

**MASTER SERVICE AGREEMENT  
PIGGYBACK ADDENDUM**

THIS PIGGYBACK ADDENDUM (the "Addendum") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2017 (the "Effective Date") by and between RedSpeed USA Corporation, operating in Florida as RedSpeed Florida, LLC (the "Contractor") and the City of Coral Gables (the "City"). RedSpeed Florida, LLC and the City are each referred to individually herein as a "Party" and referred to collectively as the "Parties." The Parties hereto acknowledge, understand, and agree that the City of Coral Gables, Florida, Automated Traffic Law Enforcement System Agreement, by and between City of Coral Gables, Florida and RedSpeed Florida, LLC, is hereby piggybacked, in accordance with Section 2-978 of the City of Coral Gables' Municipal Code. The Automated Traffic Law Enforcement System Agreement, by and between City of Coral Gables, Florida and RedSpeed Florida, LLC shall be referred to herein as the "Piggyback Agreement". The Piggyback Agreement is hereby modified as follows:

1. The Contract being piggybacked is the Automated Traffic Law Enforcement System Agreement, by and between City of Coral Gables, Florida and RedSpeed Florida, LLC , effective \_\_\_\_\_ and continued for a period of six (6) years after the installation date, with two (2) consecutive and automatic, three (3) year renewal options following the expiration of the initial six (6) year term (the "Piggyback Agreement"). All prior agreements, understandings, and work orders between City of Coral Gables, Florida and RedSpeed Florida, LLC, are hereby nullified and superseded, and to the extent that the Piggyback Agreement is inconsistent with or contrary to this Addendum or any of the provisions contained herein, this Addendum shall govern and take precedence over such contrary terms.
2. Amount of Piggyback Agreement will not exceed contract amount set forth in Exhibit "B" of the Agreement.
3. The Piggyback Agreement consists of a primary contract, and four (4) exhibits referenced as follows:
  - a. Exhibit A: RedSpeed Scope of Work for City of Coral Gables, Florida
  - b. Exhibit B: RedSpeed Compensation for City of Coral Gables, Florida
  - c. Exhibit C: City of Aurora, Illinois, Executed Agreement for Red Light Camera System and Services/Traffic Law Enforcement System – Contract Number RFP# 15-32
  - d. Exhibit D: RedSpeed Proposal for City of Aurora, Illinois, Red Light Camera System and Services/Traffic Law Enforcement System – Contract Number RFP# 15-32
4. The below Indemnification and Hold Harmless provisions are hereby added to the Piggyback Agreement and said provisions shall replace and supersede any indemnification provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with provisions stated below. The Indemnification and Hold Harmless provisions shall state as follows:

**Indemnification and Hold Harmless**

To the fullest extent permitted by laws and regulations, the Contractor shall defend, indemnify, and hold harmless the City and its appointed and elected officials, attorneys, administrators, officers, consultants, agents, and employees from and against all claims, damages, losses, and expenses direct, indirect, or consequential (including but not limited to fees and charges of attorneys and other consultants and court and arbitration costs) arising out of or resulting from the performance of this Agreement and/or any defects in the equipment purchased under this Agreement and caused in whole or in part by any willful, intentional, reckless, or negligent act or omission of Contractor, any subconsultant or any person or organization directly or indirectly employed by any of them to perform or furnish any of the trucks and/or work specified in this Agreement or anyone for whose acts any of them may be liable. This provision shall survive termination of the Agreement.

In any and all claims against the City or any of its consultants, agents, or employees by any employee of Contractor, any subconsultant, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or equipment or anyone for whose acts any of them may be liable, the indemnification obligation under the above Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such subconsultant or other person or organization under workers' or workman's compensation acts, disability benefit acts, or other employee benefit acts. The parties expressly agree that this provision shall be construed broadly, and Contractor's obligations to pay for the City's legal defense hereunder shall arise and be fully enforceable when Contractor (or any subconsultant or any person or organization directly or indirectly employed by Contractor) is alleged to have acted willfully, intentionally, recklessly, or negligently in the performance of the work and/or manufacture of the equipment required under this Agreement. Any failure of Contractor to comply with the terms of this provision shall be deemed a material breach of this Agreement and may subject Contractor to debarment from consideration for future award of City contracts pursuant to Section 2-952(4) of the City of Coral Gables Code of Ordinances. Nothing in this Indemnification and Hold Harmless provision shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes, case law, or any other source of law.

The Indemnification and Hold Harmless provision shall include, but not be limited to, all of the following:

- a. Damages awarded to any person or party.
- b. Attorney's fees and costs incurred in defending such claims. The CITY may use the attorney or law firm of its choice in which event the CONTRACTOR will pay such firm the fees it charges the CITY, provided such fees are reasonable in light of the prevailing market rate for similar legal services. Such fees shall be deemed reasonable if they are no greater than the fees that CITY pays other counsel for representation in similar cases. If the City Attorney's Office provides the defense, CONTRACTOR will reimburse the CITY at the prevailing market rate for similar legal services.
- c. Attorney's fees and cost of any party that a court orders the CITY to pay.
- d. Lost time that results from the CITY or its officials or employees responding to discovery or testifying by deposition or in court. In this regard, for any time the CITY spends in responding to document requests or public records requests relating to such claims whether from CONTRACTOR or any other party, CONTRACTOR will reimburse CITY \$50.00 for each employee work hour spent reviewing or responding to such requests. For any time spent testifying in court or in depositions, or preparing for such testimony, CONTRACTOR will reimburse CITY on a per hour basis as follows:
  - Mayor or City Commissioner: \$300.00 per hour
  - City Manager: \$250.00 per hour
  - An Assistant City Manager or Department Director: \$250.00 per hour
  - An Assistant Department Director: \$100.00 per hour
  - City Attorney or Deputy City Attorney: Prevailing market rates
  - Other City employees: \$50.00 per hour
- e. The expenses incurred by CITY in complying with any administrative or court order that may arise from such claims.

- f. Miscellaneous expenses relating to such claims including expenses of hotels and transportation in trips relating to such claims.
  - g. Any other direct or indirect expense that CITY would not have incurred but for a claim that arises out of this agreement.
  - h. RedSpeed agrees that it has a duty to defend CITY and the automated traffic law enforcement system if CITY is sued in relation to the automated traffic law enforcement system. Notwithstanding any provision of the Piggyback Agreement or this Addendum to the contrary, in the event any claim, action or demand requires Contractor to defend the City and the automotive traffic law enforcement system as set forth in the foregoing sentence, the City shall give Contractor written notice of any such claim promptly after the City first becomes aware and Contractor shall have the right to choose counsel to defend such claim (subject to approval of such counsel by the City, which approval shall not be unreasonably withheld, conditioned or delayed). Any settlement must be agreed to by the City and Contractor. The City shall have the right to participate in the defense at its sole cost and expense.
  - i. Upon RedSpeed's receipt of a written request from CITY at least fourteen (14) calendar days in advance of a hearing, RedSpeed shall provide expert witnesses, that can meet the criteria for qualification under Florida and federal evidentiary law, for use by CITY in prosecuting Infractions, before CITY's hearing officer, or in any Court of competent jurisdiction, at no cost to CITY. This shall include, but not be limited to, any hearing at which CITY is required to demonstrate the validity of the program.
  - j. The Parties further agree that in the event a legal challenge to the Program is successful and damages are awarded against CITY and/or RedSpeed commensurate with the receipts received by each party, each party is responsible for the payment of its own receipts. By way of example, if CITY is sued, CITY would only be liable for the repayment of those receipts it has retained, while RedSpeed would be responsible for those which it retained.
5. The below Insurance provisions are hereby added to the Piggyback Agreement and said provisions shall replace and supersede any insurance provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with provisions stated below. The Insurance provisions shall state as follows:

**INSURANCE REQUIREMENTS**

**GENERAL CONDITIONS**

Pursuant to the City of Coral Gables Code, Section 2-1007, the Risk Management Division of the Human Resources Department has developed the following insurance requirements to protect the City of Coral Gables to the maximum extent feasible against any and all claims that could significantly affect the ability of the City to continue to fulfill its obligations and responsibilities to the taxpayers and the public.

Consequently, prior to commencing work, the Contractor shall procure, and provide the City with evidence of insurance coverage as required herein and name the City as an Additional Insured on a primary and non-contributory basis. The Contractor shall secure and maintain, at its own expense, and keep in effect during the full period of the contract a policy or policies of insurance, and must submit these documents to the Risk Management Division of Human Resources Department for review and approval.

**INSURER REQUIREMENTS**

The Contractor shall maintain, at its own cost and expense, the following types and amounts of insurance with insurers with rating of "A-" "VI" or better according to the A.M. Best rating guide as a minimum standard. The insurers providing coverage must be approved by the State of Florida and hold all of the required licenses in good standing to

conduct business within the State of Florida. In addition, they must be acceptable to the City of Coral Gables Risk Management Division and/or the City Attorney's Office.

#### **TYPE OF COVERAGE & LIMIT OF LIABILITY REQUIREMENT**

**Workers' Compensation and Employers Liability Insurance** covering all employees, subcontractors, and/or volunteers of the Contractor and/or Vendor engaged in the performance of the scope of work associated with this contract and/or agreement. The minimum limits of liability shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation insurance, with the following limits:

Workers' Compensation - Coverage A  
Statutory Limits (State of Florida or Federal Act)

Employers' Liability - Coverage B  
\$1,000,000 Limit - Each Accident  
\$1,000,000 Limit - Disease each Employee  
\$1,000,000 Limit - Disease Policy Limit

**Commercial General Liability Insurance** written on an occurrence basis including, but not limited to; Coverage for contractual liability, products and completed operations, personal & advertising injury, bodily injury and property damage liabilities with limits of liability no less than:

Each Occurrence Limit - \$1,000,000

Fire Damage Limit (Damage to rented premises) - \$100,000

Personal & Advertising Injury Limit - \$1,000,000

General Aggregate Limit - \$2,000,000

Products & Completed Operations Aggregate Limit - \$2,000,000

**Business Automobile Liability Insurance** covering all owned, non-owned and hired vehicles used in connectin with the performance of work under this Contract, with a combined single limit of liability for bodily injury and property damage of not less than:

Combined Single Limit (Each Accident) - \$1,000,000

Any Auto (Symbol 1)

Hired Autos (Symbol 8)

Non-Owned Autos (Symbol 9)

#### **MINIMUM COVERAGE FORM (SHALL BE AT LEAST AS BROAD AS):**

##### **Workers Compensation**

The standard form approved by the State of Jurisdiction

##### **Commercial General Liability**

ISO (Insurance Services Office, Inc.) Commercial General Liability coverage ("occurrence" Form CG 0001) or its equivalent. "Claims made" form is unacceptable except for professional or environmental liability coverage.

## **Commercial Auto Liability**

ISO (Insurance Services Office, Inc.) Commercial Auto Liability coverage (form CA 0001) or its equivalent.

### **REQUIRED ENDORSEMENTS**

**In addition to being stated on the Certificate of Insurance, the following endorsements with City approved language:**

Additional insured status provided on a primary & non-contributory basis (except for Workers Compensation Insurance)

Waiver of Subrogation for all required insurance coverages.

Notices of Cancellation/Non-renewal/Material Changes on any required insurance coverage must be sent directly to the City of Coral Gables by the Insurance Company. The City only requires the same statutory notice that an insurance company must provide to the insured, however this Notice may not be less than Thirty (30) Days, except a Ten (10) Day Notice of cancellation is acceptable for non-payment of premium.

Notices of Cancellation, Non-renewal or Material Change must be provided to the following address:

CITY OF CORAL GABLES  
INSURANCE COMPLIANCE  
P.O. Box 100085 – CE  
Duluth, GA 30096

**All policies shall contain a “severability of interest” or “cross liability” clause without obligation for premium payment of the City.**

### **HOW TO EVIDENCE COVERAGE TO THE CITY**

**The following documents must be provided to the City;**

A Certificate of Insurance containing the following information:

- Issued to entity contracting with the City
- Evidencing the appropriate Coverage
- Evidencing the required Limits of Liability required
- Evidencing that coverage is currently in force
- Language provided in the Special Provision Section of the Certificate of Insurance affirming that all endorsements required by the City have been endorsed to all of the policies.
- A copy of each endorsement that is required by the City

**All Certificates of Insurance must be signed by a person authorized by that insurer to bind or amend coverage on its behalf.**

**The City reserves the right to require a complete copy of any insurance policies required by the City. Should the City invoke this right, the policy must be provided directly to the City by the insurance agent or insurance company.**

**The city reserves the right to require additional insurance requirements at any time during the course of the agreement.**

## WAIVER OF INSURANCE REQUIREMENTS

Should a bidder not be able to comply with any insurance requirement, for any reason, the bidder must write a letter to the Risk Management Division on their letter head requesting that a waiver of a specific insurance requirement be granted. The requested waiver will be evaluated by the Risk Management Division. The Risk Management Division will approve or reject the requested waiver of insurance and will forward the waiver to the City Attorney's Office for further evaluation.

CONTRACTOR is encouraged to review their individual insurance needs with their insurance agents/brokers regularly to determine the adequacy of the coverage and the limits of liability that are being purchased. In certain circumstances, the City of Coral Gables will require additional insurance to respond to the hold harmless and indemnification clauses executed with the City of Coral Gables. Based on the nature of the work performed, the City of Coral Gables will determine what additional types of insurance and/or higher limits of liability that must be obtained.

All insurance documents evidencing insurance to City of Coral Gables – Insurance Compliance should be sent via email to [cityofcoralgables@ebix.com](mailto:cityofcoralgables@ebix.com) and copy to [druiz@coralgables.com](mailto:druiz@coralgables.com). Should you require assistance, contact the dedicated Call Service Lines for City of Coral Gables:

Call Service Lines - Insurance Compliance  
Phone: (951) 652-2883.  
Fax: (770) 325-0417  
Email: [cityofcoralgables@ebix.com](mailto:cityofcoralgables@ebix.com)

When submitting Professional, Contractor and/or Vendor evidence of insurance to the City of Coral Gables, the Certificate Holder section of the Certificate of Insurance should read as follows:

City of Coral Gables  
Insurance Compliance  
P.O. Box 100085 – CE  
Duluth, GA 30096

6. The below Notice provision is hereby added to the Piggyback Agreement and said provision shall replace and supersede any notice provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with the provision stated below. The Notice provision shall state as follows:

### Notice

All notices related to this Agreement and/or the Parties' performance of this Agreement must be in writing. Written notice, moreover, shall be deemed to have been duly served if delivered in person to the Contractor or the City, with a written receipt, or shall be deemed to have been duly given on the date said notice was mailed by United States Certified or Registered Mail, Return Receipt Requested, postage prepaid, and addressed as follows (or to such other address as any Party may specify by notice to all other Parties as aforesaid):

For City:  
City of Coral Gables  
City Manager  
City of Coral Gables  
405 Biltmore Way  
Coral Gables, FL 33134

For Contractor:  
Robert Liberman  
Manager  
RedSpeed Florida, LLC  
400 Eisenhower Lane North  
Lombard, IL 60148

cc: City Attorney

With a required copy to:  
Martin S. Korey  
Stone Pogrud & Korey LLC  
1 E. Wacker Drive, Suite 2610  
Chicago, IL 60601

7. The below Sovereign Immunity provisions are hereby added to the Piggyback Agreement and said provisions shall replace and supersede any sovereign immunity provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with the provisions stated below. The Sovereign Immunity provision shall state as follows:

#### **Sovereign Immunity**

The Contractor acknowledges that the Florida Doctrine of Sovereign Immunity bars all claims by Contractor against the City other than claims arising out of this Agreement. Specifically, the Contractor acknowledges that it cannot and will not assert any claims against the City, unless the claim is based upon a breach by the City of this Agreement. In addition, the City retains the full extent of its sovereign immunity in relation to the exercise of its regulatory authority. The Contractor acknowledges that it has no right and will not make claim based upon any of the following:

- (a) Claims based upon any alleged breach by the City of implied warranties or representations not specifically set forth in this Agreement, as the parties stipulate that there are no such implied warranties or representations of the City. All obligations of the City are only as set forth in this Agreement;
  - (b) Claims based upon negligence or any tort arising out of this Agreement;
  - (c) Claims upon alleged acts or inaction by any City Employee or Agent of the City; and
  - (d) Claims based upon an alleged waiver of any of the terms of this Agreement. The Contractor affirms that the provisions regarding notice to claims, and the requirement for a written change order cannot be waived and further, without timely notice of a claim or a written change order as required in this Agreement, the Contractor shall not be entitled to additional compensation or an extension of time. Such claims for additional compensation or extensions of the time are waived if the Contractor has not given all required notices and obtained a written a change order when required.
8. The below Waiver of Consequential Damages provision is hereby added to the Piggyback Agreement and said provision shall replace and supersede any waiver of consequential damages provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with the provision stated below. The Waiver of Consequential Damages provision shall state as follows:

#### **Waiver of Consequential Damages**

The Contractor waives claims against the City for consequential damages arising out of or related to this Agreement or its performance, including but not limited to, damages for lost income, profit, lost bonding capacity, financing, business and reputation, or for loss of management or labor productivity, damages incurred for principal office expenses, including the compensation of personnel stationed there, and for anticipated profit on any Work not performed by Contractor.

9. The below Termination provisions are hereby added to the Piggyback Agreement and said provisions shall replace and supersede any termination provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with the provisions stated below. The Termination provisions shall state as follows:

#### **Termination for Cause**

If the Contractor breaches the conditions and obligations imposed by this Agreement, or if it makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if it persistently or repeatedly refuses or fails, except in cases for which an extension of time is granted, to proper materials in accordance with this Agreement, or if it fails to make prompt payment to subcontractors or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of any provision of this Agreement, then the City may, without prejudice to any right or remedy and after giving the Contractor five (5) calendar days' written notice, terminate this Agreement and secure the Goods contemplated herein by whatever method the City deems expedient. In such case, if applicable, the Contractor shall not be entitled to receive any further payment until the City receives, through alternate means, the Goods contemplated herein. If the unpaid balance of the Contract Sum exceeds the costs of securing the Goods contemplated herein (which costs shall include expenses made necessary thereby and all other damages incurred by the City), such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall promptly pay the difference to the City. This provision shall in no way limit the City's right to claims for any additional damages, including but not limited to, liquidated damages, damages for defective or nonconforming Goods, and all damages and setoffs allowable to the City in accordance with this Agreement, for which the Contractor shall be liable. If, after notice of termination for cause, it is determined for any reason that the Contractor was not in default, the rights and obligations of the City and Contractor shall be the same as though the termination had been a Termination for Convenience, as set forth herein.

#### **Termination for Convenience**

The City may also terminate this Agreement for the City's convenience and without cause upon fourteen (14) calendar days' written notice to the Contractor; except where the Contractor anticipatorily repudiates the Agreement, the City may immediately, without prior notice, terminate this Agreement for the City's convenience and without cause. If the Contractor is terminated for convenience, the Contractor shall be paid for actual and documented expenditures for the Goods received and accepted by the City to the date of termination, less payments made and damages for any defective or non-conforming Goods, and less any amounts that the City is entitled to withhold pursuant to the terms of this Agreement and by law. The City shall not be liable to the Contractor for lost profits on any Goods not provided and accepted by the City, or any other type of consequential, special or indirect damages and Contractor hereby waives same. All costs must be fully supported by the Contractor's invoices and other documentation acceptable to the City, and shall be subject to the City's audit.

Either Party shall have the right to terminate this Agreement immediately by written notice to the other if (i) the Florida Statutes are amended to prohibit or substantially change the operation of automated traffic law enforcement systems, as defined in the Florida Vehicle Code; or (ii) any court having jurisdiction over the Municipality rules, or state or federal statute declares, the results from RedSpeed's automated traffic law enforcement systems are inadmissible in evidence; or (iii) the other Party commits any material breach of any of the provisions of this Agreement which breach is not remedied within thirty (30) calendar days after written notice from the Party setting forth in reasonable detail their reasons for the alleged breach; or (iv) if part or all of the instant agreement becomes invalid under federal, state, county or municipal law or regulation. For the purposes of this paragraph, the failure by RedSpeed to adhere to the instructions provided CITY in the administration of the Automated Traffic Law Enforcement system shall be considered a material breach.

The parties recognize and acknowledge that the Automated Traffic Law Enforcement system contemplated herein may be subject to legal challenge and/or judicial review. It is understood and acknowledged that various aspects of the program may be challenged. In the event that a legal challenge is successful and the program is found invalid, either Party may elect to terminate this instant agreement. In the event a court of competent jurisdiction

determines that the program, or a program substantially similar to CITY program is invalid, the Parties will consult with one another to determine whether any appellate relief is available, and if so, whether pursuing such relief is in the best interests of the Parties. The final determination as to whether appellate relief is sought to a higher tribunal shall be within the sole discretion of CITY.

#### **Termination by Contractor**

If the City fails to make payment to Contractor for a period of fourteen (14) days after delivery of the Goods requested in a valid Purchase Order, through no fault of the Contractor and the Invoice submitted in relation to the above described Purchase Order is submitted in accordance with the procedures outlined in this Agreement, then the Contractor may, after five (5) calendar days' written notice to the City, terminate this Agreement and recover from the City payment for the Purchase Order Amount outlined in the particular Purchase Order for which payment has not been made; however, such sum shall never exceed the Purchase Order Amount, less payments made, less the cost to replace any damaged, defective, or non-conforming Goods, and any setoffs to which the City is entitled to under this Agreement. This sum shall be Contractor's sole remedy under this Agreement.

10. The below Public Records provision is hereby added to the Piggyback Agreement and said provision shall replace and supersede any public records provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with the provision stated below. The Public Records provision shall state as follows:

#### **Public Records Law, Florida Statutes Chapter 119**

Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. Contractor acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the City in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the City for such disclosure and/or production. Contractor also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the City. Furthermore, Contractor agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated by reference herein.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-460-5210, [cityclerk@coralgables.com](mailto:cityclerk@coralgables.com), 405 Biltmore Way, First Floor, Coral Gables, FL 33134.**

11. The below Ownership of Documents provision is hereby added to the Piggyback Agreement and said provision shall replace and supersede any ownership of documents provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with the provision stated below. The Ownership of Documents provision shall state as follows:

#### **Ownership of Documents**

Any and all documents, records, disks, or other information shall become the property of the City for its use and/or distribution as may be deemed appropriate by the City.

12. The below Resolution of Disputes, Governing Law, and Venue provisions are hereby added to the Piggyback Agreement and said provisions shall replace and supersede any resolution of disputes, governing law, and venue provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with the provisions stated below. The Resolution of Disputes, Governing Law, and Venue provisions shall state as follows:

#### **Resolution of Disputes, Governing Law, and Venue**

Contractor understands and agrees that all claims by Contractor against the City based upon an alleged violation of the terms of this Agreement by the City shall be submitted for resolution in the following manner. Any claims by Contractor arising under this Agreement shall be submitted in writing, with all supporting documentation, to the City Manager as identified in the Notices Paragraph herein. Upon receipt of said notification City Manager or designee shall review the issues relative to the dispute or Claim, and issue a written finding within ninety (90) calendar days from the date of submission of the dispute or Claim consistent with Section 2-953 of the City of Coral Gables Code of Ordinances, unless City Manager or designee requires additional time to gather information or allow the parties to provide additional information. During the pendency of any dispute and after a determination thereof, the Contractor and the City shall act in good faith to mitigate any potential damages. The decision of City Manager shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not be supported by substantial evidence. A party may seek judicial relief pursuant to the Florida Rules of Appellate Procedure; however, the claimant shall not be entitled to such judicial relief if they have not followed the procedure outlined herein.

The Agreement shall be construed under and in accordance with the laws of the State of Florida. Any legal proceeding arising from this Agreement shall be brought only in a court of competent jurisdiction in Miami-Dade County, Florida.

**Attorneys' Fees** In connection with any litigation including appellate proceedings arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

13. The below Successors and Assigns provision is hereby added to the Piggyback Agreement and said provision shall replace and supersede any successors and assigns provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with the provision stated below. The Successors and Assigns provision shall state as follows:

#### **Successors and Assigns**

The City and the Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in this Agreement. Neither party to this Agreement shall assign the Agreement or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due to it hereunder, without the prior written consent of the City. Provided, however, that the City hereby acknowledges and agrees that delivery and performance of Contractor's rights pursuant to the Piggyback Agreement shall require a significant investment by Contractor, and that in order to finance such investment, Contractor may be required to enter into certain agreements or arrangements including, but not limited to, acknowledgments and/or consents with equipment lessors, banks, financial institutions or other similar persons or entities. The City hereby agrees that Contractor shall have the right to assign, pledge, hypothecate or otherwise transfer its rights to the equipment but not the service provided under the Piggyback Agreement, to any of the aforesaid financial institutions without the City's prior written approval. The City further acknowledges and agrees that in the event that Contractor provides any such acknowledgment or consent to City for execution, and in the event that the City fails to execute and deliver such acknowledgment or consent back to Contractor within twenty-one (21) calendar days after its receipt of such request from

Contractor to execute such acknowledgment or consent, the City shall be deemed to have consented to and approved such acknowledgment or consent and Contractor is granted a limited power of attorney, coupled with an interest, to execute the acknowledgment and/or consent on behalf of City and deliver such document to its financial institution.

14. The below Modification provision is hereby added to the Piggyback Agreement and said provision shall replace and supersede any modification provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with the provision stated below. The Modification provision shall state as follows:

#### **Modification**

No change or modification of this Agreement shall be valid unless in writing and signed by all Parties hereto. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced.

15. The below Rights and Remedies is hereby added to the Piggyback Agreement and said provision shall replace and supersede any rights and remedies provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with the provision stated below. The Rights and Remedies provision shall state as follows:

#### **Rights and Remedies**

The duties and obligations imposed by this Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

16. The below Severability and Waiver provision is hereby added to the Piggyback Agreement and said provision shall replace and supersede any severability and waiver provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with the provision stated below. The Severability and Waiver provision shall state as follows:

#### **Severability and Waiver**

The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

The below Waiver of Trial by Jury provision is hereby added to the Piggyback Agreement and said provision shall replace and supersede any waiver of trial by jury provisions that may be set forth in the Piggyback Agreement that may conflict with and/or be inconsistent with the provision stated below. The Waiver of Trial provision shall state as follows:

#### **WAIVER OF TRIAL BY JURY**

**THE PARTIES TO THIS AGREEMENT HEREBY AGREE TO EXHAUST ALL ADMINISTRATIVE REMEDIES BEFORE FILING A LAWSUIT IN CIVIL COURT TO RESOLVE THE DISPUTE. CITY AND CONTRACTOR HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON THE AGREEMENT, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THE CONSTRUCTION OF THE WORK, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY.**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first above written:

Approved as to insurance:

AS TO CITY:

\_\_\_\_\_  
David Ruiz  
Risk Management Division

\_\_\_\_\_  
Cathy Swanson-Rivenbark  
City Manager

Approved by Department Director  
or head of negotiations team as to  
the negotiated business terms:

ATTEST:

\_\_\_\_\_  
Edward J. Hudak, Jr.  
Chief of Police

\_\_\_\_\_  
Walter J. Foeman  
City Clerk

Approved as to compliance with applicable  
procurement requirements:

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

\_\_\_\_\_  
Diana Gomez  
Chief Procurement Officer

\_\_\_\_\_  
Craig E. Leen  
City Attorney

Approved as to funds appropriation:

\_\_\_\_\_  
Keith Kleiman  
Management & Budget

AS TO CONTRACTOR:

RedSpeed Florida LLC

By: \_\_\_\_\_  
Name: Robert Liberman  
Title: Manager

(SEAL)

(OR) WITNESSES (2):

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_