party undertaking the inspection shall provide written notice (delivered by mail or facsimile with acknowledged transmission) of the pending inspection to the other party, seven (7) days prior to scheduled date of the inspection.

11.4    Verification:

VES, County and the Agent agree that, at the expense and request of County, an independent third party may inspect the Licensed Software in order to verify its relevance, completeness, currency, accuracy and functionality and whether it is the

Licensed Software as defined in and contemplated by this Escrow Agreement. Such independent third party shall agree, prior to the time of inspection, not to disclose, divulge or otherwise make available any information gathered from such inspection. County may select such independent third party subject to approval by VES, which approval shall not be unreasonably withheld. Nothing in this paragraph shall be interpreted to impose any additional obligation on VES inconsistent with the terms of this Escrow Agreement. County shall provide the Agent and VES with reasonable notice of any verification. If requested by County, VES shall permit one (1) employee or authorized agent of County to be present during such verification. Any verification shall take place either at the Agent's location or an agreed upon location during the Agent's regular business hours. The Agent shall incur no liability with respect to any loss, damage or destruction to the Licensed Software incurred as a result of verification.

11.5    Headings:

The heading in this Escrow Agreement are for convenience only and do not affect the meaning of this Escrow Agreement.

11.6    Independent Contractor:

County, VES and the Agent are and shall be independent contractors under this Escrow Agreement and nothing herein shall be construed to create a partnership, joint venture or agency relationship among them.

11.7    Confidentiality:

The Agent and County shall not divulge, disclose or otherwise make available to third parties or use the Licensed Software except as specifically provided in this Escrow

Agreement or as may be required by the Florida Public Records Law (Ch. 119, F.S.).

11.8     Entire Agreement:

This Escrow Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and there are not other terms or conditions expressed or implied, written or oral, except as set forth in the Contract.

11.9     Counterparts:

This Escrow Agreement may be executed in any number of counterparts and by the different parties on different counterparts, each of which, when executed, shall be deemed an original, but all of which, taken together, shall constitute one and the same Escrow Agreement.

**IN WITNESS WHEREOF** the undersigned have duly executed this Escrow Agreement on the _____ day of _____, 2006.

ATTEST: CHARLIE GREEN                    BOARD OF COUNTY COMMISSIONERS
CLERK OF COURTS                          OF LEE COUNTY, FLORIDA


By:_____            By:_____
         Deputy Clerk                              Chairwoman


                                         Date:_____


                                         APPROVED AS TO FORM:


                                         By:_____
                                              Office of County Attorney

WITNESSES:

_B. M. Bedrose_

_Finace Manager_

VESystems Corporation

By: _____

Tile: _C O O_

Date: _5/12/06_


WITNESSES:

_____

_____

Derivation Systems, Inc.

By: _____

Tile: _____

Date: _____

<h1 style="text-align:center">EXHIBIT "A"<br>DESIGNATED CONTACTS</h1>

**Notices, Deposit Material returns and Communication, including delinquencies VESystems Corporation should be addressed to:**

VESystems Corp.
125 Pacifica, Suite 290
Irvine, CA 92618
Designated Contact: Joel R. Bishop
Telephone: 949-212-5520
Facsimile: 949-790-7995

**Invoices to VESystems should be addressed to:**

VESystems Corp.
125 Pacifica, Suite 290
Irvine, CA 92618
Invoice Contact: Ben Bedrossian
Telephone: 949-727-4949
Facsimile: 949-790-7995

**Notices, Deposit Material returns and communication, including delinquencies County should be addressed to:**

Lee County Board of County Commissioners
P. O. Box 398
Fort Myers, Florida 33902-0398

Designated Contact:
Telephone:
Facsimile:

**Invoices to County should be addressed to:**

Lee County Board of County Commissioners
P. O. Box 398
Fort Myers, Florida 33902-0398

Designated Contact:
Telephone:
Facsimile:

**Contracts, Deposit Materials and notices to Agents should be addressed to:**

DSI
Attn: Contracts Administration
955 Chesapeake Drive
Suite 200
San Diego, California 92123

Telephone: (619) 694-1900
Facsimile: (619) 694-1919

**Invoices inquiries and fee remittances to Agent should be addressed to:**

DSI
Attn: Account Receivable
425 California Street
Suite 1450
San Francisco, California 94101

Telephone: (619) 398-7900
Facsimile: (619) 398-7914

Requests from VESystems Corporation or County to change the Designated Contact should be given in writing by the Designated contact or an authorized employee of VESystems Corporation or County.

joelbishop:Library:Mail Downloads.Escrow Agreement - VES Systems.doc

# EXHIBIT "B"
## DESCRIPTION OF DEPOSIT MATERIAL

Deposit Account Number: _____

Depositor Company Name: _____

**DEPOSIT TYPE:**    ☐ Initial        ☐ Supplemental        ☐ Replacement

If Replacement:    ☐ Destroy Deposit    ☐ Return Deposit

**ENVIRONMENT:**
Host System CPU/OS Version _____ Backup_____
Source System CPU/OS _____ Version _____ Compiler _____
Special Instructions: _____
_____
_____

**DEPOSIT MATERIAL:**
Exhibit B Name _____ Version _____

Item label description          Media                Quantity


Exhibit B Name _____ Version _____

Item label description          Media                Quantity


For Depositor, I certify that the above described Deposit Material was sent to DSI:

By: _____ Print Name: _____

Date: _____/_____/_____

For Depositor, I certify that the above described Deposit Material to the term of that Escrow Agreement by and among VESystems Corporation, Data Securities International, Inc. and _____
dated _____.

By: _____ Print Name: _____

Date of Acceptance: _____/_____/_____    ISE _____    EX. B#_____

# MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement ("**Agreement**") is entered into as of _____, 2006 ("**Effective Date**") by and between VESystems, a Corporation having its principal address at 125 Pacifica, Suite 290, Irvine CA 92618, and Lee County, Board of County Commissioners, a political subdivision of the STATE OF FLORIDA, having its principal address at 2120 Main Street, Old Courthouse, Fort Myers, FL 33901. The parties wish to protect and preserve the confidential and/or proprietary nature of information and materials that may be disclosed or made available to each other in connection with certain discussions, negotiations or dealings between the parties relating to Violation Processing (the "**Purpose**"). In consideration of the foregoing and the rights and obligations set forth herein, both parties hereby agree as follows:

## 1. PROPRIETARY INFORMATION.

"**Proprietary Information**" means any and all information and material disclosed by the disclosing party ("**Discloser**") to the receiving party ("**Recipient**") (whether in writing, or in oral, graphic, electronic or any other form) that is marked as (or provided under circumstances reasonably indicating it is) confidential or proprietary, or if disclosed orally or in other intangible form or in any form that is not so marked, that is identified as confidential at the time of such disclosure. Proprietary Information, includes, without limitation, any (a) trade secret, know-how, idea, invention, process, technique, algorithm, program (whether in source code or object code form), hardware, device, design, schematic, drawing, formula, data, plan, strategy and forecast of, and (b) technical, engineering, manufacturing, product, marketing, servicing, financial, personnel and other information and materials of, Discloser and its employees, consultants, investors, affiliates, licensors, suppliers, vendors, customers, clients and other persons and entities.

## 2. NON-DISCLOSURE AND LIMITED USE.

Recipient shall hold all Proprietary Information in strict confidence and shall not disclose any Proprietary Information to any third party, other than to its employees, agents, consultants, subsidiaries and other affiliates who need to know such information and who are bound in writing by restrictions regarding disclosure and use of such information comparable to and no less restrictive than those set forth herein. Recipient shall not use any Proprietary Information for the benefit of itself or any third party or for any purpose other than the Purpose. Recipient shall take the same degree of care that it uses to protect its own confidential and proprietary information and materials of similar nature and importance (but in no event less than reasonable care) to protect the confidentiality and avoid the unauthorized use, disclosure, publication or dissemination of the Proprietary Information. Recipient shall not make any copies of the Proprietary Information except to the extent reasonably necessary to carry out the Purpose. Recipient shall not decompile, disassemble or otherwise reverse engineer (except to the extent expressly permitted by applicable law, notwithstanding a contraetual obligation to the contrary) any

Proprietary Information or any portion thereof, or determine or attempt to determine any source code, algorithms, methods or techniques embodied in any Proprietary Information or any portion thereof. If the parties mutually agree to enter into or continue a business relationship or other arrangement relating to the Purpose and do not enter into a new confidentiality agreement, the terms and conditions set forth herein shall also apply to any information and/or materials related to, or activities undertaken in connection with, carrying out such business relationship or other arrangement, unless otherwise agreed to by the parties in writing. The obligations of this Section 2 with respect to any item of Proprietary Information shall survive any termination or expiration of this Agreement.

## 3. SCOPE.

The obligations of this Agreement, including the restrictions on disclosure and use, shall not apply with respect to any Proprietary Information to the extent such Proprietary Information: (a) is or becomes publicly known through no act or omission of Recipient; (b) was rightfully known by Recipient before receipt from Discloser, as evidenced by Recipient's contemporaneous written records; (c) is independently developed by Recipient without the use of or reference to the Proprietary Information of Discloser, as evidenced by Recipient's contemporaneous written records; or is public record under Florida Law. In addition, Recipient may use or disclose Proprietary Information to the extent (i) approved by Discloser or (ii) Recipient is legally compelled to disclose such Proprietary Information, provided, however, that prior to any such compelled disclosure, Recipient shall give Discloser reasonable advance notice of any such disclosure and shall eooperate with Discloser in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Proprietary Information. Further, each party may disclose Proprietary Information and the terms and conditions of this Agreement, in confidenee, to legal counsel, accountants, banks, and financing sources and their advisors.

## 4. OWNERSHIP.

All Proprietary Information of Discloser (including, without limitation, all copies, extracts and portions thereof) is and shall remain the sole property of Discloser. Recipient does not acquire (by license or otherwise, whether express or implied) any intellectual property rights or other rights under this Agreement or any disclosure hereunder, except the limited right to use such Proprietary Information in accordance with the express provisions of this Agreement. All rights relating to the Proprietary Information that are not expressly granted hereunder to Recipient are reserved and retained by Discloser.

## 5. NO WARRANTY.

Except as may be otherwise agreed to in writing, no warranties of any kind, whether express or implied, are given by Discloser with respect to any Proprietary Information or any use thereof, and the Proprietary Information is provided on an "AS IS" basis.

Discloser hereby expressly disclaims all such warranties, including any implied warranties of merchantability and fitness for a particular purpose and any warranties arising out of course of performance, course of dealing or usage of trade.

## 6. TERMINATION.

Either party may terminate this Agreement at any time upon written notice to the other party, and neither party shall have any obligation to disclose any Proprietary Information or to continue discussions relating to, or to enter into or continue any arrangement or agreement relating to, the Purpose or any other matter, except as agreed in writing by the parties. Sections 3, 4, 5, 6, 7, 8 and 10 and, to the extent expressly provided therein, Sections 2 and Section 9, shall survive the expiration or termination of this Agreement.

## 7. REMEDIES.

Recipient agrees that, due to the unique nature of the Proprietary Information, the unauthorized disclosure or use of the Proprietary Information of Discloser may cause irreparable harm and significant injury to Discloser, the extent of which may be difficult to ascertain and for which there may be no adequate remedy at law. Accordingly, Recipient agrees that Discloser, in addition to any other available remedies, shall have the right to seek an immediate injunction and other equitable relief enjoining any breach or threatened breach of this Agreement without the necessity of posting any bond or other security. Recipient shall notify Discloser in writing immediately upon Recipient's becoming aware of any such breach or threatened breach.

## 8. RETURN OF MATERIALS.

Upon any termination of discussions or any business relationship between the parties related to the Purpose, or of this Agreement, or at any time at Discloser's request, (a) Recipient shall promptly return to Discloser or destroy all materials (in written, electronic or other form) containing or constituting Proprietary Information of Discloser, including any copies and extracts thereof, and (b) Recipient shall not use such Proprietary Information in any way for any purpose.

## 9. BUSINESS RELATIONSHIPS.

Each party acknowledges that the other party's employees and contractors are valuable business assets. Each party agrees that, during the period until the Purpose is completed and for one (1) year thereafter, it shall not (for itself or for any third party) divert or attempt to divert from the other party any employee or contractor, through solicitation or otherwise.

## 10. MISCELLANEOUS.

This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous representations, negotiations, conditions, communications and agreements, whether oral or written, between the parties relating to the subject matter hereof and all past courses of dealing or industry custom. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing and signed by duly authorized signatories of both parties. The waiver by either party of a default under any provision of this Agreement shall not be construed as a waiver of any subsequent default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, USA, without reference to its conflicts of laws provisions. This Agreement and the rights and obligations hereunder may not be assigned or delegated by either party, in whole or part, whether voluntarily, by operation of law, change of control or otherwise, without the prior written consent of the other party. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provision valid and enforceable. The parties are independent contractors, and neither party shall have any authority of any kind to bind the other party in any respect whatsoever.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement on the date first set forth above.

**VESYSTEMS CORPORATION**

By: _____
(signature)

Name: ___Joel Bishop___
(print)

Title: ___CEO___
(print)

[_____]

By: _____
(signature)

Name: _____
(print)

Title: _____
(print)

## MAINTENANCE AND PROFESSIONAL SERVICES AGREEMENT

This Maintenance and Professional Services Agreement (this "**Agreement**") is entered into as of February 2 2006 (the "**Effective Date**") by and between VESystems Corporation, a California corporation, with principal offices at 125 Pacifica, Suite 290, Irvine, California 92618 ("**Licensor**"), and Lee County, a political subdivision of the State of Florida, with principal offices at PO Box 398, Ft Myers, Florida 33902-0398 ("**Licensee**").

### RECITALS

WHEREAS, Licensee and Licensor entered into that certain Service Provider Agreement dated as of June 21, 2005 (the "**Service Agreement**") in connection with the installation of a toll violation enforcement system for operation on three toll bridges (Sanibel, Midpoint, & Cape Coral) now being undertaken by the Licensee (the "**Licensee Project**");

WHEREAS, Licensor and Licensee entered into that certain Software License Agreement dated as of February 2, 2006 (the "**Software License Agreement**") pursuant to which Licensor granted Licensee a license to use the Licensed Software in accordance with and pursuant to the terms and conditions thereof.

WHEREAS, Licensor wishes to provide to Licensee, and Licensee desires to receive from Licensor, certain software maintenance and professional services in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to the following terms and conditions, which set forth the rights, duties and obligations of the parties:

### AGREEMENT

1. **DEFINITIONS.**

For purposes of this Agreement, the following terms will have the following meanings:

    **1.1.** "**Confidential Information**" means any information and/or materials disclosed by one party to the other in written, oral, graphic, electronic or other form, including, without limitation, computer programs, code, algorithms, names and expertise of employees and consultants, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical, business, financial and product development plans, forecasts, strategies and other non-public information.

    **1.2.** "**Documentation**" means all documentation (including, without limitation, the Specifications) delivered by Licensor with the Licensed Software or otherwise as part of the Licensee Project, whether in machine-readable or printed form, including any updates, revisions, new versions, and supplements to such documentation.

    **1.3.** "**Enhancement**" means any enhancement, upgrade, new version, improvement or new development to the Licensed Software.

    **1.4.** "**Equipment**" means the computer equipment and third party software approved by Licensor that is used to implement the execution of the Licensed Software and is listed on Exhibit A of the Software License Agreement.

    **1.5.** "**Error**" means reproducible failure of the Licensed Software to perform substantially in accordance with the Specifications when used in accordance with Licensor's instructions. A reproducible failure shall mean a failure Licensor can reproduce using that version of the Licensed Software as delivered and installed by Licensor and any Updates and/or Enhancements thereto. Errors shall exclude those errors caused by the negligence of Licensee, modification or alteration of the

Licensed Software by Licensee or any persons other than Licensor or Licensor's subcontractors or agents authorized by Licensor to perform Maintenance Services (as defined below in Section 2.1) on behalf of Licensor, user error, use on any system that deviates from the Equipment and Facilities Requirements specified on Exhibit A attached hereto, accident, misuse, or any other cause which, in Licensor's reasonable determination, is not inherent in the Licensed Software.

    **1.6.** "**Level 1 Priority Errors**" mean Errors with the Licensed Software functionality that render the Licensed Software inoperable.

    **1.7.** "**Level 2 Priority Errors**" mean Errors with the Licensed Software functionality that are significant to the productive use of the Licensed Software and only allow the Licensed Software to be operated in a restricted fashion.

    **1.8.** "**Level 3 Priority Errors**" mean Errors with the Licensed Software other than Level 1 Priority Errors and other than Level 2 Priority Errors.

    **1.9.** "**Licensed Software**" means Licensor's proprietary software product entitled VTX consisting of the following four (4) software modules, together with all end user manuals, reference manuals, installation guides and other documentation therefor, and any revision, new version, upgrade, enhancement, update, "bug" fix or correction thereto provided to Licensee: VTX-ADM Administration Module, VTX-VP Violation Processing Module, VTX-IP Image Processing Module and VTX-WEB Violation Internet Website Module.

    **1.10.** "**Maintenance Term**" means the two (2) year period commencing on the expiration of the Licensed Software Warranty (as defined in Section 6.3 of the Software License Agreement). If Licensee desires to extend the then-current Maintenance Term for an additional year, Licensee shall provide Licensor with written notice that it has elected to extend the Maintenance Term for an additional one (1) year period and pay the applicable Maintenance Fee. The initial Maintenance Term as extended in accordance with the terms and conditions of this Agreement shall be referred to as the Maintenance Term.

    **1.11.** "**Normal Business Hours**" mean 9 a.m. to 5 p.m. (EST/EDT) in respect of each Licensor business day.

    **1.12.** "**Operator**" shall have the meaning set forth in the Software License Agreement.

    **1.13.** "**Professional Services**" mean development, consulting, technical and support services provided by Licensor in connection with the Licensed Software, including without limitation engineering, connectivity, customization, training and implementation support of the Licensed Software. Professional Services shall include efforts to develop documentation reflecting customizations performed under this Agreement, but shall exclude Maintenance Services and the initial implementation services provided under the Services Agreement.

    **1.14.** "**Site**" means the Midpoint toll plaza, Ft Myers, Florida

    **1.15.** "**Specifications**" mean the "VES Functional Specifications" delivered by Licensor to Licensee under the Service Provider Agreement.

    **1.16.** "**Technical Coordinator**" means the person who is designated by Licensee to have access to the Licensor Help Desk (as

defined below in Section 2.2) and who has been trained on the installation and operation of the Licensed Software.

**1.17.** "**Update**" means any maintenance release, "bug" fix or correction of the Licensed Software that has been commercially released by Licensor to supported licensee, but does not include new products or Enhancements.

## 2. MAINTENANCE SERVICES AND PROFESSIONAL SERVICES.

**2.1. Maintenance Services.** During the Maintenance Term, Licensor shall use reasonable efforts to remedy any and all Level 1 Priority Errors and Level 2 Priority Errors in the Licensed Software ("**Maintenance Services**"). In respect of each Level 1 Priority Error or Level 2 Priority Error, Licensor shall commence providing Maintenance Services upon receiving from Licensee a properly completed "Material Non-Conformity and Error Report" in accordance with the procedures set forth in Exhibit B. In connection therewith, Licensee will report Errors to Licensor in a concise and organized manner. Licensor only shall be obligated to provide Maintenance Services if Licensee (a) has paid the applicable Maintenance Fee and (b) provides Licensor with all information, documentation, technical assistance and access to the computing device on which the Licensed Software is installed and any other equipment and personnel reasonably necessary to assist Licensor. Licensee shall pay Licensor, at Licensor's then current hourly rates for Professional Services, for Licensor's services in responding to an error, malfunction, or defect, if (i) such error, malfunction, or defect does not exist, (ii) Licensee does not assist Licensor as reasonably required, (iii) the Licensed Software is not used in accordance with the Documentation, or (d) the error, malfunction, or defect is not caused by the Licensed Software or Equipment.

**2.2. Help Desk.** During the Term, Licensee and the Operator will have access to Licensor's help desk (the "**Help Desk**") during Normal Business Hours on any given business day. The Help Desk will be responsible for facilitating the Maintenance Services. A Help Desk coordinator will be responsible for logging and tracking Errors after they have been reported by Licensee, contacting the Technical Coordinator to confirm receipt of a Material Non-Conformity and Error Report and jointly determining the priority level of the Error with Licensee. Once a priority level of an Error is so mutually determined, Licensor will respond to such Errors as follows:

**2.2.1. Level 1 Priority Errors.** Licensor will use commercially reasonable efforts to begin working on resolving Level 1 Priority Errors promptly upon notification thereof in accordance with the above provisions of Section 2.1 hereof. Licensee will be advised at least once every business day by the Help Desk as to the status of efforts to resolve each Level 1 Priority Error until such Level 1 Priority Error is resolved. One or more members of Licensor's management will be informed on a daily basis of all Level 1 Priority Errors.

**2.2.2. Level 2 Priority Errors.** Licensor will use commercially efforts to begin working on resolving Level 2 Priority Errors within one (1) business day of being notified thereof in accordance with the above provisions of Section 2.1 hereof. Licensee will be advised at least once every three (3) business by the Help Desk as to the status of efforts to resolve each Level 2 Priority Error until such Level 2 Priority Error is resolved. One or more members of Licensor's management will be informed on a weekly basis of all Level 2 Priority Errors.

**2.2.3. Level 3 Priority Errors.** In respect of all Level 3 Priority Errors, Licensor will use commercially reasonable efforts to provide a resolution for such Level 3 Priority Error (s) within the next scheduled Update.

**2.3. Licensee Obligations.** Licensee agrees to provide Licensor with remote Internet access to the server(s) on which the Licensed Software resides in order to permit Licensor to remotely perform Maintenance Services. If Licensee fails to provide such remote access to Licensor, Licensee shall pay for Licensor's travel time and expenses relating to the performance of Maintenance Services. In addition:

**2.3.1.** Licensee will use commercially reasonable efforts to work with Licensor and promptly install software modifications to attempt to remedy any malfunctions with the Licensed Software.

**2.3.2.** Licensee shall promptly install, or assist in installing, all Updates that Licensor may release during the Maintenance Term, as directed by Licensor.

**2.3.3.** Licensee shall allow Licensor access to the Site to perform Maintenance Services.

**2.3.4.** Licensee shall provide Licensor with sufficient support and test time on Licensee's computer system to duplicate the Error, certify that the Error is with the Licensed Software, and certify that the Error has been corrected.

**2.4. Updates and Enhancements.** During the Maintenance Term, Licensor will provide Licensee with all Updates developed by Licensor at no additional charge. Licensee will also have the right to review and purchase Enhancements (in executable code only) developed by Licensor. Updates, Enhancements and Error corrections obtained by Customer herein shall be governed by the terms of the Software License Agreement and shall be included within the term "Licensed Software" for all purposes.

**2.5. Improved Licensed Software.** In lieu of providing Maintenance Services, Licensor may, at its own option, supply a modified or improved Licensed Software version suited for the contractually contemplated purpose or make available a by-pass solution.

**2.6. Professional Services.** If Licensee desires Licensor to perform any Professional Services, Licensee shall provide Licensor with a written request therefor which sets forth in detail the scope of such Professional Services. Each such request shall be subject to Licensor's agreement to perform such Professional Services, which agreement Licensor shall not unreasonably withhold or delay. If Licensor agrees to render Professional Services, all such Professional Services shall be subject to the fees set forth below in Section 3.2.

## 3. FEES AND CHARGES.

**3.1. Maintenance Fee.** Licensee shall pay to Licensor an annual maintenance fee (the "**Maintenance Fee**") for Maintenance Services for each year of the Maintenance Term. The Maintenance Fee applicable to the first year of the Maintenance Term is hereby waived. The Maintenance Fee for the second year of the Maintenance Term shall be eighteen percent (18%) of the Initial License Fee set forth in Section 4.1 of the Software License Agreement (i.e., seventy-two thousand dollars ($72,000)) and shall be due on payable on at least thirty (30) days before the first anniversary of the start of the Maintenance Term. If Licensee desires Maintenance Services beyond the second year of the Maintenance Term, Licensee shall pay Licensor an additional Maintenance Fee equal to eighteen percent (18%) of the License Fee for each additional year of Maintenance Services, which shall be due and payable in advance at least thirty (30) days before each anniversary of the start of the Maintenance Term; provided, however, in respect of any Maintenance Services provided after the fifth year of the Maintenance Term, Licensor shall have the right to increase the Maintenance Fee therefore by providing Licensee with written notice of the same. Maintenance Services shall automatically terminate at the end of the applicable period if payment is not timely

made. If Licensee desires to reinstate Maintenance Services after any such termination, such reinstatement and the Maintenance Fee relating thereto shall be at Licensor's sole discretion.

**3.2. Professional Service Fees.** During the one (1) year period commencing on the Effective Date, Licensee shall pay Licensor at the following hourly rates for all Professional Services performed by the following Licensor employees/contractors:

| | |
|---|---|
| Software Consultant: | $180 |
| Software Programmer: | $200 |
| Senior Software Programmer: | $240 |

Thereafter, all Professional Services will be charged at Licensor's then standard list price for Professional Services.

**3.3. Out-of-Pocket Expenses.** Licensee shall pay, or reimburse Licensor for all documented out-of-pocket expenses incurred by Licensor in connection with the performance of this Agreement, within the constraints of Lee County's "non-personnel reimbursable expense and costs" policy.

**3.4. Payment Procedures.** Except for the Maintenance Fee which is governed by the above provisions of Section 3.1, (a) Licensor shall invoice Licensee for all charges at the beginning of the calendar month that is subsequent to the calendar month in which the charges were incurred, and (b) Licensee shall pay such charges within ten (10) days after receipt of any such invoice. All late payments (including the late payment of Maintenance Fees) shall be subject to interest at the rate of eighteen percent (18%) per annum (but in no event shall the interest rate be in excess of the maximum permitted by law) from the date such amount is due until finally paid.

**3.5. Payments Without Set-Off.** All payments by Licensee hereunder shall be paid to Licensor without set-off or reduction for any amounts owed to Licensor by Licensee or claims made by Licensee. Licensee hereby waives and disclaims any rights of offset or set-off.

**3.6. Responsibility for Taxes.** Licensee shall pay or reimburse Licensor (on an after-Tax basis and without set-off or counterclaim) for any and all Taxes. All amounts due to Licensor hereunder are exclusive of Taxes. If applicable laws require the withholding of Taxes under this Agreement, Licensee shall (a) notify Licensor of any and all such Taxes, (b) make the applicable withholding, (c) remit the required Tax to the proper governmental authority, (d) increase (to the extent necessary) an amount due hereunder to ensure that after such deduction or withholding Licensor is paid a net amount equal to the amount Licensor would have been paid in the absence of such deduction or withholding, and (c) provide Licensor with the original receipt, a duplicate original receipt, or a duly certified or authenticated copy of the receipt, and copies of cancelled checks, for any Taxes deducted or withheld and remitted to the appropriate taxing authorities under this Section.

**4. CONFIDENTIAL INFORMATION AND DISCLOSURE**

**4.1. Confidential Information.** Each party agrees to maintain all Confidential Information of the other party in confidence to the same extent that it protects its own similar Confidential Information and to use such Confidential Information of the other party only as expressly permitted under this Agreement in order to perform its obligations hereunder. Each party agrees to take all reasonable precautions to prevent any unauthorized disclosure or use of Confidential

Information of the other party, including, without limitation, by disclosing such Confidential Information only to its employees or agents (a) with a need to know such information, (b) who are parties to appropriate written agreements or written confidentiality obligations sufficient to comply with this Section, and (c) who are informed of the nondisclosure/non-use obligations imposed by this Section, and the receiving party will take appropriate steps to implement and enforce such non-disclosure/non-use obligations. The foregoing restrictions on disclosure and use will survive the termination or expiration of this Agreement.

**4.2. Exclusions.** The foregoing restrictions on disclosure and use will not apply with respect to any Confidential Information which: (a) was or becomes publicly known through no fault of the receiving party; (b) was rightfully known or becomes rightfully known to the receiving party without confidential or proprietary restriction from a source other than the disclosing party; (c) is documented by the receiving party as having been independently developed by the receiving party without the participation of individuals who have had access to the Confidential Information; (d) is approved by the disclosing party for disclosure without restriction in a written document signed by a duly authorized officer of such disclosing party; and (c) the receiving party is legally compelled to disclose, provided, however, prior to any such compelled disclosure, the receiving party will (i) assert the privileged and confidential nature of the Confidential Information against the third party seeking disclosure and (ii) cooperate fully with the disclosing party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event that such protection against disclosure is not obtained, the receiving party will be entitled to disclose the Confidential Information, but only as and to the extent necessary to legally comply with such compelled disclosure. Licensee agrees that the terms and conditions of this Agreement will be treated as the Confidential Information of Licensor; provided that Licensee may disclose the terms and conditions of this Agreement: (1) in confidence, to legal counsel; (2) in confidence, to accountants, banks and financing sources and their advisors; and (3) in confidence, in connection with the enforcement of this Agreement or any rights hereunder.

**4.3. Source Code.** With respect to any source code provided by Licensor to Licensee, such source code shall be subject to all of the obligations of this Section 4 and the following additional restrictions on use and disclosure: (a) Licensee shall allow use of or access to the source code only by employees of Licensee who have a need to use the source code for exercise of Licensee's rights expressly set forth in this Agreement; (b) Licensee shall maintain and use the source code only in secure, locked facilities to which access is limited to the employees set forth in subsection (a), above; (c) for source code that is useable or stored on any computer equipment (whether a multi-user system, network, stand-alone computer or otherwise), the equipment must have password-based access control, with each user having a unique user identification and associated password; (d) Licensee shall use, and shall allow use of and access to, the source code only at the Site; and (e) Licensee shall maintain a record of all personnel who use or have access to the source code, the number of copies made, if any, of the source code, and the computer equipment and storage media on which the source code is used or stored. Licensee hereby grants, and agrees to grant, to Licensor a non-exclusive, unrestricted, worldwide, royalty-free, transferable, sublicensable (through multiple levels of sublicenses), perpetual, irrevocable license to reproduce, distribute, display, perform, prepare derivative works of, and otherwise use and exploit any enhancement, improvement, addition or other modification to the Licensed Software and any Intellectual Property Rights therein.

**5. REPRESENTATIONS AND WARRANTIES**

**5.1. Maintenance Services and Professional Services.** Licensor hereby represents and warrants to Licensee that the Maintenance Services and Professional Services shall be performed in a professional and workmanlike manner consistent with the highest industry standards.

**5.2.     Mutual Representations and Warranties.** Each party represents and warrants that (a) it has full power to enter into this Agreement and to perform its obligations hereunder, (b) this Agreement constitutes a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, and (c) this Agreement does not contravene, violate or conflict with any applicable law or other agreement of such party.

**5.3.     Disclaimer of Warranties.**    EXCEPT AS PROVIDED IN THIS SECTION 5, ALL SERVICES PROVIDED HEREUNDER, INCLUDING ENHANCEMENTS AND UPDATES, ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER.  LICENSEE RECOGNIZES THAT THIS "AS IS" CLAUSE IS AN IMPORTANT PART OF THE BASIS OF THIS AGREEMENT, WITHOUT WHICH LICENSOR WOULD NOT HAVE AGREED TO ENTER THIS AGREEMENT. LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE LICENSED SOFTWARE AND SERVICES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT.     NO REPRESENTATION OR OTHER AFFIRMATION OF FACT REGARDING THE SERVICES AND/OR LICENSED SOFTWARE SHALL BE DEEMED A WARRANTY FOR ANY PURPOSE OR GIVE RISE TO ANY LIABILITY OF LICENSOR WHATSOEVER.    LICENSEE ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES IN THIS AGREEMENT.

**6.     INDEMNIFICATION AND LIMITATION OF LIABILITY**

**6.1.     Indemnification by Licensor.** Licensor shall defend, indemnify and hold Licensee harmless from and against any and all claims, demands, suits, actions, and proceedings, and any resulting judgments, damages, costs, losses, expenses (including attorneys' fees and expenses) and other liabilities (including settlement payments) to the extent resulting from bodily injury, death and/or property damage caused by Licensor, provided that Licensee promptly notifies Licensor in writing of any such claim, demand, suit, action, or proceeding, and allows Licensor to control, and fully cooperates with Licensor in, the defense thereof and all related settlement negotiations.  For avoidance of doubt, Licensor will not be liable to Licensee under this Agreement for any and all claims, actions, damages, liability, costs and expenses, including, but not limited to, attorney's fees and court costs, including those arising from bodily injury, death and/or property damages to the extent resulting from the negligence of Licensee or any of its officers, agents or employees.

6.2     LICENSOR'S ENTIRE LIABILITY TO LICENSEE FOR DAMAGES CONCERNING PERFORMANCE OR NONPERFORMANCE OR IN ANY WAY RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, SHALL NOT EXCEED THE AMOUNTS RECEIVED BY LICENSOR UNDER THIS AGREEMENT. IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, DAMAGES FOR LOST PROFITS, LOST DATA OR LOST BUSINESS, OR ANY OTHER INDIRECT DAMAGES, EVEN IF LICENSOR HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES. LICENSOR SHALL HAVE NO LIABILITY WITH RESPECT TO CLAIMS RELATING TO OR ARISING FROM THE USE OF NON-LICENSOR PRODUCTS AND SERVICES.

**7.     TERMINATION**

**7.1.     Termination by Licensor.** In the event that Licensee breaches any material term or condition of this Agreement, and such breach continues for a period of thirty (30) days after receipt of notice from Licensor (except for a breach regarding failure to pay amounts due, in which case the period to cure shall be ten (10) days), Licensor may terminate this Agreement immediately upon notice.

**7.2.     Termination by Licensee.** In the event that Licensor fails to remedy a Level 1 Priority Error within thirty (30) days of the date that Licensor received a properly completed Material Non-Conformity and Error Reporting Form, Licensee may terminate this Agreement immediately upon notice and receive a pro-rata refund of the Maintenance Fee (if any) paid for the current year as its sole and exclusive remedy.

**7.3.     Effects of Expiration or Termination.** Any amounts owed to Licensor shall be immediately due and payable upon the termination of this Agreement.  Each party promptly shall return to the other party any Confidential Information of the other party in its possession or control upon the termination of this Agreement.  Each party shall have an officer certify in writing that it has fully complied with the requirements set forth in this Section 7.3.

**7.4.     Survival Clause.** The obligations in this Agreement which are intended by their terms to survive the expiration or termination of this Agreement shall so survive.  In addition, and without limiting the generality of the preceding sentence, Sections 1, 3, 4, 5, 6, 7.3, 7.4 and 8 shall survive the expiration or termination of this Agreement.

**8.     GENERAL PROVISIONS**

**8.1.     Notices.** Any notice, request, demand or other communication required or permitted hereunder will be in writing and will be deemed to be properly given upon the earlier of (a) actual receipt by the addressee or (b) five (5) business days after deposit in the mail, postage prepaid, when mailed by registered or certified airmail, return receipt requested, or two (2) business days after being sent via private industry courier to the respective parties at the addresses first set forth above or to such other person or address as the parties may from time to time designate in a writing delivered pursuant to this Section.

**8.2.     Assignment.** Neither party will assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any or its rights or obligations under this Agreement; provided, however, either party may assign, sell, transfer, delegate or otherwise dispose of this Agreement or any of its rights and obligations hereunder as part of a merger, consolidation, corporate reorganization, sale of all or substantially all of such party's assets, sale of stock, change of name or like event.  Any purported assignment, sale, transfer, delegation or other disposition, except as permitted herein, will be null and void.  Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and permitted assigns.

**8.3.     Governing Law.** This Agreement is to be construed in accordance with and governed by the internal laws of the State of Florida.

**8.4.     Non-Solicitation of Employees.** During the Maintenance Term and for one (1) year thereafter, neither party shall solicit for employment any employee or consultant of the other party; provided that this obligation will not apply to or be breached by (a) advertising of open positions or other forms of soliciting candidates for employment or contract opportunities which are general in nature; or (b) responding to unsolicited inquiries about employment or contract opportunities from any individual.

**8.5.     *Force Majeure.*** Neither party shall be deemed in default hereunder, nor shall it hold the other party responsible for, any cessation, interruption or delay in the performance of its obligations hereunder due to causes beyond its reasonable control including, but not

limited to: earthquake, flood, fire, storm or other natural disaster, epidemic, accident, explosion, casualty, act of God, lockout, strike, labor controversy or threat thereof, riot, insurrection, act of terrorism, civil disturbance or commotion, boycott, disruption of the public markets, war or armed conflict (whether or not officially declared), sabotage, act of a public enemy, embargo, delay of a common carrier, the inability to obtain sufficient material, supplies, labor, transportation, power or other essential commodity or service required in the conduct of its business, or any change in or the adoption of any law, ordinance, rule, regulation, order, judgment or decree; provided that the party relying upon this Section 8.5 shall have given the other party written notice thereof promptly and, in any event, within five (5) days of discovery thereof and (b) shall take all steps reasonably necessary under the circumstances to mitigate the effects of the force majeure upon which such notice is based.

**8.6.** **Injunctive Relief.** Recognizing and acknowledging that any use or disclosure of the Licensed Software by Licensee and/or its employees and/or consultants in a manner inconsistent with the provisions of this Agreement may cause Licensor irreparable damage for which legal remedies may be inadequate, Licensee agrees that Licensor shall have the right to petition for injunctive or other equitable relief from a court of competent jurisdiction as may be necessary and appropriate to prevent any unauthorized use or disclosure of any such information and that, in connection therewith, Licensor shall not oppose such injunctive or equitable relief on the grounds that an adequate remedy is available at law.

**8.7.** **Waiver.** The waiver by either party of a breach of or a default under any provision of this Agreement will be in writing and will not be construed as a waiver of any subsequent breach of or default under the same or any other provision of the Agreement, nor will any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

**8.8.** **Severability.** If the application of any provision or provisions of this Agreement to any particular facts or circumstances is held to be invalid or unenforceable by any court of competent jurisdiction, then (a) the validity and enforceability of such provision or provisions as applied to any other particular facts or circumstances and the validity of other provisions of this Agreement will not in any way be affected or impaired thereby, and (b) such provision or provisions will be reformed without further action by the parties hereto and only to the extent necessary to make such provision or provisions valid and enforceable when applied to such particular facts and circumstances.

**8.9.** **Relationship of the Parties.** This Agreement will not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the parties; the parties will at all times be and remain independent contractors and neither party nor its agents have any authority of any kind to bind the other party in any respect whatsoever.

**8.10.** **Captions and Section Headings.** The captions and section and paragraph headings used in this Agreement are inserted for convenience only and will not affect the meaning or interpretation of this Agreement.

**8.11.** **Counterparts.** This Agreement may be executed in one or more counterparts, with the same effect as if the parties had signed the same document. Each counterpart so executed will be deemed to be an original, and all such counterparts will be construed together and will constitute one Agreement.

**8.12.** **Public Announcements.** Licensor and Licensee will cooperate with each other so that each party may issue a press release concerning this Agreement, provided that neither party may release any such press release without the prior approval of the other party, which approval will not be unreasonably withheld or delayed.

**8.13.** **Entire Agreement.** This Agreement, including the Exhibit(s) hereto, constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous representations, discussions, proposals, negotiations, conditions and agreements, whether oral or written, and all communications between the parties relating to the subject matter of this Agreement and all past courses of dealing or industry custom. In the event of any conflict or ambiguity between the terms and conditions of this Agreement and the Service Agreement, this terms and conditions of this Agreement shall govern and control. No amendment or modification of any provision of this Agreement will be effective unless in writing and signed by a duly authorized signatory of Licensor and Licensee.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by duly authorized representatives of the parties as of the Effective Date.

VESYSTEMS CORPORATION

By: _____
(*Signature*)

Name: __Joel R. Bishop_____
(*Print or Type*)

Title: __COO_____
(*Print or Type*)

LEE COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

By: _____
(*Signature*)

Name: _____
(*Print or Type*)

Title: _____
(*Print or Type*)

## EXHIBIT A

## EQUIPMENT AND FACILITIES REQUIREMENTS

### PRODUCTION SERVERS

| Server Name | Purpose | Hardware | COTS Software Installed |
|---|---|---|---|
| **CSCVIOA** | Oracle Primary DB Server<br>External WebSphere Server | • Dell PowerEdge 2850<br>• Dual 3.4GHz XEON Processors<br>• 4GB RAM<br>• Raid 1/1 .6 Terabytes | • Red Hat Linux, v4.U2 - Enterprise Server<br>• Oracle 10G Std Edition One<br>• WebSphere 6.0 |
| **CSCIMGDBA** | Image Database Server Interoperability Processes | • Dell PowerEdge 2850<br>• Dual 3.4GHz XEON Processors<br>• 4GB RAM<br>• Raid 1/1 .6 Terabytes | • Red Hat Linux, v4.U2 - Enterprise Server<br>• MySQL |
| **CSCVIOB** | Oracle Backup DB Server<br>External WebSphere Server | • Dell PowerEdge 2850<br>• Dual 3.4GHz XEON Processors<br>• 4GB RAM<br>• Raid 1/1 .6 Terabytes | • Red Hat Linux, v4.U2 - Enterprise Server<br>• Oracle Std Edition One<br>• WebSphere 6.0 |
| **CSCIMGDBA** | Image Database Backup Server Interoperability Processes | • Dell PowerEdge 2850<br>• Dual 3.4GHz XEON Processors<br>• 4GB RAM<br>• Raid 1/1 .6 Terabytes | • Red Hat Linux, v4.U2 - Enterprise Server<br>• MySQL |
| **Network Configuration** | • These servers need to be connected internally via Ethernet. For external connections, T1 and existing Bridge connections will be needed.<br><br>• Internet traffic needs to be allowed only to the External WebSphere Server via a standard HTTP connection. External Web hosting to be provided by Leeway.<br><br>• VESystems requires remote access to VTX Hardware for monitoring, maintenance software patches and performance tuning in the form of a Virtual Private Network connection over Public IP space. A minimum of four accounts are necessary to maintain the system.<br><br>• Backup Servers will be kept offsite at VESystems Irvine (California) Facility and will be connected via a Frame Relay connection to be provided by LeeWay. | | |

TEST / DEVELOPMENT SERVERS

| Server Name | Purpose | Hardware | Software Installed |
|---|---|---|---|
| **CSCVIODEV** | Image Database Server | <ul><li>Dell PowerEdge 2850</li><li>Dual 3.4GHz XEON Processors</li><li>4GB RAM</li><li>Raid 1/1 .6 Terabytes</li></ul> | <ul><li>Red Hat Linux, v4.U2 - Enterprise Server</li><li>Oracle Std Edition One</li><li>WebSphere 6.0</li></ul> |
| **CSCIMGDEV** | Replication/Backup Server | <ul><li>Dell PowerEdge 1850</li><li>Dual 3GHz XEON Processors</li><li>4GB RAM</li><li>Raid 1/1 .6 Terabytes</li></ul> | <ul><li>Red Hat Linux, v4.U2 - Enterprise Server</li><li>MySQL</li></ul> |
| **Network Configuration** | <ul><li>These servers will remain at the VESystems Irvine (California) facility for project development.</li></ul> | | |

## EXHIBIT B

### REPORTING PROCEDURES FOR MATERIAL NON-CONFORMITIES AND ERRORS

In order for Licensor to address Material Non-Conformities and Errors in a timely manner, Licensee shall follow the below procedures (the "**Procedures**") when reporting Material Non-Conformities and Error. Any deviation from the Procedures may result in delay in Licensor's ability to respond to and/or remediate Material Non-Conformities and/or Errors.

The following are the Procedures:

1. Document each Material Non-Conformity and/or Error by completing the Material Non-Conformity and Error Report attached as Schedule 1.

2. Use a separate Material Non-Conformity and Error Reporting Form for each Material Non-Conformity and Error.

3. Send the Material Non-Conformity and Error Reporting Form along with supplemental documentation, if any, by email or fax to Licensor.

SCHEDULE 1

MATERIAL NON-CONFORMITY AND ERROR REPORT

Date: _____

Reported by: _____

Company: _____

Description of problem:




Sequence of actions leading up to problem:




List of attachments (supplemental documentation, screen shots, report hardcopies, etc.):


Send this form to (email preferred):

    <u>Address</u>

    125 Pacifica
    Suite 290
    Irvine, California  92618

    <u>FAX</u>

    (949) 341-0521

    <u>E-Mail</u>

    JoelBishop@VESLLC.com

## SOFTWARE LICENSE AGREEMENT

This Software License Agreement (this "**Agreement**") is entered into as of February 2, 2006 (the "**Effective Date**") by and between VESystems Corporation, a California Corporation, with principal offices at 125 Pacifica, Suite 290, Irvine, California 92618 ("**Licensor**"), and Lee County, a political subdivision of the State of Florida, with principal offices at PO Box 398, Ft Myers, Florida 33902-0398 ("**Licensee**").

### RECITALS

**WHEREAS**, Licensee and Licensor entered into that certain Service Provider Agreement dated as of June 21, 2005 (the "**Service Agreement**") in connection with the installation of a toll violation enforcement system for operation on three toll bridges (Sanibel, Midpoint, & Cape Coral) now being undertaken by the Licensee (the "**Licensee Project**");

**WHEREAS**, Licensee desires the right to use the Licensed Software (as defined below in Section 1.6) in connection with the Licensee Project;

**WHEREAS**, Licensee desires the right to allow the Operator (as defined below in Section 1.7) to use the Licensed Software on behalf of Licensee in accordance with the term and conditions of this Agreement;

**WHEREAS**, Licensor wishes to grant such rights to Licensee;

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties agree to the following terms and conditions, which set forth the rights, duties and obligations of the parties:

### AGREEMENT

1.     **DEFINITIONS.** For purposes of this Agreement, the following terms will have the following meanings:

 1.1.     "**Confidential Information**" means any information and/or materials disclosed by one party to the other in written, oral, graphic, electronic or other form, including, without limitation, computer programs, code, algorithms, names and expertise of employees and consultants, know-how, formulas, processes, ideas, inventions (whether patentable or not), object code, source code, schematics and other technical, business, financial and product development plans, forecasts, strategies and other non-public information.

 1.2.     "**Documentation**" means all documentation (including, without limitation, the Specifications) delivered by Licensor with the Licensed Software or otherwise as part of the Licensee Project, whether in machine-readable or printed form, including any updates, revisions, corrections, revisions, new versions, and supplements to such documentation.

 1.3.     "**Equipment**" means the computer equipment and third party software approved by Licensor that is used to implement the execution of the Licensed Software and is listed on Exhibit A. Licensor can provide the Equipment at an additional cost or Licensee can purchase the Equipment.

 1.4.     "**Error**" means any reproducible failure of the Licensed Software to perform substantially in accordance with the Specifications when used in accordance with Licensor's instructions. A reproducible failure shall mean a failure Licensor can reproduce using that version of the Licensed Software as delivered and installed by Licensor. Errors shall exclude those errors caused by the negligence of Licensee, modification or alteration of the Licensed Software by Licensee or any persons other than Licensor or Licensor's authorized subcontractors or agents, user error, use on any system that deviates from the equipment and facilities requirements specified on Exhibit A attached hereto, accident, misuse, or any other cause which, in Licensor's reasonable determination, is not inherent in the Licensed Software.

 1.5.     "**Intellectual Property Rights**" mean, on a worldwide basis, any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship including, without limitation, copyrights, moral rights and mask-works, (b) rights associated with trademarks, service marks, trade names and similar rights, (c) trade secret rights, (d) patents, designs, algorithms and other industrial property rights, (e) all other intellectual and industrial property rights of every kind and nature and however designated, whether arising by operation of law, contract, license or otherwise, (f) all registrations, applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter existing, made, or in force (including any rights in any of the foregoing), and (g) any and all causes of action arising from or related to any of the foregoing.

 1.6.     "**Licensed Software**" means Licensor's proprietary software product entitled VTX consisting of the following four (4) software modules, together with all end user manuals, reference manuals, installation guides and other documentation therefor, and any revision, new version, upgrade, enhancement, update, "bug" fix or correction thereto provided to Licensee: VTX-ADM Administration Module, VTX-VP Violation Processing Module, VTX-IP Image Processing Module and VTX-WEB Violation Internet Website Module.

 1.7.     "**Operator**" means the entity that Licensee selects to operate the Licensee Project. Licensee shall identify the Operator in writing before the Operator uses or has access to the Licensed Software.

 1.8.     "**Site**" means the Midpoint Toll Plaza, Ft Myers, Florida.

 1.9.     "**Specifications**" mean the "VES Functional Specifications" delivered by Licensor to Licensee under the Service Provider Agreement.

 1.10.     "**Taxes**" means any and all taxes, levies, duties, fees, assessments or other charges based upon this Agreement, and all interest, penalties or similar liabilities with respect thereto assessed by a governmental authority, including, without limitation, sales, use, excise, value-added, withholding taxes or other taxes based upon this Agreement, excluding taxes based on Licensor's revenue or income.

2.     **GRANT OF LICENSE.**

 2.1.     **Grant of License.** Subject to the terms and conditions of this Agreement, Licensor grants to Licensee a non-transferable (except pursuant to the below provisions of Section 10.2), non-exclusive, license to (i) use (and to allow the Operator to use) the object code form of the Licensed Software solely in connection with the Licensee Project and (ii) internally use (**but not** allow the Operator to use) the source code form of the Licensed Software solely for purposes of developing modifications thereto for use in connection with the Licensee Project; provided that such use under items (i) and (ii) above is subject to the following restrictions: (a) Licensee shall use (and shall cause the Operator to use) the Licensed Software strictly in accordance with the express terms and conditions of this Agreement; (b) the Licensed Software shall be used and installed solely at the Site and solely used on or with the Equipment, or other equipment authorized by Licensor in writing; (c) the Licensed Software may only be used on the Licensee Project, (d) the Licensed Software shall be used solely for internal purposes and only in the ordinary course of business; and (e) Licensor shall not (and shall not allow the Operator or any other third party to) copy the Licensed Software in whole or in part except that Licensor may make one copy of the Licensed Software for archival or backup purposes. Nothing in this Agreement shall convey title to the Licensed Software to Licensee.

 2.2.     **Restrictions.** Licensee acknowledges that the Licensed Software and its structure, organization, and source code constitute valuable trade secrets of Licensor. Accordingly, Licensee shall not (and shall not allow the Operator or any other third party): (a) modify, adapt, alter, translate, or create derivative works from the Licensed Software (except as expressly permitted under Section 2.1(ii)); (b) merge the Licensed Software with other software; (c) sublicense, lease, rent, or

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loan the Licensed Software to any third party; (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Licensed Software; (e) otherwise use or copy the Licensed Software except as expressly allowed in this Agreement; or (f) export or re-export the Licensed Software without all required United States and foreign government licenses. Licensee will defend, indemnify and hold harmless Licensor from and against any violation of all applicable export laws and regulations by Licensee or any of its agents, officers, directors or employees.

**2.3.      Retention of Rights.**   Licensor retains exclusive ownership of all worldwide Intellectual Property Rights and all other industrial rights in the Licensed Software, including any derivative works, modifications, revisions, updates, "bug" fixes, corrections, enhancements, upgrades and new versions thereof. Licensee will have only those rights in or to the Licensed Software that are expressly granted to Licensee pursuant to this Agreement. All rights in and to the Licensed Software not expressly granted to Licensee in this Agreement are reserved by Licensor and its suppliers.

3.      DELIVERY, INSTALLATION AND ACCEPTANCE.

**3.1.      Delivery and Installation.**   Licensor shall deliver (or arrange for delivery of) the Equipment (if purchased from Licensor) and Licensed Software FCA the Site (Incoterms 2000) and shall install (or arrange for the installation of) the Equipment (if purchased from Licensor) and Licensed Software at the Site. Licensee, at its expense, shall be responsible for preparing the Site for the installation of the Licensed Software and the Equipment. If the installation of the Licensed Software and Equipment is prevented or delayed because of Licensee's failure to prepare the Site, Licensor shall use reasonable efforts to install the Equipment (if purchased from Licensor) and Licensed Software upon Licensee's compliance with this Section 3 and upon payment of all reasonable expenses incurred by Licensor resulting from Licensee's failure to timely prepare the Site.

**3.2.      Acceptance.**   Licensee shall notify Licensor in writing of any material non-conformities between the Licensed Software and the Specifications (each a "**Material Non-Conformity**") within five (5) business days of the date on which Licensor completes the installation of the Licensed Software and the Equipment at the Site. Licensor and Licensee shall mutually determine in good faith whether a non-conformity is a Material Non-Conformity. Licensee's sole and exclusive remedy for any Material Non-Conformity is the correction thereof within a reasonable period, which period shall be mutually determined by Licensor and Licensee in good faith. The Licensed Software shall be deemed to have been accepted by Licensee when one of the following occurs: (a) Licensor reasonably determines in good faith that the Licensed Software substantially conforms to the Specifications, (b) the Licensed Software is placed in use by Licensee for ten (10) consecutive days, (c) Licensee accepts the Licensed Software, or (d) Licensee fails to notify Licensor in writing of any Material Non-Conformities within five (5) business days of the date on which Licensor completes the installation of the Licensed Software and the Equipment at the Site.

**3.3.      Relocation and Possession.**   Licensee shall at all times keep the Licensed Software in its sole possession and control at the site. Licensee shall not move any part of the Licensed Software or Equipment from or within the Site without first obtaining the written consent of Licensor, which consent Licensor shall not unreasonably withhold or delay.

**3.4.      Non-Standard System.**   Licensor shall not connect or use any hardware or software not acquired from Licensor with the Licensed Software or Equipment without Licensor's prior written consent, which consent Licensor shall not unreasonably withhold or delay.

4.      FEES AND CHARGES.

**4.1.      Annual License Fee.**   Upon the execution of this Agreement, Licensee shall immediately pay to Licensor an annual license

fee in the amount of One-Hundred Thousand dollars ($100,000) for the right to use the Licensed Software hereunder for a period of one year following the Effective Date. Additionally, an annual license fee of $100,000 will be payable and due on each of the first, second, third and fourth anniversaries of the Effective Date. Upon the payment of a total of $500,000 in annual license fees, the license granted to Licensee hereunder shall become perpetual. Any use of the Licensed Software with more than the three toll bridges initially included in the Licensee Project is subject to the prior written agreement of Licensor (which agreement may be conditioned upon, among other things, the payment of additional license fees to Licensor). The annual license fees and additional license fees described above are collectively referred to as the "**License Fees.**"

**4.2.      Out-of-Pocket Expenses.**   Licensee shall pay, or reimburse Licensor for all documented out-of-pocket expenses incurred by Licensor in connection with the performance of this Agreement, within the constraints of Lee County's "non-personnel reimbursable expense and costs" policy.

**4.3.      Late Payments.**   All late payments (including the late payment of License Fees) shall be subject to interest at the rate of eighteen percent (18%) per annum (but in no event shall the interest rate be in excess of the maximum permitted by law) from the date such amount is due until finally paid.

**4.4.      Payments without Set-Off.**   All payments hereunder shall be paid to Licensor without set-off or reduction for any amounts owed to Licensor by Licensee or claims made by Licensee. Licensee hereby waives and disclaims any rights of offset or set-off.

**4.5.      Responsibility for Taxes.**   Licensee shall pay or reimburse Licensor (on an after-Tax basis and without set-off or counterclaim) for any and all Taxes. All amounts due to Licensor hereunder are exclusive of Taxes. If applicable laws require the withholding of Taxes under this Agreement, Licensee shall (a) notify Licensor of any and all such Taxes, (b) make the applicable withholding, (c) remit the required Tax to the proper governmental authority, (d) increase (to the extent necessary) an amount due hereunder to ensure that after such deduction or withholding Licensor is paid a net amount equal to the amount Licensor would have been paid in the absence of such deduction or withholding, and (e) provide Licensor with the original receipt, a duplicate original receipt, or a duly certified or authenticated copy of the receipt, and copies of cancelled checks, for any Taxes deducted or withheld and remitted to the appropriate taxing authorities under this Section.

5.      CONFIDENTIAL INFORMATION AND DISCLOSURE

**5.1.      Confidential Information.**   Each party agrees to maintain all Confidential Information of the other party in confidence to the same extent that it protects its own similar Confidential Information and to use such Confidential Information of the other party only as expressly permitted under this Agreement in order to perform its obligations hereunder. Each party agrees to take all reasonable precautions to prevent any unauthorized disclosure or use of Confidential Information of the other party, including, without limitation, by disclosing such Confidential Information only to its employees or agents (a) with a need to know such information, (b) who are parties to appropriate written agreements or written confidentiality obligations sufficient to comply with this Section, and (c) who are informed of the nondisclosure/non-use obligations imposed by this Section, and the receiving party will take appropriate steps to implement and enforce such non-disclosure/non-use obligations. The foregoing restrictions on disclosure and use will survive the termination or expiration of this Agreement.

**5.2.      Exclusions.**   The foregoing restrictions on disclosure and use will not apply with respect to any Confidential Information which: (a) was or becomes publicly known through no fault of the receiving party; (b) was rightfully known or becomes rightfully known to the receiving party without confidential or proprietary restriction from a source other than the disclosing party; (c) is documented by the receiving

party as having been independently developed by the receiving party without the partieipation of individuals who have had access to the Confidential Information; (d) is approved by the disclosing party for disclosure without restriction in a written document signed by a duly authorized officcr of such disclosing party; and (e) the receiving party is legally compelled to disclose, provided, however, prior to any such compelled disclosure, the receiving party will (i) assert the privileged and confidential nature of the Confidential Information against the third party seeking disclosure and (ii) cooperate fully with the disclosing party in protccting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event that such protection against disclosure is not obtained, the receiving party will be entitled to disclose the Confidential Information, but only as and to the extent necessary to legally comply with such compelled disclosure. Licensee agrees that the terms and conditions of this Agreement will be treated as the Confidential Information of Licensor; provided that Licensee may disclose the terms and conditions of this Agreement: (1) as required by the appliea ble securities laws, including, without limitation, requirements to file a copy of this Agreement (redacted to the extent reasonably permitted by applicable law) or to disclose information regarding the provisions hereof or performance hereunder; (2) in confidence, to legal counsel; (3) in confidence, to accountants, banks and financing sources and their advisors; and (4) in confidence, in connection with the enforeement of this Agreement or any rights hereunder.

**5.3.** **Source Code.** With respect to any source code provided by Licensor to Licensee, sueh souree eode shall be subject to all of the obligations of this Section 5 and the following additional restrictions on use and disclosure: (a) Licensee shall allow use of or access to the source code only by employees of Licensee who have a need to use the source code for exercise of Licensee's rights expressly set forth in this Agreement; (b) Licensee shall maintain and use the source code only in secure, locked facilities to which access is limited to the employees set forth in subsection (a), above; (c) for source code that is useable or stored on any computer equipment (whether a multi-user system, network, stand-alone computer or otherwise), the equipment must have password-based access control, with each user having a unique user identification and associated password; (d) Licensee shall use, and shall allow use of and aecess to, the source code only at the Site; and (e) Licensee shall maintain a record of all personnel who use or have access to the source code, the number of copies made, if any, of the source code, and the computer equipment and storage media on which the source code is used or stored. Licensee hereby grants, and agrees to grant, to Licensor a non-exclusive, unrestricted, worldwide, royalty-free, transferable, sublicensable (through multiple levels of sublicenses), perpetual, irrevocable license to reproduce, distribute, display, perform, prepare derivative works of, and otherwise use and exploit any enhancement, improvement, addition or other modifieation to the Licensed Software and any Intellectual Property Rights therein.

## 6. REPRESENTATIONS AND WARRANTIES

**6.1.** The parties acknowledge that, considering the current state of the art, it is not possible to exclude technical software problems, to manufacture faultless software or to cure all defects. Licensor does not warrant the absence of any defects in the Licensed Software, that the Licensed Software will operate without any interruption or the possibility of combining the Licensed Software with other programs.

**6.2.** Licensor warrants that at the time of delivery of the Licensed Software, the media containing the Licensed Software shall be free of material defects. Licensee's sole and exclusive remedy for breach of the warranty set forth in this Section 6.2 is replacement of the defective media if any sueh defect is found within thirty (30) days after delivery of the defective media.

**6.3.** Licensor warrants that, during the thirty (30) day period commencing on Licensee's acceptance or deemed acceptance of the Licensed Software pursuant to the above provisions of Section 3.2, the Licensed Software shall substantially perform in accordance with the then-eurrent Documentation (the "**Licensed Software Warranty**"). As Licensee's sole and exclusive remedy for breach of the warranty set forth in this Section 6.3, Licensee may request Licensor (and Licensee shall use commercially reasonable efforts) to correct the Licensed Software to enable the Licensed Software to comply with the Licensed Software Warranty. The warranties provided by Licensor hereunder shall not apply to any error, loss or damage which does not constitute an Error or is caused in whole or in part by a cause beyond the control of Lieensor.

**6.4.** Each party represents and warrants that (a) it has full power to enter into this Agreement and to perform its obligations hereunder, (b) this Agreement constitutes a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, and (c) this Agreement does not contravene, violate or conflict with any applicable law or other agreement of such party.

**6.5.** EXCEPT AS PROVIDED IN THIS SECTION 6, THE LICENSED SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER. LICENSEE RECOGNIZES THAT THIS "AS IS" CLAUSE IS AN IMPORTANT PART OF THE BASIS OF THIS AGREEMENT, WITHOUT WHICH LICENSOR WOULD NOT HAVE AGREED TO ENTER INTO THIS AGREEMENT. LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE LICENSED SOFTWARE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT REGARDING THE SYSTEM SHALL BE DEEMED A WARRANTY FOR ANY PURPOSE OR GIVE RISE TO ANY LIABILITY OF LICENSOR WHATSOEVER. LICENSEE ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES IN THIS AGREEMENT.

## 7. INDEMNIFICATION

**7.1.** **Indemnification by Licensor.** Licensor shall defend, indemnify and hold Licensee harmless from and against any third party claim of United States copyright or trade secret infringement relating to the Lieensed Software, provided that Licensee promptly notifies Licensor in writing of any sueh claim and allows Licensor to control, and fully cooperates with Licensor in, the defense of any such claim and all related settlement negotiations. In the event an injunction is sought or obtained against Licensee's use of the Licensed Software as a result of any such infringement claim, Licensor may, at its sole option and expense, (a) procure for Lieensee the right to eontinue using the affected Licensed Software or (b) replace or modify the affected Licensed Software so that it does not infringe. Licensor shall have no liability with respect to any claim based upon (i) use of other than the then-current, unaltered version of the applicable Lieensed Software, unless the infringing portion is also in the then-current, unaltered release; (ii) use, modification, operation or combination of the applicable Licensed Software with non-Licensor programs, data, equipment or documentation if such infringement would have been avoided but for such use, modification, operation or combination; (iii) compliance with Licensee's designs, speeifications or instructions; or (iv) any third party software. THE FOREGOING CONSTITUTES THE ENTIRE LIABILITY OF LICENSOR, AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OF THIRD-PARTY RIGHTS.

**7.2.** **Indemnification by Licensee.** Licensee shall defend, indemnify and hold Licensor harmless from and against any and all claims, demands, suits, actions, proccedings, judgments, damages, costs, losses, expenses (including attorneys' fees and expenses) and other liabilities (ineluding settlement payments) arising out of or related to any and all aets or omissions of the Operator arising out of this Agrcement. For avoidance of doubt, Licensee will not be liable to Licensor under this Agrcement for any and all elaims, actions, damages, liability, costs and expenses, including, but not limited to, attorney's fees and court costs,

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including those arising from bodily injury, death and/or property damages to the extent resulting from the negligence of Licensor or any of its officers, agents or employees. This Agreement shall be governed by the general laws of the State of Florida and subject to the limitations as set out in Section 768.28, Florida Statutes, as it may be revised or amended from time to time.

## 8. LIMITATION OF LIABILITY

EXCEPT FOR BREACHES OF SECTIONS 2, 4 AND/OR 5, EACH PARTY'S ENTIRE LIABILITY TO THE OTHER PARTY FOR DAMAGES CONCERNING PERFORMANCE OR NONPERFORMANCE BY SUCH OTHER PARTY OR IN ANY WAY RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, SHALL NOT EXCEED THE AMOUNTS RECEIVED BY LICENSOR UNDER THIS AGREEMENT. EXCEPT FOR BREACHES OF SECTIONS 2, 4 AND/OR 5, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, DAMAGES FOR LOST PROFITS, LOST DATA OR LOST BUSINESS, OR ANY OTHER INDIRECT DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES. LICENSOR SHALL HAVE NO LIABILITY WITH RESPECT TO CLAIMS RELATING TO OR ARISING FROM THE USE OF NON-LICENSOR PRODUCTS AND SERVICES.

## 9. TERMINATION

**9.1. Termination.** In the event that Licensee breaches any material term or condition of this Agreement, and such breach continues for a period of thirty (30) days after receipt of notice from Licensor (except for a breach regarding failure to pay amounts due, in which case the period to cure shall be ten (10) days), Licensor may terminate this Agreement immediately upon notice.

**9.2. Effects of Expiration or Termination.** Any amounts owed to Licensor shall be immediately due and payable upon the expiration or earlier termination of this Agreement. Each party promptly shall return to the other party any Confidential Information of the other party in its possession or control upon the termination of this Agreement. Each party shall have an officer certify in writing that it has fully complied with the requirements set forth in this Section 9.2.

**9.3. Survival Clause.** The obligations in this Agreement which are intended by their terms to survive the expiration or termination of this Agreement shall so survive. In addition, and without limiting the generality of the preceding sentence, Sections 1, 2.2, 2.3, 4, 5, 6, 7, 8, 9.2, 9.3 and 10 shall survive the expiration or termination of this Agreement.

## 10. GENERAL PROVISIONS

**10.1. Notices.** Any notice, request, demand or other communication required or permitted hereunder will be in writing and will be deemed to be properly given upon the earlier of (a) actual receipt by the addressee or (b) five (5) business days after deposit in the mail, postage prepaid, when mailed by registered or certified airmail, return receipt requested, or two (2) business days after being sent via private industry courier to the respective parties at the addresses first set forth above or to such other person or address as the parties may from time to time designate in a writing delivered pursuant to this Section.

**10.2. Assignment.** Neither party will assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any or its rights or obligations under this Agreement; provided, however, either party may assign, sell, transfer, delegate or otherwise dispose of this Agreement or any of its rights and obligations hereunder as part of a merger, consolidation, corporate reorganization, sale of all or substantially all of such party's assets, sale of stock, change of name or like event. Any purported assignment, sale, transfer, delegation or other disposition,

except as permitted herein, will be null and void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and permitted assigns.

**10.3. Governing Law.** This Agreement is to be construed in accordance with and governed by the internal laws of the State of Florida.

**10.4. *Force Majeure.*** Neither party shall be deemed in default hereunder, nor shall it hold the other party responsible for, any cessation, interruption or delay in the performance of its obligations hereunder due to causes beyond its reasonable control including, but not limited to: earthquake, flood, fire, storm or other natural disaster, epidemic, accident, explosion, casualty, act of God, lockout, strike, labor controversy or threat thereof, riot, insurrection, act of terrorism, civil disturbance or commotion, boycott, disruption of the public markets, war or armed conflict (whether or not officially declared), sabotage, act of a public enemy, embargo, delay of a common carrier, the inability to obtain sufficient material, supplies, labor, transportation, power or other essential commodity or service required in the conduct of its business, or any change in or the adoption of any law, ordinance, rule, regulation, order, judgment or decree; provided that the party relying upon this Section 10.4 shall have given the other party written notice thereof promptly and, in any event, within five (5) days of discovery thereof and (b) shall take all steps reasonably necessary under the circumstances to mitigate the effects of the force majeure upon which such notice is based.

**10.5. Injunctive Relief.** Recognizing and acknowledging that any use or disclosure of the Licensed Software by Licensee and/or its employees and/or consultants in a manner inconsistent with the provisions of this Agreement may cause Licensor irreparable damage for which legal remedies may be inadequate, Licensee agrees that Licensor shall have the right to petition for injunctive or other equitable relief from a court of competent jurisdiction as may be necessary and appropriate to prevent any unauthorized use or disclosure of any such information and that, in connection therewith, Licensor shall not oppose such injunctive or equitable relief on the grounds that an adequate remedy is available at law.

**10.6. Waiver.** The waiver by either party of a breach of or a default under any provision of this Agreement will be in writing and will not be construed as a waiver of any subsequent breach of or default under the same or any other provision of the Agreement, nor will any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

**10.7. Severability.** If the application of any provision or provisions of this Agreement to any particular facts or circumstances is held to be invalid or unenforceable by any court of competent jurisdiction, then (a) the validity and enforceability of such provision or provisions as applied to any other particular facts or circumstances and the validity of other provisions of this Agreement will not in any way be affected or impaired thereby, and (b) such provision or provisions will be reformed without further action by the parties hereto and only to the extent necessary to make such provision or provisions valid and enforceable when applied to such particular facts and circumstances.

**10.8. Relationship of the Parties.** This Agreement will not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the parties; the parties will at all times be and remain independent contractors and neither party nor its agents have any authority of any kind to bind the other party in any respect whatsoever.

**10.9. Captions and Section Headings.** The captions and section and paragraph headings used in this Agreement are inserted for convenience only and will not affect the meaning or interpretation of this Agreement.

**10.10. Counterparts.** This Agreement may be executed in one or more counterparts, with the same effect as if the parties had signed

the same document. Each eounterpart so executed will be deemed to be an original, and all such eounterparts will be construed together and will constitute one Agreement.

**10.11. Public Announcements.** Licensor and Licensee will eooperate with each other so that eaeh party may issue a press release concerning this Agreemcnt, provided that neither party may release any such press release without the prior approval of the othcr party, which approval will not be unreasonably withheld or delayed.

**10.12. Entire Agreement.** This Agreement, ineluding the Exhibit(s) hereto, constitutes the cntire agreement between the parties concerning thc subject matter hereof and supersedcs all prior or

contemporaneous representations, discussions, proposals, negotiations, conditions and agrecments, whether oral or written, and all communications between the parties relating to the subject matter of this Agreement and all past courses of dcaling or industry custom. In the event of any eonflict or ambiguity between the terms and conditions of this Agreemcnt and the Service Agrcement, this terms and conditions of this Agreement shall govern and control. No amendment or modification of any provision of this Agreement will be effective unless in writing and signed by a duly authorized signatory of Lieensor and Licensee.

In Witness Whereof, the parties have caused this Agreement to be executed by duly authorized representatives of the partics as of the Effective Datc.

**VESystems Corporation**

By: _____
(*Signature*)

Name: __Joe R. Bishop__
(*Print or Type*)

Title: __COO__
(*Print or Type*)

**Lee County, Florida**
**Board of County Commissioners**

By: _____
(*Signature*)

Name: _____
(*Print or Type*)

Title: _____
(*Print or Type*)

EXHIBIT A

EQUIPMENT AND FACILITIES REQUIREMENTS

PRODUCTION SERVERS

| Server Name | Purpose | Hardware | COTS Software Installed |
|---|---|---|---|
| **CSCVIOA** | Oracle Primary DB Server External WebSphere Server | • Dell PowerEdge 2850 • Dual 3.4GHz XEON Processors • 4GB RAM • Raid 1/1 .6 Terabytes | • Red Hat Linux, v4.U2 - Enterprise Server • Oracle 10G Std Edition One • WebSphere 6.0 |
| **CSCIMGDBA** | Image Database Server Interoperability Processes | • Dell PowerEdge 2850 • Dual 3.4GHz XEON Processors • 4GB RAM • Raid 1/1 .6 Terabytes | • Red Hat Linux, v4.U2 - Enterprise Server • MySQL |
| **CSCVIOB** | Oracle Backup DB Server External WebSphere Server | • Dell PowerEdge 2850 • Dual 3.4GHz XEON Processors • 4GB RAM • Raid 1/1 .6 Terabytes | • Red Hat Linux, v4.U2 - Enterprise Server • Oracle Std Edition One • WebSphere 6.0 |
| **CSCIMGDBA** | Image Database Backup Server Interoperability Processes | • Dell PowerEdge 2850 • Dual 3.4GHz XEON Processors • 4GB RAM • Raid 1/1 .6 Terabytes | • Red Hat Linux, v4.U2 - Enterprise Server • MySQL |
| **Network Configuration** | • These servers need to be connected internally via Ethernet. For external connections, T1 and existing Bridge connections will be needed. • Internet traffic needs to be allowed only to the External WebSphere Server via a standard HTTP connection. External Web hosting to be provided by Leeway. • VESystems requires remote access to VTX Hardware for monitoring, maintenance software patches and performance tuning in the form of a Virtual Private Network connection over Public IP space. A minimum of four accounts are necessary to maintain the system. • Backup Servers will be kept offsite at VESystems Irvine (California) Facility and will be connected via a Frame Relay connection to be provided by LeeWay. | | |

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TEST / DEVELOPMENT SERVERS

| Server Name | Purpose | Hardware | Software Installed |
|---|---|---|---|
| **CSCVIODEV** | Image Database Server | • Dell PowerEdge 2850 <br> • Dual 3.4GHz XEON Processors <br> • 4GB RAM <br> • Raid 1/1 .6 Terabytes | • Red Hat Linux, v4.U2 - Enterprise Server <br> • Oracle Std Edition One <br> • WebSphere 6.0 |
| **CSCIMGDEV** | Replication/Backup Server | • Dell PowerEdge 1850 <br> • Dual 3GHz XEON Processors <br> • 4GB RAM <br> • Raid 1/1 .6 Terabytes | • Red Hat Linux, v4.U2 - Enterprise Server <br> • MySQL |
| **Network Configuration** | • These servers will remain at the VESystems Irvine (California) facility for project development. | | |