SIXTH AMENDMENT TO CONTRACT #20130010

This SIXTH AMENDMENT TO Contract #20130010 ("Sixth Amendment") is made and entered into this 1st day of   December , 2023 and effective on the 1st day of October, 2023 ("Effective Date") by N. Harris Computer Corporation, a foreign corporation authorized to do business in the State of Florida ("Harris") and the City of Port St. Lucie, a Florida municipal corporation (the "City"). Harris and the City are sometimes collectively referred to herein as the "Parties" and individually as a "Party."

RECITALS:

WHEREAS, the Parties entered into that certain Software License Agreement, a Support and Maintenance Agreement, and a Software Implementation Services Agreement for the consultation services, license, support, and maintenance of certain software on March 22, 2013; subsequently amended by the First Amendment on April 3, 2018; Second Amendment on July 5, 2018; Third Amendment on January 14, 2019; Fourth Amendment on July 12, 2022, and Fifth Amendment on July 29, 2022 (collectively, "the Contract"); and

WHEREAS, pursuant to the terms of the Support and Maintenance Agreement ("Agreement"), Harris agreed to provide support and maintenance services related to its proprietary CIS-Infinity Software ("CIS"); and

WHEREAS, the Agreement had an initial term of five (5) years, with successive automatic renewal terms of one (1) year each; and

WHEREAS, the pricing structure in the Third Amendment provides pricing for five (5) years which is set to expire on September 30, 2023; and

WHEREAS, in accordance with the terms of the Agreement, including all amendments thereto, the Parties desire to extend the term of the Agreement and define the annual support and maintenance fee.

NOW, THEREFORE, for and in consideration of the mutual promises and undertakings set forth herein, the Parties hereby agree as follows:

1. <u>Recitals</u>. The foregoing Recitals are hereby incorporated as forming the purpose and intent of this Sixth Amendment.

2. <u>Extending the Term of Support and Maintenance</u>. Pursuant to Section 10 of the Agreement, the Parties desire to modify and extend the term of the Support and Maintenance commencing October 1, 2023 and ending September 30, 2028 (the "2023-2028 Term").

3. <u>Compensation for Services</u>. The City agrees to pay Harris compensation for support and maintenance services rendered as follows.

Sixth Amendment
N. Harris Computer Corporation
Contract #20130010

PERIOD	CIS Infinity	REST API	SOAP API	Infinity.Mobile
October 1, 2023 - September 30, 2024	$127,219.58	$26,704.01	$6,312.38	$13,797.66
October 1, 2024 - September 30, 2025	$134,852.75	$28,306.25	$6,691.13	$14,142.60
October 1, 2025 - September 30, 2026	$142,943.92	$30,004.62	$7,092.60	$14,496.16
October 1, 2026 - September 30, 2027	$151,520.55	$31,804.90	$7,518.15	$14,858.57
October 1, 2027 - September 30, 2028	$160,611.79	$33,713.19	$7,969.24	$15,230.03

4. Contract Administrator/Notice. The following contact shall be substituted for the "Contract Administrator" listed on page one of each the Software License Agreement #20130010, Software Implementation Services Agreement #20130010, and Support and Maintenance Agreement #20130010. Additionally, the following contact shall be substituted for the notice provisions in the Software License Agreement #20130010 (Section 6.05) and the Software Implementation Services Agreement #20130010 (Section 7.5), in addition to the other contact information in these sections:

> Stefanie Beskovoyne Deputy Director
> 1001 SE Prineville Street, Port St. Lucie, FL 34983
> phone: 772-873-6415
> email: SBeskovoyne@CityofPSL.com

This update to the contact information contained in the Agreement shall survive termination or expiration of this Sixth Amendment, regardless of how, why, or when the Sixth Amendment is terminated or if it naturally expires.

5. Expiration of the 2023-2028 Term. Upon expiration of the 2023-2028 Term, the Parties may agree to continue the Agreement for an additional renewal term on terms that are mutually acceptable to both Parties. The Parties agree to execute an amendment to define the Parties' respective obligations during any such renewal term. **The City may terminate this Sixth Amendment or any portion or section thereof at any time for any reason, or no reason, by first providing sixty (60) days advance notice in writing.**

6. Additional Terms. The Parties additionally agree to add the following terms to the Software License Agreement, Support and Maintenance Agreement, and Software Implementation Services Agreement.

   a. Insurance. Harris shall on a primary basis and at its sole expense agree to maintain in full force and effect at all times during the life of the Contract, insurance coverage and limits, including endorsements, as described herein. The requirements contained herein, shall not in any manner limit or qualify the liabilities and obligations assumed by Harris under the Contract.

The Parties agree and recognize that it is not the intent of the City of Port St. Lucie that any insurance policy/coverage that it may obtain pursuant to any provision of the Contract will provide insurance coverage to any entity, corporation, business, person, or organization, other than the City of Port St. Lucie and the City shall not be obligated to provide any insurance coverage other than for the City of Port St. Lucie or extend its immunity pursuant to Section 768.28, Florida Statutes, under its self-insured program. Any provision contained herein to the contrary shall be considered void and unenforceable by any Party. This provision does not apply to any obligation imposed on any other Party to obtain insurance coverage for this project and/or any obligation to name the City of Port St. Lucie as an additional insured under any other insurance policy or otherwise protect the interests of the City of Port St. Lucie as specified in the Contract.

Workers' Compensation Insurance & Employer's Liability: Harris shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes. Employers' Liability must include limits of at least $100,000.00 each accident, $100,000.00 each disease/employee, and $500,000.00 each disease/maximum. A Waiver of Subrogation endorsement must be provided. Coverage shall apply on a primary basis.

Commercial General Liability Insurance: Harris shall agree to maintain Commercial General Liability insurance, issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	$1,000,000
Personal/advertising injury	$1,000,000
Products/completed operations aggregate	$1,000,000
General aggregate	$2,000,000
Fire damage	$100,000 any 1 fire
Medical expense	$10,000 any 1 person

Additional Insured: An Additional Insured endorsement **must** be attached to the certificate of insurance (should be CG2026) under the General Liability policy. Coverage is to be written on an occurrence form basis and shall apply as primary and non-contributory. A waiver of subrogation is to be provided in favor of the City. Coverage shall extend to independent consultants and fellow employees. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests provision as provided under the standard ISO form separation of insurers clause.

Except as to Workers' Compensation and Employers' Liability, and Professional Liability Insurance, Certificates of Insurance and policies shall

clearly state that coverage required by the Contract has been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents, and employees as Additional Insured for Commercial General Liability and Business Auto policies. The name for the Additional Insured endorsement issued by the insurer shall read: **"City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents shall be listed as additional insured and shall include Contracts #20130010, Software License Agreement, Support and Maintenance Agreement, and Software Implementation Services Agreement."** Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance. The policies shall be specifically endorsed to provide thirty (30) days written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. In the event that the statutory liability of the City is amended during the term of the Contract to exceed the above limits, Harris shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City. If the City requests that Harris increase its coverage to the amended statutory limit of liability of the City, then Harris, with thirty (30) days notice, may contact the City to renegotiate an increased Agreement price. However, any such renegotiation of the Agreement price must be directly and necessarily related to a price of insurance premium increase based on the increased statutory limit of liability. If the City and Harris are unable to renegotiate such terms, then Harris may terminate the Agreement. However, such termination is only permissible if the City requests Harris to increase its coverage limits in compliance with this paragraph, and the parties discuss in good faith, but cannot agree, to a renegotiation of the Agreement price.

Business Automobile Liability Insurance: Harris shall agree to maintain Business Automobile Liability at a limit of liability not less than $1,000,000.00 each accident covering any auto, owned, non-owned and hired automobiles. In the event Harris does not own any automobiles, the Business Auto Liability requirement shall be amended allowing Harris to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. Certificate holder must be listed as additional insured. A waiver of subrogation must be provided. Coverage shall apply on a primary and non-contributory basis.

Cyber Liability Insurance: Harris shall agree to maintain Cyber Liability in limits not less $1,000,000 Per Occurrence for direct loss, legal liability, and consequential loss resulting from cyber security breaches. Coverage to include coverage for Privacy & Security Liability, Security Breach Response / Customer Breach Notice Expense, Cyber Extortion and Electronic Media Liability. The City of Port St. Lucie must be listed as an additional insured. Coverage shall apply on a primary and non-contributory basis.

Professional Liability Insurance: Harris shall agree to maintain Professional Liability, or equivalent Errors & Omissions Liability at a limit of liability not less than $1,000,000 Per Occurrence.   For policies written on a "Claims-Made" basis, Harris warrants the retroactive date equals or precedes the effective date of this Sixth Amendment. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of the Contract, Harris shall agree to purchase a SERP with a minimum reporting period not less than four (4) years.

Waiver of Subrogation: By entering into this Sixth Amendment, Consultant agrees to a Waiver of Subrogation for the Worker's Compensation, Auto Liability and Commercial General Liability   policies.

Deductibles: All deductible amounts shall be paid for and be the responsibility of the Harris for any and all claims under the Contract.
It shall be the responsibility of Harris to ensure that all independent contractors and subcontractors comply with the same insurance requirements referenced herein. It will be the responsibility of Harris to obtain Certificates of Insurance from all independent contractors and subcontractors listing the City as an Additional Insured without the language "when required by written contract.;" provided, however, that hosting providers are not considered subcontractors for the purposes of this Agreement. If Harris, any independent contractors or any subcontractors maintain higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by Harris/independent consultant/subconsultant.

Harris may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employers' Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employers' Liability. When required by the insurer, or when Umbrella or Excess Liability is written on Non-Follow Form, the City shall be endorsed as an "Additional Insured."

The City by and through its Risk Management Department reserves the right, but is not obligated, to review, modify, reject, or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of the Contract. All insurance carriers must have an AM Best rating of at least A:VII or better.

A failure on the part of Harris to execute this Sixth Amendment and/or punctually deliver the required insurance certificates and endorsements may be cause for annulment of the award.

b. **Sovereign Immunity.** Nothing contained in the Contract shall be deemed or otherwise interpreted as waiving the City's sovereign immunity protections existing under the laws of the State of Florida, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

c. **Public Records.** Harris and any subcontractor, shall comply with § 119.0701, Fla. Stat. Harris and any subcontractors are to allow public access to all documents, papers, letters, or other material made or received by Harris in conjunction with the Contract, unless the records are exempt from Art. I, § 24(a), Fla. Const. and § 119.07(1)(a), Fla. Stat. (2013). Pursuant to § 119.10(2)(a), Fla. Stat., any person who willfully and knowingly violates any of the provisions of Ch. 119, Laws of Fla., commits a misdemeanor of the first degree, punishable as provided in § 775.082 and § 775.083 Fla. Stat. The City of Port St. Lucie is a public agency subject to Chapter 119, Florida Statutes. Harris shall comply with Florida's Public Records Law, and as may be amended from time to time. It is HARRIS'S RESPONSIBILITY FOR COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES. Pursuant to Section 119.0701, F.S. Harris agrees to comply with all public records laws, specifically to:

Keep and maintain public records required by the City in order to perform the service;

1. The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies.

2. During the term of the Contract, Harris shall maintain all books, reports, and records in accordance with generally accepted accounting practices and standards for records directly related to the Contract. The form of all records and reports shall be subject to the approval of the City.

3. Records include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the City. Harris's records under the Contract include but are not limited to, supplier/subconsultant invoices and contracts, project documents, meeting notes, emails, and all other documentation generated during the Contract.

4. Harris agrees to make available to the City, during normal business hours all books of account, reports, and records relating to this Contract

5. A contractor who fails to provide the public records to the City within a reasonable time may also be subject to penalties under Section 119.10, Florida Statutes.

Upon request from the City's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law,

Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if Harris does not transfer the records to the City.

Upon completion of the Contract, transfer, at no cost to the City, all public records in possession of Harris that are or may be subject to Public Records requests, or keep and maintain public records required by the City to perform the service. If Harris transfers all public records to the City upon completion of the Contract, Harris shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Harris keeps and maintains public records upon completion of the Contract, Harris shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

IF HARRIS HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO HARRIS'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

CITY CLERK
121 SW Port St. Lucie Blvd.
Port St. Lucie, FL 34984
(772) 871-5157
prr@cityofpsl.com

d. <u>Audits.</u> Harris shall establish and maintain a reasonable accounting system that enables the City to readily identify Harris's assets, expenses, costs of goods, and use of funds throughout the term of the Contract for a period of at least seven (7) years following the date of final payment or completion of any required audit, whichever is later. Records shall include, but are not limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement

supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; backcharge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Harris shall permit the City's authorized auditor or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and to make copies of all books, documents, papers, electronic or optically stored and created records, or other records relating or pertaining to the Contract kept by or under the control of Harris, including, but not limited to, those kept by Harris, its employees, agents, assigns, successors, and subcontractors. Such records shall be made available to the City during normal business hours at Harris's office or place of business. Harris shall not impose a charge for audit or examination of Harris's books and records. If an audit discloses incorrect billings or improprieties, the City reserves the right to charge Harris for the cost of the audit and appropriate reimbursement. Any adjustments and/or payments that must be made as a result of any such audit or inspection of Harris's invoices and/or records shall be made within a reasonable amount of time (not to exceed ninety (90) days) from presentation of the City's findings to Harris. Evidence of criminal conduct will be turned over to the proper authorities. Unless the City is itself subject to an audit, no such audit shall occur more than once in any twelve (12) month period.

Harris shall also ensure the City has these rights with Harris's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between Harris and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of Harris's obligations to the City.

e. <u>E-Verify.</u> In accordance with section 448.095, Florida Statutes, Harris agrees to comply with the statute, including:
   1. Harris must register with and use the E-Verify system to verify the work authorization status of all new employees of Harris. Harris must provide the City with sufficient proof of compliance with this provision before beginning work under the Contract.
   2. If Harris enters into a contract with a subcontractor, Harris must require each and every subcontractor to provide Harris with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Harris shall maintain a copy of each and every such affidavit(s) for the duration of the Contract and any renewals thereafter.

3. The City shall terminate the Contract if it has a good faith belief that a person or an entity with which it is contracting has knowingly violated section 448.09(1), Florida Statutes.
4. Harris shall immediately terminate any contract with any subcontractor if Harris has, or develops, a good faith belief that the subcontractor has violated section 448.09(1), Florida Statutes. If City has or develops a good faith belief that any subcontractor of Contractor knowingly violated section 448.09(1) or any provision of section 448.095, Florida Statutes, the City shall promptly notify Harris and order Harris to immediately terminate the Contract with the subcontractor.
5. The City shall terminate the Contract for violation of any provision in this section. If the Contract is terminated under this section, it is not a breach of contract and may not be considered as such. If the City terminates this Contract under this section, Harris may not be awarded a public contract for at least one (1) year after the date on which the Contract was terminated. A contractor is liable for any additional costs incurred by the City as a result of the termination of a contract.
6. The City, Harris, or any subcontractor may file a cause of action with a circuit or county court to challenge a termination under section 448.095(5)(c) no later than twenty (20) calendar days after the date on which the Contract was terminated. Such a cause of action must be filed in St. Lucie County, as otherwise provided herein.

f. <u>Venue.</u> Any action filed related to the Contract shall be in St. Lucie County, Florida.

g. <u>Survival.</u> The Additional Terms in this Section 6 shall survive the termination or expiration of this Sixth Amendment, regardless of how, why, or when the Sixth Amendment is terminated or if it naturally expires.

7. <u>Remaining Terms Unaffected.</u> All other terms and conditions of the Agreement shall remain in full force and effect.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have executed this Sixth Amendment as of the date first written above.

N. Harris Computer Corporation, a foreign profit corporation

By: _____

Printed: _____Blair Robinson_____

Title: _____Portfolio Leader_____

The City of Port St. Lucie, a Florida municipal corporation

By: _____

Printed: _____

Title: _____