



2/25/2019

RE: Contract No. CAC2019-0106

Dear Tracy Fryer,

Please find enclosed an executed original of the above referenced contract with Sarasota County for your records.

Should you have any questions regarding your contract, please contact the County's Administrative Agent designated for this contract.

Your service to Sarasota County is appreciated and we look forward to working with you.

Sincerely,

Contracts Administration
Office of Financial Management
1660 Ringling Blvd., 3rd Floor
Sarasota, FL 34236
Web: www.scgov.net

**SARASOTA COUNTY
GOVERNMENTAL MANAGEMENT SYSTEM (GOVMAX)
HOSTED APPLICATION SERVICE and LICENSE AGREEMENT**

THIS HOSTED APPLICATION SERVICE and LICENSE AGREEMENT ("Agreement") is made and entered into as of the date of execution by both parties, by and between City of North Port, a Florida municipal corporation, hereafter referred to as "**Licensee**", and Sarasota County, a political subdivision of the State of Florida, hereinafter referred to as "**Licensor**."

WITNESSETH:

WHEREAS, Licensor wishes to grant to Licensee a non-exclusive and non-transferable license agreement to use the Governmental Management System, hereinafter referred to as "GOVMAX" and;

WHEREAS, Licensor is willing to provide hosted application service to support Licensee's use of GOVMAX, and;

NOW, THEREFORE, in consideration of the covenants, representations and warranties set forth herein and other good and valuable consideration, the parties hereby agree as follows:

I. SCOPE

This Agreement applies to GOVMAX and related hosting services, which comply with current ITIL (Information Technology Infrastructure Library) standards.

II. DEFINITIONS

- A. The term "GOVMAX" as used in this Agreement includes the Strategic Planning, Business Planning, Performance Management and Financial Planning systems integrated in GOVMAX and the user guides and administrators manual for GOVMAX.
- B. The term "Software Enhancement" shall mean additional software functionality or software modules which are optional and which may be purchased by Licensee at an additional fee to be set by Licensor.
- C. The term "Updates" shall include bug fixes and shall mean mid-version releases of GOVMAX where the primary version number does not change; for example, an upgrade from version 5.0 to version 5.1, or, a minor change which does not require any update to the version identifier.
- D. The term "Upgrades" shall mean full version releases of GOVMAX where the primary version number is increased by one or more; for example, an upgrade from version 5.0 to version 6.0.

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III. ACCESS AND SERVICES PROVIDED

- A. Licensor agrees to provide access to GOVMAX to Licensee and such access shall be deemed to have occurred when connection is made by Licensee by electronic connection via the Internet. Licensee shall be entirely responsible for establishing and maintaining an Internet connection, and providing an HTML 5 compliant Internet Browser to access the GovMax Web application. Licensor shall not be responsible for connection failures, degraded service speed or outages as they relate to Licensee's Internet Service Provider or internet connection.
- B. Licensor shall provide services as set forth in Exhibit A – Scope of Services, attached and made a part hereof.

IV. LICENSE REQUIREMENTS AND USES

- A. Grant of License and Permitted Uses. GOVMAX (including but not limited to the source code and all intellectual property that is created, modified, or reduced to a tangible medium of expression during any services provided or any activities conducted by Licensor pursuant to this Agreement) shall at all times remain the property of Licensor. Licensor hereby states that the Licensor owns GOVMAX free of liens and encumbrances. Licensor grants, and Licensee accepts, a non-exclusive, non-transferable license ("the License") to use GOVMAX in accordance with the provisions of this Agreement. GOVMAX may only be used by Licensee's own personnel for the development of Licensee's operating and/or capital budget(s) and for management use. Licensee agrees to take reasonable precautions to provide adequate security to use and provide access to GOVMAX only as permitted by this Agreement.
- B. Prohibited Uses. Licensee recognizes that GOVMAX was developed by Licensor and that Licensor claims copyright protections in GOVMAX to the fullest extent provided by law and Licensee agrees that it will not infringe upon or otherwise violate Licensor's copyright. Licensee shall not sell, assign, license, sublicense, transfer, allow the use of, or otherwise convey any of its rights to GOVMAX provided under this Agreement to any third party, any other governmental, or non-governmental entity without Licensor's prior written consent, which consent Licensor shall have the right to either grant or deny in its sole discretion.
- C. Software and Licensing Requirements. In order to operate GOVMAX, additional third party software licenses may be required. It is the responsibility of Licensee to acquire all necessary third party licenses and to maintain sufficient numbers of such licenses to operate GOVMAX and to satisfy all Agreement requirements by third parties. The following represent the minimum requirements of Licensee:

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1. Desktop computers and/or terminals with power and network capacities sufficient to support high-speed internet access for Licensee's users, and providing HTML 5 compliant Internet Browser to access GovMax application.
2. Security at the desktop or terminal location.
3. All table data in Licensor's required format and media.

In the event Licensee intends or endeavors to create or design reports separate from those created or designed by Licensor, Licensee must have properly-licensed, updated and maintained versions of the necessary third-party software. Specific information regarding technical requirements for user-designed reports should be requested from Licensor prior to Licensee's undertaking the report creation and design.

- D. Data Ownership. Licensee is the sole owner of its data and as such will be provided with access to all databases as requested. Licensor recognizes that such data may contain material exempt from disclosure under State of Florida public records laws and will turn over to Licensee for response any request from a third party for access to or copies of said data.

V. TERM

The term of this Agreement shall commence upon execution of the Agreement by both parties and shall continue for an initial term of five (5) years, with a renewal option of up to one additional one year period subject to written agreement of both parties.

VI. FEES

- A. Annual Fee. The initial Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) for this Agreement shall be due upon completion of System Administrator training of the Licensee by the Licensor. In subsequent years, the Fee shall be due and payable on the anniversary date of execution of this Agreement by Licensor. The Fee shall be increased annually by three percent (3%) of the preceding year's annual fee.
- B. The Annual Fee may at County's discretion be reduced according to the table set forth in Exhibit B, attached and made a part hereof. Licensee may be eligible for such reduction if another governmental entity ("Affiliated Entity") whose budget is contained within Licensee's budget purchases a GOVMAX license. The determination of whether any such Affiliated Entity would qualify Licensee for a reduction of Licensee's Annual Fee Increase shall be made solely at the County's discretion. Examples of governmental entities which may be deemed

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to qualify as an Affiliated Entity could include a Clerk of Courts, a Sheriff's Office, a Tax Collector, or a Supervisor of Elections.

- C. From time to time Licensor may add Updates or Upgrades to GOVMAX. The fee for Updates is included in Licensee's Fee. Upgrades represent major changes and may require, at Licensor's sole discretion, a separate implementation charge and/or an increase in the Fee as specified hereunder. Upgrades will be implemented by Licensor on a date to be mutually agreed between the parties, but not more than twelve (12) months from the date the Upgrade is first made available to Licensee.
- D. Should Licensee refuse the implementation of an Upgrade, Licensor shall continue full support under the terms of this Agreement for a twelve (12) month period following the date the Upgrade is first made available to Licensee.

VII. TERMINATION OF AGREEMENT

- A. If the Licensee is in material breach or default, including non-payment of any Fees, which is not cured within thirty (30) days after receipt of the written notice of breach or default, then Licensor's Administrative Agent may terminate this Agreement upon thirty (30) days prior written notice.
- B. If the Licensor is in material breach or default, including failure to perform as provided in Section III which is not cured within thirty (30) days after receipt of the written notice, then Licensee may terminate this Agreement upon thirty (30) days prior written notice.
- C. Licensee may also terminate this Agreement for its convenience and without cause upon sixty (60) days prior written notice.
- D. In the event the Licensor determines to no longer provide GOVMAX services, Licensor shall provide written notice to Licensee at least one year prior to discontinuing services at which point this Agreement shall terminate. In that event, Licensor shall cooperate with Licensee in transferring Licensee's data to Licensee.

Immediately following termination of this Agreement, Licensee shall return all manuals, templates and product software to Licensor. Licensee further agrees that it shall not disclose any trade secrets, proprietary contents or protected intellectual property of Licensor's GOVMAX software system to any person in accordance with Section 119.071(1)(f), Florida Statutes at any time while such materials are in Licensee's possession. If Licensor notifies the Licensee that it does not want such materials returned at the termination or expiration of this Agreement, Licensee shall retain such confidential, protected materials for the duration of the public records retention requirements and at the expiration thereof, shall then destroy them and shall then certify the occurrence of such event to Licensor. If Licensor is in possession of any

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backup tapes of Licensee's data at the time of termination, they shall be returned to Licensee at its sole expense. Licensor shall be responsible for storage, disposition and applicable confidentiality (if any) of any additional copies of such backup tapes it may have produced for its own purposes and if Licensor so elects, it may destroy such additional copies at the time allowed by Florida public records retention requirements. Licensee shall be required to print hard copies for retention of its own confidential materials of data files to avoid costs of data retrievals from Licensor.

VIII. LIMITED WARRANTY

- A. Licensor certifies that it has a proprietary right and authority to license GOVMAX and that GOVMAX is the copyrighted product of Licensor. Licensor shall be solely responsible for, and Licensee shall incur no liability in connection with, any claim that GOVMAX infringes a U.S. patent or copyright or a third party's trade secrets, provided that:
1. Licensee promptly notifies Licensor in writing of the claim.
 2. Licensor has sole control of the settlement or defense of any action against Licensee as to which this indemnity relates (provided that there is no finding of fault against the Licensee and that the Licensee is not required to contribute to any settlement).
 3. Licensee reasonably cooperates with Licensor to facilitate such defense. Other than the certification and Limited Warranty expressly stated herein, there are no express or implied warranties relating to GOVMAX covered by this Agreement, including but not limited to warranties of merchantability or fitness for a particular purpose.
- B. If GOVMAX or any portion thereof is held to constitute an infringing product, Licensor shall allow Licensee to terminate this Agreement and shall refund Fees to Licensee on a prorated basis for the period of time that Licensee was unable to use GOVMAX due to an infringement claim.

IX. LIMITATION OF LIABILITIES

Licensor shall have no liability for any loss or claims resulting from any application of GOVMAX, or results, of such application by Licensee or any other party. Licensor's sole obligation and liability, if GOVMAX is defective or fails to conform to specifications, shall be to correct software-coding errors in the original code. In any event, Licensor's liability for any losses or damages which arise out of or in connection with GOVMAX services provided under this Agreement, whether the claim is in contract or

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otherwise, shall not exceed the annual amount paid by Licensee pursuant to this Agreement. Under no circumstances shall Licensor be liable for special, incidental or consequential damages, including, but not limited to, loss of anticipated income or loss resulting from business disruption, even if Licensor has been advised of the possibility of such damages.

X. DISPUTE RESOLUTION

- A. In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Sarasota County, Florida, with the parties sharing equally in the cost of such mediation.
- B. Any and all suits or any claims for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in Sarasota County, Florida. In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.
- C. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Sarasota County, Florida, or where proper subject matter jurisdiction exists in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.
- D. The parties hereby waive all rights to trial by jury for any litigation concerning this Agreement.
- E. This Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.
- F. Unless otherwise agreed in writing, the Licensor shall be required to continue its services and all other obligations under this Agreement during the pendency of claim or dispute including, but not limited to, actual period of mediation or judicial proceedings.

XI. LICENSOR'S ADMINISTRATIVE AGENT AND LICENSEE'S REPRESENTATIVE

The Licensor's Administrative Agent is designated to act on behalf of the Licensor and to administer the terms and conditions of this Agreement. If necessary, a specific Administrator may be authorized to perform the duties and responsibilities of the Administrative Agent. Licensor's Administrative Agent and Licensee's Representative are named below,

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and may be changed at any time by providing written notice to the other party.

Any notices of default or termination shall be sufficient if sent by the parties via United States certified mail, postage paid, or via a nationally recognized delivery service, to the addresses listed below:

Licensee's Representative:		Licensor's Administrative Agent:	
Name:	<u>June Prosser</u>	Name:	<u>Jonathan T. Small</u>
Title:	<u>Budget Administrator</u>	Title:	<u>EIT Manager</u>
Address:	<u>4970 City Hall Boulevard. City of North Port, FL 34288</u>	Address:	<u>1660 Ringling Blvd. Sarasota, FL 34236</u>
Telephone:	<u>941-429-7116</u>	Telephone:	<u>941-861-5377</u>
Facsimile:	<u>941-429-7209</u>	Facsimile:	<u>941-861-5371</u>
E-mail:	<u>jprosser@cityofnorthport.com</u>	E-Mail:	<u>jtsmall@scgov.net</u>

XII. NON-APPROPRIATION

The performance of obligations of either party under the agreement is subject to lawfully available appropriations.

XIII. MISCELLANEOUS

- A. This Agreement constitutes the sole and complete understanding between the parties and supersedes all other contracts between them, whether oral or written with respect to the subject matter. No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement.
- B. Force Majeure. The Licensor specifically agrees that all work performed under the terms and conditions of this Agreement shall be completed within the time limits as set forth herein, or as otherwise identified in the Licensee's purchase order or specified by the Licensee's Administrative Agent, subject only to delays caused by force majeure, or as otherwise defined herein. "Force majeure" shall be deemed to be any cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the parties.

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- C. Licensee may not assign this Agreement without the prior written consent of Licensor. Licensor may assign this Agreement to another entity or agency in the event ownership of GOVMAX is transferred, or in the event Licensor in its sole discretion deems such an assignment necessary in connection with the performance of its obligations hereunder.
- D. If any provision of this Agreement is deemed invalid or unenforceable, the remaining provisions shall not be affected thereby. The terms and conditions of this Agreement shall prevail over any provision of any purchase order used by Licensee to order GOVMAX.
- E. The parties hereto do not intend nor shall this Agreement be construed to grant any rights, privileges or interest to any third party.

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**SARASOTA COUNTY
GOVERNMENTAL MANAGEMENT SYSTEM (GOVMAX)
HOSTED APPLICATION SERVICE and LICENSE AGREEMENT**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last below written.

WITNESS:

Licensee:

CITY OF NORTH PORT, FLORIDA

Signed By: Rebecca Frost

Print Name: Rebecca Frost

Date: 1/29/19

Signed By: [Signature]

Print Name: Christopher Hanks

Title: Mayor

Date: 1/29/19

Approved as to form and correctness:

BY: [Signature]

LICENSEE ATTORNEY
Amber L. Slayton, City Attorney

ATTEST: [Signature]
Kathryn Peto, City Clerk

Licensor:

BOARD OF COUNTY COMMISSIONERS
OF SARASOTA COUNTY, FLORIDA

BY: [Signature]

Jonathan R. Lewis, County Administrator

DATE: 2/22/19

*Executed by the County Administrator,
pursuant to Resolution No. 2004-095*

Approved as to form and correctness:

BY: [Signature]

COUNTY ATTORNEY *TRW*

**SARASOTA COUNTY
GOVERNMENTAL MANAGEMENT SYSTEM (GOVMAX)
HOSTED APPLICATION SERVICE AND LICENSE AGREEMENT
EXHIBIT A – SCOPE OF SERVICES**

A. EQUIPMENT, SOFTWARE, AND SERVICES

1. Licensors shall coordinate the initial setup process to configure GOVMAX to meet Licensee's individual requirements in the areas of organizational structure and planning, backend systems integration, custom reporting, and any other unique configurable settings to match GOVMAX's operational capabilities to the specific business goals identified by Licensee. The specific hosting services to be provided by the Licensor are itemized herein. Licensor may from time to time engage a third-party service provider to perform services as the need arises. Licensor will negotiate with the Licensee all requests and invoice Licensee on a case-by-case basis for internal or outsourced service hours.
2. Licensor shall provide hardware platform, operating system, system application and database maintenance.
3. Licensor shall perform maintenance and operations control on GOVMAX.
4. Licensor shall store data and conduct daily backups of database.
5. Licensor shall provide security of GOVMAX and data.
6. Licensor shall provide, one 8-hour training session, intended for Licensee's system administration-level users. Additional user training is available at Licensee's site, at Licensor's current support rate, plus travel expenses. All travel expenses for Licensor's trainers will be reimbursed in accordance with Section 112.061, Florida Statutes or Sarasota County Resolution No. 2015-178, as either may be revised from time to time, as applicable. Potential participants in training sessions shall have, at minimum, a functional understanding of personal computers and a working knowledge of Microsoft Office products.

B. HOSTING SUPPORT SERVICES

Licensor's Data Center shall provide the following hosting support services:

1. Operations and Monitoring Services - GOVMAX is supported by an on-site operations team providing 24 x 7 continuous system monitoring; basic problem identification and resolution; escalation and notification; change and problem management; operating system security; data restores; vendor management; and batch scheduling and monitoring within the Licensor's data center ("Data Center"). Emergency Support is accessed by telephone at (941) 861-7100.

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EXHIBIT A – SCOPE OF SERVICES**

2. System Administration Services - Systems are supported at the Licensor's Data Center by an on-call system administration team providing hardware/operating system installation, maintenance, updates and upgrades, backup and recovery, hardware security, performance tuning and capacity planning, configuration management and data backup and restoration.

3. Database Administration Services - On-call database administration teams will support systems located within the Licensor's Data Center. Services included by this team are: hardware and software review (memory, disk volumes, operating system levels and any additional software required); compatibility review with existing software; and technical support; MS SQL Server software installation; support and recovery documentation patch support; database backup software resolution; creation of database backup scripts; automatic notification of event conditions; automatic action on selected events (software failures); security reporting, and capacity planning monitoring (disk, memory, CPU, MS SQL Server licensing, etc.). Licensor will also perform upgrades and patches to the MS SQL Server Relational Database Management System, as published by MS SQL Server if determined to be appropriate by the System Administrator. Licensor shall continually measure and report disk utilization for average utilization during 15-minute intervals over a 24-hour period of time. Should average disk utilization exceed 90% over a 24-hour period of time a performance problem will be identified and appropriate problem management procedures evoked by Licensor.

4. Standard System Recovery Services - Licensor shall provide the following data and system recovery services:
 - a. Use disk mirroring and off-site storage of backup tapes to enable the restoration of service in the event the application database is corrupted and/or damaged. The high-availability architecture enables business continuance at degraded performance levels. In the event that the primary computing resources are made inoperable, GOVMAX will be available at a degraded level of performance.

 - b. Daily backup of Licensee's data. Licensor stores copies of all backup tapes in an off-site, environmentally controlled, secure archive. Off-site storage is cycled on a daily basis. This service is provided as a means to protect Licensee from total loss of data in the event of a significant site failure.

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EXHIBIT A – SCOPE OF SERVICES**

- c. Ensure that all systems purchased by Licensor for use in the performance of the services specified hereunder are equipped with dual power supplies and are provided with commercial power supported by separate uninterrupted power supplies. The Uninterrupted Power Supply (UPS) facilities are composed of battery back-up and diesel generators. The battery back-up services are sufficient to support power transition from primary power to the secondary power provided by the diesel generators.
5. Archive Storage Services - Licensor shall provide the following archive storage services:
- a. Five (5) years of adopted archives will be maintained on the GovMax production server. Adopted archives older will be moved to a secondary server for storage that will be accessible for pulling reports.
 - b. If Licensee needs to access an older adopted archive, the Licensee will open a ticket to request a copy be updated on the production server. Cost for support is one (1) hour at the current rate. When the request is made, a completion date will be determined so that the adopted archive can be removed from the production server.
 - c. GovMax adopted archives take up considerable space and resources so this move will improve the performance of the production server.

C. APPLICATION SUPPORT SERVICES

Licensor shall provide the following support services:

- 1. GOVMAX will be available on a supported basis as described in this Section. Licensor shall provide help desk support to Licensee's Representative, or designee, and up to three (3) system administrators during standard hours (Monday through Friday, 8:00 a.m. to 5:00 p.m., Eastern Standard Time, (excluding Licensor's observed holidays). The parties understand that any support, services, or products will be requested only by persons authorized by the Licensee's Representative to do so.
- 2. GOVMAX will be available outside of business hours on an unsupported basis. Service requests that arise outside of business hours shall be addressed the following business day. Additional support can be made available outside of

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EXHIBIT A – SCOPE OF SERVICES**

normal working hours with reasonable advance notice upon mutual agreement of Licensor's Administrative Agent and Licensee's Representative. Additional fees may apply to this service.

3. Any additional related services including custom reports will be available from Licensor or Licensor's third-party service provider, once specific requirements are provided by Licensee. Estimates for any additional related services will be provided at Licensor's then current rates.
4. Code Deployment Services: Unless an emergency deployment is required, all code changes will be batched and deployed using the following schedule:
 - a. All code changes are submitted to the Sarasota Change Advisory Board (CAB) on Tuesdays.
 - b. The open maintenance window for production deployment is scheduled for 12:01 a.m. - 10:00 a.m., Eastern Standard Time, on Sundays. Notification will be given in advance if deployment is to be made outside of the open maintenance window.

(END EXHIBIT A)

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EXHIBIT B – ANNUAL FEE REDUCTION**

Number of Affiliated Entities	Percent Reduction in Annual Fee
1	0.5%
2	0.75%
3	1%

The maximum reduction in a Licensee's Annual Fee shall be no greater than 1% regardless of the number of Affiliated Entities.

In order for Licensee to be eligible for any Annual Fee reduction, the Affiliated Entity must have an active GOVMAX license on the date of Licensee's annual license renewal.

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The following represents an addition to the terms and conditions of the above referenced GOVMAX Hosted Application Service and License Agreement, by and between City of North Port, Florida, a political subdivision of the State of Florida, hereinafter referred to as "**Licensee**", and Sarasota County, a political subdivision of the State of Florida, hereinafter referred to as "**Licensor**." This addendum shall hereafter be regarded as part of the GOVMAX Hosted Application Service and License Agreement.

SECTION VI. FEES

Add the following to Section VI. A. Annual Fee:

"Notwithstanding, Section VI. A., there will be no annual fee for the first year of service. However, fees for hosting and application support services, as set forth in Exhibit A – Scope of Services, shall remain in full force and in effect during the initial year. "

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GOVERNMENTAL MANAGEMENT SYSTEM (GOVMAX)
HOSTED APPLICATION SERVICE AND LICENSE AGREEMENT ADDENDUM**

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date last below written.

WITNESS:

Signed By: Rebecca Frost

Print Name: Rebecca Frost

Date: 1/29/19

Licensee:

CITY OF NORTH PORT, FLORIDA

Signed By: [Signature]

Print Name: Christopher Hanks

Title: Mayor

Date: 1/29/19

Approved as to form and correctness:

BY: [Signature]
Amber L. Slayton, City Attorney
LICENSEE ATTORNEY

ATTEST: [Signature]
Kathryn Peto, City Clerk

Licensors:

BOARD OF COUNTY COMMISSIONERS
OF SARASOTA COUNTY, FLORIDA

BY: [Signature]
Jonathan R. Lewis, County Administrator

DATE: 2/22/19

*Executed by the County Administrator,
pursuant to Resolution No. 2004-095*

Approved as to form and correctness:

BY: [Signature]
COUNTY ATTORNEY TRW