

**visionLive™ Subscription Services Agreement**  
**Vision Internet Providers**  
**Account Terms and Conditions**

These Terms and Conditions, and any addendum attached hereto, represents the complete agreement and understanding ("Agreement") between Vision Technology Solutions, LLC DBA Vision Internet Providers ("Contractor"), and CITY OF SMYRNA, Georgia (the "Client"), and supersedes any other written or oral agreement with regard to the Subscription Services provided for herein. Client and Contractor are sometimes individually referred to as "Party" and collectively as "Parties."

**1. Ongoing Service Provisions**

Pursuant to the terms herein, Contractor agrees to provide Hosting Services, Upgrade Services, and Support Services (collectively "Subscription Services") as provided below for the Client's website, which utilizes Contractor's Vision Content Management System ("VCMS") developed under a prior or concurrent agreement by and between Contractor and Client ("Website Development Agreement"). To the extent that the Website Development Agreement and/or any other prior agreement entered into by and between Contractor and Client conflicts with this Agreement, then the terms and conditions of this Agreement shall supersede, replace, and amend any and all conflicting provisions of such prior agreement. Contractor will provide Subscription Services to the Client in exchange for payment of fees and compliance with the terms and conditions of this Agreement. Subscription Services include the following:

(a) **Hosting Services**

Contractor will provide shared website hosting on a Microsoft Windows Server and shared database hosting on a Microsoft SQL Server for one (1) unique VCMS website.

(b) **Upgrade Services**

Contractor will provide Upgrade Services which include:

- Enhancements to the backend VCMS functionality.
- Enhancements to the Included Interactive Components that were developed under the Website Development Agreement or other prior agreement entered into by and between Contractor and Client.
- New Interactive Components released from time to time according to the visionLive™ Roadmap ("Roadmap").
- Bug fixes to the VCMS code.
- Updates to provide compatibility to future versions of Supported Web Browsers (as defined below) within three months of their release. Compatibility with previous versions of Supported Web Browsers is not guaranteed.

Client understands and agrees that Contractor will develop website frontend to be compatible with Internet Explorer 9, 10, and 11, and the latest released versions at the time of Completion of: Firefox, Chrome, and Safari. Website backend will be compatible with Internet Explorer 9, and 10, and 11, and the latest released version at the time of Completion of Firefox. Website may not be compatible with previous or future versions. Client understands and agrees that Supported Web Browsers for visionMobile™ currently are iOS Safari, Android Chrome, and Windows Phone 7 Internet Explorer. All

of the web browsers listed in this paragraph, and any others added by Contractor at its discretion are herein referred to collectively as the "Supported Web Browsers".

To receive the Upgrade Services, a non-interrupted Subscription Services Agreement must be in place from time of website launch and the VCMS code must be unmodified.

Upgrade Services do not include:

- Optional Interactive Components.
- Modules, Programs, or Software Applications.
- Conversion to new platforms.
- Modification of third-party products.
- Updates to provide compatibility to third-party products, except for those included in VCMS.
- Upgrades that require modification or customization to website design.
- System configuration, website content editing and/or formatting, website design, custom data updates, etc.

(c) **Support Services**

Support Services is defined as technical support for the unmodified VCMS. Contractor will provide Support Services to a designated Client account manager, system administrator or webmaster. Technical support is generally available by email and telephone from 6:00 AM to 6:00 PM Pacific Time Monday through Friday excluding holidays ("Business Hours"), with emergency support available 24 hours a day, 7 days a week. An emergency is defined as the website being down for more than ten (10) minutes.

(d) **Redesign Services**

At the conclusion of year four of an uninterrupted Subscription Services agreement, the Client will be entitled to a basic graphic redesign of one (1) website. Basic graphic redesign does not include Design Themes. Services shall include:

- Project Management
- Wireframe Development
- Graphic Design Development with one preliminary concept
- Graphic Production

Contractor will not develop a sitemap or new content as part of the redesign, but will assist the Client in transferring existing content into the new design.

**2. Fees**

Rate: \$6,600 per year payable to Contractor in U.S. funds in advance, which rate shall be increased by five percent (5%) per year, for each year of the Initial Term (defined below), and any and all renewal terms, as provided in Section 3 below. Contractor shall invoice Client annually within thirty days of start of service or any renewal term as defined below. Any services not covered in this Agreement will be subject to additional fees and will be considered extra work ("Extra Work"). Extra Work will be billed at Contractor's prevailing hourly rates, which are currently as follows: Content Migration, \$85/hr; Graphic Production \$95/hr; Quality Assurance, Testing, Debugging, Technical Support, Webmaster Services, HTML Programming, \$105/hr; Consulting, Project Management, Database Design, Dynamic Programming, \$135/hr; Graphic Design, Training, \$125/hr. Client shall be responsible for any or all additional fees including, without limitation: software, applications, online promotion, marketing, copy writing, redesign, change orders,

mailings, fees to any third party vendors if applicable, and websites exceeding 10GB of storage. Websites exceeding 10GB of storage shall be subject to a monthly fee of \$50 per 5GB increment. Maintenance work is considered Extra Work as defined herein. Calls outside of Business Hours not deemed an emergency as defined above will be subject to a minimum fee of \$135.

### **3. Term**

The Subscription Services will begin when the website is hosted on the production server and remain in effect for a period of four years thereafter (the "Initial Term"). With respect to the Initial Term, unless one party has given written notice to the other party of its intent not to renew this Agreement at least thirty (30) days prior to expiration of the Initial Term, this Agreement will continue in effect on a year-to-year basis thereafter until one party gives written notice to the other of its intent not to renew this Agreement at least thirty (30) days prior to the expiration of any renewal term. If the term of this Agreement is extended or renewed in accordance with the foregoing, all of the terms and conditions of this Agreement shall continue, unmodified, in full force and effect, until the end of the last applicable renewal or extension term, except that all rates, fees, charges, and compensation payable to Contractor hereunder shall be increased by five percent (5%) per year, for each annual renewal term extending the term hereof.

### **4. Subscription Services Website Usage**

(a) The Client shall use the Subscription Services in strict accordance with, but not limited to, all local, state, and federal laws. The Client shall not use the Subscription Services for any unlawful or destructive purpose including, but not limited to, copyright and/or trademark infringement. The Client hereby represents and warrants that any text, data, graphics, or any other material displayed or published by the Client on its Website is, and shall continue to be, throughout the term of this Agreement, free from violation of or infringement upon copyright, trademark, service mark, patent, trade secret, statutory, common law or proprietary or intellectual property rights of others, and is free from obscene or libelous material.

(b) The Client represents and warrants that it has or has obtained all rights necessary to display all the images, data, information or other items being displayed at the Client's Website. The Client expressly authorizes Contractor to display those images, data, information or other items.

(c) The Client shall not misuse any of Contractor's resources or cause any disruption to Contractor's business ("Misuse"). Examples of Misuse include, but are not limited to, the display of pornography or linking to pornographic material, the sending of chain letters, advertisements, solicitations, or mass mailings to individuals who have not agreed to be contacted in this manner (including, but not limited to, what is commonly referred to as "Spam").

(d) The Client shall not use any process, program or tool via Contractor for gaining unauthorized access to the accounts of other parties, including but not limited to, other Contractor clients, customers or account holders or other Contractor systems. The Client shall not use Subscription Services to make unauthorized attempts to access the systems and networks of others. Client shall not use Contractor's services as a door or signpost to another server.

(e) The Client shall not use Subscription Services in a manner in which system or network resources are denied to other Contractor clients, customers or account holders. This includes, but is not limited, to excessive memory usage and programs that consume excessive CPU resources.

(f) The Client will have password access to the VCMS through the Subscription Services.

The Client agrees to be responsible for keeping all passwords secure and will immediately notify Contractor if a password is lost, stolen or compromised in any way. The Client shall be responsible for all use of Subscription Services accessed through the Client's passwords. The Client's passwords are not transferable to any third party and are subject to any limits established by Contractor.

## 5. Disclaimers and Acknowledgments

### (a) The Internet

(i) The Client acknowledges that, when using the Internet, the Client is using a completely different physical network than the Contractor communications network and different content than available on Contractor. The reliability, availability and performance of resources accessed through the Internet are beyond Contractor's control and are not in any way warranted or supported by Contractor. The Client acknowledges that safeguards relative to copyright, ownership, decency, reliability and integrity of content may be entirely lacking with respect to the Internet and content accessible through it. Contractor makes no warranty that any systems accessed will be free of computer viruses. The Client is responsible for making backup copies of its files. The Client assumes all risk and liability of its use of the Internet.

(ii) The Client specifically acknowledges that Contractor provides access to other systems not controlled by Contractor including, but not limited to, discussion groups, RSS Feeds, websites and databases, that may contain pictures and language intended for adult audiences. The Client further understands that Contractor is not responsible for any damages that may result from exposure to such material and the Client shall hold Contractor harmless from any damages that may result.

(iii) Contractor does not warrant (a) any connection to, transmission over, nor results or use of, any network connection or facilities provided under this Agreement or (b) any third-party applications and software obtained by, for, or on behalf of Client. **CONTRACTOR MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS OF THE SUBSCRIPTION SERVICES FOR ANY PARTICULAR PURPOSE WHATSOEVER.** Contractor assumes no responsibility for any damages suffered by the Client, including, but not limited to, server down time, loss of data, loss of business, mis-deliveries, delays, non-deliveries, access speed, service interruptions of any kind, or to third-party applications and software used by Client. In no event, at any time, shall the aggregate liability of Contractor exceed the amount of fees paid by Client to Contractor and Contractor shall not be responsible for any lost profits or other damages, including direct, indirect, incidental, special, consequential or any other damages, however caused.

(iv) The Client acknowledges that the information available through the Internet may not be accurate. Contractor has no ability or authority over the material. In addition, Contractor has no liability for the quality, accuracy, or validity of the data/information delivered over the Internet. Use of information gathered through the use of Contractor services is at the risk of the Client.

### (b) Domain Name and Secure Digital Certificate

If agreed to under this Agreement, Contractor will apply for a custom domain name of the Client's choosing. Contractor cannot guarantee the availability of any particular name. Client is responsible for all fees charged by the registrar (i.e. Verisign or Dotster) including setup and renewal fees. Client shall be responsible for all licensing fees, if any, including but not limited to secure digital certificate renewal fees. Contractor shall not be responsible for maintaining or renewing domain names, digital certificates, or any other third party registrations.

## **6. Indemnification**

(a) Contractor will defend, hold harmless and indemnify Client from and against all liability costs and expenses including reasonable attorney fees resulting from claims of injury to person, damages to property, or monetary damages arising out of Contractor's intentional misconduct.

(b) The Client will defend, hold harmless and indemnify Contractor, its officers, directors, shareholders, employees and agents from and against all liability costs and expenses including reasonable attorney fees resulting from claims of injury to person, damages to property, or monetary damages arising out of the Client's intentional misconduct.

## **7. Defaults**

The occurrence of any one or more of the following shall constitute an Event of Default under this Agreement:

(a) Any Misuse of Contractor resources that disrupts Contractor's business.

(b) The Client's breach of any representation, warranty, term or provision of this Agreement.

## **8. Remedies**

(a) If Contractor discovers that the Client is displaying content that is in violation of any of the foregoing provisions, Contractor may discontinue or suspend access to the Client's Website without prior notice, until the violating item(s) have been resolved. However, the Client shall remain liable for all payments due under this Agreement as if access had not been interrupted;

(b) If an Event of Default occurs, Contractor may immediately discontinue or suspend access to the Client's Website without prior notice and may immediately terminate this Agreement. However, if access is only suspended, the Client shall remain liable for all payments due under this Agreement as if access had not been interrupted; and/or

(c) If an Event of Default occurs and remains uncured for at least ten (10) days after Contractor's delivery of written or email notice to Client, Contractor may immediately terminate Subscription Services and this Agreement.

## **9. Documents & Data; Licensing of Intellectual Property**

This Agreement creates a non-exclusive and perpetual license for Client to copy, use, or modify for its own use, any and all copyrights, designs, and other intellectual property embodied in this website, which are prepared or caused to be prepared by Contractor under this Agreement ("Documents & Data"), to which Contractor retains ownership of all intellectual property rights. Notwithstanding anything to the contrary in any of the agreement documents, Client understands and agrees that Contractor shall retain all right, title, and interest to the Vision Content Management System<sup>TM</sup> (also known as the Vision Internet Content Management System, VCMT, VCMS and the Vision Content Management Tool), and Dynamic and Interactive Components.

## **10. Other**

(a) The headings in this Agreement are intended solely for convenience and shall be given no effect in the construction or interpretation of this Agreement.

(b) The Client agrees that a failure to exercise or delay in exercising any right, power or privilege on the part of Contractor will not operate as a waiver or estoppel thereof.

(c) Neither the course of conduct between parties nor any trade practice shall act to modify the provisions of this Agreement except as expressly stated herein.

(d) This Agreement shall be governed by and construed in accordance with the laws of the United States of America, and the State of Georgia. Any cause of action of the Client with respect to the services provided hereunder must be instituted within one year after the claim or cause of action has arisen or be forever barred. Further, jurisdiction and venue for any cause of action or claim with respect to the services provided hereunder shall be exclusively in Cobb County.

(e) Except for any injunctive relief or similar remedy, which may be sought in any court of competent jurisdiction, any controversy, dispute, claim or counterclaim, whether it involves a disagreement about this Agreement or its meaning, interpretation, or application; the performance of the Agreement; questions of arbitrability as to subject matter of the dispute; whether an agreement to arbitrate exists and, if so, whether it covers the dispute(s) in question; or any other question of arbitrability or form of disagreement or conflict among the parties to the Agreement, shall be submitted to final and binding arbitration at the request of either party, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, or the comparable rules promulgated by ADR Services or JAMS in Cobb County, Georgia. Each party shall be responsible for one-half of the costs for the arbitrator(s) and arbitration.

(f) Should a dispute, including but not limited to any litigation or arbitration be commenced (including any proceedings in a bankruptcy court) between the parties hereto or their representatives concerning any provision of this Agreement, or the rights and duties of any person or entity hereunder, the party or parties prevailing shall be entitled to attorneys' fees, expenses of counsel and court costs incurred by reason of such action.

(g) With the intent to be legally bound, each of the undersigned hereby covenants and acknowledges that he, she or it (i) has read each of the terms set forth herein, (ii) has the authority to execute this Agreement for such person or entity, and (iii) expressly consents and agrees that the person or entity upon behalf of which the undersigned is acting shall be bound by all terms and conditions contained herein.

(h) The parties have each been advised to seek independent legal counsel in entering into this Agreement and the transactions described herein. In the event a party chooses not to seek independent legal counsel, that party does so freely and knowingly and waives any such rights to counsel. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party.

(i) Any delay in the performance by either Party hereto of its obligations hereunder shall be excused when such delay in performance is due to any cause or event of any nature whatsoever beyond the reasonable control of such Party, including, without limitation, any act of God; any fire, flood, or weather condition; any computer virus, worm, denial of service attack; any earthquake; any act of a public enemy, war, insurrection, riot, explosion or strike; provided, that written notice thereof must be given by such Party to the other Party within ten (10) days after occurrence of such cause or event.

(j) This Agreement, including any attachments, is the entire, complete, final and exclusive

expression of the parties with respect to the Subscription Services and supersedes all other agreements or understandings, whether oral or written, or entered into between Client and Contractor prior to the execution of this Agreement related thereto. No amendment to this Agreement shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

(k) It is understood and agreed that if any interpretation is to be made of this Agreement, the same shall not be construed for or against any of the Parties. If any provision of this Agreement is determined to be invalid, all other provisions shall remain in full force and effect.

(l) This Agreement may be executed in counterparts, each of which shall be an original and all of which together shall constitute one and the same Agreement. This Agreement becomes effective upon Contractor's receipt of an executed copy of this Agreement and receipt of any sums of money that are provided for herein.

(m) All notices under this Agreement shall be in writing and effective on the date of delivery if delivered by personal service, Federal Express, or facsimile; or effective three (3) days after deposit in first class U.S. mail, postage prepaid, to each party as follows:

(1) Client: City of Smyrna  
Address: 2800 King Street  
Smyrna, Ga 30080  
Attn: Jennifer Bennett, Community Relations Director  
Fax: \_\_\_\_\_

(2) Contractor:

2530 Wilshire Boulevard, 2nd Floor  
Santa Monica, California 90403  
Attn: Contract Administrator  
Cc: Rose De Vries  
Fax: (310) 656-3103

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth next to their signatures below.

CITYOF SMYRNA

DATE:\_\_\_\_\_ By: \_\_\_\_\_

Print Name\_\_\_\_\_ Print Title\_\_\_\_\_

VISION TECHNOLOGY SOLUTIONS, LLC  
DBA VISION INTERNET PROVIDERS

DATE:\_\_\_\_\_ By: \_\_\_\_\_

David M. Nachman, Chief Executive Officer



## **Exhibit A to Subscription Services Agreement**

Client and Contractor may have already entered into one or more separate agreements which specify (1) the inclusion of Included and/or Optional Interactive Components and Features and/or (2) browser compatibility, and/or (3) hosting provisions. To the extent that any prior agreement entered into by and between Contractor and Client conflicts with this Agreement, then the terms and conditions of this Agreement shall supersede, replace, and amend any and all conflicting provisions of such prior agreement.

### **1. Included Interactive Components and Features**

The following are the initial Included Interactive Components and Features provided in Client's project, subject to upgrades and revisions based on Contractor's then current Included Interactive Components listed on the Roadmap. Additional options may be available and can be added for an additional fee:

#### **SITE ADMINISTRATION AND SECURITY**

- |   |   |
|---|---|
| • Audit Trail Log                                 | • Flexible Site Variable Settings       |
| • Backend Content Title Search                    | • Image Library                         |
| • Backend Dashboard                               | • Page Template Library                 |
| • Broken Link Reporter                            | • Personal Toolbar                      |
| • Content Review and Publishing                   | • Role-Based Security                   |
| • Component Manager                               | • Scheduled Content Review              |
| • Content Scheduling                              | • SiteMaster™ Template Builder          |
| • Context Sensitive Online Help                   | • Submission Validation (reCAPTCHA)     |
| • Departmental Page Restrictions                  | • Recycle Bin                           |
| • Document Central                                | • Updated and Expired Content Reporting |
| • Drag and Drop Multiple File and Image Uploading | • Web Traffic Statistics                |
| • Email Address Masking                           | • Widget-based Layout Options           |
| • Enhanced User Interface                         | • Workspace                             |

#### **CONTENT EDITING**

- |                           |                   |
|---------------------------|-------------------|
| • Advanced WYSIWYG Editor | • Table Wizard    |
| • Search and Replace      | • Undo/Redo       |
| • Spell Checker           | • User Commenting |
| • Style Gallery           | • Version Control |

#### **ADVANCED NAVIGATION MANAGEMENT**

- |                                       |                            |
|---------------------------------------|----------------------------|
| • Automatic Breadcrumbs               | • Navigation Control       |
| • Connected Pages                     | • Navigation Redirect      |
| • Content Categories                  | • Page Linking             |
| • Dynamic Drop Down Menus             | • Quick Links              |
| • Error 404 (Page Not Found) Handling | • Single-Source Publishing |
| • External Link Splash Page           | • Site Search (Google CSE) |

- Friendly URL Redirect

- Sitemap Generator

## USER EXPERIENCE AND INTERACTIVITY

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>• Business Directory</li> <li>• Business Submissions</li> <li>• Community Spotlight</li> <li>• Dynamic Calendar System</li> <li>• Dynamic Homepage</li> <li>• Event Registrations</li> <li>• Event Submissions</li> <li>• Facilities Directory</li> <li>• Facilities Reservations</li> <li>• Feedback Form</li> <li>• Form Builder</li> <li>• Frequently Asked Questions</li> </ul> | <ul style="list-style-type: none"> <li>• In-page Content Editing</li> <li>• Job Application Manager</li> <li>• Job Posts</li> <li>• News</li> <li>• Online Polls</li> <li>• RFP Posts</li> <li>• Rotating Homepage Banners</li> <li>• Service Directory</li> <li>• Single Sign On</li> <li>• Staff Directory</li> <li>• Sticky News</li> <li>• Weather Update</li> </ul> |
|--|--|

## DEPARTMENT MANAGEMENT

- Department-Level Administration
- Department-Level Navigation
- Department-Level Sitemap

## OUTREACH, MEDIA, AND SOCIAL NETWORKING

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>• Audio and Video Embedding</li> <li>• Bookmark and Share</li> <li>• eNotification</li> <li>• Emergency Alert (site wide)</li> <li>• Facebook FeedReader™</li> <li>• Forward to a Friend</li> </ul> | <ul style="list-style-type: none"> <li>• govTrack CRM™</li> <li>• OneClick Social Networking™</li> <li>• Photo Gallery &amp; Slideshow</li> <li>• RSS FeedReader™</li> <li>• Twitter FeedReader™</li> </ul> |
|--|---|

## ACCESSIBILITY

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>• Automatic Alt-Tags</li> <li>• Dynamic Font Resizing</li> <li>• Dynamic Reader Download Links</li> </ul> | <ul style="list-style-type: none"> <li>• Google Translation Integration</li> <li>• Printer Friendly Pages</li> <li>• Table Accessibility Tools</li> </ul> |
|--|---|

## ADDITIONAL INTERACTIVE COMPONENTS AND FEATURES

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>• Approval Cycle</li> </ul> | <ul style="list-style-type: none"> <li>• Responsive Design</li> </ul> |
|--|---|

## 2. Customizations

The following are customizations provided in Client's project: None.