

DATAREMOTE, INC. SERVICES AGREEMENT

This Agreement is made this _____ day of _____, 201_ by and between DataRemote, Inc. (the "Company", "We", "Us", "DataRemote") and the City of Clearwater (the "City", "Customer"), collectively the "Parties". Company agrees to provide, and City agrees to contract for, WBC Fleet Tracking and related services ("Solution") as per the City's RFP, subsequent Amendments and this Agreement for Customer.

WHEREAS, The City wishes to lease the Solution from DataRemote; and

WHEREAS, DataRemote has been selected to supply the Solution to the City per the terms of this Agreement and the RFP#38-16 and its Amendments;

NOW THEREFORE, the Parties agree as follows:

- I. **TERM.** The initial term of this contract shall be for a period of five (5) years from the issuance of a Purchase Order by the City or execution of this Agreement, whichever shall occur first.
- II. **EXTENSION.** At the end of the initial term of this contract, the City may initiate renewal(s) as provided herein for one (1) five (5) year renewal term at the City's option. The decision to renew a contract rests solely with the City. The City will give written notice of its intention to renew the contract no later than thirty (30) days prior to the expiration of the respective contract period.
- III. **TERMINATION.** The parties agree that either party may, under certain circumstances and with thirty (30) days-prior written notice, terminate the Solution. Cause for such termination shall include, but not be limited to, (a) breaches or violations of this Agreement, or DataRemote Terms of Service b) orders by law enforcement or other government agencies, (c) a request by the City, (d) discontinuance or material modification to the Solution, (e) illegal usage by either party, and/or (h) nonpayment of any fees owed by the City in connection with the Solution.
- IV. **ASSIGNMENT.** This Agreement may not be assigned either in whole or in part without first receiving the City's written consent. No granting of consent to any assignment will relieve DataRemote from any of its obligations and liabilities under the Agreement. However, the preceding restrictions shall not apply if Company merges or becomes acquired during the term of this Agreement, and newly formed or acquiring company continues to provide the Solution under the same terms. Any attempted assignment outside the provisions of this Section IV, either in whole or in part, without such consent will be null and void and in such event the City will have the right at its option to terminate the Agreement.
- V. **AMENDMENTS.** There will be no oral changes to this Agreement. This Agreement can only be modified in a writing signed by both parties. No charge for extra work or material will be allowed unless approved in writing, with a Change Order (Appendix B) in advance, by the City and DataRemote.
- VI. **SUSPENSION AND TERMINATION OF THE SOLUTION.** The Solution may also be terminated or suspended if the availability of communication Solution used by DataRemote ends (for example, as a result of the discontinuance of service by a cellular telecommunications carrier) or is interrupted (for

example, as a result of telephone/telecommunications network or internet congestion) or should any other circumstance arise or omission occur related to maintaining, repairing, or improving our network.

- VII. **PRICE.** Pricing shall be in accordance with Appendix A of this Agreement. Table 1 represents the individual components that may be used while Table 2 shows the configuration and respective pricing associated with those configurations.
- VIII. **SUPPORT.** DataRemote shall provide support for the Product and Solution during the term of this Agreement. Support may be handled remotely by phone and email if not provided on-site. Support shall include: (i) Hardware guidance and troubleshooting; (ii) Software support, specifically use of the WBC Fleet Service; (iii) configuration of the City's reports. While DataRemote will perform best-effort support, Customer acknowledges that issues related to Customer's: (i) computer skills; (ii) Internet connection; (iii) network; (iv) computer systems; and (v) cellular connection may cause Support Solution to be incomplete at no fault of DataRemote.
- IX. **TRAINING.** DataRemote will provide remote user training sessions for WBC Fleet during DataRemote normal business hours. The session will use a remote desktop session. An on-line user manual may be accessed by the customer at www.wbcfleet.com. Access to this manual may be distributed for training purposes to all Customer employees.
- X. **DATA RETENTION.** Reports and data created and stored by WBC Fleet is considered property of the Customer, including messages, statuses, GPS location, speed, heading, sensor and all other transmissions as relates to the tracking and messaging of the Customer's vehicle(s) or driver(s). DataRemote will store this data as required by Florida Statutes Chapter 119 and consistent with the City's record retention policy. Once Customer data is deleted, there is no possibility of recovery of the data. It is recommended that the Customer download and archive the data during the data retention period as needed.

In addition to all other contract requirements as provided by law, the Company executing this agreement agrees to comply with public records law.

IF THE COMPANY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, THE COMPANYS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT. CONTACT THE CUTODIAN OF PUBLIC RECORDS AT 727-562-4092, Rosemarie.Call@myclearwater.com, 112 S. Osceola Ave., Clearwater, FL 33756

The Company's agreement to comply with public records law applies specifically to:

- a) Keep and maintain public records required by the City of Clearwater (hereinafter "public agency") to perform the service being provided by the Company hereunder.
- b) Upon request from the public agency'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 for in Chapter 119, Florida Statutes, as may be amended from time to time, or as otherwise provided by law.

c) Ensure that the 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 the Company does not transfer the records to the public agency.

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

e) A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the Company of the request and the Company must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.

f) The Company hereby acknowledges and agrees that if the Company does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.

g) A Company who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes.

h) If a civil action is filed against a Company to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the Company the reasonable costs of enforcement, including reasonable attorney fees, if:

1. The court determines that the Company unlawfully refused to comply with the public records request within a reasonable time; and
2. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Company has not complied with the request, to the public agency and to the Company.

i) A notice complies with subparagraph (h)2. if it is sent to the public agency's custodian of public records and to the Company at the Company's address listed on its contract with the public agency or to the Company's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

j) A Company who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

- XI. **WARRANTY.** Your GPS hardware is covered by the lease warranty for the length of this Agreement. DataRemote will be responsible for the full cost of one technology upgrade. If a second technology upgrade is required DataRemote would pay up to fifty percent (50%) of the cost associated with such upgrade.
- XII. **DEFAULT.** A party will be in default if that party: Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects DataRemote's capability to perform under the Agreement; (ii) Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) calendar days; (iii) Conducts business in an unethical manner or in an illegal manner; or (iv) Fails to carry out any term, promise, or condition of the Agreement. The defaulting party will have thirty (30) days from receipt of the notice to cure the default; the thirty (30) day cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide notice of the default does not waive any rights under the Agreement.
- XIII. **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default: (i) The non-defaulting party may terminate the Agreement, and the termination will be effective upon thirty (30) days prior written notice. (ii) The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it. (iii) Neither party will be liable for incidental, special, or consequential damages.
- XIV. **LIMITATIONS OF THE SOLUTION.** The Solution uses the AT&T cellular network, as well as the global positioning system ("GPS") satellite network. The Solution may not always be available everywhere, particularly in remote areas, or at all times. The Solution may not work if your device is not installed by an authorized representative, or combined with equipment, services, apps, or software not expressly approved by us. Circumstances beyond our control that may prevent us from providing the Solution to you at any given time, such as damage to your vehicle in an accident, abuse or neglect of your device, terrain, buildings, bridges, tunnels, weather, the design of your vehicle, defects in your vehicle, localized "gaps" in cellular network coverage, cellular telephone network congestion, and interference with the satellite transmissions that help supply the telematics data used by us in providing the Solution.
- XV. **LOST OR STOLEN VEHICLES.** We are under no obligation to help you locate your vehicles or assets for the purpose of tracking or locating a person or recovering any vehicles, assets or the contents therein. As a courtesy, if your vehicle is lost or stolen, we can try to help you locate it, although we have no responsibility to do so, do not guarantee that it can or will be found, and do not guarantee the condition of your vehicle or the items that were in it should the vehicle be recovered.
- XVI. **INDEPENDENT CONTRACTOR.** It is expressly understood that the relationship of Company to the City will be that of an independent contractor. Company and all persons employed by Company,

either directly or indirectly, are Company's employees, not City employees. Accordingly, Company and Company's employees are not entitled to any benefits provided to City employees including, but not limited to, health benefits, enrollment in a retirement system, paid time off or other rights afforded City employees. Company employees will not be regarded as City employees or agents for any purpose, including the payment of unemployment or workers' compensation. If any Company employees or subcontractors assert a claim for wages or other employment benefits against the City, Company will defend, indemnify and hold harmless the City from all such claims

- XVII. **PAYMENTS.** All payments must be made in U.S. Dollars and shall be paid by the City according to the Florida Prompt Payment Act after the City has received an invoice for payment. Payment is due in full each payment period. All amounts due must be paid by the due date to avoid any late fees and possible deactivation of the Solution. We may, at our discretion, accept partial payments, which will be applied to the oldest outstanding charges on your account. If you are late in making any payments to us, we reserve the right to suspend or terminate your service, deactivate your Product immediately and report any late payment or non-payment to credit reporting agencies. You can dispute your account history or bill by contacting our Controller or Legal Department. Unless otherwise provided by law, you must still pay any disputed charges until the dispute is resolved.
- XVIII. **LATE FEE.** IF WE DO NOT RECEIVE PAYMENT IN FULL WHEN DUE, WE MAY, TO THE EXTENT PERMITTED BY FLORIDA LAW, CHARGE YOU THE LESSER OF A LATE FEE OF UP TO 1.5 PERCENT A MONTH (18 PERCENT ANNUALLY) AND THE MAXIMUM AMOUNT PERMITTED BY LAW, ON UNPAID BALANCES. WE MAY ALSO CHARGE YOU FOR ANY COLLECTION AGENCY FEES AND COSTS INCURRED IN COLLECTING. We reserve the right to waive any of these fees, in whole or in part, at our discretion. If we waive any fee or any other provisions of this Contract, we will not be deemed to have waived the fee or other contract provision for any other subscription or customer or as to any future occasion.
- XIX. **FORCE MAJEURE.** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected will within five (5) calendar days of the unforeseeable circumstance notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected must also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will delays caused by a force majeure extend beyond ninety (90) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.
- XX. **COOPERATIVE USE OF CONTRACT.** The City has entered into various cooperative purchasing agreements with other Florida government agencies, including the Tampa Bay Area Purchasing Cooperative. Under a Cooperative Purchasing Agreement, any contract may be extended for use by other municipalities, school districts and government agencies with the approval of DataRemote.

Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency. Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City is not responsible for any disputes arising out of transactions made by others.

- XXI. **NOTICES.** All notices to be given pursuant to this Agreement must be delivered to the Parties at their respective addresses. Notices may be (i) personally delivered; (ii) sent via certified or registered mail, postage prepaid; (iii) sent via overnight courier; or (iv) sent via facsimile or email. Receipt will be deemed effective upon confirmed delivery.

Notices shall be sent to:

To Company: c/o Legal, 17755 Homestead Ave, Miami, FL 33157

To the City: John Pittman, General Services Department, 1900 Grand Ave, Clearwater, FL 33765

- XXII. **GOVERNING LAW, VENUE.** This Agreement is governed by the laws of the State of Florida. The exclusive venue selected for any proceeding or suit in law or equity arising from or incident to this Agreement will be Pinellas County, Florida or in the United States District Court for the Middle District of Florida for the purposes of any suit, action or other proceeding arising out of this Agreement or the subject matter hereof brought by any party hereto; and hereby waive and agree not to assert as a defense or otherwise, in any such suit action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced by such court. Each party shall be responsible for their own attorneys' fees and costs.
- XXIII. **INDEMNIFICATION.** You agree to indemnify and hold DataRemote and its subsidiaries, affiliates, officers, agents, employees, partners and licensors harmless from any claim or demand, made by any third party due to or arising out of your use of the Solution, content you upload or otherwise make available through the Solution, or your violation of any of our terms of service or this Agreement. Nothing contained herein shall be construed as a waiver of any immunity from or limitation of liability the City is entitled to under the doctrine of sovereign immunity or section 768.28, Florida Statutes.
- XXIV. **SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision will be severed from this Agreement, which will otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.
- XXV. **SURVIVAL.** Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion,

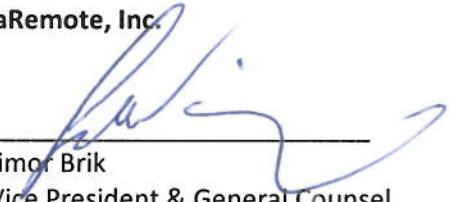
termination, or other expiration of this Agreement will not release any party from any liability or obligation arising prior to the date of termination.

- XXVI. **LIMITED LIABILITY.** DataRemote SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES, EVEN IF DataRemote HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. DataRemote is not responsible for any costs incurred as a result of the use of the Solution, including but not limited to, lost profits or revenue, loss of data, costs of recreating data, the cost of any substitute equipment or program, or claims by any third party.

AUTHORIZED SIGNATURE

IN WITNESS WHEREOF, DateRemote, Inc. and the City of Clearwater have caused this Agreement to be signed as of the Effective Date set forth above.

DataRemote, Inc.

By: 
Timor Brik
Vice President & General Counsel

City of Clearwater

By: _____
George N. Cretekos
Mayor

Attest:

By: _____
William B. Horne, II
City Manager

By: _____
Rosemarie Call
City Clerk

Approved as to form:

Camilo A. Soto
Assistant City Attorney

Table 1

APPENDIX A: PRICING – MATERIAL AND SERVICES (TABLES 1 &2)

Part Number	Product	CW Hardware Price	CW Monthly Price Per Unit
3	RFID Badge Reader	\$235.20	\$2.50
4	RFID Trash Bins	\$1,560.00	\$5.00
5	MDT-7	\$358.80	\$5.00
6	MDT BYOD	\$0.00	\$5.00
7	LMU-4230	\$99.99	\$13.00
8	CalAmp Vanguard	\$599.00	\$47.00
9	LMU-2630 w / power harness	\$69.68	\$13.00
10	Splice-in, 3-Wire Starter Disable Kit, with Relay	\$16.25	
11	Connectorized Accessory Harness, LMU-4200	\$6.60	
12	iButton Reader and Cable Assy	\$16.50	\$2.50
13	Buzzer and Cable Assy, 2 ft	\$15.93	
14	jPOD to J1939, Y Pass-through cable, 5 meters	\$37.20	
15	VPOD2vPod2, Ext OBDII Dongle (for 26xx/27xx/	\$33.00	
17	Installation	\$125.00	
18	Fuel Point integration	\$5,500.00	\$3.00
19	Maintenance	\$0.00	\$5.00

Table 2

Parts Used		HW and Install	HW, Install & Warranty	Monthly with Financing	Monthly Service	Total Monthly Price
4, 5, 8, 10, 11, 12, 13, 15, 17	(Trash Truck)	\$2,731.08	\$3,823.51	\$81.24	\$67.50	\$148.74
5, 8, 10, 11, 12, 13, 15, 17	Vehicles with GPS, MDT, iButton, and Fuel	\$1,171.08	\$1,639.51	\$34.83	\$62.50	\$97.33
9, 10, 12, 13, 15, 17	Vehicles with GPS, iButton, and Fuel	\$276.36	\$386.90	\$8.22	\$22.00	\$30.22
9, 10, 13, 15, 17	Vehicles with Fuel only	\$259.86	\$363.80	\$7.73	\$19.50	\$27.23
	Fuel Point integration	\$5,500.00				

APPENDIX B: CHANGE REQUEST FORM

Change Request Number: _____			
Clearwater Requestor:		DataRemote PO#:	
Title:		Date of Request:	
Nature of the Change Request:			
(Please list specific details explaining the Change):			
Change Priority:			
Attached Materials: (list of additional documents required for other sources – i.e. engineering drawings, Purchased Equipment order list, etc.)			
To be completed by the Project Manager:			
Impact of Change on the Project:			
Impact of Project Time and Scheduled Delivery Date:			
Impact on Pricing and Work Order(s):			
Notes or Additional Information:			