

**NOTICE OF A REGULAR MEETING  
OF THE GOVERNING BODY  
OF THE CITY OF MIDLOTHIAN, TEXAS  
Tuesday, January 24, 2012**

Pursuant to the provisions of Chapter 551 VTCA Government Code, notice is hereby given of a Regular Meeting of the Midlothian City Council, to be held in the Council Chambers of City Hall, 104 West Avenue E, Midlothian, Texas

**REGULAR AGENDA – 6:00 P.M.**

Call to Order, Invocation and Pledge of Allegiance

- 2012-17 Announcements/Presentations
- a. Community Affairs calendar
  - b. Proclamation recognizing Southern Star Christmas Celebration organizers
  - c. Administer Oaths to Police and Fire Department personnel
  - d. Administrative announcements related to personnel

**CONSENT AGENDA**

*All matters listed under Consent Agenda are considered to be routine by the City Council and will be enacted by one motion without separate discussion. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.*

- 2012-18 Consider and act upon minutes from City Council meeting of January 10, 2012
- 2012-19 Consider and act upon approval of a new three-year agreement between the City and Intermedix Technologies, Inc. for ambulance billing and related professional services.

**WORKSHOP**

- 2012-20 Conduct a workshop to review a major update to the Parks, Recreation and Open Space Master Plan, a supplement to the City of Midlothian Comprehensive Plan. This plan will help to guide the development of the City of Midlothian's park system and recreation programs

**PUBLIC HEARINGS**

- 2012-21 Conduct a public hearing to consider and act upon an ordinance for a Specific Use Permit (SUP), to allow an electronic message sign for the following elementary schools: T.E. Baxter Elementary – 1050 Park Place Boulevard, J.A. Vitovsky Elementary – 333 Church Street and Mt. Peak Elementary – 5201 FM 663 (Case No. SUP02-2011-09)

**REGULAR AGENDA**

- 2012-22 Citizens to be heard
- 2012-23 Consider and act upon authorizing Amendment No. Six to the agreement for Construction Manager at Risk Services for Water Treatment Plant No. 2 with Garney Companies, Inc. to award the remaining Bid Set One packages and all of the Bid Set Two packages in a total amount not to exceed \$12,595,708

- 2012-24 Consider and act upon an ordinance establishing requirements for the placement of mailboxes within public rights-of-way in the City of Midlothian, attached hereto as Exhibit “A”; providing that this ordinance shall be cumulative of all ordinances; providing for a severability clause; providing for a penalty that any violation of the terms of this Ordinance is declared to be a misdemeanor, and any person found to be guilty thereof shall be punishable by a fine not to exceed one thousand dollars (\$1,000), and each day that such violation continues shall constitute a separate offense and shall be punishable accordingly; and providing for an effective date
- 2012-25 Consider and act upon adopting the City of Midlothian Purchasing Policy and Procedures Manual
- 2012-26 Consider and act upon adopting the City of Midlothian Debt Management Policy
- 2012-27 Consider and act upon adopting the City of Midlothian Financial Policies

### **EXECUTIVE SESSION**

*Executive Session items are discussed in closed session but any and all action is taken in regular open session. Executive Session is not open to the public because there is a compelling need of confidentiality (e.g., certain real estate, litigation, or personnel matters).*

1. Section 551.071 Legal: Consultation with attorney regarding City of Midlothian v. Randall Denton, MidTexas International Center, Inc., Texas Properties Trust and Trade Zone Operations, Inc.
2. Section 551.071 Legal: Consultation with attorney regarding Cause No. 3-07-CV-1351-N, Texas Central Business Lines Corporation v. City of Midlothian
3. Section 551.087 Deliberation regarding economic development negotiations
4. Section 551.074 Personnel Matters: (a)(1) to deliberate the appointment, employment or duties of an Economic Development Executive Director for the City of Midlothian
5. Section 551.072 Real Estate: Deliberate and consider the acquisition of real property necessary for roadway and parks improvement projects
6. Section 551.072 Real Estate: Deliberation regarding real property - to deliberate the purchase, exchange, lease or value of real property

As authorized by Section 551.071(2) of the Texas Government Code, this meeting may be convened into closed Executive Session for the purpose of seeking confidential legal advice from the City Attorney on any agenda item listed herein.

### **REGULAR AGENDA**

- 2012-28 Action resulting from Executive Session, Item #1: Randall Denton, et al
- 2012-29 Action resulting from Executive Session, Item #2: Texas Central Business Lines
- 2012-30 Action resulting from Executive Session, Item #3: Economic Development
- 2012-31 Action resulting from Executive Session, Item #4: Personnel – Economic Development Executive Director
- 2012-32 Action resulting from Executive Session, Item #5: Real Estate
- 2012-33 Action resulting from Executive Session, Item #6: Real Estate
- 2012-34 Action resulting from Executive Session related to Section 551.071(2)
- 2012-35 Adjourn

I, Tammy Varner, Deputy City Secretary of the City of Midlothian, Texas, do hereby certify that this Notice of Meeting was posted on the front window of City Hall, 104 West Avenue E, Midlothian, Texas, at a place readily accessible to the general public at all times, no later than the 20th day of January, 2012 at or before 5:00 p.m.

  
Tammy Varner, Deputy City Secretary

**This facility is wheelchair accessible and accessible parking spaces are available.  
Requests for reasonable accommodations must be made 48 hours prior to this meeting.  
Please contact the City Secretary at 775-3481 for further information.**



## AGENDA ITEM 2012-18

**AGENDA CAPTION:**

Consider and act upon minutes from City Council meeting of January 10, 2012

**ITEM SUMMARY/BACKGROUND:**

Minutes from the January 10 Council meeting are submitted for approval or correction

**SPECIAL CONSIDERATION:**

N/A

**FINANCIAL IMPACT/FUNDING SOURCE:**

N/A

**ATTACHMENTS:**

Minutes from Regular Council meeting of January 10, 2012

**ALTERNATIVES:**


Approve or correct

**RECOMMENDATION:**

Approve as submitted

**SUBMITTED AND TO BE PRESENTED BY:**

Lou Jameson, City Secretary, for the January 24, 2012 City Council Meeting

  
\_\_\_\_\_  
City Secretary

**REVIEWED BY:**

  
\_\_\_\_\_  
Tammy Varner, Deputy City Secretary

**APPROVED BY:**

  
\_\_\_\_\_  
Don Hastings, City Manager

**MINUTES  
REGULAR COUNCIL MEETING  
JANUARY 10, 2012**

The City Council of the City of Midlothian convened in a Regular Meeting in the Council Chambers of City Hall, 104 West Avenue E, with the meeting open to the public and notice of said meeting posted as prescribed by V.T.C.A., Government Code, Chapter 551, with the following members present to-wit:

Vacant	§	Mayor
Wayne Sibley	§	Councilmember Place 1
Bill Houston	§	Councilmember Place 2
Jason Kyle	§	Councilmember Place 3
Joe Frizzell	§	Mayor Pro Tem Place 4
Hank Miller	§	Councilmember Place 5

*Absent: Councilmember Massey – work related*

**REGULAR AGENDA – 6:00 P.M.**

Mayor pro tem Frizzell called the meeting to order at 6:00 p.m. with notice of the meeting duly posted and a quorum present. Councilmember Sibley gave the invocation and led in the pledges.

**2012-01 ANNOUNCEMENTS/PRESENTATIONS**

**a. Community Affairs calendar**

Christmas tree recycling available through Ellis County Precinct 4 Barn through January 13; video tour of MidWay Airport available on City website; tickets available to annual Chamber Awards Dinner.

**b. Administrative announcements related to personnel**

None were received.

**CONSENT AGENDA**

**2012-02 CONSIDER AND ACT UPON MINUTES FROM CITY COUNCIL MEETING OF DECEMBER 13, 2011**

**2012-03 CONSIDER AND ACT UPON A RESOLUTION ADOPTING ETHICAL AND TRAINING STANDARDS FOR JUVENILE CASE MANAGERS EMPLOYED BY THE CITY OF MIDLOTHIAN, PROVIDING FOR THE IMPLEMENTATION OF SAID STANDARDS, AND PROVIDING FOR PERIODIC REVIEW TO ENSURE IMPLEMENTATION OF THE REQUISITE STANDARDS**

**2012-04 CONSIDER AND ACT UPON A FACILITIES JOINT USE INTERLOCAL CONTRACT WITH THE MIDLOTHIAN INDEPENDENT SCHOOL DISTRICT, FOR THE USE OF A TRACT OF LAND. THE DESIGNATED PARCEL OF LAND IS CURRENTLY OWNED BY THE MIDLOTHIAN INDEPENDENT SCHOOL DISTRICT AND SHALL BE USED AS AN ATHLETIC PRACTICE FIELD BY THE CITY OF MIDLOTHIAN. PROPERTY IS LOCATED WEST OF SOUTH 14<sup>TH</sup> STREET AND NORTH OF DON FLOYD DRIVE, IN THE CITY OF MIDLOTHIAN**

Councilmember Sibley moved to approve the Consent Agenda as presented. Motion was seconded by Councilmember Houston and carried unanimously (5-0).

**REGULAR AGENDA**

**2012-05 CITIZENS TO BE HEARD**

None were received.

**2012-06 CONSIDER AND ACT UPON AN ORDINANCE REPEALING ORDINANCE NO.'S 66-158, 78-418, 81-507, 83-591, 88-17, 89-07, 89-08, 89-09, 89-10, 89-12, 91-13, 93-07, 98-27, 98-34, 98-65, 98-69, 99-28, 99-29, 99-30, 99-31, 2004-22, 2007-24, 2008-51, 2009-18, 2009-19 AND 2009-20 AND ESTABLISHING NEW SPEED ZONES FOR VEHICLES UNDER THE PROVISIONS OF TRANSPORTATION CODE, SECTION 545.356 AS IDENTIFIED IN THE "TABLE OF SPEED ZONES FOR CITY STREETS"; POSTINGS SHALL SET MAXIMUM SPEEDS; AUTHORIZING ERECTION OF APPROPRIATE SIGNS; PROVIDING FOR A CUMULATIVE EFFECT; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR A PENALTY THAT ANY PERSON VIOLATING ANY OF THE PROVISIONS OF THIS ORDINANCE SHALL BE DEEMED GUILTY OF A MISDEMEANOR AND UPON CONVICTION THEREOF SHALL BE FINED IN ANY AMOUNT NOT TO EXCEED TWO HUNDRED DOLLARS (\$200.00), AND EACH OCCURRENCE THAT SUCH VIOLATION CONTINUES SHALL CONSTITUTE A SEPARATE OFFENSE AND SHALL BE PUNISHABLE ACCORDINGLY; PROVIDING FOR A SEVERABILITY CLAUSE; AND SETTING AN EFFECTIVE DATE**

Mike Adams presented the housekeeping item designed to consolidate all speed control ordinances into one ordinance in a table format to simplify research. The Item was presented to the Transportation Subcommittee in November and was recommended for Council action

Councilmember Miller moved to approve Item 2012-06 with an amendment to include a definition of prima facie. Motion was seconded by Councilmember Sibley and carried unanimously (5-0).

*Council moved to Executive Session at 6:12 p.m. for the purpose of discussing Items 1, 3, and 5, with the following present: Mayor pro tem Frizzell, Councilmembers Sibley, Houston, Kyle, Miller, Massey; City Manager, City Attorney, City Engineer, Alberto Mares*

<b>EXECUTIVE SESSION</b>
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1. **SECTION 551.071 LEGAL: CONSULTATION WITH ATTORNEY REGARDING CITY OF MIDLOTHIAN V. RANDALL DENTON, MIDTEXAS INTERNATIONAL CENTER, INC., TEXAS PROPERTIES TRUST AND TRADE ZONE OPERATIONS, INC.**
2. **SECTION 551.071 LEGAL: CONSULTATION WITH ATTORNEY REGARDING CAUSE NO. 3-07-CV-1351-N, TEXAS CENTRAL BUSINESS LINES CORPORATION V. CITY OF MIDLOTHIAN**
3. **SECTION 551.071 LEGAL: CONSULTATION WITH ATTORNEY REGARDING CONTEMPLATED LITIGATION**
4. **SECTION 551.087 DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS**
5. **SECTION 551.071 LEGAL: CONSULTATION WITH ATTORNEY REGARDING CAUSE NO. 74,681; CITY OF MIDLOTHIAN V. CORGAN ASSOCIATES, ET AL**
6. **SECTION 551.074 PERSONNEL MATTERS: (A)(1) TO DELIBERATE THE APPOINTMENT, EMPLOYMENT OR DUTIES OF AN ECONOMIC DEVELOPMENT EXECUTIVE DIRECTOR FOR THE CITY OF MIDLOTHIAN**
7. **SECTION 551.072 REAL ESTATE: DELIBERATE AND CONSIDER THE ACQUISITION OF REAL PROPERTY NECESSARY FOR ROADWAY AND PARKS IMPROVEMENT PROJECTS**

**8. SECTION 551.072 REAL ESTATE: DELIBERATION REGARDING REAL PROPERTY - TO DELIBERATE THE PURCHASE, EXCHANGE, LEASE OR VALUE OF REAL PROPERTY**

**AS AUTHORIZED BY SECTION 551.071(2) OF THE TEXAS GOVERNMENT CODE, THIS MEETING MAY BE CONVENED INTO CLOSED EXECUTIVE SESSION FOR THE PURPOSE OF SEEKING CONFIDENTIAL LEGAL ADVICE FROM THE CITY ATTORNEY ON ANY AGENDA ITEM LISTED HEREIN**

*Council reconvened in Regular Session at 7:52 p.m. with no action taken in Executive Session.*

**REGULAR AGENDA**

**2012-07 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #1: RANDALL DENTON, ET AL**

Mike Adams, Alberto Mares, and attorney Terry Morgan were present for the discussion; no action was taken following Executive Session.

**2012-08 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #2: TEXAS CENTRAL BUSINESS LINES**

The Item was not discussed in Executive Session nor was action taken.

**2012-09 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #3: CONTEMPLATED LITIGATION**

Mike Adams was present for the discussion; no action was taken following Executive Session.

**2012-10 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #4: ECONOMIC DEVELOPMENT**

The Item was not discussed in Executive Session nor was action taken.

**2012-11 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #5: CORGAN**  
Kent Davenport was present for the discussion. Councilmember Kyle moved to approve the compromise settlement agreement releasing Cause No. 74,681 City of Midlothian and Corporation for Community Development vs. Corgan Associates vs. Haws and Tingle, et al, and authorize staff to execute all necessary documents. Motion was seconded by Councilmember Sibley and carried unanimously (5-0).

**2012-12 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #6: PERSONNEL – ECONOMIC DEVELOPMENT EXECUTIVE DIRECTOR**

The Item was not discussed in Executive Session nor was action taken.

**2012-13 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #7: REAL ESTATE**

The Item was not discussed in Executive Session nor was action taken.

**2012-14 ACTION RESULTING FROM EXECUTIVE SESSION, ITEM #8: REAL ESTATE**

The Item was not discussed in Executive Session nor was action taken.

**2012-15 ACTION RESULTING FROM EXECUTIVE SESSION RELATED TO SECTION 551.071(2)**

The Item was not discussed in Executive Session nor was action taken.

**2012-16 ADJOURN**

With no further business to discuss, Mayor pro tem Frizzell adjourned the meeting at 7:53 p.m.

ATTEST:

\_\_\_\_\_  
Joe Frizzell, Mayor pro tem

\_\_\_\_\_  
Lou Jameson, City Secretary



## AGENDA ITEM 2012-19

**AGENDA CAPTION:**

Consider and act upon approval of a new three-year agreement between the City and Intermedix Technologies, Inc. for ambulance billing and related professional services.

**ITEM SUMMARY/BACKGROUND:**

It is time to renew our ambulance billing contract with Intermedix. There are no substantial changes from the previous contract. They will continue to charge 12% of the monies collected as their fee for services rendered, plus an additional 1.7% for their enhanced mobile data-entry service. Mobile data-entry service provides the ability for our personnel to enter patient information in the field and up to four (4) Panasonic Toughbooks provided by Intermedix at no additional cost to us. Intermedix also services and upgrades the Toughbooks at no additional charge.

**SPECIAL CONSIDERATION:**

This contract term is three-years with subsequent automatic annual renewals, and can be terminated by either party with a 90-day written notice.

**FINANCIAL IMPACT/FUNDING SOURCE:**

No Change.

**ATTACHMENTS:**

1. Intermedix Agreement with Exhibits A, B, and C
2. City Attorney approval

**ALTERNATIVES:**

Approve, amend, table, deny

**RECOMMENDATION:**

Staff recommends approval as presented.

**SUBMITTED BY and TO BE PRESENTED BY:**

A handwritten signature in blue ink that reads "D. Schrodtt".

David Schrodtt, Fire Chief

For the January 24, 2012 Council meeting

**REVIEWED BY:**A handwritten signature in blue ink that reads "Chris Dick".  
Chris Dick, Finance Director



  
\_\_\_\_\_  
Tammy Varner, Deputy City Secretary

**APPROVED BY:**

  
\_\_\_\_\_  
Don Hastings, City Manager

**AGREEMENT BETWEEN  
CITY OF MIDLOTHIAN, TEXAS  
AND  
INTERMEDIIX TECHNOLOGIES, INC.  
FOR RESCUE AMBULANCE BILLING & RELATED PROFESSIONAL SERVICES.**

THIS AGREEMENT, hereinafter "AGREEMENT", made and entered into this 1<sup>st</sup> day of January, 2012 by and between the CITY OF MIDLOTHIAN, a Texas municipality, with principal offices located at 104 W. Avenue E, Midlothian, TX 76065 hereinafter referred to as the "CITY", and Intermedix Technologies, Inc., a Delaware Corporation with principal offices located at 6451 North Federal Highway, Suite 1002, Fort Lauderdale, Florida 33308, hereinafter referred to as the "CONTRACTOR".

WITNESSETH:

WHEREAS, the CITY is requesting the CONTRACTOR to provide the required services;  
and

WHEREAS, the parties hereto now wish to enter into an agreement, pursuant to which the CONTRACTOR will render those professional services in connection with said project as hereinafter provided;

NOW THEREFORE, the parties hereto agree as follows:

**1. DEFINITION OF PROJECT.** During the term of this contract, CONTRACTOR shall be exclusively responsible for the billing and collection of all charges and fees relating to the services provided by CONTRACTOR pursuant to Section 2, including but not limited to private insurance, Medicare, Medicaid, and other governmental programs.

**2. SCOPE OF SERVICES.** The CONTRACTOR shall perform and carry out the work as defined in "EXHIBIT A – Scope of Work", which is attached hereto. All payments shall be paid directly to CITY or via Locked-Box facility as directed by the PROVIDER.

**3. TIME OF PERFORMANCE.** This AGREEMENT shall be effective for a three-year period from January 1, 2012, through December 31, 2014, under the terms and conditions contained herein unless otherwise terminated. This AGREEMENT shall renew automatically for a period of one additional year at the end of the initial term and any subsequent renewal term unless the AGREEMENT is terminated in accordance with section "12. TERMINATION". All terms and conditions hereof shall remain in full force and effect during any renewal term.

**4. COMPENSATION AND METHOD OF PAYMENT.**

**4.01** The CITY reserves the right to request changes in the services within the general scope of the AGREEMENT to be performed upon mutual agreement by the CITY and CONTRACTOR that shall specify the change ordered and the adjustment of time and compensation required therefore.

**4.02** Any services added to the scope of this AGREEMENT by a change order shall be executed in compliance with all other applicable conditions of this AGREEMENT. No claim for

additional compensation or extension of time shall be recognized unless contained in the duly executed change order.

**4.03** The CONTRACTOR shall be paid by the CITY a monthly amount representing fees for the services provided computed as:

**4.03(a)** Twelve percent (12.00%) of all monies collected by CONTRACTOR, plus

**4.03(b)** One and seven-tenths percent (1.7%) of all monies collected by CONTRACTOR for use of CONTRACTOR provided field data capturing and reporting system while in possession of up to and including four (4) Pen-based "Toughbook" type units, Field Automation Software, Administrative Reporting System, including training and support (referred heretofore as "TripTix® Mobile").

**4.03(c)** CITY is aware that for an optional amount of one dollar \$1.00 per NPP Notice, CONTRACTOR has the ability to provide patient required HIPAA-compliant Privacy Notice. CONTRACTOR reserves the right to increase these fees if postage is increased by the United States Postal Service, but only to cover additional postage costs.

**4.04** CONTRACTOR shall submit the monthly invoices representing fees for the services provided to City of Midlothian, 104 W. Avenue E, Midlothian, TX 76065. The CITY shall issue a check for the amount invoiced less any disputed amounts, within thirty (30) days of receipt and acceptance of an accurate invoice. CITY's obligations hereunder are absolute and unconditional and not subject to set-off, delay, counterclaim, termination or performance. CONTRACTOR will resolve any disputed amounts within 60 days from the date CITY gives notification of a dispute.

**4.05** The CITY shall bear the cost of any and all Lock-box services. CITY, should they elect to participate in any credit card acceptance program, agrees to assume and be responsible for all costs associated with such program. All other costs incurred by CONTRACTOR in the performance of services as specified herein (including, but not limited to postage, materials, communications and phone costs and other operating costs) shall be assumed by the CONTRACTOR.

## **5. DATA MANAGEMENT; DATA ENTRY; ADDITIONAL RECORDS ON WEB ACCESS SYSTEM**

**5.01 Web Access System.** CONTRACTOR will grant to CITY electronic access to all records on file regarding CITY including, but not limited to, medical records, billing records, correspondence regarding accounts, and records on personnel including credentials. It shall be the responsibility of CITY to provide its own necessary computer equipment, computer communication equipment capable of connecting to the Internet and accessing CONTRACTOR's Internet server (hereinafter referred to as "TripTix® Web") except for any equipment specifically provided by CONTRACTOR under Section 4.03(b).

**5.02 TripTix® Web System Training.** Upon request of CITY, CONTRACTOR will provide an annual, on-site training class on the use of the TripTix® Web System at a time determined to be mutually convenient to the parties.

**5.03 Limitation of Access to TripTix® Web System.** Access to data in the TripTix® Web System regarding CITY shall be limited to the employees, representatives and agents of CONTRACTOR and the authorized personnel of CITY. A complete and signed access form for

each of CITY's personnel authorized to access the TripTix® Web System must be submitted to and approved by CONTRACTOR. CONTRACTOR shall use its best efforts to maintain the security of the TripTix® Web System, but shall not be responsible for negligence with respect to password security related to CITY's personnel or other breaches beyond CONTRACTOR's reasonable control.

**5.04 Data Entry Devices.** CITY and CONTRACTOR understand and agree that CONTRACTOR may make available data entry devices (hand-held devices, tablet pc's and/or other data entry devices for the collection and/or transmission of medical information). CITY understands and acknowledges that any of the aforementioned data entry devices provided by CONTRACTOR will be subject to an additional fee to be negotiated at the time the devices are to be deployed to the CITY. Also, in connection with the potential provision of such devices, CITY agrees:

(a) CITY will be responsible for the loss or damage to such devices. CITY agrees to pay (i) the cost of repairs of any such device provided to it or (ii), if the device is irreparable, lost or stolen, for the replacement cost of the device. CONTRACTOR agrees that CITY may obtain insurance for such payments provided that CONTRACTOR is named as a beneficiary under such plan.

(b) CITY may be required to enter into additional agreements with the makers of third-party medical devices (monitors, scanners, EKG machines, etc.) with respect to the transmission of information between the medical device and the data entry device. CITY understands and agrees that CONTRACTOR will not be able to provide data entry devices unless and until agreements are entered into with the third-party manufacturers of such medical devices. CITY understands and agrees that its failure to enter into or reach agreements with such third-parties (and any and all consequences of such failure) shall not be deemed to be a default of CONTRACTOR under this AGREEMENT or any other arrangement between CITY and CONTRACTOR. CITY further understands and agrees that the failure to enter into such agreements with these third parties may hinder CITY's use of certain software features that might otherwise be available to it (for instance, a direct data connection between a medical device and the data entry device).

(c) CITY may be required to obtain new or different medical or other equipment capable of communicating with the data entry devices. CITY understands and agrees that such new or different medical or other equipment must be obtained at CITY's sole cost and expense.

(d) CITY may request CONTRACTOR to support additional medical or other devices. CITY understands and agrees that the costs of developing an interface may be significant and may involve the payment of royalties to the third-party manufacturers of the device. CITY further understands and agrees that CONTRACTOR has no obligation to undertake the development of interfaces with additional medical or other devices.

**5.05 Statistical Reporting.** Statistical and financial data reports will be available on the Web Access System at all times that the Web Access System is available. The format and content of the statistical data will be established and defined by CONTRACTOR and such reports may be added, modified or deleted without notice to CITY. Notwithstanding the foregoing, CITY may request specific, custom reports to be available to it at an additional charge to be negotiated between CONTRACTOR and CITY.

**5.06 Acknowledgement with Respect to Reports.** With respect to each report generated by the Web Access System, CITY acknowledges and agrees:

(a) Each report represents a “snapshot” of a moment in time, and, as such, the snapshot may not be accurate with respect to financial results on the whole.

(b) The underlying data may be subject to correction from time-to-time, which may change the results of the report or its interpretation.

(c) The data represented in the report represents only a limited portion of all data available regarding the CITY’s business.

CITY thus further acknowledges and agrees that any particular report may not accurately represent the CITY’s then-current or future financial condition.

**6. INDEPENDENT CONTRACTORS.** The CONTRACTOR is an independent contractor and not an employee or agent of the CITY with the following exception:

To the extent necessary to fulfill its billing and collection efforts under the AGREEMENT, the CONTRACTOR is authorized to sign *in an administrative capacity* for the CITY the following types of standard forms and correspondences only: probate filings; letters to patients or their representatives verifying that an account is paid in full; forms verifying the tax-exempt status of the CITY; and insurance filings and related forms. The CONTRACTOR has no authority to sign any document that imposes any additional liability on the CITY.

The CONTRACTOR shall retain full control over the employment, direction, compensation and discharge of all persons assisting in the performance of service by CONTRACTOR. The CONTRACTOR shall be fully responsible for all matters relating to payment of employees, including compliance with Social Security, withholding tax and all other laws and regulations governing such matters. The CONTRACTOR shall be responsible for its own acts and those of its agents and employees during the term of this AGREEMENT.

**7. INDEMNIFICATION.** The CONTRACTOR shall indemnify and hold the CITY harmless from any and all claims, damages, losses and expenses, including but not limited to reasonable attorney fees, arising out of or resulting from CONTRACTOR’s performance, but only to the extent caused by the willful misconduct or the negligent acts or omissions of CONTRACTOR its employees, agents, representatives, consultants, or its SUBCONTRACTORS.

**8. INSURANCE.** CONTRACTOR shall procure and maintain for the duration of the AGREEMENT, the following insurance coverage:

- 1) Workers’ Compensation Insurance in compliance with the applicable state and federal laws
- 2) General Liability insurance in an amount no less than \$1,000,000 per occurrence.
- 3) Coverage for business interruption, destruction of data processing equipment and media, liabilities affecting accounts receivable, contracts and independent contractors and, valuable documents in an amount no less than \$100,000 aggregate;
- 4) Liability coverage for all vehicles whether owned, hired or used in the amount of \$500,000; and

The policies are to contain, or be endorsed to contain, the following provisions:

a. General Liability and Automobile Liability Coverage

1. The CITY, its officers, officials, employees and volunteers are to be covered as additional insured as respects; liability arising out of activities performed by or on behalf of the Contractor, including the insured general supervision of the

CONTRACTOR; products and completed operations of the CONTRACTOR; premises owned, occupied or used by the CONTRACTOR; or automobiles owned, leased, hired or borrowed by the CONTRACTOR. The coverage shall contain no special limitations on the scope of protections afforded the CITY, its officers, officials, employees or volunteers.

2. The CONTRACTOR's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees and volunteers. Any insurance of self-insurance maintained by the CITY, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. Contractor hereby waives subrogation rights for loss or damage against the CITY.

3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.

4. The Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Companies issuing the insurance policy, or policies, shall have no recourse against the CITY for payment of premiums or assessments for any deductibles with are all at the sole responsibility and risk of Contractor.

b. All Coverage

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the CITY.

Contractor shall furnish the CITY with certificates of insurance and with original endorsements effecting coverage required by this clause if requested. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the CITY before work commences. The CITY reserves the right to require complete, certified copies of all required insurance policies at any time.

## 9. CONFIDENTIALITY.

**9.01** The terms and conditions of this AGREEMENT are confidential and neither party shall release any of the terms hereof to any third party without the prior written consent of the other party, except to the extent necessary to comply with law, the valid order of a court of competent jurisdiction, or the valid order or requirement of a governmental agency. Notwithstanding the foregoing, either party may, without the prior written consent of the other party, disclose the existence of a contractual relationship between the parties.

**9.02 *Intellectual Property.*** CITY agrees that the equipment, computer hardware and software, billing and collection processing, and other related systems and equipment are the property and trade secrets of CONTRACTOR, and that CITY will not release any information regarding such trade secrets to any third party without the prior written consent of CONTRACTOR. CITY further agrees that, in connection with the use of certain data entry devices, CITY may gain access to the intellectual property of third parties. CITY understands and agrees that it may be required to enter into agreements with respect to such intellectual property in order to use such equipment. CITY agrees to enter into such arrangements at CONTRACTOR's request.

**10. OWNERSHIP OF DOCUMENTS.** CONTRACTOR shall be required to work in harmony with other consultants relative to providing information requested in a timely manner and in the specified form. The CONTRACTOR agrees that any and all documents, records, disks, and electronic data produced in the performance of this AGREEMENT shall be the sole property of the CITY, including all rights therein of whatever kind except as may otherwise be provided hereinafter.

**11. ATTACHMENTS.** The following named attachments are made an integral part of this AGREEMENT:

- A. Scope of Work (**Exhibit A** attached hereto and made a part hereof)
- B. Business Associate Agreement (**Exhibit B** attached hereto and made a part hereof)
- C. Addendum to Service Agreement – TripTix® Mobile Program (**Exhibit C** attached hereto and made a part hereof)

**12. TERMINATION.** During the time of this AGREEMENT the CITY or CONTRACTOR may terminate this AGREEMENT either for convenience or for default after first giving to the other party ninety (90) days written notice.

For cases of default, the CONTRACTOR shall be given opportunity to cure the default within the allotted period following such written notice. In the event the acts constituting default are a violation of law, CONTRACTOR shall be subject to immediate termination of AGREEMENT.

Upon termination for any cause, the CONTRACTOR shall submit an invoice(s) to the CITY in an amount(s) representing fees for services actually performed or obligations incurred to the date of effective termination for which the CONTRACTOR has not been previously compensated. Upon payment of all sums found due, the CITY shall be under no further obligation to the CONTRACTOR, financial or otherwise.

For purposes of this section, the notice period begins when the CONTRACTOR receives written notice from the CITY.

**13. UNCONTROLLABLE FORCES.** Neither the CITY nor CONTRACTOR shall be considered to be in default of this AGREEMENT if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term “Uncontrollable Forces” shall mean any event which results in the prevention or delay of performance by a party of its obligations under this AGREEMENT and which is beyond the reasonable control of the non-performing party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, terrorism and governmental actions.

Neither party shall, however, be excused from performance if non-performance is due to forces that are preventable, removable, or remediable nor which the non-performing party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The non-performing party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this AGREEMENT.

**14. JURISDICTION, VENUE and ARBITRATION.** All questions pertaining to the validity and interpretations of this AGREEMENT shall be determined in accordance with the laws of Texas. Any legal action by either party against the other concerning this AGREEMENT shall be filed in Ellis County, Texas which shall be deemed proper jurisdiction and venue for the action.

**15. REPRESENTATIONS.** CITY and CONTRACTOR agree that this AGREEMENT constitutes a legal, valid and binding obligation for each party, enforceable against such party in accordance with its terms (subject always to applicable bankruptcy, insolvency, receivership and other similar laws relating to or affecting the enforcement of creditor's rights generally and to general principles of equity). Further, CONTRACTOR and CITY warrant and represent to each other:

that each (i) is duly formed and organized and validly existing under the laws of the jurisdiction of its formation, (ii) is properly qualified to do business and is in good standing under the laws of each jurisdiction in which it does business, (iii) has all necessary corporate or similar power and authority to execute and deliver this AGREEMENT and to consummate the transaction contemplated hereby; and

that this AGREEMENT, its execution and the fulfillment and compliance with the terms and conditions hereof, do not violate or conflict with any provision of or result in any breach of or default under any (i) organizational documents of each party, (ii) law or judicial, award, or similar decree, or (iii) agreement, to which CITY or CONTRACTOR, for CONTRACTOR's representations and warranties, or CITY, for CITY's representations and warranties, are bound.

**16. EXPORT LAWS.** CITY shall comply with all then current export laws and regulations of the U.S. Government and the government of the country in which CITY receives delivery of the Licensed Software which pertain to the Licensed Software.

**17. ASSIGNMENT OF AGREEMENT.** Except to a parent, subsidiary, or affiliate, the CONTRACTOR shall not sell, transfer, assign or otherwise dispose of this AGREEMENT or any part thereof or work provided therein, or of its right, title or interest therein, unless otherwise provided in the AGREEMENT, without express prior written consent by the CITY.

**18. NOTICES.** Any notice given or required to be given under this AGREEMENT shall be in writing and shall be addressed to the Parties hereto at the addresses set out below. Any such notices shall be deemed to have been given (i) if mailed, then three (3) Days following the date such notice is placed in the United States mail in a postage paid wrapper, registered or certified with return receipt requested, addressed to the appropriate Party at the address set forth below for such Party, or to the last address provided in writing to the other Party by the addressee, or (ii) if by any other method, when actually received. Either Party may change its address for the purpose of this AGREEMENT by notice in writing to the other Party in accordance herewith.



To the **CITY**:

City of Midlothian  
ATTN: Fire Chief  
104 W. Avenue E  
Midlothian, TX 76065

To the **CONTRACTOR**:

Brad Williams  
Vice President, Finance  
Advanced Data Processing, Inc.  
6451 North Federal Highway, Suite 1002  
Fort Lauderdale, Florida 33308

**19. SEVERABILITY.** Should any part, term or provision of this AGREEMENT be by the courts decided to be illegal or in conflict with any law of Texas, the validity of the remaining portions or provisions shall not be affected.

**20. ENTIRE AGREEMENT.** This AGREEMENT contains the entire agreement between the parties. The CONTRACTOR represents that in entering into this AGREEMENT it has not relied on any previous oral and/or implied representations, inducements or understandings of any kind or nature.

***[signature pages to follow]***

**IN WITNESS OF THE FOREGOING**, the CITY has caused this AGREEMENT to be signed by its CITY Administrator, attested by the CITY Clerk with the corporate seal of CLIENT NAME, and the CONTRACTOR has executed this Agreement effective as of the date set forth above.

ATTEST:

**City of Midlothian**

BY: \_\_\_\_\_  
City Secretary

By: \_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

**CONTRACTOR**  
**Intermedix Technologies, Inc.**  
**A Delaware Corporation**

\_\_\_\_\_  
**DOUG SHAMON,**  
**PRESIDENT**

(CORPORATE SEAL)

**STATE OF FLORIDA**  
**BROWARD COUNTY**

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared **Doug Shamon, as President of Intermedix Technologies, Inc.**, a Delaware corporation, and acknowledged execution of the foregoing **AGREEMENT** for the use and purposes mentioned in it and that the instrument is the act and deed of the **Contractor**.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at \_\_\_\_\_ in the State and County aforesaid on \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public, State of Florida

My Commission expires:

\_\_\_\_\_

## **Exhibit A**

### **Scope of Services**

**CONTRACTOR shall provide complete medical billing and accounts receivable management services for CITY's ambulance services in accordance with the responsibilities outlined below.**

***CONTRACTOR's Responsibilities:***

CONTRACTOR will provide timely and accurate billing services for emergency medical treatment and transport services utilizing information provided by CITY and information obtained from other reliable sources.

All services will be provided as stated below. The following is a summary of these responsibilities:

1. Provide billing and accounts receivable management services to CITY as required on a case-by-case basis.
2. Ensure that all required documentation and agreements with payors (e.g. Medicare, Medicaid, Champus, etc.) are filed and maintained and that the CITY is kept apprised of important changes to industry regulations.
3. Ensure knowledge of different industry insurance plans and will ensure that every billable claim is pursued.
4. Provide reasonably necessary training periodically, as requested by CITY, to CITY's Emergency Medical personnel regarding the gathering of the necessary information and proper completion of run tickets.
5. Provide prompt submission of Medicare, Medicaid and insurance claims after receiving completed run ticket and corresponding insurance claim information. Secondary insurance claims shall be submitted after the primary insurance payor has paid.
6. Provide follow-up on rejected and inactive claims.
7. Utilize most up-to-date knowledge and information with regard to coding requirements and standards, to ensure compliance with applicable Federal, State and local regulations.
8. Reconcile the number of transports processed with those received
9. Provide a designated liaison for patient/payor concerns.
10. Provide all customer-related inquiry services and prepare additional third-party claims or patient payment arrangements based on this information exchange.
11. Provide a toll free telephone number for patients to be answered as designated by the CITY.

12. Facilitate proper security of confidential information and proper shredding of all disposed materials containing such information.
13. Establish arrangements with hospitals to obtain/verify patient insurance and contact information.
14. Respond to any CITY or patient inquiry or questions promptly
15. Maintain appropriate accounting procedures for reconciling all deposits, receivables, billings, patient accounts, adjustments and refunds.
16. Provide access to CITY for all requested information in order for CITY to perform appropriate and periodic audits. Reasonable notice will be given to CONTRACTOR for any planned audit and will be conducted during normal business hours of CONTRACTOR
17. Provide timely comprehensive reports facilitating all required aspects of monitoring, evaluating, auditing and managing the services provided. Process refund requests and provide the CITY with documentation substantiating each refund requested.
18. Provide CITY all unpaid invoices along with the complete processing history once collection efforts are exhausted.

#### Specific Scope Compliance

The CONTRACTOR will provide the specific services:

19. Assign billing patient numbers providing cross-reference to the CITY'S assigned transport numbers.
20. Utilize internal proprietary and/or external commercially available resources to identify patients and locate potential insurer information in accordance with law and generally acceptable business practices.
21. Provide accurate coding of medical claims.
22. Make recommendations for fee schedule changes and regularly advise on changes in statutes and industry regulations.
23. Respond to all patients' requests and inquiries, either written or verbal.
24. Accounts will be processed within the following guidelines unless express written permission advising otherwise is received from the CITY by the CONTRACTOR:
  - a. Retain all accounts for a minimum of twelve (12) months (unless otherwise specified by mutual agreement) and after (12) months turn over accounts for which no collection has been made (unless insurance payment is pending).
  - b. CITY grants to CONTRACTOR the express ability to settle an account for no less than 70% of the billed amount, and to effect any negotiations necessary to accomplish this tasking. Offers of less than 70% require express written consent of the CITY.

- c. CONTRACTOR may establish payment plans for patients unable to pay the amount due in full, provided no payment plan exceeds 12 monthly payments in term and the total amount to be paid is no less than 70% of the total billed amount.
  - d. If reasonable efforts have been made to collect an account and such efforts have not been successful, CONTRACTOR shall have the right to terminate collection efforts and close the account as unpaid debt. As used herein, "reasonable efforts" shall be as outlined in paragraph "24-a" immediately above. CONTRACTOR shall notify CITY on a mutually agreeable recurring basis of the accounts that CONTRACTOR deems uncollectable pursuant to this section, and shall forward rosters of the collection efforts for those accounts if requested.
  - e. Uncollectable accounts shall either be returned to the CITY for additional collections activity actions, or referred to the CONTRACTOR's sub-contracted collections agency for collections activity. Accounts referred to the CONTRACTOR's sub-contracted collections agency will incur a 20% fee on any amount collected through the sub-contracted collections agency, and not subject to the provisions of Section 4.03(a) and/or Section 4.03(b) as applicable.
25. Provide for facilities to permit real-time read only electronic look-up access by CITY to CONTRACTOR'S system to obtain patient data and billing information.
26. Maintain records in an electronic format that is readily accessible by the CITY personnel and that meets all federal and state requirements for maintaining patient medical records.
27. Maintain daily deposit control sheets and original documentation
28. Create, implement and comply with a Compliance Plan consistent with the intent and activities included in the U.S. Office of Inspector General (OIG) Compliance Program Guidance for Third Party Medical Billing Companies 63 FR 70138; (December 18, 1998).
29. Provide reporting of trauma data required by the Texas Department of State Health Services (TDSHS) with connectivity/interface in a format reasonably required by the State.

***CITY's Responsibilities:***

- 1. CITY will provide CONTRACTOR with patient encounter information on a timely basis and in sufficient detail to support diagnosis and procedure coding. CITY will also provide patient demographic information necessary for accurate patient identification including name, address, social security number, date of birth, and telephone number. Where possible, CITY will obtain and provide CONTRACTOR with patient health insurance, auto insurance, or other insurance information.
- 2. CITY will provide CONTRACTOR with necessary documents required by third parties to allow for the electronic filing of claims by CONTRACTOR on CITY's behalf.
- 3. CITY will provide CONTRACTOR with its approved billing policies and procedures including fee schedules and collection protocols. CITY will be responsible for engaging

any third party collection service for uncollectible accounts after CONTRACTOR has exhausted its collection efforts in accordance with .

4. CITY will timely process refunds identified by CONTRACTOR for account overpayments.
5. CITY will provide a Lock Box address to CONTRACTOR and will instruct Lock Box to forward all Lock Box documents to CONTRACTOR for processing if CITY desires to utilize the services of a Lock Box entity.
6. CITY will provide CONTRACTOR with Daily Bank Balance Reporting capabilities via the bank's designated web site.
7. CITY will cooperate with CONTRACTOR in all matters to ensure proper compliance with laws and regulations.

## Exhibit B

### Business Associate Addendum

CONTRACTOR the "Business Associate" and CITY hereby add the following additional language to the AGREEMENT.

1. CONTRACTOR shall carry out its obligations under this Addendum in compliance with the privacy regulations pursuant to Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, Sections 261, *et seq.*, as amended ("HIPAA"), to protect the privacy of any personally identifiable protected health information ("PHI") that is collected, processed or learned as a result of the Billing Services provided hereunder. In conformity therewith, CONTRACTOR agrees that it will:
  - a. Not use or further disclose PHI except as permitted under this Addendum or required by law;
  - b. Use appropriate safeguards to prevent use or disclosure of PHI except as permitted by this Addendum;
  - c. To mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a use or disclosure of PHI by CONTRACTOR in violation of this Addendum.
  - d. Report to CITY any use or disclosure of PHI not provided for by this Addendum of which CONTRACTOR becomes aware;
  - e. Ensure that any agents or subcontractors to whom CONTRACTOR provides PHI, or who have access to PHI, agree to the same restrictions and conditions that apply to CONTRACTOR with respect to such PHI;
  - f. Make PHI available to CITY and to the individual who has a right of access as required under HIPAA within 30 days of the request by CITY regarding the individual;
  - g. Incorporate any amendments to PHI when notified to do so by CITY;
  - h. Provide an accounting of all uses or disclosures of PHI made by CONTRACTOR as required under the HIPAA privacy rule within sixty (60) days;
  - i. Make their internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services for purposes of determining CONTRACTOR's and CITY's compliance with HIPAA; and
  - j. At the termination of the AGREEMENT, return or destroy all PHI received from, or created or received by CONTRACTOR on behalf of CITY, and if return is not feasible, the protections of this Addendum will extend to such PHI.
2. The specific uses and disclosures of PHI that may be made by CONTRACTOR on behalf of CITY include:

- a. The preparation of invoices to patients, carriers, insurers and others responsible for payment or reimbursement of the services provided by CITY to its patients;
  - b. Preparation of reminder notices and documents pertaining to collections of overdue accounts;
  - c. The submission of supporting documentation to carriers, insurers and other payers to substantiate the health care services provided by CITY to its patients or to appeal denials of payment for same.
  - d. Uses required for the proper management of CONTRACTOR as business associate.
  - e. Other uses or disclosures of PHI as permitted by the HIPAA privacy rule.
3. As part of the contract agreement, Intermedix acknowledges its obligations as your Business Associate under the requirements of the Identity Theft Red Flag Rules promulgated under the Fair and Accurate Credit Transactions Act of 2003 ("Red Flag Rules") found in 16 C.F.R. Part 681.
- a. We agree to ensure that our activities for you are conducted in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft.
  - b. We agree to have in place policies and procedures to detect relevant Red Flag incidents that may arise in the performance of services on your behalf.
  - c. We agree that will use reasonable efforts to ensure that any agent or third party who performs services on our behalf in connection with your accounts, including a subcontractor, agrees to implement reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft.
  - d. We agree to alert you of any Red Flag incident of which we become aware, and the steps we take to mitigate any potential security compromise that may have occurred, and provide a report of any threat of identity theft as a result of the incident.
4. Notwithstanding any other provisions of this AGREEMENT or Addendum, the AGREEMENT may be terminated by CITY if CONTRACTOR has violated a term or provision of this Addendum pertaining to CONTRACTOR's material obligations under the HIPAA privacy rule, or if CONTRACTOR engages in conduct which would, if committed by CITY, result in a violation of the HIPAA privacy rule by CITY.



**Exhibit C**  
**Addendum to Service Agreement**  
**(TripTix® Mobile System Program)**

This Addendum to the AGREEMENT (the "Addendum") hereby adds the following language to the AGREEMENT.

WHEREAS, CONTRACTOR has developed the "TripTix® Mobile System" system running on various hardware platforms to enter medical records and data into and interact with its main billing and medical records system (the "Product" as more particularly defined herein) that CONTRACTOR is willing to make available under license to CITY upon the terms herein set forth; and

WHEREAS, CITY has expressed a desire to use the Product; and

WHEREAS, CITY acknowledges that, in connection with the provision of the Product and the TripTix® Mobile System devices, CONTRACTOR is incurring significant costs per unit and, in some cases, per User out of pocket expenses;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises and covenants contained herein and for other good and valuable consideration the adequacy and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**ARTICLE I. DEFINITIONS**

*1.01 Definitions.* For all purposes of this Addendum, the following definitions shall apply:

*"Confidential Technical Information" shall mean any and all technical information of the designated Party except:*

technical information which at the time of disclosure is in the public domain;

technical information which after disclosure is published or otherwise becomes a part of the public domain through no fault of the recipient (but only after it is published or otherwise becomes part of the public domain);

technical information which the recipient can show was in its possession at the time of disclosure and it was not acquired, directly or indirectly, from the other Party hereto; or

technical information which was received by the recipient after the time of disclosure hereunder from a third party who did not acquire it, directly or indirectly, from the disclosure Party under an obligation of confidence.

For the purpose of this definition, specific technical information disclosed by one Party to the other pursuant to the provisions of this Addendum shall not be deemed, as to the recipient, to be within any of the above exceptions merely because it is embraced by more general information within one of the said exceptions. In addition, any combination of features disclosed by one Party to the other pursuant to the provisions of this Addendum shall not be deemed, as to the recipient, to be within any of the above exceptions merely because individual features of the combination are within any of said exceptions, but only if the combination itself and its principle of operation are within one of the said exceptions.

*“Contract Rights” shall mean Intellectual Property and any other rights and interests of CITY or CONTRACTOR in and under this Addendum, including other assets relating to the Product.*

*“Customizations” shall mean any changes to the Licensed Software requested by CITY and agreed to by CONTRACTOR for increased or different functionality of the Licensed Software.*

*“Day” or “Days” shall mean a continuous calendar day.*

*“Documentation” shall mean any technical or instructional materials for the Licensed Software that are delivered to CITY by CONTRACTOR.*

*“Defaulting Party” shall mean either CONTRACTOR or CITY to this Addendum who has been served with written notice that it is not in compliance with any term to this Addendum.*

*“Effective Date” shall mean the date on which the Initial Fee is paid or, if no Initial Fee is required, the date on which the last party to this Addendum executed it.*

*“First Day of Service” shall mean, with respect to each Product Unit, the first day such Product Unit is delivered to CITY.*

*“Initial Period” shall mean, with respect to each Product Unit, the initial three-year period following the delivery of the Product Unit to CITY.*

*“Intellectual Property” shall mean all of CONTRACTOR’s rights in and to the Product, including, without limitation, CONTRACTOR’s copyrights, trademarks, trade dress, trade secrets, patents and patent applications (if any), and “know how” and any other proprietary information developed by CONTRACTOR relevant to the Product.*

*“Initial Fee” shall mean, with respect to each Product Unit, the Third-Party Intellectual Property Royalty Payments required in connection with such Product Unit.*

*“Licensed Software” means the copies of CONTRACTOR’s software programs as are contained in the Product, including any Documentation included therewith. CONTRACTOR may, at its sole discretion, provide corrections and modifications to the Licensed Software from time to time.*

*“Licensed Territory” shall mean any geographical area in which CITY operates its emergency medical service throughout the term of this addendum.*

*“Material Breach” shall have the meaning given to it in Article 5 of this Addendum.*

*“Material Non-Monetary Breach” shall have the meaning given to it in Article 5 of this Addendum.*

*“Product” shall mean, collectively, each Product Unit (a tablet PC, personal digital assistant or similar device), the Licensed Software, any Customizations with respect to one or more of the Product Units delivered to CITY, and any Third-Party Intellectual Property, as licensed to CITY under the terms and conditions of this Addendum.*

*“Product Unit” shall mean a single data collection device delivered pursuant to the terms and conditions of this Addendum containing one or more elements of the Product but shall not mean any ancillary devices or products provided by persons other than CONTRACTOR.*

*“Third-Party Interface Devices” shall mean those devices that interface with the Product to transfer information, including medical monitoring devices for which Third-Party Intellectual Property Royalty Payments are made.*

*“Third-Party Intellectual Property Rights” shall mean the intellectual property rights of any third-party used in connection with the Product.*

*“Third-Party Intellectual Property Royalty Payments” shall mean the payments to be made directly by CITY or, indirectly, on CITY’s behalf, as consideration for the licensing of any Third-Party Intellectual Property Rights.*

*“Updates” shall mean any and all revisions to the Licensed Software, and the Customizations or any other part of the Product, if any, as shall be delivered by CONTRACTOR to the CITY from time to time.*

*“Users” shall mean any employees or independent contractors of CITY, all of whom shall have the right to use the Licensed Software, Customizations and any Documentation pursuant to the terms and conditions of this Addendum.*

## **ARTICLE II. PRICE AND PAYMENT**

*2.01 Adjustment to Rates of Compensation under the AGREEMENT.* The compensation due and owing CONTRACTOR by CITY shall be increased as described in Section 4.03(b) of the AGREEMENT during the Term of this Addendum.

*2.02 License Fees.* In addition to the payments required pursuant to the provisions of Section 4.03(b) of the AGREEMENT, CITY shall make the payments in connection with Third-Party Intellectual Property Royalty Payments as further set out on Schedule 2.01 hereto.

In the event that CITY terminates this Addendum within the first 12 months, it shall pay an early termination fee as set out on Schedule 2.02 hereto

*2.03 Payment Terms.* All undisputed amounts shall be paid within thirty (30) days of receipt of a valid invoice.

*2.04 Taxes.* CITY shall pay all taxes, duties or charges of any kind (including withholding or value added taxes) imposed by any federal, state, or local governmental entity for Licensed Software or Products and supporting training and Documentation and related materials and maintenance provided during the term of this Addendum, excluding only taxes based solely on CONTRACTOR’s income. CITY shall indemnify and hold CONTRACTOR harmless from all claims and liability arising from CITY’s failure to discharge or pay any and all such taxes, duties, or charges.

## ARTICLE III. PROPRIETARY RIGHTS

3.01 CITY acknowledges that CONTRACTOR and its suppliers, including, without limitation, the suppliers of licenses of Third-Party Intellectual Property Rights, have, retain and own all right, title and interest in and to the Licensed Software, the Customizations, the Updates, any Documentation, and all patent, copyright, trademark and service mark and trade name and the goodwill associated therewith, trade secret, inventions, technology, ideas, know-how, and all other intellectual property rights and all other rights pertaining thereto. All such right, title and interest shall be and remain the sole property of CONTRACTOR. CITY shall not be an owner or holder of any copies of, or have any interest in the Licensed Software or any Updates, Customizations, and Documentation but rather, such Licensed Software, Releases and Updates and Documentation are solely licensed for use pursuant to this Addendum. Neither CITY nor its Users shall: (i) remove any copyright, patent or other proprietary legends from the Licensed Software or any Product; (ii) sub-license, lease, rent, assign, transfer or distribute Licensed Software or any Product to any third party; (iii) alter, modify, copy, enhance or adapt the Licensed Software or any Product; (iv) attempt to reverse engineer, covert, translate, decompile, disassemble or merge the Licensed Software or any Product with any other software or materials; (v) otherwise create or attempt to create any derivative works from this Licensed Software or any Product, or permit persons who are not Users any access to the Licensed Software or its operations, and any attempt to do any of the above shall void all warranties given CITY by CONTRACTOR.

## ARTICLE IV. TERM AND TERMINATION

4.01 *Generally.* The term of this Addendum shall begin on the Effective Date and shall continue until the end of the Initial Period of the last Product Unit delivered pursuant to the terms and provisions of this Addendum ("Initial Term"). CONTRACTOR's Maintenance and Support obligations, as well as its development commitments, shall continue until the end of the Initial Term at the fees set forth by the AGREEMENT provided, however, that CITY or CONTRACTOR may terminate this Addendum pursuant to the terms and provisions of this Addendum.

4.02 *Termination.* Notwithstanding any other language herein or in the AGREEMENT, a termination of the Addendum shall not operate to terminate the AGREEMENT, but a termination of the AGREEMENT shall operate as a termination of this Addendum. Notwithstanding anything to the contrary herein or in the AGREEMENT, a termination of the AGREEMENT may be deemed to be an elective termination and a default under this Addendum.

### 4.03 *Termination of the Addendum.*

Termination by CITY upon CONTRACTOR Material Breach. *CITY may terminate this Addendum (but not the AGREEMENT) without obligations to pay an early termination payment, if CONTRACTOR commits a Material Non-Monetary Breach which breach, if capable of being cured, is not cured within 30 days of a written notice of termination*

Termination by CITY without CONTRACTOR Material Breach. *CITY may terminate this Addendum (but not the AGREEMENT) at any time by providing notice to CONTRACTOR, making payment in full of the required early termination payment disclosed on Schedule 2.01 with respect to EACH Product Unit delivered pursuant to this Addendum and returning all Product Units to CONTRACTOR.*

*Termination by CONTRACTOR upon CITY Material Breach.* CONTRACTOR may terminate this Addendum if CITY commits

a Material Monetary Breach CITY fails to pay any undisputed amount due under this Addendum within 20 days after written notice of such nonpayment or

a Material Non-Monetary Breach, which breach, if capable of being cured, is not cured within 30 days of a written notice of termination.

4.04 Any termination of the Addendum shall not:

release CITY or CONTRACTOR from any claim of the other accrued hereunder prior to the effective date of such termination;

release CITY or CONTRACTOR from their obligations under Article VII or Sections 4.05 and 4.06, respectively, unless otherwise released by the further terms hereof;

4.05 Upon termination of this Addendum, CONTRACTOR shall remain the sole owner of the Product and all intellectual property and goodwill associated therewith, and CITY shall assert no rights thereto.

4.06 *Delivery of Materials.* Upon termination of this Addendum for any reason, CITY shall immediately discontinue use of the Product including all Documentation and within ten (10) days return each of the Product Units and certify in writing to CONTRACTOR that all copies, extracts or derivatives of any item comprising the Product, including all Documentation, in whole or in part, in any form, have either been delivered to CONTRACTOR or destroyed in accordance with CONTRACTOR's instructions. All payments made by CITY to CONTRACTOR hereunder are non-refundable.

## ARTICLE V. BREACH OF ADDENDUM

5.01 *Material Non-Monetary Breaches.*

CITY Material Non-Monetary Breach. *For purposes of this Addendum, as respects a breach by a CITY, a "Material Non-Monetary Breach" includes any breach of its or its User's obligations with respect to Proprietary Rights, Confidentiality, or any material breach of a party's representations or warranties under this Addendum.*

CONTRACTOR Material Non-Monetary Breach. *For purposes of this Addendum, as respects a breach by CONTRACTOR, a "Material Non-Monetary Breach" includes any material breach of its Maintenance and Support obligations or any material breach of its representations or warranties under this Addendum.*

CONTRACTOR and CITY Material Non-Monetary Breach. *For purposes of this Addendum, as respects a breach by either CONTRACTOR or CITY, it shall be a "Material Non-Monetary Breach" if such party (i) terminates or suspends its business or operations, (ii) becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority, or (iii) becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes which are not rescinded within forty-five (45) days.*

5.02 *Material Monetary Breaches.* For purposes of this Addendum, as respects a breach by either CONTRACTOR or CITY, it shall be a "Material Monetary Breach" with respect to such party if:

*Such party fails to make any Third-Party Intellectual Property Royalty Payment as required under any agreement with such third party;*

*Such party fails to make payments due under the terms of this Addendum or the AGREEMENT when and as due; or*

*Such party fails to reimburse the other party for payments made on its behalf for Third-Party Intellectual Property Royalty Payments.*

## ARTICLE VI. LICENSE

*6.01 License.* Commencing on the Effective Date and subject to the terms and conditions of this Addendum, CONTRACTOR grants CITY a non-exclusive, non-transferable license, to use the Product in the Licensed Area by the Users. This license does not constitute a sale of the Product or any portion or piece thereof or of any copies of Licensed Software, Customizations or Documentation.

*6.02 Delivery and Acceptance.* CONTRACTOR will deliver to CITY, the Product at mutually agreeable times, after or simultaneously with the later of date of the execution of this Addendum or Effective Date, or as otherwise provided.

*6.03 No Other Rights.* Except to exercise the license of Section 6.01 and its rights specifically granted under this Addendum, CITY shall have no rights to own, use or otherwise exercise dominion over the Product. Except as otherwise permitted under this Addendum, CITY may not rent, lease, loan, sell or otherwise distribute the Product or any derivative works based upon the Licensed Software in whole or in part.

*6.04 Right of Audit.* Either party may audit and inspect the other party's physical and electronic records solely to verify such party's compliance with the terms of this Article VI. CITY hereby agrees to the remote electronic survey of the Licensed Software licensed hereunder, provided CITY is provided ten (10) business day's prior written notice of such survey and provided further that such audit is conducted in a reasonable manner. In addition, upon written request from the other party, each party shall provide or obtain physical access to such records to either the requesting party or an independent auditor chosen by the party for the purposes of audit. All physical audits of CITY will be conducted at the business premises in which the Licensed Software is installed or accessed during regular business hours during the term of this Addendum. Audits will be conducted no more frequently than once annually. All individuals performing such audits, including independent third party auditors, must be bound by confidentiality obligations consistent with this Addendum.

*6.05 Material Change to Product.* If there is any material change in any rules, orders, laws or regulations governing the manner in which this Product operates or in the data provided by third parties (such as changes in the manner of operation of global distribution systems or standards in wireless or non-wireless communications protocols); then upon written notice to CITY, CONTRACTOR will have the right, retroactive to the date of such material change, to modify the way in which this Product delivers data in order to comport with any change in law or regulations or functionality governing the Product. All data used by CONTRACTOR for testing and development shall be supplied by CITY at its expense to CONTRACTOR promptly upon request by CONTRACTOR to CITY.

## ARTICLE VII. LIMITED WARRANTY AND DISCLAIMER:

*7.01 Software Media Warranty.* CONTRACTOR warrants that each Product Unit delivered to CITY will be free from material defects when delivered. CONTRACTOR's entire liability and CITY's exclusive remedy under this warranty will be to replace the media on which such Product was delivered. CONTRACTOR shall have no obligation to replace any defective media which is not returned to CONTRACTOR within the warranty period or which has failed because of accident, abuse or misapplication.

*7.02 Software Warranty.* CONTRACTOR warrants that for a period of 90 days from the delivery of a Product Unit identified by CONTRACTOR as being fully functional for production at the site

designated by CONTRACTOR, the Product, if properly used by CITY, shall operate in conformity with the Documentation for such Product, if any. CONTRACTOR does not warrant that any Product will meet all of CITY's requirements or that the use of any Product will be uninterrupted or error free.

*7.03 Grant of Standard Warranties Only.* NEITHER CONTRACTOR NOR ANY OF ITS SUPPLIERS MAKE ANY WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR IN ANY COMMUNICATION WITH CITY WITH RESPECT TO THE PRODUCT OR OTHER ITEMS DELIVERED PURSUANT TO THIS ADDENDUM THAT IS NOT PART OF THE STANDARD WARRANTY OFFERED BY CONTRACTOR TO ITS OTHER CUSTOMERS. CONTRACTOR's sole and exclusive liability, and CITY's sole and exclusive remedy, shall be, at CONTRACTOR's sole election, to terminate this Addendum, at which time, CITY shall immediately deliver each Product Unit and any related Documentation to CONTRACTOR; provided, however, CONTRACTOR may elect, to attempt, through reasonable efforts, to: (a) correct any material nonconformities discovered within the Warranty Period, (b) replace the nonconforming Product. The above remedies are available only if CONTRACTOR is promptly notified in writing, within the warranty period, upon discovery of the nonconformities by CITY and CONTRACTOR's examination of the Product discloses that such nonconformities exist, and that the Product has not been (i) altered or modified; (ii) subjected to negligence, or computer or electrical malfunctions; (iii) used, adjusted, or installed other than in accordance with the instructions furnished by CONTRACTOR; or (iv) modified for custom development by CONTRACTOR for CITY as agreed in an Order. ANY REFUND OF FEES PROVIDED HEREUNDER (WHICH MAY BE UNDERTAKEN AT CONTRACTOR'S SOLE AND COMPLETE DISCRETION) SHALL BE DEEMED A TERMINATION OF THIS ADDENDUM (AND ANY RELATED MAINTENANCE) AND SHALL BE CITY'S SOLE AND EXCLUSIVE REMEDY FOR REJECTION OF THE PRODUCT(S) AND NEITHER PARTY SHALL HAVE ANY FUTURE OBLIGATIONS OR LIABILITY HEREUNDER WITH RESPECT TO SUCH PRODUCT(S). THIRD PARTY INTELLECTUAL PROPERTY PAYMENTS SHALL NOT BE REFUNDABLE IN FULL OR IN PART.

*7.04 Information/Disclaimer of Warranties with Respect to Data and Information Provided by Third Parties.*

*Some information transmittable or accessible through any Product Unit may have been obtained through sources believed to be reliable (such as various Internet CITYs, real-time data provided by GPS systems or medical devices or other third party information sources). CITY agrees that CONTRACTOR shall not have any liability whatsoever for the accuracy, completeness, timeliness or correct sequencing of the information, or for any decision made or action taken by the CITY in reliance upon such information or the Product. CITY further agrees that CONTRACTOR shall have no liability whatsoever for the transmission, non-transmission or partial transmission of data through third-party data systems and that such transmission shall be undertaken at CITY's sole risk, cost and expense.*

*CONTRACTOR and its third party suppliers do not warrant to the CITY that any Product will meet CITY's requirements or that access to the Product, or the operation of the Product, will be uninterrupted, error-free, that all errors will be timely corrected by third party's providing of information, or that the data and/or reports generated by the Product will be accurate in the event that third party information CITYs have provided inaccurate information.*

**7.05 DISCLAIMER.** EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH IN THIS ADDENDUM AND THEIR OWN WILLFUL MISCONDUCT, CONTRACTOR DOES NOT MAKE ANY WARRANTIES EXPRESS, IMPLIED, STATUTORY OR IN ANY COMMUNICATION WITH CITY WITH RESPECT TO THE LICENSED SOFTWARE, ANY SERVICES OR ANY PRODUCT, AND CONTRACTOR EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO REPRESENTATIVE OF CONTRACTOR SHALL HAVE THE RIGHT TO MAKE WARRANTIES ON CONTRACTOR'S BEHALF UNLESS THOSE WARRANTIES ARE IN WRITING AND EXECUTED BY A DULY AUTHORIZED OFFICER OF CONTRACTOR. EXCEPT

WITH RESPECT TO THEIR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY OR ITS SUPPLIERS HAVE ANY LIABILITY FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES, ARISING IN ANY WAY OUT OF THIS ADDENDUM UNDER ANY CAUSE OF ACTION, WHETHER OR NOT CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THIS SECTION DOES NOT LIMIT LIABILITY FOR BODILY INJURY OF A PERSON.



**Schedule 2.01**

***Third-Party Intellectual Property Royalty Payments***

In addition to the other compensation required under this Addendum, Third-Party Intellectual Property Payments shall be made as follows:

Licensing/Royalty agreement to be executed between CITY and the manufacturer of the CITY's defibrillating equipment when the manufacturer has cleared the TripTix® Mobile System equipment for direct interface between their equipment and the CONTRACTOR provided data devices.

**AND NO OTHER**

## Schedule 2.02

### Initial Term Early Termination Payments

The Initial Term Early Termination Payments with respect to each Product Unit are as follows:

	Period	Amount
(1)	For an Early Termination during the first 12 months from the beginning of the Term:	\$4,500
(2)	For an Early Termination during the remainder of the Term:	\$---0---