

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN
AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE
AND IMAGEWARE SYSTEMS, INC.**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois,
as follows:

1. That the form and substance of a certain Agreement (the “Agreement”), between the Village of Downers Grove (the “Village”) and Imageware Systems, Inc. (“IWS”), for software and hardware maintenance of the Police Department digital booking system, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

SOFTWARE AND HARDWARE MAINTENANCE RENEWAL AGREEMENT

(the "Agreement")

BETWEEN

IMAGEWARE SYSTEMS, INC ("IWS")

AND

THE VILLAGE OF DOWNER'S GROVE PD ("AGENCY")

1 TERM AND PAYMENT

1.1 Initial Term. The initial term of this Agreement shall be for one year and shall commence on **December 1, 2007** and end on **November 30, 2008**.

1.2 Renewal Terms. Subject to the receipt by **IWS** of payment for such services, this Agreement shall be renewed annually thereafter, **in writing**, commencing on the same month and day noted first directly above and ending on the same month and day noted second directly above, for set additional one-year terms.

1.3 Annual Fee. For the services specified herein, except for those services designated as "Extra Services" pursuant to Section 2.6 hereof, **AGENCY** agrees to pay an annual maintenance fee ("Maintenance Fee") as specified in Exhibit A. Annual maintenance fees will be due and payable on first day of coverage. Any changes to Exhibit A will be provided to **AGENCY** before the start of that year's commencement date. For additional hardware and/or software purchased from **IWS** during the term of this Agreement and added to the System (as defined below), **AGENCY** agrees to pay maintenance fees for the added hardware and/or software on a pro rated basis commencing on the date of the installation of such added items through the end of that annual period, and then annually, thereafter, for so long as this Agreement is in place.

2 MAINTENANCE SERVICE TO BE PROVIDED.

2.1 General. **IWS** shall provide to **AGENCY** maintenance service with respect to the Crime Capture System[®] (the "System", being the software purchased from **IWS** and the related hardware, whether purchased from **IWS** or supplied by **AGENCY**). The obligation of **IWS** to provide such maintenance service shall not extend beyond the items of software and hardware (the **IWS** supported items or "Supported Items" as are identified in Exhibit A) that **AGENCY** has purchased directly from **IWS**. Such maintenance service shall consist of (i) Preventive Maintenance as is described in Section 2.4, (ii) Remedial Maintenance as is described in Section 2.5, and (iii) Extra Services as is described in Section 2.6, all in accordance with and subject to the terms and conditions of this Agreement.

2.2 Obligation for Maintenance Support. **AGENCY** acknowledges that **IWS** will not be required to provide maintenance support during the time frames noted in Section 1 of the Agreement unless and until **AGENCY** has provided **IWS** with an executed copy of the Agreement.

2.3 Connectivity. Electronic communication connectivity between **IWS** and the System shall be via either a point-to-point Internet connection or via a dial-back modem (whereby **IWS** will dial **AGENCY**'s server and the server will dial back to **IWS**).

2.4 Preventive Maintenance. Preventive maintenance ("Preventive Maintenance") shall only be required for Supported Items and shall consist of all maintenance service, other than Excluded Services as defined in paragraph 2.7, performed by **IWS** representatives, independent of any System failure, for the purpose of maintaining the System in good working order, including, without limitation, the maintenance services described in subsections 2.4.1 and 2.4.2 below. Any additional Preventive Maintenance beyond that described in subsections 2.4.1 and 2.4.2 shall be at the sole discretion of **IWS**. Preventive Maintenance performed on-site at **AGENCY** locations shall be performed by **IWS** representatives during normal working days, Monday – Friday except holidays, between the hours of 8:00 a.m. and 5:00 p.m. or as otherwise arranged. **IWS** will provide **AGENCY** with reasonable prior notice and **AGENCY** will assure that **IWS** has access to the equipment. Preventive Maintenance performed off-site from **AGENCY** locations may be performed by **IWS** representatives at any time.

2.4.1 Preventive Software Maintenance.

(a) Subject to the availability of access through **IWS** approved System connectivity, **IWS** representatives will perform Preventive Software Maintenance for a) System servers purchased directly from **IWS**, no less frequently than monthly; b) Capture Stations where the client hardware, on which such **IWS** software resides, has been purchased directly from **IWS**, no less frequently than quarterly; and c) Investigative Stations where client hardware, on which such **IWS** software resides, no less frequently than annually.

(b) If the System server(s) and/or Capture Station(s) and/or Investigative Station(s) hardware is changed by **AGENCY**, on which the **IWS** software resides, **AGENCY** must notify **IWS** in advance of its intent to purchase hardware. **IWS** will review hardware specifications for hardware to be supplied by **AGENCY** and **IWS** will provide approval for continuing Preventative Software Maintenance. If **AGENCY** fails to notify **IWS** and obtain approval in advance, **IWS** will not be required to provide Preventative Software Maintenance.

2.4.2 Preventive Hardware Maintenance. **IWS** representatives will perform an annual quality control check of the Supported Items to ensure that the System is performing at the prescribed standards for System functionality. Such check shall include a cleaning of the Supported Items, Supported Items hardware alignment, and general system checks to assess image quality and System performance.

2.5 Remedial Maintenance. Remedial maintenance ("Remedial Maintenance") shall mean all maintenance, other than Excluded Services, reasonably required as a result of, and for the purpose of correcting, a System Failure. For purposes of this Agreement, "System Failure" shall mean any malfunction in the Supported Items that prevents or materially interferes with, any or all aspects of the System's intended functions.

IWS will provide Remedial Maintenance through its Customer Support Department based on three technical levels of support. **IWS** will make available to **AGENCY** a Help Desk (Tier I support), which will be continuously accessible by telephone, e-mail or the

worldwide web 24 hours per day, 7 days per week (including holidays). If so required to solve Remedial Maintenance issues, **IWS**, in its sole discretion, may also utilize specialized engineers and technicians (Tier II support) who are adept at solving more complex problems, as well as selected members of **IWS**'s Research and Development Department (Tier III support). Following the identification of a System Failure by **AGENCY**, and **AGENCY**'s completion of any diagnostic procedures recommended by **IWS**, **AGENCY** shall provide notification thereof to **IWS**. **AGENCY** agrees to actively cooperate with **IWS** in all further diagnostic testing, as determined and requested by **IWS**.

In the event of any software failure, **IWS** shall make a good faith effort to have an appropriate software support person respond to the **AGENCY** within the time frames described in the **IWS** Response Schedule (attached hereto as Exhibit B). Such response will be to provide notification with an update on possible causes and/or solutions.

In the event of the failure of any Critical Hardware Items (as defined below), **IWS** shall make a good faith effort to cause an authorized representative of **IWS** to arrive at the location where the System is installed no later than the time frames described in the **IWS** Response Schedule (Exhibit B).

- 2.5.1 Critical Hardware Items: Critical hardware items ("Critical Hardware Items") are hardware items purchased from **IWS**, that are specifically associated with the Server, the supplied interfaces, or the Capture Stations, and that are required for the **AGENCY** to perform its day-to-day duties associated with the capture and storage of mug photo images. As a point of clarification, printers are not among the Critical Hardware Items.
- 2.5.2 Non-critical Items: Non-critical items ("Non-critical Items") are hardware items purchased from **IWS** that are not mentioned in Section 2.5.1. Non-critical Items shall be repaired during **IWS**'s normal work hours. Printers are not among Non-critical Items and are only supported by **IWS** during the initial 45 days after their installation.
- 2.5.3 Software Only Installations: If the System server(s) and/or Capture Station(s) and/or Investigative Station(s) hardware, on which the **IWS** software resides, has/have not been purchased directly from **IWS**, **AGENCY** must provide connectivity subject to section 2.3.
- 2.6 Extra Services. Extra services ("Extra Services") shall consist of any maintenance services with respect to the System, other than Preventive Maintenance and Remedial Maintenance, but including without limitation, Excluded Services (as defined below). **IWS** shall be under no obligation to perform any Extra Service but may undertake to make a good faith effort to render such services to the extent that it is capable of doing so without substantially interfering with its other obligations under this Agreement or its obligations to other customers. Extra Services will be charged to the **AGENCY** on a time and materials basis as determined by **IWS** and **AGENCY** will pay such charges as invoiced by **IWS**. If so requested by **AGENCY**, **IWS** shall provide a written estimate of the extra charges likely to be incurred as a result of the performance of such Extra Services, to the extent such charges can be reasonably ascertained in advance.
- 2.7 Excluded Services. For the purpose of this Agreement, "Excluded Services" are those services that **IWS** is not obligated to perform for the Maintenance Fee, but may perform

- for extra compensation as set forth in Section 2.6. Excluded Services shall be defined as: (a) the replacement of any hardware as is required by age, duty cycle, obsolescence or excessive use; (b) the replacement of any hardware or the support of third-party software where service or support for such hardware or such third-party software is no longer provided by the original equipment manufacturer of such hardware or the original vendor of such third-party software; (c) the update or upgrade of third-party software, including operating system(s); (d) the replacement of supplies or expendable items (e.g. ink rollers, ribbon cartridges, toner cartridges, fusers, paper, film, diskettes, tape cassettes, lamps, etc.); (e) any maintenance services to be performed on any software, hardware or other item not furnished by **IWS** to **AGENCY** or any other work external to the System by anyone other than **IWS**; or (f) any maintenance services necessary or appropriate in order to correct any System Failure, or potential failure, attributable in whole or in part to any of the following factors, or any combination thereof:
- 2.7.1 Failure by **AGENCY** to provide or maintain a suitable installation environment as the System site in accordance with the operations documentation, and any other reasonable requirements thereafter communicated in writing by **IWS** to **AGENCY**, including without limitation, any electrical power, air conditioning, or humidity control failure or changes to the environment of the System site,
 - 2.7.2 Use of supplies or materials not approved by **IWS**, or by the equipment manufacturer, as it applies to the supported items.
 - 2.7.3 Use or attempted use of the System or any component thereof for any purpose other than that for which it was acquired,
 - 2.7.4 Alterations to the System software (including operating system(s), operating system service packs or applications) other than alterations installed by, provided by, or approved in writing by **IWS**,
 - 2.7.5 System failure caused by alterations to the System performed by non-**IWS** representatives using the NT server administrator password,
 - 2.7.6 Connection of the System by mechanical or electrical means to any other machine, equipment or device, other than those installed by or approved in writing by **IWS**,
 - 2.7.7 Any changes in the **AGENCY** network or in IP addresses that relate to or affect the System, other than those approved in writing by **IWS**,
 - 2.7.8 Support issues related to the removal, transportation or relocation of the System by any person other than **IWS**'s personnel. From area the system is currently located.
 - 2.7.9 Neglect or misuse of the System by **AGENCY** or any third party,
 - 2.7.10 Any other intentional or negligent damage to the System by the **AGENCY** or third party,
 - 2.7.11 Any other failure by **AGENCY** to comply with its obligations under this Agreement or the Purchase and License Agreement, or
 - 2.7.12 Any damage caused by other than normal operating conditions or events, including

- without limitation, accident, transportation, neglect, misuse, lightning, failure or fluctuation of electrical power, temperature or humidity changes, telephone equipment or line failure, failure of foreign interconnect equipment and acts of God.
- 2.8 Replacement or Repair. In performing Preventive Maintenance and Remedial Maintenance, **IWS** shall be entitled to exercise reasonable discretion in determining whether to replace or repair any malfunctioning item; provided, however, that any such replacement shall be a functional equivalent.
- 2.9 Diagnostic Software. In order to facilitate rapid analysis of a System Failure involving software, **IWS** will provide trained staff, at its company location, capable of handling software failures in an expedient manner. In addition they will have diagnostic software for the purpose of identifying the cause of System Failures, temporarily patching around the problem if necessary or temporarily disabling the use of the malfunctioning software module so that the System can be returned to use for other activities with minimal degradation in operation.
- 2.10 Off-Site Maintenance: Any maintenance services required to be performed under this Agreement which need not or cannot, in **IWS's** reasonable judgment, be performed effectively at or near the System site shall be performed at such other location(s) as **IWS** may determine, at no extra cost to Customer.
- 2.11 Log Entries: **AGENCY**, after its request, shall be provided with **IWS** records regarding System failures, and any other malfunctions, problems, or defects in the System, in accordance with a format to be provided by **IWS**.
- 2.12 Network Connections: Although **IWS** will provide some guidance and direction, **IWS** is not responsible for resolving problems relating to networks.
- 2.13 Data Back-ups: It is the **AGENCY's** responsibility to keep adequate System data back-ups. **IWS** is not responsible for loss of data.
- 2.14 Proprietary Information: **AGENCY** acknowledges that the database structure contains **IWS** trade secrets and intellectual property rights, which are the property of **IWS**. **AGENCY** agrees that the database structure may not be copied, modified or reproduced in whole or in part, for any purpose whatsoever. The database structure may not be reverse engineered, de-compiled, disassembled, or otherwise reverse engineered in whole or in part.
3. CUSTOMER RESPONSIBILITIES
- 3.1 General: **AGENCY** agrees to provide **IWS** with the contact information for their System Administrator(s), and their backup(s), who generally will be available during the **AGENCY's** normal Monday through Friday daytime business hours. **AGENCY** acknowledges that it is important for the **AGENCY's** System Administrator to take an active role in the management of the Crime Capture System and that image quality and consistency are very important in general and especially important with regard to any centralized repositories.

- 3.2 Periodic Routines: **AGENCY** agrees that it is the responsibility of the **AGENCY's** System Administrator to perform the following tasks.
- 3.2.1 Periodically inspect images for quality.
 - 3.2.2 Use manufacturer approved consumable supplies.
 - 3.2.3 Manage System data back-ups.
 - 3.2.4 Maintain studio lighting with prescribed lamps.
 - 3.2.5 Label stations with machine name and trouble reporting instructions.
 - 3.2.6 Manage supporting network.
 - 3.2.7 Manage users, groups, passwords, and access rights.
 - 3.2.8 Train users as necessary.
 - 3.2.9 Ensure problems are reported in a timely fashion to the **IWS** Help Desk.
 - 3.2.10 Utilize most recent IWS provided software when required by **IWS**.
 - 3.2.11 Provide reliable connectivity for remote entry.
 - 3.2.12 Provide suitable environment for stations and especially for the servers.
 - 3.2.13 Provide stable and adequate power.
 - 3.2.14 Maintain effective communications with **IWS**.
 - 3.2.15 **IWS** has given **AGENCY** System Administrator Password to assist **IWS** with System Administration.
4. MISCELLANEOUS TERMS

Confidential Information, Publicity: **IWS** will not publish or otherwise disclose any information or data obtained from **AGENCY** in any manner where the identity of any particular person or establishment can be identified, except with the consent of the **AGENCY**. Until such consent is obtained from **AGENCY**, **IWS** will keep such information confidential using the same care and discretion used with similar information that **IWS** designates as confidential.

Publicity giving reference to the sale, installation, and/or existence of the System, whether in the form of a press release, verbal announcement or filing of governmental form (as may be required by The Securities and Exchange Commission or other governmental entity under public disclosure laws, regulations or otherwise) may be given by **IWS** without the prior approval of **AGENCY**.

Limitation of Liability: **IWS's** maximum liability to the **AGENCY** arising for any reason relating to **IWS's** performance of the this Agreement, or any amendment thereto, shall be limited to the

amount of fees paid to **IWS** for its performance under this Agreement for the specific year that is related to the event which gave rise to the liability.

- 4.3 Hold harmless: **IWS** will indemnify, defend and hold harmless the **AGENCY**, its officers, agents, employees or representatives from all liability for any loss, damage, or injury to persons or property arising from or related to the performance of this Agreement, including without limitation all consequential damages and attorney's fees, resulting from **IWS's** gross negligence or its wrongful or reckless performance hereunder.

The **AGENCY** will indemnify, defend and hold harmless **IWS**, its officers, agents, employees or representatives from all liability for any loss, damage, or injury to persons or property arising from or related to the performance of this Agreement, including without limitation all consequential damages and attorney's fees, resulting from **AGENCY's** gross negligence or its wrongful or reckless performance hereunder.

- 4.4 Independent Contractor: This Agreement is for the professional services of **IWS** and its representatives and is non-assignable by **IWS** without the prior written consent of the **AGENCY**. In performing these professional services, **IWS** is an independent Contractor and is not acting as an agent or employee of the **AGENCY**.

- 4.5 Termination: Prior to the expiration of this Agreement, this Agreement may be terminated for the convenience of both parties by mutual consent. **AGENCY** may terminate this agreement with a 90 day written notice if Software is no longer in use. Either party may terminate this Agreement upon a breach by the other party which is not cured in a timely manner as follows: In the event of any material breach of this Agreement by either party, the aggrieved party must give written notice thereof, including a reasonably detailed statement of the nature of such breach, to the breaching party. The breaching party has thirty (30) days to cure such breach. In the case of a breach that cannot reasonably be cured within 30 days, the breaching party will provide a written estimate of the time needed to cure such breach, will commence to cure such breach within thirty (30) days of notice from the aggrieved party, and will diligently continue to cure such breach to completion. If the breaching party fails to cure, to commence cure, or diligently prosecute such cure to completion, the aggrieved party shall be entitled to suspend its performance under this Agreement for as long as the breach remains uncorrected, and avail itself the remedies provided by this Agreement. Failure of **AGENCY** to pay, when due, all fees payable, including annual or Extra Services fees, will be

4.6

Disputes:

- (a) Disputes: In the event that any dispute or controversy arises between **IWS** and **AGENCY**, **IWS** and **AGENCY** agree to first attempt to resolve the matter through discussions directly between themselves.
- (b) In the event the parties cannot resolve the matter through discussions, the parties agree that the court system in DuPage County, Illinois is to be deemed the venue and jurisdiction for all disputes.

4.7 Notices: All notices required under this agreement shall be made in writing and addressed or delivered as follows:

TO AGENCY-

VILLAGE OF DOWNER'S GROVE POLICE DEPT.
ATTN: MARY NELSON
825 BURLINGTON AVE
DOWNER'S GROVE, IL 60615

TO IWS-

IMAGEWARE SYSTEMS, INC.
JEFF HOTZE, CONTROLLER
10883 THORN MINT RD
SAN DIEGO, CA 92127

Either party may, by written notice to the other, change its own mailing address.

Any notice or other written communication, if delivered personally to such party or if delivered by registered U.S. Mail or by prepaid overnight courier, shall be deemed to have been received on the day of its delivery, and if delivered by any other means, shall be deemed to have been received upon the receiving party's acknowledgement of such receipt.

- 4.7 Governing Law: The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties under this Agreement, will be construed pursuant to and in accordance with the laws of the State of Illinois.
- 4.8 Severability of Agreement: If any term of this Agreement is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the terms of the Agreement will remain in full force and effect and will not be affected.
- 4.9 Cumulative Remedies: The exercise of or failure to exercise legal rights and remedies by either party in the event of any default or breach hereunder will not constitute a waiver or forfeiture of any other rights and remedies, and will be without prejudice to the enforcement of any right or remedy available by law or authorized by this Agreement.
- 4.10 Compliance with Laws: Each party to this Agreement will comply with all applicable laws.
- 4.11 Non Discrimination: IWS will comply with all applicable federal, state and local laws, rules and regulations in regard to non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, disability or other prohibited basis.

4.12 Entire Agreement, Modification: This Agreement, including the exhibit(s), constitutes the entire agreement between the parties and supersedes all previous agreements or representation, oral or written, relating to this Agreement. This Agreement may only be modified or amended by a written modification signed by each party. Both parties acknowledge they have read this Agreement, understand its terms and conditions, and agree to be bound by it.

Agreed to:
IMAGEWARE SYSTEMS, INC.

Agreed to:
AGENCY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

**QUOTE WITH
SCHEDULE OF SUPPORTED ITEMS & MAINTENANCE FEES
“SEE ATTACHED MAINTENANCE SCHEDULE”**

EXHIBIT B

IWS RESPONSE SCHEDULE

Software – sixty (60) minute call back with status and 24 hour status by email or phone. All updates provided free of charge. Tier II on eight (8) hours response.

Hardware – Next IWS business day on all Critical Hardware Items.