



BIRMINGHAM
CITY COUNCIL

SPECIAL CALLED PUBLIC SAFETY COMMITTEE MEETING
TUESDAY, MARCH 22, 2022
1 P.M. – CITY COUNCIL CHAMBERS
COUNCILOR LATONYA A. TATE CHAIRMAN

AGENDA

- A. CALL TO ORDER
- B. APPROVAL OF MINUTES – March 8, 2022
- C. LIQUOR LICENSES
 - 1. **AAW Shell – New Application**
 - 2. **Adios Margarita Bar – New Application**
 - 3. **Yo Chef Surf and Turf Smokehouse – New Application**
- D. AGREEMENTS
 - 4. A Resolution authorizing the Mayor to execute and deliver an agreement with ESO Solutions, Inc. and the Birmingham Fire and Rescue Department.
 - 5. A Resolution authorizing the Mayor to execute and deliver an agreement with ESO Solutions, Inc. and the EMS billing office.
- E. PRESENTATION
 - 6. Aspen Justice and Governance Partnership – Douglas Wood, Director, The Aspen Institute
- F. ADJOURNMENT

Liquor Licenses

1. AAW Shell 1100 4 th Avenue North Chemindra Willathgamuwa	Beer Off Premise Wine Off Premise NEW APPLICATION	<input type="checkbox"/> Approved Consent Agenda <input type="checkbox"/> Approved pending NA _____ ZONING _____ <input type="checkbox"/> No Recommendation <input type="checkbox"/> DO NOT RECOMMEND <input type="checkbox"/> Date: _____ <input type="checkbox"/> Delayed: _____
2. Adios Margarita Bar 2218 1 st Avenue North Vinh Tran	Lounge Retail Liquor Class I NEW APPLICATION	<input type="checkbox"/> Approved Consent Agenda <input type="checkbox"/> Approved pending NA _____ ZONING _____ <input type="checkbox"/> No Recommendation <input type="checkbox"/> DO NOT RECOMMEND <input type="checkbox"/> Date: _____ <input type="checkbox"/> Delayed: _____
3. Yo Chef Surf and Turf Smokehouse 2201 4 th Place West Cicely Jones	Restaurant Retail Liquor NEW APPLICATION	<input type="checkbox"/> Approved Consent Agenda <input type="checkbox"/> Approved pending NA _____ ZONING _____ <input type="checkbox"/> No Recommendation <input type="checkbox"/> DO NOT RECOMMEND <input type="checkbox"/> Date: _____ <input type="checkbox"/> Delayed: _____

Agreement

4. Authorizing the Mayor to execute and deliver an agreement with ESO Solutions, Inc. to provide software updates, annual maintenance and support services to the Birmingham Fire and Rescue Department for the City's emergency dispatch operations and services, the agreement is for a term of three (3) years, and for an amount not to exceed \$425,835.70. Submitted by: Annette C. Harris	<input type="checkbox"/> Approved Consent Agenda <input type="checkbox"/> Approved pending NA _____ ZONING _____ <input type="checkbox"/> No Recommendation <input type="checkbox"/> DO NOT RECOMMEND <input type="checkbox"/> Date: _____ <input type="checkbox"/> Delayed: _____
5. Authorizing the Mayor to execute and deliver an agreement with ESO Solutions, Inc. to allow the EMS billing office to complete and submit electronic patient care reports to the insurance companies within 24-hours for a term not to exceed three (3) years. The cloud-based program will increase HIPPA compliance and reliability for mandatory State reporting. Submitted by: Annette C. Harris	<input type="checkbox"/> Approved Consent Agenda <input type="checkbox"/> Approved pending NA _____ ZONING _____ <input type="checkbox"/> No Recommendation <input type="checkbox"/> DO NOT RECOMMEND <input type="checkbox"/> Date: _____ <input type="checkbox"/> Delayed: _____



**JOINT PUBLIC SAFETY AND SPECIAL CALLED COMMITTEE OF THE WHOLE MEETING
TUESDAY, March 8, 2022 | 3:30 P.M.
COUNCIL CHAMBERS**

MINUTES

**COUNCILOR LATONYA A. TATE COMMITTEE CHAIR
COUNCILORS CRYSTAL N. SMITHERMAN & HUNTER WILLIAMS, COMMITTEE MEMBERS**

Councilor(s) Present: Tate, Smitherman

A. CALL TO ORDER

The Meeting was called to order by the Committee Chair, Councilor Tate.

B. APPROVAL OF MINUTES – February 22, 2022

Action Taken:

Councilor Smitherman Motioned to Approve the Minutes.

Councilor Tate Seconded the Motion.

The February 22, 2022 Joint Public Safety and Special Called Committee of the Whole Meeting Minutes were approved as Recorded.

C. LIQUOR LICENSES

Mickey's Place

1720 Avenue D Ensley

Mickey Bailey

Lounge Retail Liquor Class I Division I Dance Permit

(customer)

Pool Table Permit/NEW APPLICATION

Action Taken:

Councilor Smitherman Motioned to Approve the Application.

Councilor Tate Seconded the Motion.

The Item was Forwarded to the March 22, 2022 City Council Consent Agenda.

The Goose

4100 4th Avenue South

John Conner

Restaurant Retail Liquor/NEW APPLICATION

Action Taken:

Councilor Smitherman Motioned to Approve the Application.

Councilor Tate Seconded the Motion.

The Item was Forwarded to the March 22, 2022 City Council Consent Agenda.

The House of Found Objects

2205 2nd Avenue North

Feizal Valli

Lounge Retail Liquor Class I/NEW APPLICATION

Action Taken:

Councilor Smitherman Motioned to Approve the Application.

Councilor Tate Seconded the Motion.

The Item was Forwarded to the March 22, 2022 City Council Consent Agenda.

D. SPECIAL EVENT LICENSES

The Novel Taste

2100 Park Place

Friends Foundation of the Birmingham Public Library

Catherine Frey

Special Event License (7 days) NEW APPLICATION

Action Taken:

Councilor Smitherman Motioned to Approve the Application.

Councilor Tate Seconded the Motion.

The Item was Forwarded to the March 22, 2022 City Council Consent Agenda.

Wellhouse Style Event

1218 2nd Avenue North TLT Interiors, LLC

Terri Tatton

Special Event License (7 days) NEW APPLICATION

Action Taken:

Councilor Smitherman Motioned to Approve the Application.

Councilor Tate Seconded the Motion.

The Item was Forwarded to the March 22, 2022 City Council Consent Agenda.

E. TOWING/IMMOBILIZATION

5 Way Towing/NEW APPLICATION

4800 8th Ave Wylam

Haier Ali Yehia

Towing (Consensual) NEW APPLICATION

Action Taken:

Item Withdrawn

F. AGREEMENTS

An Ordinance authorizing the Mayor and/or the Chief of Police to execute an Interlocal Cooperation Agreement, for a period not to exceed three years, with the Alabama Law Enforcement Agency (hereinafter referred to as "ALEA"), for access to and use of ALEA's ASPEN, ENCRYPTION SOFTWARE to be used of by certified Commercial Vehicle Enforcement officers of the Birmingham Police Department ("BPD") to perform driver- vehicle inspections on commercial motor vehicles. The Mayor and/or Chief of Police is authorized to execute and deliver all documents necessary to accomplish the purpose of this Ordinance.

Speaker: Sergeant Al T. Anger

Action Taken:

Councilor Smitherman Motioned to Approve the Application.

Councilor Tate Seconded the Motion.

The Item was Forwarded to the March 22, 2022 City Council Consent Agenda.

An Ordinance authorizing the Mayor and/or the Chief of Police to apply for and accept grant disbursements from the Law Enforcement Support Office (hereinafter referred to as "LESO") of the Alabama Department of Economic and Community Affairs (hereinafter referred to as "ADECA"), of excess personal property from the U.S. Department of Defense (DoD), including but not limited to equipment such as tactical gear, electronics, vehicles, weapons, etc., received through the LESO 1033 Program, for use by the Birmingham Police Department ("BPD") for law enforcement purposes. The City is authorized to pay not more than the annual One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) participation/membership fee for participation in the program. The Mayor and/or Chief of Police is authorized to execute and deliver all documents necessary to receive the disbursements from ADECA, including any grant Agreements with ADECA and DoD for a term which shall not exceed three years.

Speaker: Sergeant Al T. Anger

Action Taken:

Councilor Smitherman Motioned to Approve the Application.

Councilor Tate Seconded the Motion.

The Item was Forwarded to the March 22, 2022 City Council Consent Agenda.

An Ordinance, pursuant to Alabama Act 1969-916, the Mayor to execute an Interlocal Agreement between the City of Birmingham (City) and the Housing Authority of the Birmingham District (HABD), to provide a law enforcement task force and Community Safety Partnership related to HABD's High-Intensity Community Oriented

Police Patrol Program at designated HABD properties for a period of up to two (2) years, with an end date of June 30, 2023 unless terminated earlier by either party. HABD will provide funding to the City in the amount of Three Million, Two Hundred Ninety-three Thousand, Six Hundred Forty-five and 54/100 Dollars (\$3,293,645.54) to cover personnel costs, expenses, and reimbursement for maintenance, fuel and repair of vehicles. The City will provide up to Fourteen (14) police officers, one (1) sergeant and one (1) captain to perform law-enforcement functions in the housing communities as part of the Task Force.

Speaker: Law Department

Action Taken:

Councilor Smitherman Motioned to Approve the Application.

Councilor Tate Seconded the Motion.

The Item was Forwarded to the March 22, 2022 City Council Consent Agenda.

- G. OLD BUSINESS – Update**
Alpha Charlie Grill
Update – The establishment continues working on the fencing issue(s).
No Action – Information Only.
- H. ADJOURNMENT**
Councilor Smitherman Motioned to Adjourn.
Councilor Tate Seconded the Motion.
The Meeting was Adjourned.

LICENSE STATUS REPORT FORM

Date: 11/23/21

To: Latonya Tate, Chairman
Public Safety

Subject: Applicant's Name Willath Oil Company
Business Name AAW Shell
Business Address 1100 4th Ave N

Type of License & Description

- | | |
|---|--|
| <input type="checkbox"/> Lounge Retail Liquor Class I | <input type="checkbox"/> Lounge Retail Liquor Class II (Package Store) |
| <input type="checkbox"/> Club Liquor Class I | <input type="checkbox"/> Club Liquor Class II (Private) |
| <input checked="" type="checkbox"/> Beer Off Premise | <input type="checkbox"/> Beer On & Off Premise |
| <input checked="" type="checkbox"/> Wine Off Premise | <input type="checkbox"/> Wine On & Off Premise |
| <input type="checkbox"/> Restaurant Retail Liquor | <input type="checkbox"/> Special Retail License (over 30 days) |
| <input type="checkbox"/> Special Retail License (under 30 days) | <input type="checkbox"/> Pool Table Permit |
| <input type="checkbox"/> Division I Dance Permit (customers) | <input type="checkbox"/> Division II Dance Permit |

The Fountain Heights Neighborhood Association met on March 9, 2022 and voted in reference to the above named license application. The concerns of the Neighborhood regarding the granting of this license are indicated as follows: (Please check one)

6 Attendance 0 Oppose 6 Support ___ No Recommendation

Reason for Opposition _____

Applicant: X attended NA meeting ___ did not attend NA meeting

Bonderie A. Lyons
President

(Please return this form to the of attention Latonya Tate /Public Safety; City of Birmingham; 710 North 20th Street, Birmingham, AL 35203; City Council Chambers; 3rd Floor) Failure to attend the neighborhood meeting may result in a delay in the liquor process.

Transfer Application: Beer-Type 050/Wine – Type 070 (Off Premise Only)

The following applicant has applied to the City of Birmingham for an alcohol, dance or pool table license:

Name of Applicant: Willath Oil Company, LLC
Mailing Address: 2269 White Way
Hoover, AL 35226
Trade Name: AAW Shell
Location Address: 1100 4th Ave N
Contact Number: (205)249-5683 Contact Person: Chemindra Willathgamuwa

New Application Transfer

Type of License

- | | |
|---|--|
| <input type="checkbox"/> Lounge Retail Liquor Class I | <input type="checkbox"/> Lounge Retail Liquor Class II (Package Store) |
| <input type="checkbox"/> Club Liquor Class I (Fraternal) | <input type="checkbox"/> Club Liquor Class II (Private) |
| <input checked="" type="checkbox"/> Beer Off Premise | <input type="checkbox"/> Beer On & Off Premise |
| <input checked="" type="checkbox"/> Wine Off Premise | <input type="checkbox"/> Wine On & Off Premise |
| <input type="checkbox"/> Restaurant Retail Liquor | <input type="checkbox"/> Special Retail Liquor (7 days or less) |
| <input type="checkbox"/> Special Retail Liquor (over 30 days) | <input type="checkbox"/> Special Retail Liquor (under 30 days) |
| <input type="checkbox"/> Division I Dance Permit (customer) | <input type="checkbox"/> Division II Dance Permit (entertainers) |
| <input type="checkbox"/> Pool Table Permit (send copy of application) | |

Kitchen equipped: yes no

Number of table and chairs

Date Applied: 11/23/21

Copy: Fire Prevention
Health Department
Community Development
Operation New Birmingham
Melanie Genkin (pool tables)

Revenue Examiner: GS

**City of Birmingham
Application for
Alcoholic Beverage License**

New Application
Transfer

BEER-TYPE 050/WINE-TYPE 070(OFF PREMISE ONLY)

By: GS

(Enter Type of License Applied For)

(Revenue Official)

1. Name of Applicant (s) Willath Oil Company, LLC
(Indicate whether Individual, Partnership, Corporation, LLC, LLP, etc)
2. Name and address of individual applicant or all partners and members if partnership or assoc., or all officers and directors, if corporation
(Attach separate sheet if necessary)

Social Security Number Drivers License Number Name of Owner, Officer or Partner	Title	Date of Birth Place of Birth	Present Residence Address	Length of Residence at Place Named
ALDL# [REDACTED] Chemindra Alex Willathgamuwa	Member	[REDACTED] Sri Lanka	2269 White Way Hoover, AL 35226	18 years

Note: If a corporation, LLC or LLP, give place and date of incorporation or issuance of certificate of authority to do business in Alabama:

Book 2019-63 Page: 1 of 3 Date: 01/16/2019 County: St Clair
Foreign Corporation: certificate of Authority Date: (get copy of original papers)

3. Trade Name AAW Shell
- 4(a) Location 1100 4th Ave N
Exact Street Number, or if on Highway, give details as to Location
Birmingham, Alabama Zip Code 35203 County Jefferson Shelby
- (b) Length of time at this location _____
- (c) Mailing Address: 2269 White Way Hoover, AL 35226
- (d) Business Phone _____ Fax: _____ Other Contact: (205)249-5683
5. Name, trade name and License number of last or previous licensee: SK Food Mart LLC
Trade name Downtown Shell Year 2018 Type 150K 150N Taxpayer ID 470407
- 6 (a) Owner of real estate for which license is desired Willath Oil Company, LLC
2269 White Way Hoover, AL 35226 Address
- (b) Give a full description of the premises for which a license is desired: New Construction Existing Structure
Description 1 Story Bldg Juke Box or Slot Musical Equipment? Yes No
- (c) Is establishment equipped with tables and chairs? Yes No If "Yes", how many? _____
7. Has a liquor, malt or brewed beverage license for premises ever been denied, suspended or revoked? Yes No
If "Yes", explain fully _____
- 8 (a) Pool Tables? Yes No Coin Operated? Yes No Standard Provider:
(b) Video Games? Yes No Juke Box or Slot Musical Equipment? Yes No
(c) Vending Machines (Snacks/Sodas)? Yes No Cigarettes or Tobacco Products? Yes No Other? _____
- 9 (a) Will you allow dancing? Yes No If "Yes": Customer/Patron? Div I Exhibition/Performance? Div II
(b) Independent Contract Employees (Disc Jockey, Band, Bartenders, Servers)? Yes No

- 10 (a) Are these premises kitchen equipped? Yes No Not Applicable
- (b) Is kitchen apart from but convenient to the dining room? Yes No
- (c) Is place of business habitually and principally used for providing food to the public? Yes No
- (d) If not kitchen equipped, is any type of food served? Yes No If "Yes", explain Grocery Items
- (e) Are these premises equipped for on premises consumption of liquor? Yes No
- (f) Will this business be operating primarily as a package store? Yes No
- (g) Seating Capacity: _____
- (h) For a SPECIAL RETAIL LICENSE, less than thirty (30) days: Starting Date _____ Ending Date _____
- (i) For a SPECIAL RETAIL LICENSE, more than thirty (30) days: Starting Date _____ Ending Dec. 31, _____
- (j) For a SPECIAL EVENTS RETAIL LICENSE, not to exceed seven (7) days: Starting _____ Ending _____
(Note: Application must be filed 120 days in advance of event for which license is applied for)
- (k) Event Sponsor _____ Phone Number _____
- (1) Sponsor Letter of Designation? Yes No
- (2) Multi-Vendor Sponsorship? Yes No
- (3) Street Closing Required? Yes No
- (4) Park Board Permission? Yes No

- 11 (a) Does the club charge and collect dues from elected members? Yes No
- (b) How many paid-up members are there in the club? _____
- (c) Are regular meetings held? Yes No If so, when? _____
- (d) Is business conducted through officers regularly elected? Yes No
- (e) Are members admitted by written application, investigation, and ballot? Yes No
- (f) For what purpose is the club organized and operated? Social Patriotic Political Athletic Other

12. List below the court records for law violations in the last ten (10) years, if any, of each person interested in this application, including the manager, whether as sole applicant, partner, officer, member, or landlord. (Do not include traffic violations, except D.U.I. and reckless driving. If no record, state "None".)

Name	Violation Charged	Name of Court	Date	Disposition of Case
<u>NO - Applicant</u>				

Applicant for the Alcoholic Beverage license requested by the aforementioned applicant hereby swears or affirms that he or she has read said application and that all the statements therein and the facts set forth therein are true and correct, and that the applicant is the only person interested in the business for which said license is requested.

Sworn and subscribed before me this 23rd day of November, 2021

[Signature]
Signature of Affiant

[Signature]
Signature of Revenue Official

This application will not be processed until all fees due at the time of application are paid and receipts are on file.

**TRANSFER OF CITY OF BIRMINGHAM BUSINESS LICENSE
(CONTROLLED)**

I, SK Food Mart, LLC (current taxpayer), holding City of Birmingham License ID# [REDACTED] located at 1100 4th Ave N Birmingham, AL 35203 (six-digit City ID) (business address), hereby agree that said License be

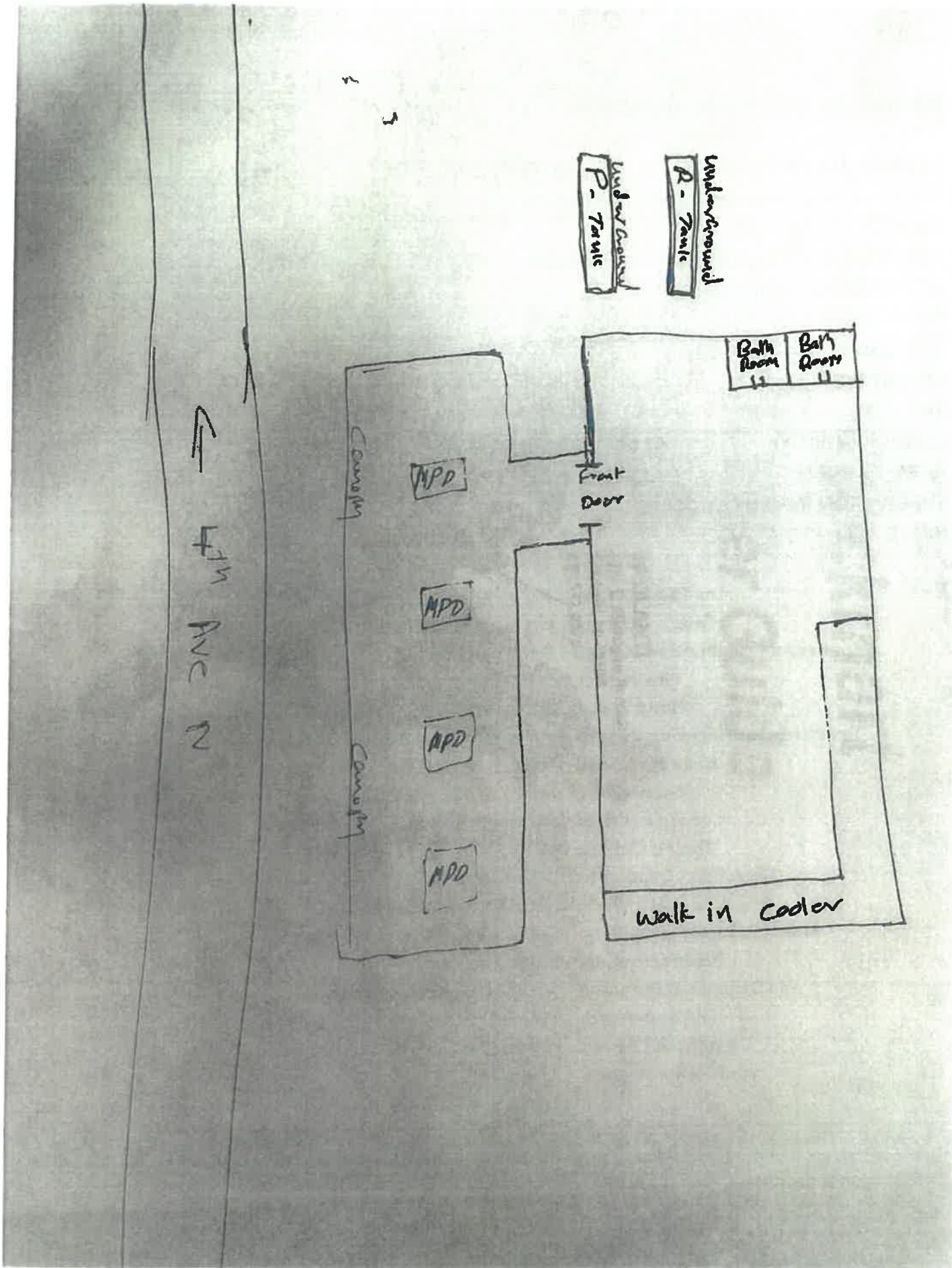
transferred to Willath Oil Company, LLC (applicant) provided Willath Oil Company, LLC (applicant) obtains approval from the local governing body and meets all the requirements of the ABC Board. I understand that I am responsible for the operation of this licensed establishment and for all taxes due until Willath Oil Company, LLC (applicant) obtains his/her license from the ABC Board.

I also understand that if for any reason this transfer is not approved by the local governing body or the ABC Board, I must take over complete control, operation, and responsibility of these licensed premises. If I do not continue operating this licensed establishment, then, I will turn in my ABC Board License to the local ABC Board Field Office and all my City of Birmingham licenses to the Revenue Division of the Finance Department of the City of Birmingham.

I further understand that this license will not be transferred until all taxes and licenses are paid and current.

LICENSEE [Signature]
APPLICANT [Signature]
Witness [Signature]
NOTARY [Signature]

DATE 11-23-21
DATE 11/23/21
DATE 11/23/21



PARCEL ID: 012200354024005000

SOURCE: TAX ASSESOR RECORDS **TAX YEAR:** 2021

DATE: Monday, November 22, 2021 11:17:50 AM

OWNER: A R DIAMOND INC

ADDRESS: ATTN HAIDER BHARWANI 1104 4TH

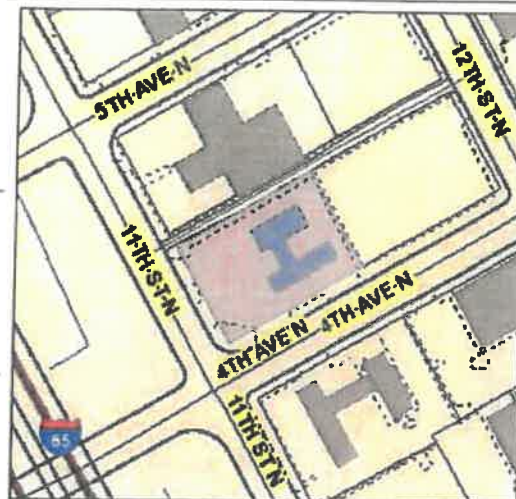
CITY/STATE: BIRMINGHAM AL

ZIP+4: 35203

SITE ADDR: 1104 4TH AVE N

CITY/STATE: , AL

ZIP: 35203



LAND: \$264,600.00

BLDG: \$406,700.00

OTHER: \$0.00

AREA: 27,455.48

ACRES: 0.63

SUBDIVISION INFORMATION:

NAME BIRMINGHAM BLOCKS

BLOCK: 262

LOT: 11&

:

Section: 35-17-3W

Land Slide Zones: Not in Land Slide Zones

Historic Districts: Not in Historic Districts

Commercial Revitalization District: Downtown Northwest

Fire District: In Fire District

Flood Zones: Not in Flood Zones

Tax Increment Financing District: In Tax Increment Financing District

Neighborhoods: Fountain Hghts (1204)

Communities: Northside (12)

Council Districts: District - 5 (Councilor: Darrell O'Quinn)

Zoning Outline: M1

Demolition Quadrants: DEM Quadrant - 3

Impaired Watersheds: Not in Impaired Watersheds

Strategic Opportunity Area: Not in Strategic Opportunity Area

RISE Focus Area: In RISE Focus Area

Tax Delinquent Property: Not in Tax Delinquent Property

EPA Superfund: Not in EPA Superfund

Opportunity Zones: In Opportunity Zones

Judicial Boundaries: JEFFERSON

Parcel mapping and description information is obtained from the Jefferson County Tax Assessor's Office. This site does not provide real-time information and may contain errors. All data should be verified with the official source. The City of Birmingham makes no warranty as to the accuracy of the data and assumes no responsibility for any errors. Data from the Tax Assessor's Office may not be available for all parcels.

LICENSE STATUS REPORT FORM

Date: **2/16/22**

To: Latonya Tate, Chairman
Public Safety

Subject: Applicant's Name Urban Beverage 2 Inc
New Business Name Adios Margarita Bar
Application Business Address 2218 1st Ave N

Type of License & Description

- | | |
|--|--|
| <input checked="" type="checkbox"/> Lounge Retail Liquor Class I | <input type="checkbox"/> Lounge Retail Liquor Class II (Package Store) |
| <input type="checkbox"/> Club Liquor Class I | <input type="checkbox"/> Club Liquor Class II (Private) |
| <input type="checkbox"/> Beer Off Premise | <input type="checkbox"/> Beer On & Off Premise |
| <input type="checkbox"/> Wine Off Premise | <input type="checkbox"/> Wine On & Off Premise |
| <input type="checkbox"/> Restaurant Retail Liquor | <input type="checkbox"/> Special Retail License (over 30 days) |
| <input type="checkbox"/> Special Retail License (under 30 days) | <input type="checkbox"/> Pool Table Permit |
| <input type="checkbox"/> Division I Dance Permit (customers) | <input type="checkbox"/> Division II Dance Permit |

The Central City Neighborhood Association met on March 15, 2022 and voted in reference to the above named license application. The concerns of the Neighborhood regarding the granting of this license are indicated as follows: (Please check one)

_____ Attendance _____ Oppose 9 Support _____ No Recommendation

Reason for Opposition None

Applicant: n/s attended NA meeting _____ did not attend NA meeting

Phelton King
President

Neighborhood Officers: (Please return this form to the of attention Latonya Tate /Public Safety; City of Birmingham; 710 North 20th Street, Birmingham, AL 35203; City Council Chambers; 3rd Floor)
Failure to attend the neighborhood meeting may result in a delay in the liquor process.

New Application: Lounge Retail Liq – Class I On/Off Prem Type 010

The following applicant has applied to the City of Birmingham for an alcohol, dance or pool table license:

Name of Applicant: Urban Beverage 2 Inc
Mailing Address: 2677 Altadena Ridge Cir
Vestavia, AL 35243
Trade Name: Adios Margarita Bar
Location Address: 2218 1st Ave N
Contact Number: (205)200-2229 Contact Person: Vinh Tran

New Application Transfer

Type of License

- | | |
|---|--|
| <input checked="" type="checkbox"/> Lounge Retail Liquor Class I | <input type="checkbox"/> Lounge Retail Liquor Class II (Package Store) |
| <input type="checkbox"/> Club Liquor Class I (Fraternal) | <input type="checkbox"/> Club Liquor Class II (Private) |
| <input type="checkbox"/> Beer Off Premise | <input type="checkbox"/> Beer On & Off Premise |
| <input type="checkbox"/> Wine Off Premise | <input type="checkbox"/> Wine On & Off Premise |
| <input type="checkbox"/> Restaurant Retail Liquor | <input type="checkbox"/> Special Retail Liquor (7 days or less) |
| <input type="checkbox"/> Special Retail Liquor (over 30 days) | <input type="checkbox"/> Special Retail Liquor (under 30 days) |
| <input type="checkbox"/> Division I Dance Permit (customer) | <input type="checkbox"/> Division II Dance Permit (entertainers) |
| <input type="checkbox"/> Pool Table Permit (send copy of application) | |

Kitchen equipped: yes no

Number of table and chairs 10TBS/53CHS

Date Applied: 2/16/22

Revenue Examiner: GS

Copy: Fire Prevention
Health Department
Community Development
Operation New Birmingham
Melanie Genkin (pool tables)
Katrina Thomas (PEP)

**City of Birmingham
Application for
Alcoholic Beverage License**

New Application
Transfer

LOUNGE RETAIL LIQ-CLASS I ON/OFF PREM TYPE 010

By: **GS**

(Enter Type of License Applied For)

(Revenue Official)

1. Name of Applicant (s) Urban Beverage 2 Inc
(Indicate whether Individual, Partnership, Corporation, LLC, LLP, etc)
2. Name and address of individual applicant or all partners and members if partnership or assoc., or all officers and directors, if corporation
(Attach separate sheet if necessary)

Social Security Number Drivers License Number Name of Owner, Officer or Partner	Title	Date of Birth Place of Birth	Present Residence Address	Length of Residence at Place Named
ALDL# [REDACTED] Vinh Phuc Tran [REDACTED]	Officer	10/1/91 Dong Nai, Vietna	2677 Altadena Ridge Cir Vestavia, AL 35243	4 years
ALDL# [REDACTED] Nehal Soni	Officer	[REDACTED] Ahmedabad, Indi	1432 Scout Ridge Dr Hoover, AL 35244	16 years

Note: If a corporation, LLC or LLP, give place and date of incorporation or issuance of certificate of authority to do business in Alabama:

Book 904-575 Page: 1 of 3 Date: 9/14/2021 County: Jefferson
Foreign Corporation: certificate of Authority Date: (get copy of original papers)

3. Trade Name Adios Margarita Bar

4(a) Location 2218 1st Ave N
Exact Street Number, or if on Highway, give details as to Location
Birmingham, Alabama Zip Code 35203 County Jefferson Shelby

(b) Length of time at this location

(c) Mailing Address: 2677 Altadena Ridge Cir Vestavia, AL 35243

(d) Business Phone _____ Fax: _____ Other Contact: (205)200-2229

5. Name, trade name and License number of last or previous licensee:
Trade name _____ Year Type _____ Taxpayer ID _____

6 (a) Owner of real estate for which license is desired Mountainside Birmingham LLC
10200 E Girard Ave Bldg Ste C Denver, CO 80231

(b) Give a full description of the premises for which a license is desired: New Construction Existing Structure
Description Multi-Story Bldg

(c) Is establishment equipped with tables and chairs? Yes No If "Yes", how many? 10TBS/53CHS

7. Has a liquor, malt or brewed beverage license for premises ever been denied, suspended or revoked? Yes No
If "Yes", explain fully _____

8 (a) Pool Tables? Yes No Coin Operated? Yes No Standard Provider:

(b) Video Games? Yes No Juke Box or Slot Musical Equipment? Yes No

(c) Vending Machines (Snacks/Sodas)? Yes No Cigarettes or Tobacco Products? Yes No Other?

9 (a) Will you allow dancing? Yes No If "Yes": Customer/Patron? Div I Exhibition/Performance? Div II

(b) Independent Contract Employees (Disc Jockey, Band, Bartenders, Servers)? Yes No

- 10 (a) Are these premises kitchen equipped? Yes No Not Applicable
- (b) Is kitchen apart from but convenient to the dining room? Yes No
- (c) Is place of business habitually and principally used for providing food to the public? Yes No
- (d) If not kitchen equipped, is any type of food served? Yes No If "Yes", explain _____
- (e) Are these premises equipped for on premises consumption of liquor? Yes No
- (f) Will this business be operating primarily as a package store? Yes No
- (g) Seating Capacity: _____
- (h) For a SPECIAL RETAIL LICENSE, less than thirty (30) days: Starting Date _____ Ending Date _____
- (i) For a SPECIAL RETAIL LICENSE, more than thirty (30) days: Starting Date _____ Ending Dec. 31, _____
- (j) For a SPECIAL EVENTS RETAIL LICENSE, not to exceed seven (7) days: Starting _____ Ending _____
(Note: Application must be filed 120 days in advance of event for which license is applied for)
- (k) Event Sponsor _____ Phone Number _____
- (1) Sponsor Letter of Designation? Yes No
- (2) Multi-Vendor Sponsorship? Yes No
- (3) Street Closing Required? Yes No
- (4) Park Board Permission? Yes No

- 11 (a) Does the club charge and collect dues from elected members? Yes No
- (b) How many paid-up members are there in the club? _____
- (c) Are regular meetings held? Yes No If so, when? _____
- (d) Is business conducted through officers regularly elected? Yes No
- (e) Are members admitted by written application, investigation, and ballot? Yes No
- (f) For what purpose is the club organized and operated? Social Patriotic Political Athletic Other

12. List below the court records for law violations in the last ten (10) years, if any, of each person interested in this application, including the manager, whether as sole applicant, partner, officer, member, or landlord. (Do not include traffic violations, except D.U.I. and reckless driving. If no record, state "None".)

Name	Violation Charged	Name of Court	Date	Disposition of Case
<u>NO - Applicants</u>				

Applicant for the Alcoholic Beverage license requested by the aforementioned applicant hereby swears or affirms that he or she has read said application and that all the statements therein and the facts set forth therein are true and correct, and that the applicant is the only person interested in the business for which said license is requested.

Sworn and subscribed before me this 16th day of February, 2022

[Signature]
Signature of Affiant

[Signature]
Signature of Revenue Official

This application will not be processed until all fees due at the time of application are paid and receipts are on file.

Adios Safety Plan

Establishment/Licensee: Urban Beverage 2 Inc.
(DBA Adios Margarita Bar)

Premise: The Dagny Building
2218 First Ave . North, Birmingham, Alabama.
(2,306 sq.ft)

Mission Purpose: The purpose for Adios is community driven. The staff has been in the downtown community for years now and look forward to presenting a new concept for everyone to enjoy. Established operators and staff from this city want to showcase Mexican inspired recipes and ingredients into cocktails. The traditional Margarita Cocktail will be the fun factor of our bar program. The inside of the bar is inspired by hacienda homes of Mexico with a fun 1968 Mexico City Olympics theme. No Food will be served or offered.

1) **Business Hours of Operation** : Adios will operate from Thursday-Mondays. Closed Tuesdays and Wednesdays. Hours will be 3pm-Midnight.

2) **Signage**: The business shall have signs inside and outside the establishment at the entrance and exit areas stating "Please do not cause loud noise, loitering or impairment of traffic to occur that will disturb our community as you enter and exit our establishment Our Noise Control, Traffic Flow and Anti-Loitering Policy shall be strictly enforced by the Management". There shall be a sign stating "No Guns are permitted on the premises." There shall be a sign stating "Person in Charge" . There shall be a sign stating legal age to enter and consumption as required by ABC.

3) **Employee:**

*All employees including management and ownership will be educated/trained for responsible service, sale and consumption of alcohol. The program used will be TIPS (Training for prevention Procedures) TIPS is a skills-based training program that is designed to prevent intoxication, underage drinking, and drunk driving.

*All employees shall be at/over the age of 21 to work at this establishment.

*All employees shall be properly trained by management.

4) **Log Book:**

The establishment shall enter into a log book all incidents of illegal activity reported or

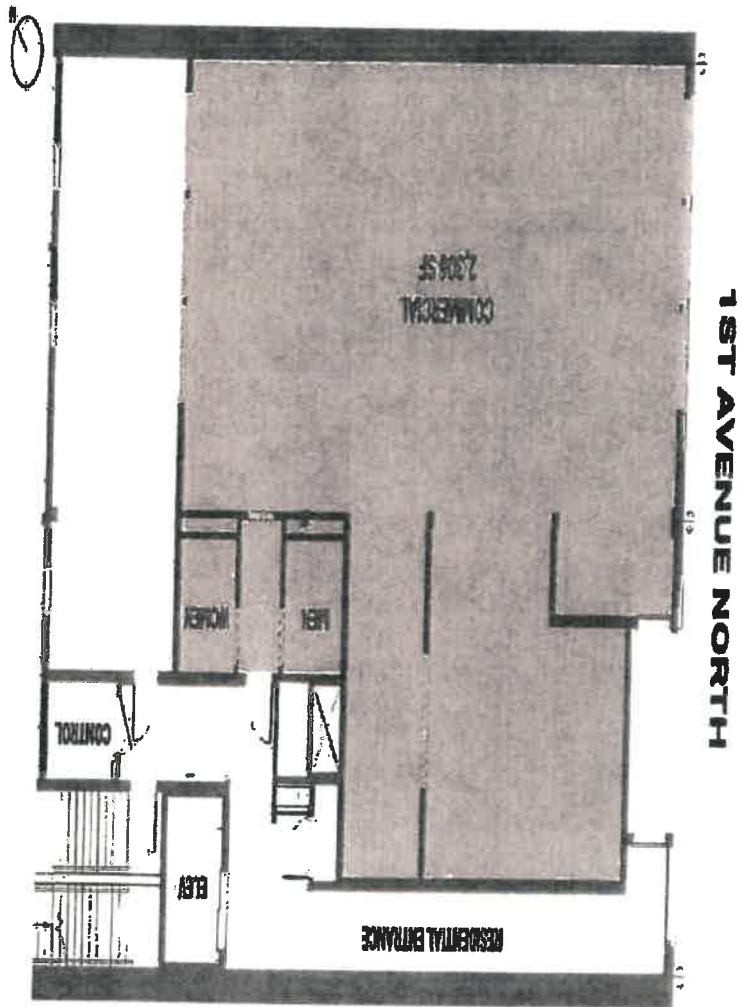
required to be reported to the police department, Insurance policy and management/ownership.

5) **Lighting and Surveillance:** The establishment shall place lighting on all areas of the building where there are entrances and exits and shall have surveillance cameras for Security purposes.

6) **Parking:** Employees and guest will be required to park on public parking located on 1st North Birmingham AL. Paid Parking lots are also available on premise beside and behind the establishment.

EXHIBIT B

SITE PLAN



COMMERCIAL FLOOR PLAN

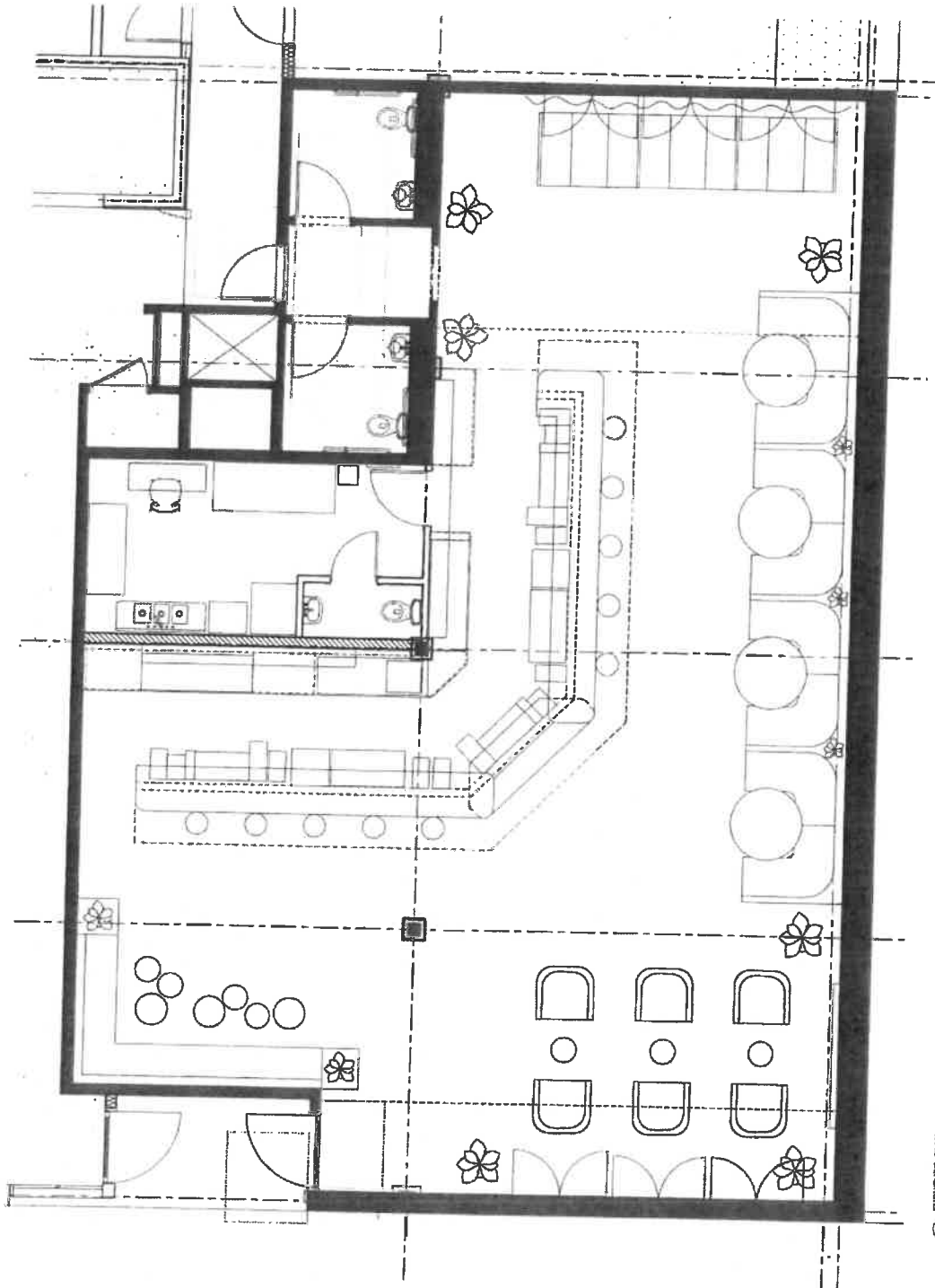


EXHIBIT C

Exhibit B

PROJECT NO. 020
DATE: 08/12/09
DRAWN BY: J. B. BROWN
CHECKED BY: J. B. BROWN
SCALE: AS SHOWN

Myron Sowards
(205) 938-1524
ms@myrongsowards.com



FURNITURE PLAN
SCALE: 3/8"=1'-0"

PARCEL ID: 012200361030013000

SOURCE: TAX ASSESSOR RECORDS **TAX YEAR:** 2021

DATE: Tuesday, February 15, 2022 10:03:48 AM

OWNER: MOUNTAINSIDE BIRMINGHAM LLC

ADDRESS: 10200 E GIRARD AVE BLDG C STE

CITY/STATE: DENVER CO

ZIP+4: 80231

SITE ADDR: 2218 1ST AVE N

CITY/STATE: BHAM, AL

ZIP: 35203

LAND: \$94,500.00

BLDG: \$148,500.00

OTHER: \$0.00

AREA: 3,588.21

ACRES: 0.08

SUBDIVISION INFORMATION:

NAME BIRMINGHAM BLOCKS

BLOCK: 102

LOT: 16

Section: 36-17-3W

Land Slide Zones: Not in Land Slide Zones

Historic Districts: Morris Avenue / 1st Ave N

Commercial Revitalization District: Morris Avenue

Fire District: In Fire District

Flood Zones: Not in Flood Zones

Tax Increment Financing District: In Tax Increment Financing District

Neighborhoods: Central City (1201)

Communities: Northside (12)

Council Districts: District - 5 (Councilor: Darrell O'Quinn)

Zoning Outline: B4

Demolition Quadrants: DEM Quadrant - 3

Impaired Watersheds: Not in Impaired Watersheds

Strategic Opportunity Area: Not in Strategic Opportunity Area

RISE Focus Area: In RISE Focus Area

Tax Delinquent Property: Not in Tax Delinquent Property

EPA Superfund: Not in EPA Superfund

Opportunity Zones: In Opportunity Zones

Judicial Boundaries: JEFFERSON



Parcel mapping and description information is obtained from the Jefferson County Tax Assessor's Office. This site does not provide real-time information and may contain errors. All data should be verified with the official source. The City of Birmingham makes no warranty as to the accuracy of the data and assumes no responsibility for any errors. Data from the Tax Assessor's Office may not be available for all parcels.

LICENSE STATUS REPORT FORM

Date: 3/10/22

New

Application

To: Latonya Tate, Chairman
Public Safety

Subject: Applicant's Name Yo Chef Surf & Turf Smokehouse LLC
Business Name Yo Chef Surf & Turf Smokehouse
Business Address 2201 4th PL W

Type of License & Description

- | | |
|---|--|
| <input type="checkbox"/> Lounge Retail Liquor Class I | <input type="checkbox"/> Lounge Retail Liquor Class II (Package Store) |
| <input type="checkbox"/> Club Liquor Class I | <input type="checkbox"/> Club Liquor Class II (Private) |
| <input type="checkbox"/> Beer Off Premise | <input type="checkbox"/> Beer On & Off Premise |
| <input type="checkbox"/> Wine Off Premise | <input type="checkbox"/> Wine On & Off Premise |
| <input checked="" type="checkbox"/> Restaurant Retail Liquor | <input type="checkbox"/> Special Retail License (over 30 days) |
| <input type="checkbox"/> Special Retail License (under 30 days) | <input type="checkbox"/> Pool Table Permit |
| <input type="checkbox"/> Division I Dance Permit (customers) | <input type="checkbox"/> Division II Dance Permit |

The _____ Neighborhood Association met on _____ and voted in reference to the above named license application. The concerns of the Neighborhood regarding the granting of this license are indicated as follows: (Please check one)

_____ Attendance _____ Oppose _____ Support _____ No Recommendation

Reason for Opposition _____

Applicant: _____ attended NA meeting _____ did not attend NA meeting

President

Neighborhood Officers: (Please return this form to the of attention Latonya Tate /Public Safety; City of Birmingham; 710 North 20th Street, Birmingham, AL 35203; City Council Chambers; 3rd Floor)
Failure to attend the neighborhood meeting may result in a delay in the liquor process.

New Application: Restaurant Retail Liquor – Type 020

The following applicant has applied to the City of Birmingham for an alcohol, dance or pool table license:

Name of Applicant: Yo Chef Surf & Turf Smokehouse LLC
Mailing Address: 125 Carol DR
Birmingham, AL 35215
Trade Name: Yo Chef Surf & Turf Smokehouse
Location Address: 2201 4th PL W
Contact Number: (205)515-3827
Contact Person: Cicely Jones

New Application Transfer

Type of License

- | | |
|---|--|
| <input type="checkbox"/> Lounge Retail Liquor Class I | <input type="checkbox"/> Lounge Retail Liquor Class II (Package Store) |
| <input type="checkbox"/> Club Liquor Class I (Fraternal) | <input type="checkbox"/> Club Liquor Class II (Private) |
| <input type="checkbox"/> Beer Off Premise | <input type="checkbox"/> Beer On & Off Premise |
| <input type="checkbox"/> Wine Off Premise | <input type="checkbox"/> Wine On & Off Premise |
| <input checked="" type="checkbox"/> Restaurant Retail Liquor | <input type="checkbox"/> Special Retail Liquor (7 days or less) |
| <input type="checkbox"/> Special Retail Liquor (over 30 days) | <input type="checkbox"/> Special Retail Liquor (under 30 days) |
| <input type="checkbox"/> Division I Dance Permit (customer) | <input type="checkbox"/> Division II Dance Permit (entertainers) |
| <input type="checkbox"/> Pool Table Permit (send copy of application) | |

Kitchen equipped: yes no

Number of table and chairs 11TBS/80CHS

Date Applied: 3/10/22

Revenue Examiner: GS

Copy: Fire Prevention
Health Department
Community Development
Operation New Birmingham
Melanie Genkin (pool tables)
Katrina Thomas (PEP)

**City of Birmingham
Application for
Alcoholic Beverage License**

New Application
Transfer

RESTAURANT RETAIL LIQUOR-TYPE 020
(Enter Type of License Applied For)

By: GS
(Revenue Official)

1. Name of Applicant (s) Yo Chef Surf & Turf Smokehouse LLC
(Indicate whether Individual, Partnership, Corporation, LLC, LLP, etc)
2. Name and address of individual applicant or all partners and members if partnership or assoc., or all officers and directors, if corporation
(Attach separate sheet if necessary)

Social Security Number Drivers License Number Name of Owner, Officer or Partner	Title	Date of Birth Place of Birth	Present Residence Address	Length of Residence at Place Named
ALDL# [REDACTED] Michelle Trainer Carmichael	Member	[REDACTED] Birmingham, AL	125 Carol DR Birmingham, AL 35215	

Note: If a corporation, LLC or LLP, give place and date of incorporation or issuance of certificate of authority to do business in Alabama:

Book 830-380 Page: 1 of 2 Date: 2/14/2022 County: Jefferson
Foreign Corporation: certificate of Authority Date: (get copy of original papers)

3. Trade Name Yo Chef Surf & Turf Smokehouse
- 4(a) Location 2201 4th PL W
Exact Street Number, or if on Highway, give details as to Location
Birmingham, Alabama Zip Code 35204 County Jefferson Shelby
- (b) Length of time at this location _____
- (c) Mailing Address: 125 Carol DR Birmingham, AL 35215
- (d) Business Phone (833)587-6325 Fax: _____ Other Contact: (205)341-8798

5. Name, trade name and License number of last or previous licensee:
Trade name _____ Year Type _____ Taxpayer ID _____

- 6 (a) Owner of real estate for which license is desired Maria Ruttle
6619 N Scottsdale RD Scottsdale, AZ 85250 Address _____
- (b) Give a full description of the premises for which a license is desired: New Construction Existing Structure
Description 1 Story Bldg Juke Box or Slot Musical Equipment? Yes No
- (c) Is establishment equipped with tables and chairs? Yes No If "Yes", how many? 11TBS/80CHS

7. Has a liquor, malt or brewed beverage license for premises ever been denied, suspended or revoked? Yes No
If "Yes", explain fully _____

- 8 (a) Pool Tables? Yes No Coin Operated? Yes No Standard Provider:
(b) Video Games? Yes No Juke Box or Slot Musical Equipment? Yes No
(c) Vending Machines (Snacks/Sodas)? Yes No Cigarettes or Tobacco Products? Yes No Other?

9 (a) Will you allow dancing? Yes No If "Yes": Customer/Patron? Div I Exhibition/Performance? Div II
(b) Independent Contract Employees (Disc Jockey, Band, Bartenders, Servers)? Yes No

- 10 (a) Are these premises kitchen equipped? Yes No Not Applicable
- (b) Is kitchen apart from but convenient to the dining room? Yes No
- (c) Is place of business habitually and principally used for providing food to the public? Yes No
- (d) If not kitchen equipped, is any type of food served? Yes No If "Yes", explain _____
- (e) Are these premises equipped for on premises consumption of liquor? Yes No
- (f) Will this business be operating primarily as a package store? Yes No
- (g) Seating Capacity: _____
- (h) For a SPECIAL RETAIL LICENSE, less than thirty (30) days: Starting Date _____ Ending Date _____
- (i) For a SPECIAL RETAIL LICENSE, more than thirty (30) days: Starting Date _____ Ending Dec. 31, _____
- (j) For a SPECIAL EVENTS RETAIL LICENSE, not to exceed seven (7) days: Starting _____ Ending _____
(Note: Application must be filed 120 days in advance of event for which license is applied for)
- (k) Event Sponsor _____ Phone Number _____
- (1) Sponsor Letter of Designation? Yes No
- (2) Multi-Vendor Sponsorship? Yes No
- (3) Street Closing Required? Yes No
- (4) Park Board Permission? Yes No

- 11 (a) Does the club charge and collect dues from elected members? Yes No
- (b) How many paid-up members are there in the club? _____
- (c) Are regular meetings held? Yes No If so, when? _____
- (d) Is business conducted through officers regularly elected? Yes No
- (e) Are members admitted by written application, investigation, and ballot? Yes No
- (f) For what purpose is the club organized and operated? Social Patriotic Political Athletic Other

12. List below the court records for law violations in the last ten (10) years, if any, of each person interested in this application, including the manager, whether as sole applicant, partner, officer, member, or landlord. (Do not include traffic violations, except D.U.I. and reckless driving. If no record, state "None".)

Name	Violation Charged	Name of Court	Date	Disposition of Case
NO - Applicant				

Applicant for the Alcoholic Beverage license requested by the aforementioned applicant hereby swears or affirms that he or she has read said application and that all the statements therein and the facts set forth therein are true and correct, and that the applicant is the only person interested in the business for which said license is requested.

Sworn and subscribed before me this 10th day of March, 2022

Lacey Jones
Signature of Affiant

Ray Hruby
Signature of Revenue Official

This application will not be processed until all fees due at the time of application are paid and receipts are on file.

For Zoning Purposes Only:
Restaurant Retail Liquor-Type 020

TAXPAYER IDENTIFICATION NUMBER
(City Office Use Only)

CITY OF BIRMINGHAM
APPLICATION FOR TAX CERTIFICATE

The information that you provide in this application is protected by the confidentiality provisions outlined in Ordinance No. 97-183, "The Business License Code of the City of Birmingham", Article II, Section 14. Please type or print. This application should be completed fully to avoid delays in processing.

Section 1 - WHAT WOULD YOU LIKE TO DO?

- Register a new business (Please complete all sections)
- Add a New Location or Tax Type to your current registration (Please complete Sections 2, 3, 5-10, 12, 13, and 14)
- Change Business Ownership of your current registration (Please complete all sections)
- Change the Mailing Address only for your current registration (Please complete Sections 2, 8-10, 12, 13 and 14)
- Change the Location Address of your current registration (Please complete Sections 2, 3, 5-13, and 14)
- Change in Corporate Officers, Members, or Partners (Please complete Sections 2, 5, 7-9,, 11-13, and 14)
- Provide a general "update" of your current registration information (Please complete all sections)

Section 2 - LEGAL NAME AND MAILING ADDRESS to which tax forms are to be sent:

(Note: If mailing address is a post office box, the street address of the business must also be indicated.)

Full Legal Name: Yo Chef Surf & Turf Smokehouse LLC
Attention: _____
Address: 125 Carol DR
City: Birmingham State: AL Zip Code: 35215
Area Code and Phone Number: (205)515-3827
Area Code and Fax Number: _____
Name of Contact Person: Cicely Jones
E-Mail: mpafinancials@gmail.com Website Address: _____

Section 3 - TRADE NAME AND LOCATION ADDRESS of office in Birmingham. If you are registering more than one location, please see reverse side of this form. (Important Note: All business locations are subject to zoning approval.)

Please select: Commercial Establishment Private Residence No Physical Birmingham Location

Trade Name (d/b/a): Yo Chef Surf & Turf Smokehouse
Attention: _____
Address: 2201 4th PL W
City: Birmingham State: AL Zip: 35204
Area Code and Phone Number of Business Location: _____
Area Code and Fax Number of Business Location: _____
Name of Contact Person at Business Location: _____
E-Mail: _____ Website Address: _____

Section 4 - CHANGE OF OWNERSHIP resulting from merger, purchase or acquisition of an existing business. If applicable, this section MUST be completed.

Former Owner: _____
Trade Name (d/b/a) _____
Mailing Address of Former Owner _____
Address (es) of Former Location(s) _____
Area Code and Phone Number of Former Owner: _____

Section 5 - TYPE OF OWNERSHIP

Please indicate the form of organization. NOTE: Please refer to the accompanying "General Information for Preparing an Application for Tax Certificate Form" instruction sheet for a listing of supplemental documentation to be included with this application.

- 1. Alabama Corporation (Incorporated in Alabama)
- 2. Partnership (two or more owners)
- 3. Sole Proprietor (one owner)
- 4. Unincorporated Association (i.e., PA)
- 5. Other _____
- 6. Limited Liability Partnership (LLP)
- 7. Limited Liability Company (LLC)
- 1. Foreign Corporation (Incorporated in another state)

Section 6 - TYPE OF BUSINESS

Please indicate the principal business activity category.

- 1. Manufacturer
- 2. Contractor (Please Specify)
- 3. Wholesaler
- 4. Retailer
- 5. Other (Please Specify)
- 6. Food/Eating Establishment
- 7. Day Care Center
- 8. Home Occupation/Home Office
(Please Specify the type of occupation or office)
- 9. State Certified, State Regulated, or State Licensed Occupations, (Please Specify)
- 10. Transient Vendors/Special Events:
Date(s) of the Event _____
Event Location _____

Section 7 - PRINCIPAL BUSINESS ACTIVITY AND PRODUCT

You should indicate the one business activity that accounts for the largest percentage of gross income. State the broad field of business activity as well as the product or service. For example-Activity: Wholesale Sales / Product: Pharmaceuticals OR Activity: Manufacturing / Product: Automobiles. Note: This information should be the same information as required by the Internal Revenue Service on Schedule c of Form 1040 for Sole Proprietorships.

Activity: Restaurant Product: Alcohol/Food

Section 8 - FEDERAL TAX ID NUMBER / NUMBER OF EMPLOYEES

Enter Federal Identification Number (REQUIRED) and the number of employees that will be working in Birmingham.

Federal ID Tax Number _____ Number of Employees in Birmingham (Required) _____

Section 9 - COMMENCEMENT OF BUSINESS ACTIVITY

Enter Date Business Activity Will Begin in Birmingham: Month _____ Day _____ Year _____
Enter Date City of Birmingham Taxpayer ID Applied For: Month _____ Day _____ Year _____

Section 10 - Tax Liabilities Check the taxes for which you are liable.

- Sales Tax
- Sellers Use Tax
- Consumers Use Tax
- Lease Tax
- Occupational Tax- Employers
- Lodgings Tax
- Business License Tax

TAX IDENTIFICATION NUMBERS NOW ASSIGNED TO YOU: (Write "None" if no number assigned)

State of Alabama Sales Tax Number _____
State of Alabama Sellers Use Tax Number _____
State of Alabama Consumers Use Tax Number _____
State of Alabama Lease Tax Number _____
State of Alabama Lodgings Tax Number _____
State of Alabama Unemployment Tax Number _____

If you have more than one business location, it is assumed that you will file consolidated returns for each of the taxes for which you may be liable, including sales, use, lease, occupational, and lodgings taxes. Each separate business location requires a separate business license.

APPLICATION FOR TAX CERTIFICATE (CITY OF BIRMINGHAM, ALABAMA)

Section 11 - OWNER, PARTNERS, MEMBERS, OR CORPORATE OFFICERS
 This information REQUIRED. (Attach additional sheets if necessary.)

NAME	TITLE	SOCIAL SECURITY NUMBER
Carmichael, Michelle	Member	[REDACTED]

Section 12 - CORPORATE RESIDENT AGENT OR LOCAL MANAGER

Name: _____
 Address of Residence: _____
 City: _____ State _____ Zip Code _____
 Area Code and Phone Number of Residence: _____

Section 13- STATEMENT OF ACKNOWLEDGEMENT AND ACCEPTANCE OF CONDITIONS -Please read carefully, then sign.

I declare, under the penalty of making a false declaration, that I am authorized to complete this form and to the best of my knowledge and belief all questions answered are true, correct, and complete statements, made in good faith. I understand and agree that the granting of this license requires my compliance with all applicable City of Birmingham Tax Code provisions, and state laws, as well as with all conditions set forth in any and all applicable City of Birmingham Laws, Ordinances, Rules and Regulations, and that any failure or refusal to comply with said laws, ordinances, rules and regulations may result in the revocation of any license issued pursuant to this application. I also understand that disclosure of any false or misleading information will result in automatic denial of any license issued pursuant to this application, or in the revocation of the license if such has already been issued. I understand that it is unlawful for any person to commence or engage in any business, vocation, occupation or profession, who is not otherwise exempt therefrom under the provisions of the City of Birmingham Business License Tax Code (Ordinance No. 97-183), without first having procured a license therefore, and that it is unlawful for any person to continue in any business, vocation, occupation, or profession after the expiration of a license previously issued without obtaining a new license. I further understand that it is unlawful for any person to engage in or continue in any business, vocation, occupation, or profession at any location within the corporate limits of the City of Birmingham without approval from the City of Birmingham Department of Planning, Engineering, and Permits (Zoning Division).

Signed:

Cicely Jones
 Signature of Person Completing This Application

3/10/22
 Date

Cicely Jones
 Print the Name of the Person Completing This Application

(205) 515-3827
 Phone Number of Person Completing Application

CITY OFFICE USE ONLY Location

ZONING APPROVAL AND COMMENTS:
 C-M1 O/S BDL 3-10-22
 All beer & wine must be approved by Council
 HOME OCCUPATION CERTIFICATE EXECUTED
 YES NO NOT APPLICABLE

SIC OR NAICS _____
 BLIC _____
 TERRITORY _____
 ANNEX _____
 HEALTH DEPT PERMIT _____
 OTHER REQUIRED PERMIT _____
 ARTICLES OF INCORPORATION _____
 CERTIFICATE OF AUTHORITY _____
 TAX FORMS ORDERED NBL ORDERED

APPLICATION FOR TAX CERTIFICATE (CITY OF BIRMINGHAM, ALABAMA)
SECTION 14 - ADDITIONAL TAXABLE LOCATIONS

Trade Name and Location Address of office in Birmingham. If you are registering more than one location, please use this section. Attach additional sheets if necessary. (Important Note: All business locations are subject to zoning approval.)
Location

Please select: Commercial Establishment Private Residence No Physical Birmingham Location

Trade Name (d/b/a): _____
Attention: _____
Address: _____
City: _____ State: _____ Zip: _____
Area Code and Phone Number of Business Location: _____
Area Code and Fax Number of Business Location: _____
Name of Contact Person at Business Location: _____
E-Mail: _____ Website Address: _____

CITY OFFICE USE ONLY - Location

ZONING APPROVAL AND COMMENTS: _____ _____ _____	SIC OR NAICS _____
	BLIC _____
	TERRITORY _____
	ANNEX _____
HOME OCCUPATION CERTIFICATE EXECUTED <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> NOT APPLICABLE	HEALTH DEPT PERMIT _____
	OTHER REQUIRED PERMIT _____
	ARTICLES OF INCORPORATION _____
	CERTIFICATE OF AUTHORITY _____
	TAX FORMS ORDERED <input type="checkbox"/> NBL ORDERED <input type="checkbox"/>

Trade Name and Location Address of office in Birmingham. If you are registering more than one location, please use this section. Attach additional sheets if necessary. (Important Note: All business locations are subject to zoning approval.)
Location

Please select: Commercial Establishment Private Residence No Physical Birmingham Location

Trade Name (d/b/a): _____
Attention: _____
Address: _____
City: _____ State: _____ Zip: _____
Area Code and Phone Number of Business Location: _____
Area Code and Fax Number of Business Location: _____
Name of Contact Person at Business Location: _____
E-Mail: _____ Website Address: _____

CITY OFFICE USE ONLY - Location

ZONING APPROVAL AND COMMENTS: _____ _____ _____	SIC OR NAICS _____
	BLIC _____
	TERRITORY _____
	ANNEX _____
HOME OCCUPATION CERTIFICATE EXECUTED <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> NOT APPLICABLE	HEALTH DEPT PERMIT _____
	OTHER REQUIRED PERMIT _____
	ARTICLES OF INCORPORATION _____
	CERTIFICATE OF AUTHORITY _____
	TAX FORMS ORDERED <input type="checkbox"/> NBL ORDERED <input type="checkbox"/>

Hi Greg,

Enclosed and attached, please find documents for Yo Chef owner Michelle T Carmichael

1. Articles of Incorporation (attached)
2. Drivers License (attached)
3. Social # [REDACTED]
4. 125 Carol Drive Birmingham, AL 35215
5. 20 yrs
6. [REDACTED] Birmingham
7. Safety Plan (attached)
8. Lease (will send)
9. Drawing or sketch attached.

11/25/80/MS

DRIVER LICENSE



ALABAMA



NO. **[REDACTED]**

CLASS DM

D.O.B. **07-22-1958**

EXP **06-08-2021**

MICHELLE TRAINER
CARMICHAEL

1910 34TH AVE N
BIRMINGHAM AL 35207-3342

ENDORSEMENTS
ISS **[REDACTED]**

REST

SEX F

HT 5-00

EYES BRO

WT 130

HAIR BRO

Michelle Carmichael

Secretary Neil Taylor

www.al.gov

STATE OF ALABAMA

**DOMESTIC LIMITED LIABILITY COMPANY (LLC)
CERTIFICATE OF AMENDMENT**

PURPOSE: In order to amend a Limited Liability Company's (LLC) Certificate of Formation under Section 10A-5A-2.02 of the *Code of Alabama 1975*, this Certificate of Amendment and the appropriate filing fees must be filed with the Office of the Secretary of State.

1. The current recorded name of the Limited Liability Company:

Yo Chef Surf & Turf Smokehouse LLC

2. The date the Certificate of Formation was filed: 01 / 19 / 2021 (MM/DD/YYYY)

3. Alabama Entity ID Number (Format: 000-000-000): 000 - 830 - 380 **TO OBTAIN ID NUMBER,** website at www.sos.alabama.gov click on Business Services (below picture), click on Business Entity and Name Search, click on Entity Name, enter the name of the entity in the appropriate box, and enter. Click on the number and verify that this is the correct entity. **This step is strongly recommended.**

(For SOS Use Only)

Alabama
Sec. Of State
000-830-380 DLLL
Date 02/14/2022
Time 08:49:38
File \$100.00
County -----
Total \$100.00

DOMESTIC LIMITED LIABILITY COMPANY AMENDMENT

4. The following amendment was adopted on 02 / 14 / 2022 (MM/DD/YYYY):

See attached.

Additional Amendments and the dates on which they were adopted are attached.

*Be very specific about what must be changed if you are amending existing information.

*If the amendment includes a name change, a copy of the **Name Reservation Certificate** issued by the Office of Secretary of State **must be attached**.

*Registered agents and registered agent addresses are changed by filing a Change Of Registered Agent Or Registered Office By Entity form directly with the Office of the Secretary of State (the new agent's signature is required agreeing to accept responsibility). **Agent information will NOT be changed with an amendment.**

5. The undersigned authorized signature certifies that the amendment or amendments have been approved in the manner required by Title 10A of the *Code of Alabama of 1975* and the governing documents of this entity.

02 / 14 / 2022

Date (MM/DD/YYYY)

Michelle T. Carmichael

Signature as required by 10A-5A-2.04

Member

Title/capacity to sign under 10A-5A-2.04

Amendment Details

Entity Info

Current Entity Name
Yo Chef Surf & Turf Smokehouse LLC

Entity ID
000-830-380

Type
Limited Liability Company (LLC)

Formation Date
2021-01-19

Members and Addresses

Original

Member	Street Address	Mailing Address
--------	----------------	-----------------

Amended

Member	Street Address	Mailing Address	
Michelle T. Carmichael	125 Carol Drive Birmingham, AL 35215	125 Carol Drive Birmingham, AL 35215	(Added)

COMMERCIAL PROPERTY LEASE

MAIN TERMS AND DEFINITIONS

1. The Landlord is 4th Place West LLC, hereafter the "Landlord".
2. The Tenant is Michelle Carmichael, hereafter the "Tenant".
3. The Premises are 2201 4th PL.W. Birmingham, Alabama 35204, hereafter the "Premises".
4. The "Term": The Term of this lease begins immediately on January 1, 2022. The end date is subject to December 20, 2022 written notice by either the Landlord or the Tenant.
5. The Rent is \$3,500 per calendar month (exclusive of all other charges) (hereafter the "Rent") and is payable on every first of every month.
6. The Rent begins to be payable on April 1, 2022 and the first payment shall be made on April 1, 2022.
7. "Permitted Use": The Permitted Use of the Premises is for the commercial use of the Tenant's business.

LETTING AND RIGHTS

8. The Landlord lets the Premises to the Tenant at the Rent for the Term.
9. The Landlord grants to the Tenant the following rights and makes the following reservations:
 - a. The Premises form all of the building. They do not include any part of the main structure, foundations, roof or exterior of that building but they do include window frames and glass, doors and door frames, raised floors and suspended ceilings and the voids above and below them, light fittings and other Landlord's fixtures and fittings;
 - b. "Common Parts": The Tenant is granted the shared use of the following Common Parts:

[Not a shared lease.]

but must use them in a reasonable and proper manner in accordance with any regulations imposed from time to time by the Landlord.

10. The Tenant is granted the non-exclusive use of service media (meaning any ducts flues gutters pipes drains sewers cables conduits wires or other media for conducting water soil gas electricity and telecommunications) which serve the Premises and which may serve other premises, but must use them in a reasonable and proper manner in accordance with any regulations imposed from time to time by the Landlord.
11. The Landlord reserves the right to alter or close any Common Parts subject to providing (except in emergencies) reasonably suitable alternative amenities, and reserves the right to use (and repair, alter or renew) any service media in the Premises which serve other premises;
12. The Landlord also reserves the right to enter the Premises for the purposes and on the terms set out elsewhere in this Lease. The right of entry will only be exercised following reasonable notice, except in the case of an emergency.

LANDLORD'S OBLIGATIONS

13. The Landlord's Obligations to be observed throughout the Term are:

Emergency Action Plan

Provided by

Nolan Securities LLC

For

Yo Chef Surf and Turf Smokehouse

2201 4th Pl W

Birmingham, AL 35204

Emergency Action Plan

This emergency action plan is provided only as a guide to help employers and employees comply with the requirements of the Occupational Safety and Health Administration's (OSHA) Emergency Action Plan Standard, 29 *Code of Federal Regulations* (CFR) 1910.38. It is not intended to supersede the requirements of the standard. This plan contains the basic elements of emergency action plan. However, an employer should review the OSHA standards that apply to its situation, company, and facility, and customize this plan to its specific processes and procedures. Modifications other than those indicated in parentheses may be necessary to establish an effective, comprehensive program.

**Emergency Action Plan
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Emergency Action Plan
 for
Yo Chef Surf and Turf Smokehouse
 2201 4th Pl W
 Birmingham, AL 35204
 February 1, 2022

I. OBJECTIVE

The objective of the Yo Chef Surf and Turf Smokehouse Emergency Action Plan is to comply with the Occupational Safety and Health Administration's (OSHA) Emergency Action Plan Standard, 29 CFR 1910.38, and to prepare employees for dealing with emergency situations. This plan is designed to minimize injury, loss of human life, and company resources by training employees, procuring and maintaining necessary equipment, and assigning responsibilities. This plan applies to all emergencies that may reasonably be expected to occur at Yo Chef Surf and Turf Smokehouse 2201 4th Pl W Birmingham, AL 35204

II. ASSIGNMENT OF RESPONSIBILITY

A. Emergency Plan Manager

Emergency Plan Manager will manage the Emergency Action Plan for Yo Chef Surf and Turf Smokehouse. The Emergency Plan Manager will also maintain all training records pertaining to this plan. The plan manager is responsible for scheduling routine tests of the Yo Chef Surf and Turf Smokehouse 2201 4th Pl W Birmingham, AL 35204 emergency notification system with the appropriate authorities.

The Emergency Plan Manager will also coordinate with local public resources, such as fire department and emergency medical personnel, to ensure that they are prepared to respond as detailed in this plan. This includes allowing emergency responders to perform a walkthrough of the facility to familiarize themselves with the layout of the structures, types, and volume of hazardous chemical storage, and other hazards they might encounter when responding to an emergency. Emergency-responder input will be incorporated into this Emergency Action Plan.

B. Emergency Plan Coordinators

The Yo Chef Surf and Turf Smokehouse Emergency Plan Coordinators are as follows:

Bldg. Number/Section /Dept.	Primary Name and Position	Primary Phone #	Alternate Name and Position	Alternate Phone #

The Emergency Plan Coordinators are responsible for implementing the procedures in this plan in their designated areas in an emergency. *(Note: Coordinators may also be given the responsibility of accounting for employees or visitors after an evacuation.)*

The following people will be responsible for assisting employees who have disabilities or who do not speak English during evacuation:

Bldg. Number/Section/Dept.	Title
Bar Area	Bartender
Kitchen	Head Chef
Parking Lot	Security Guards
Dinning Area	Head Server

C. Management

Yo Chef Surf and Turf Smokehouse will provide adequate controls and equipment that, when used properly, will minimize or eliminate risk of injury to employees in an emergency. Yo Chef Surf and Turf Smokehouse management will review this plan regularly to ensure proper adherence.

D. Supervisors

Supervisors will follow, and ensure that their employees are trained in, the procedures in this plan.

E. Employees

Employees are responsible for following the procedures in this plan.

F. Contractors

Contract employees are responsible for complying with this plan, and will be given the training described in the plan by Yo Chef Surf and Turf Smokehouse

III. PLAN IMPLEMENTATION

A. Reporting Fire and Other Emergency Situations

All fires and other emergency situations will be reported as soon as possible to Birmingham Fire Department by one of the following means:

1. verbally, as soon as possible during normal work hours; or
2. by telephone, after normal work hours or on weekends.

To eliminate confusion and false alarms, Designated Employees is/are authorized to contact community emergency response personnel.

Type of Emergency Responder	Person(s) Responsible for Contacting Emergency Responders	Contact Information for Responsible Person(s)
Fire		
Police/Sheriff		
Ambulance/EMS		

If (Responsible Person(s)) cannot be reached, any individual with knowledge of a fire or other emergency situation may then contact emergency responders.

Under no circumstances will an employee attempt to fight a fire after it can no longer be put out with a fire extinguisher, nor will any employee attempt to enter a burning building to conduct search and rescue. These actions must be left to emergency services professionals (such as the fire department or emergency medical professionals) who have the necessary training, equipment, and experience to do so. Untrained people might endanger themselves or those they are trying to rescue.

B. Informing Yo Chef Surf and Turf Smokehouse Employees of Fires and Other Emergency Situations

In the event of a fire or other emergency situation, (Responsible Person) will ensure that all employees are notified as soon as possible using the building alarm system (which includes audible and visual alarms, 24 hours a day). (Responsible Person) will provide special instructions to all employees via the public address system.

If a fire or other emergency situation occurs after normal business hours, (Responsible Person(s)) will contact all employees not on shift to provide future work status, depending on the nature of the situation.

C. Corporate Notification

1. (Responsible Person) will contact the Yo Chef Surf and Turf Smokehouse public relations department as soon as possible if media coverage of the situation is expected.
2. (Responsible Person) will contact the Yo Chef Surf and Turf Smokehouse Management as soon as possible with information on employee injuries or loss of life, cargo losses, or property damage or theft.

D. Emergency Contact Information

Designated Employees will maintain a list of all employees' personal emergency contact information and will keep the list in Designated Area for easy access in an emergency.

E. Evacuation Routes

Emergency evacuation escape route plans (see Appendix A) are posted in (Designated Areas) throughout Yo Chef Surf and Turf Smokehouse. In the event that a fire or emergency alarm is sounded or instructions for evacuation are given by (Responsible Person), all employees (except those noted in Part III.F of this plan) must immediately exit the building(s) at the nearest exits as shown in the escape route plans, and must meet as soon as possible at the (Designated Assembly Area). Employees with offices must close the doors (unlocked) as they exit the area.

Mobility-impaired employees and their assigned assistants will gather at the (Designated Area) within the building to ensure safe evacuation in the pre-determined fashion.

F. Securing Property and Equipment

If evacuation of the premises is necessary, some items may need to be secured to prevent further danger to the facility and personnel on hand (such as securing confidential or irreplaceable records, or shutting down equipment to prevent release of hazardous materials). Only the following people may remain in the building for the prescribed amount of time to secure the property and equipment to which they have been assigned.

Name	Property or Equipment to Secure	Location of Property or Equipment	Estimated Time to Complete Security Process

All people remaining behind to shut down critical systems or utilities must be capable of recognizing when to abandon the operation or task. Once the property or equipment has been secured, or the situation becomes too dangerous to remain, those who remained behind must exit the building by the nearest escape route as soon as possible and meet the remainder of the employees at the (Designated Assembly Area).

G. Advanced Medical Care

Under no circumstances may an employee provide advanced medical care and treatment. These situations must be left to emergency services professionals, or **(Designated Person(s))**, who have the necessary training, equipment, and experience. Untrained people might endanger themselves or those they are trying to assist.

H. Accounting for Employees/Visitors After Evacuation

Once an evacuation has occurred, the **(Responsible Person(s))** will account for each employee or visitor assigned to them at the **(Designated Assembly Area)**. Each employee is responsible for reporting to the appropriate **(Responsible Person(s))** so an accurate head count can be made. All employee counts will then be reported to the Emergency Action Plan Manager as soon as possible.

I. Re-entry

Once the building has been evacuated, no one may re-enter the building for any reason, except for designated and properly trained rescue personnel (such as fire department or emergency medical professionals). Untrained people might endanger themselves or those they are trying to rescue.

All employees must remain at the **(Designated Assembly Area)** until the fire department or other emergency response agency notifies **(Responsible Person)** that either:

1. the building is safe for re-entry, in which case personnel will return to their workstations; or
2. the building or assembly area is not safe, in which case **(Responsible Person)** will instruct personnel how or when to vacate the premises.

J. Sheltering in Place

In the event that chemical, biological, or radiological contaminants are released into the environment in such quantity or proximity to Yo Chef Surf and Turf Smokehouse authorities and/or **(Responsible Person(s))** might determine that is safer to remain indoors rather than evacuate. The Emergency Action Plan Manager will announce shelter-in-place status by public address system or other means of immediate notification available at worksite.

1. **(Responsible Person(s))** will immediately close the business. If customers, clients, or visitors are in the building, they will be advised to stay in the building for their safety.

2. Unless there is an imminent threat, employees, customers, clients, and visitors will call their emergency contacts to let them know where they are and that they are safe.
3. **(Responsible Person(s))** will turn on call-forwarding or alternative telephone answering systems or services. The recording for voice mail or automated attendant will be changed to indicate that the business is closed, and that staff and visitors will be remaining in the building until authorities advise that it is safe to leave.
4. **(Responsible Person(s))** will quickly lock exterior doors and close windows, air vents, and fireplace dampers. **(Responsible Person(s))** familiar with the building's mechanical systems will turn off, seal, or disable all fans, heating and air conditioning systems, and clothes dryers, especially systems that automatically exchange inside air with outside air. If there is a danger of explosion, **(Responsible Person(s))** must close window shades, blinds, or curtains.
5. **(Responsible Person(s))** will gather essential disaster supplies (for example, nonperishable food, bottled water, battery-powered radios, first-aid supplies, flashlights, batteries, duct tape, plastic sheeting, and plastic garbage bags), which are stored at **(Designated Location)**, and will take them to the **(Shelter-in-Place Location(s))** within the building. *[Select interior room(s) above the ground floor, with the fewest windows or vents. The room(s) should have adequate space for everyone to be able to sit. Avoid overcrowding by selecting several rooms if necessary. Large storage closets, utility rooms, pantries, and copy and conference rooms without exterior windows work well. Avoid selecting rooms with mechanical equipment, such as ventilation blowers or pipes, which may be impossible to seal from outdoors. It is ideal to have a hard-wired telephone in the room(s) you select. Cellular telephone equipment may be overwhelmed or damaged during an emergency. Call emergency contacts and have the telephone available if you need to report a life-threatening condition.]*
6. All employees, customers, and visitors will move immediately to the **(Shelter-in-Place Location(s))** within the building. **(Responsible Person(s))** will seal all windows, doors, and vents with plastic sheeting and duct tape.
7. **(Responsible Person)** will write down the names of everyone in the room and will call the **(Designated Emergency Contact outside the building)** to report who is in the room, and their affiliations with Yo Chef Surf and Turf Smokehouse

8. **(Responsible Person(s))** will monitor telephone, radio, television and Internet reports for further instructions from authorities to determine when it is safe to leave the building.

K. Severe Weather

The Emergency Action Plan Manager will announce severe weather alerts (such as tornados) by public address system or other means of immediate notification available at the worksite. All employees will immediately retreat to the (Designated Area) until the threat of severe weather has passed as communicated by the Emergency Action Plan Manager.

IV. TRAINING

A. Employee Training

All employees will receive instruction on this Emergency Action Plan as part of new-employee orientation. Additional training must be provided:

1. when there are any changes to the plan or facility;
2. when an employee's responsibilities change; and
3. annually, as refresher training.

Items for review during the training include:

1. proper housekeeping;
2. fire-prevention practices;
3. fire extinguisher locations, usage, and limitations;
4. threats, hazards, and protective actions;
5. means of reporting fires and other emergencies;
6. names of Emergency Action Plan manager and coordinators;
7. individual responsibilities;
8. alarm systems;
9. escape routes and procedures;
10. emergency shut-down procedures;
11. procedures for accounting for employees and visitors;
12. closing doors;
13. sheltering in place;
14. severe weather procedures; and
15. Emergency Action Plan availability.

B. Fire/Evacuation Drills

Fire/evacuation drills must be conducted at least annually and in coordination with local police and fire departments. Additional drills will be conducted if physical properties of the business change, processes change, or it is otherwise deemed necessary.

C. Training Records

(Responsible Person) will document all training pertaining to this plan and will maintain records at **(Designated Area)**.

V. PLAN EVALUATION

This Emergency Action Plan must be reviewed annually, or as needed if changes to the worksite are made, by **(Responsible Person)**. Following each fire drill, **(Responsible Management and Employee Representatives)** will evaluate the drill's effectiveness and any weaknesses in the plan, and will implement improvements.

Appendix A: Emergency Action Plan Checklist

General Issues	
<input type="checkbox"/> Does the plan consider all natural or human-made emergencies that could disrupt your workplace?	Common sources of emergencies identified in emergency action plans include fires, explosions, floods, hurricanes, tornadoes, toxic material releases, radiological and biological accidents, civil disturbances, and workplace violence.
<input type="checkbox"/> Does the plan consider all potential internal sources of emergencies that could disrupt your workplace?	Conduct a hazard assessment of the workplace to identify any physical or chemical hazards that might exist and could cause an emergency.
<input type="checkbox"/> Does the plan consider the impact of these internal and external emergencies on the workplace's operations and is the response tailored to the workplace?	Brainstorm worst-case scenarios. Ask yourself what you would do, what the likely impact on your operation would be, and what the device-appropriate responses would be.
<input type="checkbox"/> Does the plan contain a list of key personnel information for local emergency responders, agencies and contractors?	Keep your list of key contacts current and make provisions for an emergency communications system, such as a cellular phone or a portable radio unit, so that contact with local law enforcement, the fire department, and others can be swift.
<input type="checkbox"/> Does the plan contain the names, titles, departments, and telephone numbers of people to contact for additional information or an explanation of duties and responsibilities under the plan?	List names and contact information for people responsible for implementing the plan.
<input type="checkbox"/> Does the plan address how rescue operations will be performed?	Unless you are a large employer handling hazardous materials and processes, or you have employees regularly working in hazardous situations, you will probably rely on local public resources, such as the fire department, which is trained, equipped, and certified to conduct rescues. Make sure any external department or agency identified in your plan is prepared to respond as outlined in your plan. Untrained people may endanger themselves and those they are trying to rescue.
<input type="checkbox"/> Does the plan address how medical assistance will be provided?	Most small employers do not have a formal internal medical program and instead make arrangements with nearby medical clinics or facilities to handle emergencies. If an infirmary, clinic, or hospital is not close to your workplace, ensure that onsite personnel(s) have adequate training in first aid. The American Red Cross, some insurance providers, injury should begin within three to four minutes of the accident. Consult a physician to order appropriate first-aid supplies for emergencies. Establish a relationship with a local ambulance service so that transportation is readily available for emergencies.
<input type="checkbox"/> Does the plan identify how or where personal information on employees can be obtained in an emergency?	In an emergency, it could be important to have ready access to important personal information about your employees. This includes their home telephone numbers, names and telephone numbers of their next of kin, and medical information.

Evacuation Policy and Procedure

<input type="checkbox"/> Does the plan identify the conditions under which an evacuation would be necessary?	<input type="checkbox"/> The plan should identify situations that will require an evacuation of the workplace. This might include a fire, earthquake, or chemical spill. The extent of evacuation needed may be different for different types of hazards.
<input type="checkbox"/> Does the plan identify a clear chain of command and designate a person authorized to order an evacuation or shutdown of operations?	<input type="checkbox"/> It is common practice to select a responsible person to lead and coordinate your emergency plan and evacuation. It is critical that employees know who the coordinator is and that they understand that this person has the authority to make decisions during emergencies. The coordinator is responsible for assessing the situation to determine whether an emergency exists requiring activation of the emergency procedures, overseeing emergency procedures, notifying and coordinating with outside emergency services, and directing shutdown of utilities or plant operations if necessary.
<input type="checkbox"/> Does the plan address the types of actions expected of various employees for the types of potential emergencies?	<input type="checkbox"/> The plan may specify different actions for employees depending on the emergency. For example, employers may want to have employees assemble in one area of the workplace if it is threatened by a tornado or earthquake but evacuate to an exterior location during a fire.
<input type="checkbox"/> Does the plan designate who, if anyone, will stay to shut down critical operations during an evacuation?	<input type="checkbox"/> Consider including locations of where to shut down utilities, such as electrical and gas utilities, for all or part of the facility. All people remaining behind to shut down critical systems or utilities must be capable of recognizing when to abandon the operation or task and evacuate themselves.
<input type="checkbox"/> Does the plan outline specific evacuation routes and exits, and are these posted in the workplace where they are easily accessible to all employees?	<input type="checkbox"/> Most employers create maps from floor diagrams with arrows that designate exit route assignments. These maps should include locations of exits, assembly points and equipment (such as fire extinguishers, first-aid kits, and spill kits) that may be needed in an emergency. Exit routes should be clearly marked and well lit, wide enough to accommodate the number of evacuating personnel, unobstructed and clear of debris at all times, and unlikely to expose evacuating personnel to additional hazards.
<input type="checkbox"/> Does the plan address procedures for assisting people during evacuations, particularly those with disabilities or who do not speak English?	<input type="checkbox"/> Many employers designate evacuation wardens to help move employees from dangerous to safe areas during an emergency. Generally, one warden for every 20 employees is adequate, and the appropriate number of wardens should be available at all times during working hours. Wardens may be responsible for checking offices and bathrooms before being the last person to exit an area as well as for ensuring that fire doors are closed when exiting. Employees designated to assist in emergency evacuation procedures should be trained in the complete workplace layout and alternative escape routes. Employees designated to assist in emergencies should be made aware of employees with special needs (who may require extra assistance during an evacuation), how to use the buddy system, and any hazardous areas to avoid during an emergency evacuation.
<input type="checkbox"/> Does the plan identify one or more assembly areas (as necessary for different types of emergencies) where employees will gather and a method for accounting for all employees?	<input type="checkbox"/> Accounting for all employees following an evacuation is critical. Confusion in the assembly areas can lead to delays in rescuing anyone trapped in the building, or to unnecessary and dangerous search-and-rescue operations. To ensure the fastest, most accurate accounting of your employees, consider taking a head count after the evacuation. The names and last known locations of anyone not accounted for should be passed on to the official in charge.
<input type="checkbox"/> Does the plan address how visitors will be accounted for and assisted in evacuation?	<input type="checkbox"/> Some employers have all visitors and contractors sign in when entering the workplace. The hosts or area wardens, if established, are often given the task of helping visitors and contractors evacuate safely.

Reporting Emergencies and Alerting Employees in an Emergency	
<input type="checkbox"/> Does the plan identify a preferred method for reporting fires and other emergencies?	<p>Dialing 911 is a common method for reporting emergencies if external responders are used. Internal numbers may be used and are sometimes connected to Intercom systems so that coded announcements may be made. In some cases, employees are requested to activate manual pull stations or other alarm systems.</p> <p>Make sure alarms are distinctive and recognized by all employees. Sequences of horn blows or different types of alarms (such as bells or horns) can be used to signal different responses or actions from employees. Consider making an emergency communications system available, such as a public address system, for broadcasting emergency information to employees. Ideally, alarms will be able to be heard, seen, or otherwise perceived by everyone in the workplace, including those who are blind or deaf. Otherwise, floor wardens or others must be given the task of ensuring that all employees are notified. Consider providing an auxiliary power supply in an electrical failure.</p>
<input type="checkbox"/> Does the plan describe the method used to alert employees, including disabled workers, to evacuate or take other action?	<p>Make sure alarms are distinctive and recognized by all employees. Sequences of horn blows or different types of alarms (such as bells or horns) can be used to signal different responses or actions from employees. Consider making an emergency communications system available, such as a public address system, for broadcasting emergency information to employees. Ideally, alarms will be able to be heard, seen, or otherwise perceived by everyone in the workplace, including those who are blind or deaf. Otherwise, floor wardens or others must be given the task of ensuring that all employees are notified. Consider providing an auxiliary power supply in an electrical failure.</p>
Employee Training and Drills	
<input type="checkbox"/> Does the plan identify how and when employees will be trained so that they understand the types of emergencies that may occur, their responsibilities, and actions?	<p>Train employees when you develop your initial plan and when new employees are hired. Retrain employees when your plan changes due to a change in facility layout or design of the facility, when new equipment, hazardous materials, or actions are introduced that affect evacuation routes, or when new types of hazards are introduced that require special actions. General training for your employees should address:</p> <ul style="list-style-type: none"> • threats, hazards, and protective actions; • notification, warning, and communications procedures; • emergency response procedures; • evacuation, shelter, and accountability procedures; • location and use of common emergency equipment; and • emergency shutdown procedures. <p>You may also need to provide additional training to your employees (for example, first-aid procedures, portable fire extinguisher use) depending on the responsibilities in your plan.</p> <p>If training is not reinforced, it will be forgotten. Consider retraining employees annually.</p> <p>Once you have reviewed your emergency action plan with your employees and everyone has had the proper training, it is a good idea to hold practice drills as often as necessary. Include outside resources, such as fire and police departments, strengths and weaknesses of your plan and work to improve it.</p>
<input type="checkbox"/> Does the plan address how and when retraining will be conducted?	<p>If training is not reinforced, it will be forgotten. Consider retraining employees annually.</p>
<input type="checkbox"/> Does the plan address if and how often drills will be conducted?	<p>Once you have reviewed your emergency action plan with your employees and everyone has had the proper training, it is a good idea to hold practice drills as often as necessary. Include outside resources, such as fire and police departments, strengths and weaknesses of your plan and work to improve it.</p>

4th St W

48 FT

85 FT

103 FT

410 x 90

PARKING 1

4th Pl W

Finley Biv

Exit

♿

ENTRANCE

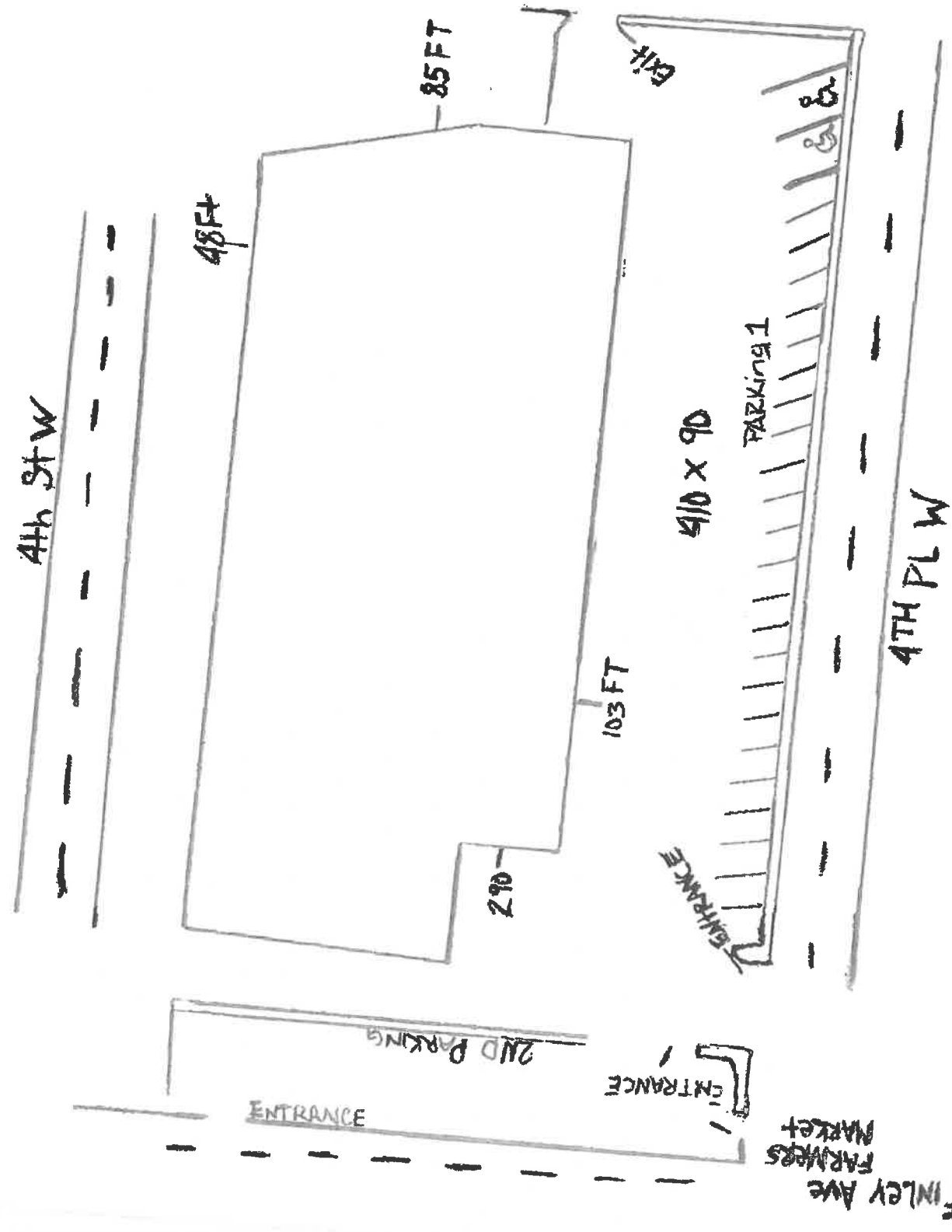
ENTRANCE

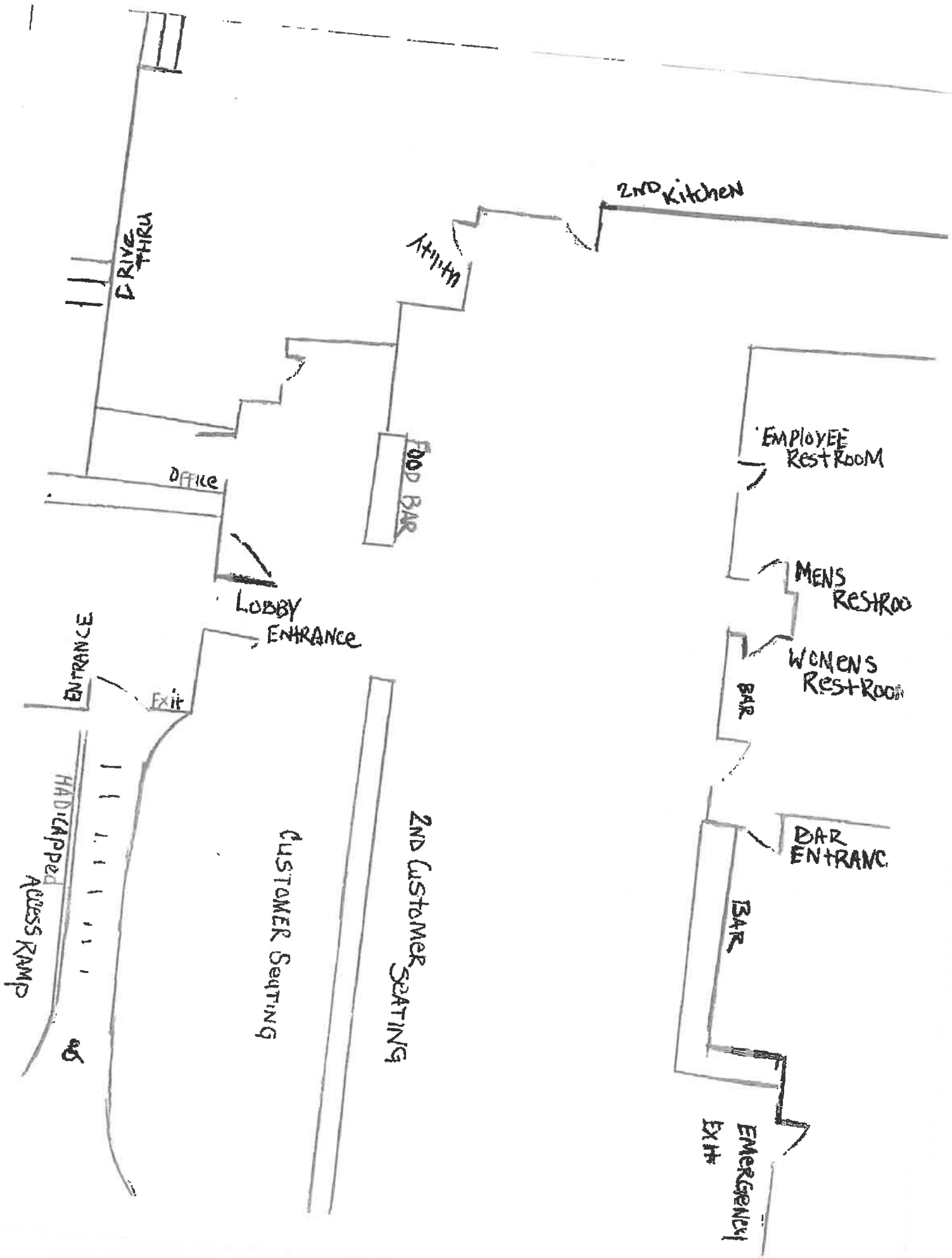
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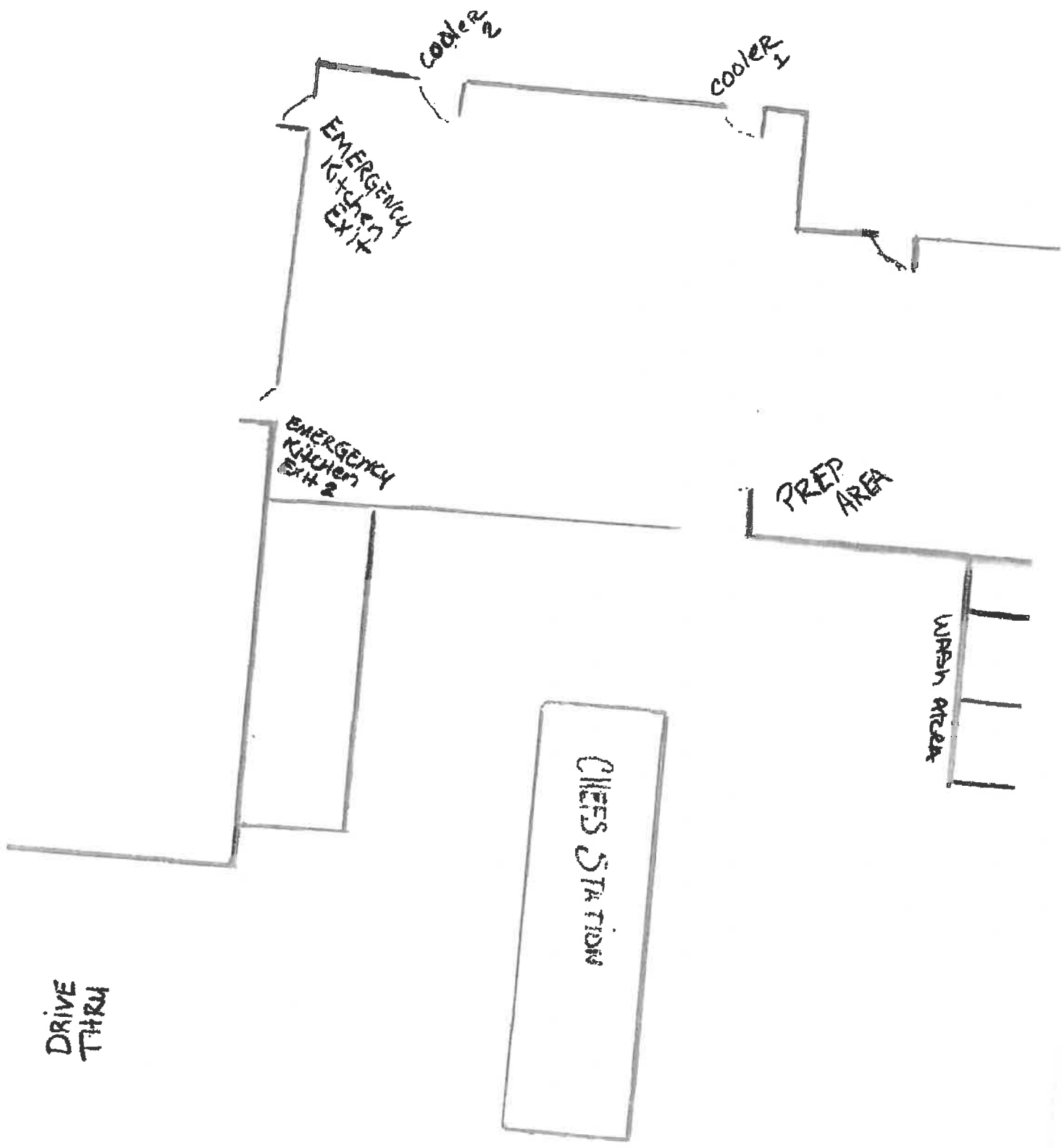
ENTRANCE

FARMERS MARKET

FINLEY AVE







PARCEL ID: 012200272013002000

SOURCE: TAX ASSESSOR RECORDS **TAX YEAR:** 2021

DATE: Wednesday, March 9, 2022 3:57:30 PM

OWNER: RUTTLE MARIA D H 480031

ADDRESS: 6619 N SCOTTSDALE RD

CITY/STATE: SCOTTSDALE AZ

ZIP+4: 85250

SITE ADDR: 2201 4TH PL W

CITY/STATE: BHAM, AL

ZIP: 35204

LAND: \$75,500.00

BLDG: \$256,400.00

OTHER: \$0.00

AREA: 33,033.03

ACRES: 0.76

SUBDIVISION INFORMATION:

NAME WADE TR RE B28 RE 22-27-2

BLOCK: 28

LOT: 2

Section: 27-17-3W

Land Slide Zones: Not in Land Slide Zones

Historic Districts: Not in Historic Districts

Commercial Revitalization District: Not in Commercial Revitalization District

Fire District: Not in Fire District

Flood Zones: Not in Flood Zones

Tax Increment Financing District: Not in Tax Increment Financing District

Neighborhoods: Thomas (1306)

Communities: Pratt (13)

Council Districts: District - 9 (Councilor: LaTonya Tate)

Zoning Outline: CM1

Demolition Quadrants: DEM Quadrant - 2

Impaired Watersheds: Impaired Watershed - Upper Village Creek

Strategic Opportunity Area: Not in Strategic Opportunity Area

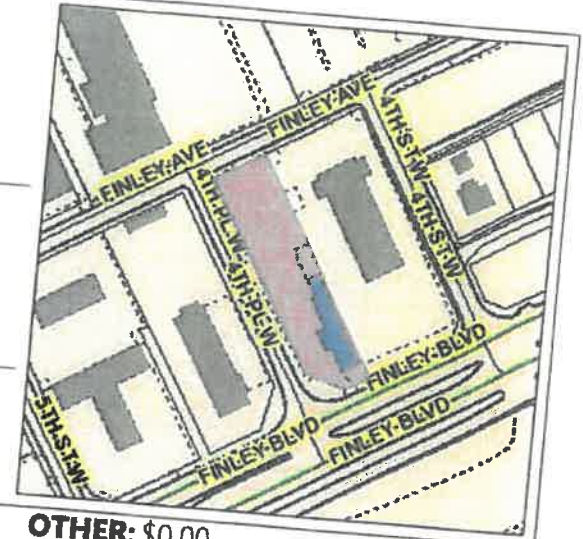
RISE Focus Area: In RISE Focus Area

Tax Delinquent Property: Not in Tax Delinquent Property

EPA Superfund: Not in EPA Superfund

Opportunity Zones: In Opportunity Zones

Judicial Boundaries: JEFFERSON



Parcel mapping and description information is obtained from the Jefferson County Tax Assessor's Office. This site does not provide real-time information and may contain errors. All data should be verified with the official source. The City of Birmingham makes no warranty as to the accuracy of the data and assumes no responsibility for any errors. Data from the Tax Assessor's Office may not be available for all parcels.

Public Safety Committee Meeting

FY 2022 Submission Sheet

Date Submitted: March 17, 2022

For Meeting Date: March 22, 2022

Detailed description of item as it should appear on agenda: *(Please Submit Supporting Documents)*

A Resolution pursuant to §11-40-1 of the Code of Alabama, 1975 authorizing the Mayor to execute and deliver an agreement with ESO Solutions, Inc. to provide software updates, annual maintenance and support services to the Birmingham Fire and Rescue Department for the City's emergency dispatch operations and services, the agreement is for a term of three (3) years, and for an amount not to exceed \$425,835.70.

Funding Source-TBA

Submitted by: Annette C. Harris

Dept: IMS Enterprise

Extension: 254-2751

Submit agenda items via email to Brandon McCray
Brandon.Mccray@birminghamal.gov and to Councilor LaTonya Tate at
LaTonya.Tate@birminghamal.gov, extension 2302, no later than 12:00 p.m. on
the Wednesday before the upcoming committee meeting date.

Committee ONLY

Reviewed By: _____ Date: _____

_____ **** Approved**

_____ **** Denied**

Comments: _____

MASTER SUBSCRIPTION AND LICENSE AGREEMENT

This Master Subscription and License Agreement (this "**Agreement**") is entered into as of _____ ("**Effective Date**"), by and between ESO Solutions, Inc., a Texas corporation having its principal place of business at 11500 Alterra Parkway, Suite 100 Austin, TX 78758, including its controlled subsidiaries, (collectively, "**ESO**") and City of Birmingham, Alabama, having its principal place of business at 1808 7th Ave, North Birmingham, Alabama 35203 ("**Customer**"). This Agreement consists of the General Terms & Conditions below and any Addenda (as defined below) executed by the parties, including any attachments to such Addenda.

The parties have agreed that ESO will provide Customer certain technology products and/or services and that Customer will pay ESO certain fees. Therefore, in consideration of the covenants, agreements and promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows.

GENERAL TERMS AND CONDITIONS

1. **DEFINITIONS.** Capitalized terms not otherwise defined in this Agreement have the meanings below:

"Add-On Software" means any complementary software components or reporting service(s) that ESO makes available to customer through its Software.

"Addendum" means a document addressing the order of a specific set of products or services which is executed by authorized representatives of each party. An Addendum may be (a) an ESO sales form or "Quote", (b) a Statement of Work, or (c) another writing the parties intend to be incorporated by reference into this Agreement.

"Anonymized Data" means Customer Data from which all personally identifiable information is removed, as well as the names and addresses of Customer and any of its Users and/or Customer's clients (and which, as a consequence, is neither PHI nor identifiable to or by Customer).

"Customer Data" means information, data and other content in electronic form that is submitted, posted, or otherwise transmitted by or on behalf of Customer through the Software.

"Deliverable" means software, report, or other work product created pursuant to a Statement of Work.

"Documentation" means the Software's user guides and operating manuals.

"Feedback" refers to any suggestion or idea for improving or otherwise modifying ESO's products or services.

"Intellectual Property" means trade secrets, copyrightable subject matter, patents and patent applications, and other proprietary information, activities, and any ideas, concepts, innovations, inventions and designs.

"Licensed Software" means the executable, object code version of software that ESO provides to Customer for its use and installation on Customer's own equipment. For the avoidance of doubt, Licensed Software does not include Add-on Software or SaaS.

"New Version" means any new version of Licensed Software (excluding SaaS Software) that ESO may from time to time introduce and market generally as a distinct licensed product, as may be indicated by ESO's designation of a new version number, brand or product.

"Outage" means Customer is unable to access SaaS, or such access is materially delayed, impaired or disrupted, in each case as caused or controlled by ESO.

"Professional Services" means professional services provided by ESO under a Statement of Work.

"Protected Health Information" or "**PHI**" has the meaning set forth in HIPAA. All references herein to PHI shall be construed to include electronic PHI, or ePHI, as that term is defined by HIPAA.

"Reporting Services" means, collectively, the different tools or features in the Software allowing Customer to generate compilations of data, including but not limited to ad-hoc reports, analytics, benchmarking or any other reporting tool provided through the Software.

"SaaS" means software-as-a-service that ESO hosts (directly or indirectly) for Customer's use on a periodic subscription basis. For the avoidance of doubt, SaaS does not include Licensed Software.

"Scheduled Downtime" means periods when ESO intentionally interrupts SaaS to perform system maintenance or otherwise correct service errors during non-peak hours (except for critical circumstances), typically between midnight and 6 a.m. Central Time on a fortnightly basis.

"Software" means any ESO computer program, programming or modules specified in the Agreement or any Addendum. For the avoidance of doubt, Add-on Software, SaaS, and Licensed Software are collectively referred to as Software.

"Support Services" means those services described in Exhibit B.

"Third-Party Data" means data not owned by ESO but which is (or access to which is) provided by ESO under a Software Schedule.

"Third-Party Service" means a service not provided by ESO but which is made available by ESO in connection with its Software under a Software Schedule or Addendum.

"Third-Party Software" means software not owned by ESO but which is (or access to which is) provided by ESO under a Software Schedule or Addendum.

"Use Restrictions" means the restrictions imposed on Customer's use of Software as described in Section 3.3.

"User" means any individual who uses the Software on Customer's behalf or through Customer's account or passwords.

2. **SOFTWARE ORDERS.** During the Term, Customer may order Software from ESO by signing an appropriate Addendum. Customer's license to Licensed Software and its subscription to SaaS are set forth below. Each such Addendum is incorporated herein by reference.

3. LICENSE/SUBSCRIPTION TO SOFTWARE

3.1. **Grant of Subscription: SaaS.** For SaaS, during the Term Customer may access and use the SaaS and Reporting Services, with the access and volume limitations set forth on the applicable Addendum, subject to Customer's compliance with the Use Restrictions and other limitations contained in this Agreement.

3.2. **Grant of License: Licensed Software.** For Licensed Software, during the Term ESO hereby grants Customer a limited, non-exclusive, non-transferable, non-assignable, non-sublicensable, revocable license to copy and use the Licensed Software, in such quantities as are set forth on the applicable Addendum and as necessary for Customer's internal business purposes, in each case subject to Customer's compliance with the Use Restrictions and other limitations and obligations contained in this Agreement.

3.3. **Use Restrictions.** Except as provided in this Agreement or as otherwise authorized by ESO, Customer has no right to, and shall not: (a) decompile, reverse engineer, disassemble, print, copy or display the Software or otherwise reduce the Software to a human-perceivable form in whole or in part; (b) publish, release, rent, lease, loan, sell, distribute or transfer the Software to another person or entity; (c) reproduce the Software for the use or benefit of anyone other than Customer; (d) alter, modify or create derivative works based upon the Software either in whole or in part; or (e) use or permit the use of the Software for commercial time-sharing arrangements or providing service bureau, data processing, rental, or other services to any third party (including any affiliate not specifically listed in the applicable Addendum).

- 3.4. **Ownership.** The rights granted under the provisions of this Agreement do not constitute a sale of the Software. ESO retains all right, title, and interest in and to the Software, including without limitation all software used to provide the Software and all graphics, user interfaces, logos and trademarks reproduced through the Software, except to the limited extent set forth in this Agreement. This Agreement does not grant Customer any intellectual property rights in the Software or any of its components, except to the limited extent that this Agreement specifically sets forth Customer's rights to access, use, or copy the Software during the Term. Customer acknowledges that the Software and its components are protected by copyright and other laws.
- 3.5. **Third-Party Software and Services.** This Section 3.5 applies to Third-Party Software and Services offered by ESO. Refer to the product table following the Agreement for applicability.
- 3.5.1. ESO neither accepts liability for, nor warrants the functionality, utility, availability, reliability or accuracy of, Third-Party Software or Third-Party Services. The Third-Party Software "EMS1 Academy" and/or "FireRescue1 Academy" and/or "EMS1 & FireRescue1 Academy - Implementation and Configuration" and/or "Learning Management System" and/or "EVALS Implementation" (collectively, "Education") is offered by ESO in collaboration with Lexipol, f/k/a The Praetorian Group. If Customer subscribes to Education, Customer acknowledges and agrees to the terms and conditions of the Praetorian license agreement, located at <http://www.praetoriandigital.com/LMS-Master-Service-Agreement>, which shall supersede this Agreement as it applies to Customer's use of Education and any Customer Data stored therein.
- 3.5.2. **Third-Party Data.** If Customer (as indicated on an Addendum) elects to license Third-Party Data (e.g., fire codes), then subject to the terms hereof, ESO hereby grants Customer a non-exclusive, non-sublicensable, and non-transferable license during the Term to use such Third-Party Data via the Software solely for Customer's internal purposes. Customer will not (i) allow greater access than that set forth in the applicable Addendum, (ii) disclose, release, distribute, or deliver Third-Party Data, or any portion thereof, to any third party (iii) copy, modify, or create derivative works of Third-Party Data, (iv) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available Third-Party Data, (v) attempt to output in any form more than 10% of the Third-Party Data or otherwise circumvent the usage limitations included in the Software, (vi) remove any proprietary notices included within Third-Party Data or Software, or (vii) use Third-Party Data in any manner or for any purpose that infringes or otherwise violates any proprietary right of a person, or that violates applicable law. ESO does not warrant the functionality, reliability, accuracy, completeness or utility of, Third-Party Data, or accept any liability therefor. Additional terms and limitations applicable to Third-Party Data may be provided on the applicable Addendum.
4. **HOSTING, SLA & SUPPORT SERVICES**
- 4.1. **Hosting & Management.** Customer shall be responsible for hosting and managing any Licensed Software on systems meeting the requirements specified by ESO. ESO shall be responsible for hosting and managing any SaaS.
- 4.2. **Service Level Agreement.** If an Outage, excluding Scheduled Downtime (as defined below), results in the service level uptime falling below 99% for any three-month period (the "Uptime Commitment"), then Customer may immediately terminate this Agreement, in which case ESO will refund any prepaid, unearned Fees to Customer. This is Customer's sole remedy for ESO's breach of the Uptime Commitment.
- 4.3. **Scheduled Downtime.** ESO will endeavor to provide reasonable (72 hour) notice of Scheduled Downtime to Customer's Users. Notice of Scheduled Downtime may be provided from within the Software or via email. Scheduled Downtime shall never constitute a failure of performance or Outage by ESO. Notification timelines and the frequency of Scheduled Downtime are subject to the emergence of security concerns outside of ESO's control.
- 4.4. **Support and Updates.** During the Term, ESO shall provide to Customer the Support Services, in accordance with Exhibit B, which is incorporated herein by reference.
5. **FEES**
- 5.1. **Fees.** In consideration of the rights granted hereunder, Customer agrees to pay ESO the fees for the Software and Professional Services as set forth in the Addendum(s) (collectively, "Fees"). The Fees are non-cancelable and non-refundable, except as expressly provided herein. Customer (or Third-Party Payer, if applicable) shall pay all invoices within 30 days of receipt.
- 5.2. **Third-Party Payer.** If Customer desires to use a third-party to pay some or all of the Fees on behalf of Customer (a "Third-Party Payer"), then (i) each applicable Addendum will identify such arrangement, (ii) the Third-Party Payer will enter into a written agreement with ESO regarding such arrangement, (iii) Customer may replace the Third-Party Payer by written notice to ESO (provided that no such change shall be made until the then-current Term's renewal), (iv) references within this Section 5 to Customer's responsibility for Fees shall be understood to refer to the Third-Party Payer when applicable, and (v) Customer shall remain responsible for payment if the Third-Party Payer does not pay the Fees.
- 5.3. **Uplift on Renewal.** Fees for Software, which recur annually, shall increase by 3% each year this Agreement is in effect.
- 5.4. **Taxes and Fees.** The Fees are exclusive of all taxes and credit card processing fees, if applicable. Unless and until Customer provides ESO a tax exemption certificate, Customer will be responsible for and will remit (or will promptly reimburse ESO for) all taxes of any kind, including sales, use, duty, customs, withholding, property, value-added, and other similar federal, state or local taxes (other than taxes based on ESO's income) related to this Agreement.
- 5.5. **Appropriation of Funds.** If Customer is a city, county or other government entity, Customer may terminate the Agreement at the end of the Customer's fiscal term if Customer provides evidence that its governing body did not appropriate sufficient funds for the next fiscal year. Notwithstanding the foregoing, this provision shall not excuse Customer from past payment obligations or other Fees earned and unpaid.
- 5.6. **Usage Monitoring.** Customer is solely responsible for its own adherence to volume and use limitations indicated on the applicable Addendum. ESO may monitor Customer's use of the Software, and if Customer's usage exceeds the level indicated in the applicable Addendum (an "Overage"), Customer shall owe ESO the Fee corresponding to such usage level at a rate no higher than ESO's then-standard pricing for new customers at an equivalent usage level. ESO may invoice for Overages immediately.
6. **TERM AND TERMINATION**
- 6.1. **Term.** The term of this Agreement (the "Term") commences on the Effective Date and continues for a period set forth in the applicable software schedule or, if none, for one year (or any longer period provided in an Addendum). Thereafter, the Term will renew for successive one-year periods unless written notice is provided at least 60 days prior to the anniversary of the Effective Date.
- 6.2. **Termination for Cause.** Either party may terminate this Agreement or any individual Addendum for the other party's uncured material breach by providing written notice. The breaching party shall have 30 days from receipt to cure such breach to the reasonable satisfaction of the non-breaching party.
- 6.3. **Effect of Termination.**
- 6.3.1. If Customer terminates this Agreement or any Addendum as a result of ESO's material breach, then to the extent Customer prepaid any Fees, ESO shall refund to Customer those prepaid Fees on a pro-rata basis from the date Customer actually ceases use of the Software.

6.3.2. Upon termination of this Agreement or any Addendum, Customer shall cease all use of the Software and delete, destroy or return all copies of the Documentation and Licensed Software in its possession or control, except as required by law. Customer shall remain obligated to pay appropriate Fees at ESO's then-current rates if Customer continues to use or access Software after the termination or expiration of this Agreement. If Customer's Agreement includes a multi-year discount plan with diminishing discounts, and Customer terminates the Agreement prior to the completion of the discount plan, Customer shall promptly pay ESO's invoice recouping such discounts for a maximum of two years prior to the date of termination.

6.3.3. Termination of this Agreement is without prejudice to any other right or remedy and shall not release a party from any liability.

6.4. Delivery of Data. ESO will provide Customer its Customer Data in a searchable .pdf format upon request made within 60 days of the expiration or termination of this Agreement. Customer acknowledges that ESO has no obligation to retain Customer Data more than 60 days after expiration or termination of this Agreement.

7. REPRESENTATIONS AND WARRANTIES

7.1. Material Performance of Software. After it is fully implemented (and subject to Customer's adherence to Sections 3.3, 4.1 and 13.4), ESO warrants that the Software will reliably collect, transmit, store and/or permit access to data in compliance with applicable law and industry standards.

7.2. Due Authority. Each party's execution, delivery and performance of this Agreement and each agreement or instrument contemplated by this Agreement is duly authorized by all necessary corporate or government action.

7.3. Customer Cooperation. Customer agrees to use current operating systems and reasonably and timely cooperate with ESO, including providing ESO reasonable access to its equipment, software and data as necessary for the implementation and operation of the Software.

8. **DISCLAIMER OF WARRANTIES.** EXCEPT AS OTHERWISE PROVIDED IN SECTION 7, ESO DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, TITLE, NON-INFRINGEMENT, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7, CUSTOMER ACCEPTS THE SOFTWARE "AS-IS" AND "AS AVAILABLE."

9. CONFIDENTIALITY

9.1. "Confidential Information" refers to the following items: (a) any document marked "Confidential"; (b) any information orally designated as "Confidential" at the time of disclosure, provided the disclosing party confirms such designation in writing within five business days; (c) the Software and Documentation, whether or not designated confidential; (d) ESO's security controls, policies, procedures, audits, or other information concerning ESO's internal security posture; (e) any other nonpublic, sensitive information reasonably treated as trade secret or otherwise confidential; and (f) Customer Data which does not comprise PHI. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in the other party's possession at the time of disclosure free of duty of non-disclosure; (ii) is independently developed without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of the receiving party's improper action or inaction; (iv) is approved for release in writing by the disclosing party; (v) as to ESO, Customer's Feedback; or (vi) is PHI (which shall be governed by the Business Associate Agreement rather than this Section).

9.2. Non-disclosure. Each party shall use Confidential Information of the other party solely to fulfill the terms of this Agreement (the "Purpose"). Each party shall (a) ensure that its employees or contractors are bound by confidentiality obligations no less restrictive than those contained herein, and (b) not disclose Confidential Information to any

other third party without prior written consent from the disclosing party. Without limiting the generality of the foregoing, the receiving party shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. A receiving party shall promptly notify the disclosing party of any misuse or misappropriation of Confidential Information of which it is aware.

9.3. Termination & Return. With respect to each item of Confidential Information, the obligations of nondisclosure will terminate three years after the date of disclosure; provided that, such obligations related to Confidential Information constituting ESO's trade secrets shall continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement, a party shall return all copies of Confidential Information to the other or certify the destruction thereof.

9.4. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto.

9.5. Open Records and Other Laws. Notwithstanding anything in this Section to the contrary, the parties expressly acknowledge that Confidential Information may be disclosed if such Confidential Information is required to be disclosed by law, a lawful public records request, or judicial order, provided that prior to such disclosure, written notice of such required disclosure shall be given promptly and without unreasonable delay by the receiving party in order to give the disclosing party the opportunity to object to the disclosure and/or to seek a protective order. The receiving party shall reasonably cooperate in this effort. In addition, Customer may disclose the contents of this Agreement solely for the purpose of completing its review and approval processes under its local rules, if applicable.

10. **INSURANCE.** Throughout the Term (and for a period of at least three years thereafter for any insurance written on a claims-made form) ESO shall maintain in effect the insurance coverage described below:

10.1. Commercial general liability insurance with a minimum of \$1 million per occurrence and \$1 million aggregate;

10.2. Commercial automobile liability insurance covering use of all non-owned and hired automobiles with a minimum limit of \$1 million for bodily injury and property damage liability;

10.3. Worker's compensation insurance and employer's liability insurance or any alternative plan or coverage as permitted or required by applicable law, with a minimum employer's liability limit of \$1 million each accident or disease; and

10.4. Computer processor/computer professional liability insurance (a/k/a technology errors and omissions) covering the liability for financial loss due to error, omission or negligence of ESO, and privacy and network security insurance ("cyber coverage") covering losses arising from a disclosure of confidential information (including PHI) with a combined aggregate amount of \$1 million.

11. INDEMNIFICATION

11.1. IP Infringement. Subject to the limitations in Section 12, ESO shall defend and indemnify Customer from any damages, costs, liabilities, expenses (including reasonable attorney's fees) ("Damages") actually incurred or finally adjudicated as to any third-party claim or action alleging that the Software delivered pursuant to this Agreement infringe or misappropriate any third party's patent, copyright, trade secret, or other intellectual property rights enforceable in the applicable jurisdiction (each, an "Indemnified Claim"). If Customer makes an Indemnified Claim under this Section or if ESO determines that an Indemnified Claim may occur, ESO shall at its option: (a) obtain a right for Customer to continue using such Software; (b) modify such Software to make it a non-infringing equivalent or (c) replace such Software with a non-infringing equivalent. If (a), (b), or (c) above are not reasonably practicable, either party may, at its option, terminate the relevant Addendum, in which case ESO will refund any pre-paid Fees on a pro-rata basis for such Addendum. Notwithstanding the foregoing, ESO shall have no obligation hereunder for any claim

resulting or arising from (x) Customer's breach of this Agreement; (y) modifications made to the Software not performed or provided by or on behalf of ESO or (z) the combination, operation or use by Customer (and/or anyone acting on Customer's behalf) of the Software in connection with any other product or service (the combination or joint use of which causes the alleged infringement). This Section 11 states ESO's sole obligation and liability, and Customer's sole remedy, for potential or actual intellectual property infringement by the Software.

11.2. **Indemnification Procedures.** Upon becoming aware of any matter which is subject to the provisions of Sections 11.1 (a "Claim"), Customer must give prompt written notice of such Claim to ESO, accompanied by copies of any written documentation regarding the Claim received by the Customer. ESO shall compromise or defend, at its own expense and with its own counsel, any such Claim. Customer will have the right, at its option, to participate in the settlement or defense of any such Claim, with its own counsel and at its own expense; provided, however, that ESO will have the right to control such settlement or defense. ESO will not enter into any settlement that imposes any liability or obligation on Customer without the Customer's prior written consent. The parties will cooperate in any such settlement or defense and give each other full access to all relevant information, at ESO's expense.

12. LIMITATION OF LIABILITY

12.1. **LIMITATION OF DAMAGES.** NEITHER ESO NOR CUSTOMER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, INCLUDING CLAIMS FOR DAMAGES FOR LOST PROFITS, GOODWILL, USE OF MONEY, INTERRUPTED OR IMPAIRED USE OF THE SOFTWARE, AVAILABILITY OF DATA, STOPPAGE OF WORK OR IMPAIRMENT OF OTHER ASSETS RELATING TO THIS AGREEMENT.

12.2. **SPECIFIC LIABILITY.** LIABILITY SHALL BE LIMITED AS FOLLOWS:

- (a) ESO'S OBLIGATIONS UNDER SECTION 11 SHALL BE LIMITED TO \$500,000.
- (b) DAMAGES ARISING FROM A PARTY'S BREACH OF CONFIDENTIALITY OBLIGATIONS (INCLUDING A BREACH OF OBLIGATIONS REGARDING PROTECTED HEALTH INFORMATION), SHALL BE LIMITED TO \$1,000,000.
- (c) DAMAGES ARISING FROM A PARTY'S WILLFUL MISCONDUCT OR CRIMINAL CONDUCT SHALL NOT BE LIMITED.

12.3. **GENERAL LIABILITY.** EXCEPT AS EXPRESSLY PROVIDED "SPECIFIC LIABILITY," ESO'S MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS OF LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID BY (OR ON BEHALF OF) CUSTOMER WITHIN THE PRECEDING 12-MONTH PERIOD UNDER THE APPLICABLE ADDENDUM OR EXHIBIT GIVING RISE TO THE CLAIM.

12.4. THE FOREGOING LIMITATIONS, EXCLUSIONS, DISCLAIMERS SHALL APPLY REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT OR OTHERWISE. INsofar AS APPLICABLE LAW PROHIBITS ANY LIMITATION HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION SHALL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION PERMITTED TO THE FULLEST EXTENT POSSIBLE UNDER SUCH LAW. THE PARTIES AGREE THAT THE LIMITATIONS SET FORTH HEREIN ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR ESO'S SOFTWARE AND SERVICES TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSES OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES.

12.5. THIS SECTION 12 SHALL SURVIVE EXPIRATION OR TERMINATION OF THE AGREEMENT.

13. CUSTOMER DATA & PRIVACY

13.1. **Ownership of Data.** As between ESO and Customer, all Customer Data shall be owned by Customer.

13.2. **Use of Customer Data.** Unless it receives Customer's prior written consent, ESO shall not grant any third-party access to Customer Data, except (a) subcontractors that are subject to a reasonable nondisclosure agreement or (b) authorized participants in the case of Software designed to permit Customer to transmit Customer Data. ESO may only use and disclose Customer Data to fulfill its obligations under this Agreement or as required by applicable law or legal or governmental authority. ESO shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise contest such required disclosure, at Customer's expense.

13.3. **Anonymous Data.** CUSTOMER ACKNOWLEDGES AND AGREES THAT, NOTWITHSTANDING ANY OTHER PROVISION HEREIN, ESO MAY USE ANONYMIZED DATA FOR INTERNAL AND EXTERNAL PURPOSES (INCLUDING BENCHMARKING AND RESEARCH), PROVIDED THAT ESO WILL NOT SELL ANONYMIZED DATA TO THIRD PARTIES FOR COMMERCIAL USE. Without limiting the foregoing, ESO will own all right, title and interest in all Intellectual Property of any aggregated and de-identified reports, summaries, compilations, analysis, statistics or other information derived therefrom.

13.4. **Internet Access.** Customer is solely responsible for obtaining, maintaining, and securing its network connections, and acknowledges such connections are essential to the effective operation of the Software. ESO makes no representations to Customer regarding the reliability, performance or security of any network or service provider not provided or managed by ESO.

14. WORK PRODUCT

14.1. **Work Product Ownership.** In the event Customer hires ESO to perform Professional Services, ESO alone shall hold all right, title, and interest to all proprietary and intellectual property rights of the Deliverables (including, without limitation, patents, trade secrets, copyrights, and trademarks), as well as title to any copy of software made by or for Customer (if applicable). Customer hereby explicitly acknowledges and agrees that nothing in this Agreement or a separate Addendum gives the Customer any right, title, or interest to the Intellectual property or proprietary know-how of the Deliverables.

15. GOVERNMENT PROVISIONS

15.1. **Compliance with Laws.** Both parties shall comply with and give all notices required by all applicable federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on use of the Software and the performance of this Agreement.

15.2. **Business Associate Addendum.** The parties agree to the terms of the Business Associate Addendum attached as Exhibit B and incorporated herein by reference.

15.3. **Equal Opportunity.** The parties shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a), and the posting requirements of 29 CFR Part 471, appendix A to subpart A, if applicable (prohibiting discrimination on the basis of protected veteran status, disability, race, color, religion, sex, sexual orientation, gender identity or national origin).

15.4. **Excluded Parties List.** ESO agrees to report to Customer if an employee or contractor is listed by a federal agency as debarred, excluded or otherwise ineligible for participation in federally funded health care programs.

16. PHI-ACCURACY & COMPLETENESS

16.1. **Customer Responsibilities.** The Software allows Customer and its Users to enter, document, and disclose Customer Data, and as such, ESO gives no representations or guarantees about the accuracy or completeness of Customer Data (including PHI) entered, uploaded or disclosed through the Software. Customer is solely responsible for any decisions or actions taken involving patient care or patient care management, whether those decisions or actions were made or taken using information received through the Software.

16.2. **HDE Customer Certifications.** In the interest of furthering community health through the power of data, ESO encourages Customers subscribing to ESO's Health Data Exchange ("HDE") Software to empower joint healthcare providers by incorporating relevant, HIPAA-compliant data elements in Customer's outgoing patient care records delivered through HDE. ESO shall annually accredit qualifying customers with Gold, Silver, or Bronze level certifications in accordance with Exhibit C, and Customer may reference such certification in marketing materials.

17. MISCELLANEOUS

17.1. **Independent Contractors.** The parties are independent contractors. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that no ESO employee or contractor is or will be considered an employee of Customer.

17.2. **Notices.** Notices provided under this Agreement must be in writing and delivered by (a) certified mail, return receipt requested to a party's principal place of business as forth in the recitals on page 1 of this Agreement, (b) hand delivered, (c) facsimile with receipt of a "Transmission Confirmed" acknowledgment, (d) e-mail to a person designated in writing by the receiving party, or (e) delivery by a reputable overnight carrier service. In the case of delivery by facsimile or e-mail, the notice must be followed by a copy of the notice being delivered by a means provided in (a), (b) or (e). The notice will be deemed given on the day the notice is received.

17.3. **Merger Clause.** In entering into this Agreement, neither party is relying upon any representations or statements of the other that are not fully expressed in this Agreement; rather, each party is relying on its own judgment and due diligence and expressly disclaims reliance upon any representations or statement not expressly set forth in this Agreement. In the event the Customer issues a purchase order, letter or any other document addressing the Software or Services to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that any such writing is for the Customer's internal purposes only, and that any terms, provisions, and conditions contained therein shall in no way modify this Agreement.

17.4. **Severability.** To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. If a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

17.5. **Subcontracting.** Except for training and implementation services related to the Software, neither party may subcontract or delegate its obligations to each other hereunder, nor may it contract with third parties to perform any of its obligations hereunder except as contemplated in this Agreement, without the other party's prior written consent.

17.6. **Modifications and Amendments.** This Agreement may not be amended except through a written agreement signed by authorized representatives of each party, provided that the Customer agrees that ESO may rely on informal writings (including emails) of Customer's authorized representatives to (i) terminate Software products and services and (ii) approve or ratify rate or tier increases for Software products and services then in use by Customer.

17.7. **Force Majeure.** No delay, failure, or default will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control (collectively, "Force Majeure"). In such event, however, the delayed party must promptly provide the other party notice of the Force Majeure. The delayed party's time for performance will be excused for the duration of the Force Majeure, but if the event last longer than 30

days, the other party may immediately terminate the applicable Addendum.

17.8. **Marketing.** If requested by ESO, Customer agrees to reasonably cooperate with ESO's preparation and issuance of a public announcement regarding the relationship of the parties.

17.9. **Waiver & Breach.** Neither party will be deemed to waive any rights under this Agreement except through an explicit written waiver made by an authorized representative. No waiver of a breach of this Agreement will constitute a waiver of any other breach hereof.

17.10. **Survival of Terms.** Unless otherwise stated, all of ESO's and Customer's respective obligations, representations and warranties under this Agreement which are not, by the expressed terms of this Agreement, fully to be performed while this Agreement is in effect shall survive the termination of this Agreement.

17.11. **Ambiguous Terms.** This Agreement will not be construed against any party by reason of its preparation.

17.12. **Governing Law.** This Agreement, any claim dispute or controversy hereunder (a "Dispute") will be governed by (i) the laws of the State of Texas, or (ii) if Customer is a city, county, municipality or other governmental entity, the law of state where Customer is located, in each case foregoing without regard to its conflicts of law. The UN Convention for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply. In any Dispute, each party will bear its own attorneys' fees and costs and expressly waives any statutory right to attorneys' fees.

17.13. **New Versions & Sunset.** If ESO releases a New Version of Licensed Software (i.e., not SaaS), Customer may elect to receive such New Version, subject to a relicensing fee of 75% of the standard price for such new version. All New Versions provided under this Agreement will constitute Licensed Software and be subject to the terms and conditions of this Agreement. ESO may discontinue Support Services for Licensed Software upon 12 months' notice to Customer.

17.14. **No Class Actions.** NEITHER PARTY SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER ESO CUSTOMERS, OR PURSUE ANY CLAIM AS A REPRESENTATIVE OR CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.

17.15. **Dispute Resolution.** Customer and ESO will attempt to resolve any Dispute through negotiation or by utilizing a mediator agreed to by the parties, rather than through litigation. Negotiations and mediations will be treated as confidential. If the parties are unable to reach a resolution within 30 days of notice of the Dispute to the other party, the parties may pursue all other courses of action available at law or in equity.

17.16. **Technology Export.** Customer shall not (a) permit any third party to access or use the Software in violation of any U.S. law or regulation; or (b) export any software provided by ESO or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer shall not permit any third party to access or use the Software in, or export such software to, a country subject to a United States embargo (as of the Effective Date - Cuba, Iran, North Korea, Sudan, and Syria).

17.17. **Order of Precedence.** In the event of any conflict between this Agreement, Addenda or other attachments incorporated herein, the following order of precedence will govern: (1) the General Terms and Conditions; (2) any Business Associate Agreement; (3) the applicable Addendum, with most recent Addendum taking precedence over earlier ones; and (4) any ESO policy posted online, including without limitation its privacy policy. No amendments incorporated into this Agreement after execution of the General Terms and Conditions will amend such General Terms and Conditions unless it specifically states its intent to do so and cites the section or sections amended.

- 17.18. **Counterparts.** This Agreement may be executed in one or more counterparts. Each counterpart will be an original, and all such counterparts will constitute a single instrument.
- 17.19. **Signatures.** Electronic signatures on this Agreement or on any Addendum (or copies of signatures sent via electronic means) are the equivalent of handwritten signatures
- 17.20. **Immigration Law Compliance.** (a) Consultant represents and warrants that it does not knowingly employ, hire for employment, or continue to employ, in Alabama, an "unauthorized alien," as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, et seq., Code of Alabama 1975, as amended (the "Act"). (b) Consultant represents and warrants that it will enroll in the E-Verify program prior to performing any work on the project in Alabama and shall provide documentation establishing that Consultant is enrolled in the E-Verify program. During the performance of this Agreement, Consultant shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations. (c) Consultant agrees to comply with all applicable provisions of the Act with respect to its subcontractors by entering into an agreement with or by obtaining an affidavit from such subcontractors providing work for Consultant on the Project in Alabama, that such subcontractors are in compliance with the Act with respect to their participation in the E-verify program. Consultant represents and warrants that Consultant shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which Consultant knows is not in compliance with the Act. (d) By signing this Contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.
- 17.21. **Offset for Overdue Fees, Taxes, Etc.** Pursuant to Executive Order of the Mayor of Birmingham No. 76-09 (effective as of August 21, 2009), Consultant acknowledges and agrees that the City has the

right to deduct from the total amount of consideration to be paid, if any, to Consultant under this Agreement all unused prepaid Fees due the City from Consultant.

17.22. **Non-Discrimination.** During the performance of this contract the contractor agrees as follows:

(i) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender identity, sexual orientation, disability, familial status, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, gender identity, sexual orientation, disability, familial status, or national origin. Such action shall include but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. (ii) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further municipal contracts.

17.23 **Historically Underutilized Business Enterprises.** Consultant acknowledges that the City, as a matter of public policy and to the extent required under applicable law, encourages participation of minority-owned, women owned and disadvantaged business enterprises to the maximum extent possible and seeks to provide opportunities for and to actively include Disadvantaged Business Enterprises (DBEs) and Historically Underutilized Business Enterprises (HUBEs) which includes architectural firms, engineering firms, investment banking firms, other professional service providers, and construction contractors as part of the City's business, economic and community revitalization programs. To the extent applicable for the performance of Services in this Agreement, Consultant agrees to comply with this policy, and to include and retain those firms, contractors and consultants as sub-contractors or participants in other capacities to assist Consultant to complete the Services.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

ESO Solutions, Inc.

By: 
(signature)

Name: Robert Munden
(print name)

Title: Chief Legal & Compliance Officer
(print title)

City of Birmingham, Alabama

By: _____
(signature)

Name: _____
(print name)

Title: _____
(print title)

ATTEST:

Date:

Lee Frazier, City Clerk

Approved as to Form Office of the City Attorney

 Date: 3.17.22
 Assistant City Attorney

EXHIBIT A-1

SAAS SOFTWARE SCHEDULE

(Applications - ESO EHR, ESO Fire, ESO PM, FIREHOUSE Cloud, IFC Codes, EMS1 Academy, FireRescue1 Academy, Staff Scheduling, Assets, Inventory, Checklist)

1. The SaaS subscription term shall begin 15 calendar days after the Effective Date (existing Renewal Date ("SaaS Subscription Start Date"). Customer shall be deemed to have accepted the SaaS on the SaaS Subscription Start Date. The parties will make reasonable efforts to ensure that Customer is able to use the SaaS as contemplated as quickly as possible, but in no event will the SaaS Subscription Start Date be modified for implementation delays.
2. The following SaaS may be ordered under this Exhibit:
 - 2.1. ESO Electronic Health Record ("EHR") is a SaaS software application for prehospital patient documentation (<http://www.eso.com/software/ehr>).
 - 2.2. ESO Personnel Management ("PM") is a SaaS software application for tracking personnel records, training courses and education history (<http://www.eso.com/software/personnel-management>).
 - 2.3. ESO Fire is a SaaS software application for NFIRS reporting (<http://www.eso.com/software/fire>).
3. The following Third-Party Data and/or Software may be ordered under this Exhibit: 2018 International Fire Code, 2015 International Fire Code, 2012 International Fire Code, Education (see section 3.5).
4. Third-Party Payer is responsible for the following products and Fees:

N/A

5. During the initial Term, Customer hereby agrees to timely pay for the following products according to the schedule below:

Asset Management/Checklist

Product	Volume	Price	Discount	Total	Fee Type
Assets-Checklist Bundle	100 Vehicles	\$25,195.00	(\$1,259.75)	\$23,935.25	Recurring
Asset Management and Checklist - Training and Implementation	100 Vehicles	\$2,995.00	(\$2,995.00)	\$0.00	One-time

Education

Product	Volume	Price	Discount	Total	Fee Type
EMS1 & FireRescue1 Academy with ESO Integration	650 Employees	\$36,400.00	(\$0.00)	\$36,400.00	Recurring
EMS1 & FireRescue1 Academy-Implementation and Configuration	650 Employees	\$2,500.00	(\$0.00)	\$2,500.00	One-time

Fire

Product	Volume	Price	Discount	Total	Fee Type
Telestaff Integration	55000 Incidents	\$2,595.00	(\$0.00)	\$2,595.00	Recurring
Fire Incidents CAD Integration	55000 Incidents	\$3,995.00	(\$3,995.00)	\$0.00	Recurring
Fire Setup & Online Training	12 Sessions	\$7,140.00	(\$7,140.00)	\$0.00	One-time
Properties/Inspections Data Import	32 Stations	\$7,040.00	(\$7,040.00)	\$0.00	One-time
NFPA 101 - 2015 Codeset	32 Stations	\$3,440.00	(\$0.00)	\$3,440.00	One-time
IFC 2015 - National Codeset	32 Stations	\$3,440.00	(\$0.00)	\$3,440.00	One-time
Fire Incidents NFIRS Data Import	55000 Incidents	\$10,995.00	(\$10,995.00)	\$0.00	One-time

Personnel Management

Product	Volume	Price	Discount	Total	Fee Type
Personnel Management Data Migration	650 Employees	\$500.00	(\$0.00)	\$500.00	One-time

Total Recurring Fees	\$	147,892.00
Total One-Time Fees	\$	38,050.00
Discounts	\$	(37,410.10)
TOTAL FEES	\$	148,531.90

During the second Term, if any, Customer hereby agrees to timely pay for the following products according to the schedule below:

Fire RMS Bundle				
Product	Price	Discount	Total	Fee Type
FIRE RMS Bundle	\$79,707.00	(\$3,985.35)	\$75,721.65	Recurring
RMS Bundle - ESO Fire Incidents RMS Bundle - ESO Inspections RMS Bundle - ESO Properties RMS Bundle - Personnel Management RMS Bundle - ESO Hydrants RMS Bundle - ESO Activities				

Fire					
Product	Volume	Price	Discount	Total	Fee Type
Telestaff Integration	55000 Incidents	\$2,595.00	(\$0.00)	\$2,595.00	Recurring
Fire Incidents CAD Integration	55000 Incidents	\$3,995.00	(\$3,995.00)	\$0.00	Recurring

Education					
Product	Volume	Price	Discount	Total	Fee Type
EMS1 & FireRescue1 Academy with ESO Integration	650 Employees	\$36,400.00	(\$0.00)	\$36,400.00	Recurring

Asset Management/Checklist					
Product	Volume	Price	Discount	Total	Fee Type
Assets-Checklist Bundle	100 Vehicles	\$25,195.00	(\$1,259.75)	\$23,935.25	Recurring

Total Recurring Fees	\$	147,892.00
Total One-Time Fees	\$	0.00
Discounts	\$	(9,240.10)
TOTAL FEES	\$	138,651.90

During the third Term and any subsequent renewal Terms, if any, Customer hereby agrees to timely pay for the following products according to the schedule below:

Fire RMS Bundle					
Product	Price	Discount	Total	Fee Type	
FIRE RMS Bundle	\$79,707.00	(\$3,985.35)	\$75,721.65	Recurring	
RMS Bundle - ESO Fire Incidents RMS Bundle - ESO Inspections RMS Bundle - ESO Properties RMS Bundle - Personnel Management RMS Bundle - ESO Hydrants RMS Bundle - ESO Activities					

Fire					
Product	Volume	Price	Discount	Total	Fee Type
Telestaff Integration	55000 Incidents	\$2,595.00	(\$0.00)	\$2,595.00	Recurring
Fire Incidents CAD Integration	55000 Incidents	\$3,995.00	(\$3,995.00)	\$0.00	Recurring

Education					
Product	Volume	Price	Discount	Total	Fee Type
EMS1 & FireRescue1 Academy with ESO Integration	650 Employees	\$36,400.00	(\$0.00)	\$36,400.00	Recurring

Asset Management/Checklist					
Product	Volume	Price	Discount	Total	Fee Type
Assets-Checklist Bundle	100 Vehicles	\$25,195.00	(\$1,259.75)	\$23,935.25	Recurring

Total Recurring Fees	\$	147,892.00
Total One-Time Fees	\$	0.00
Discounts	\$	(9,240.10)
TOTAL FEES	\$	138,651.90

6. All the Fees above will be invoiced by ESO as follows:
 - 6.1. Training and Training Travel Fees shall be invoiced on the Effective Date.
 - 6.2. During the first year, 100% of the remaining Fees shall be invoiced on the SaaS Subscription Start Date.
 - 6.3. During the second term any renewal years thereafter, 100% of the recurring Fees shall be due on the anniversary of the SaaS Subscription Start Date.

EXHIBIT B
SUPPORT SERVICES ADDENDUM

1. DEFINITIONS. Capitalized terms not defined below shall have the same meaning as in the General Terms & Conditions.

- 1.1. "Enhancement" means a modification, addition or new release of the Software that when added to the Software, materially changes its utility, efficiency, functional capability or application.
- 1.2. "E-mail Support" means ability to make requests for technical support assistance by e-mail at any time concerning the use of the then-current release of Software.
- 1.3. "Error" means an error in the Software, which significantly degrades performance of such Software as compared to ESO's then-published Documentation.
- 1.4. "Error Correction" means the use of reasonable commercial efforts to correct Errors.
- 1.5. "Fix" means the repair or replacement of object code for the Software or Documentation to remedy an Error.
- 1.6. "Initial Response" means the first contact by a Support Representative after the incident has been logged and a ticket generated. This may include an automated email response depending on when the incident is first communicated.
- 1.7. "Management Escalation" means, if the initial Workaround or Fix does not resolve the Error, notification of management that such Error(s) have been reported and of steps being taken to correct such Error(s).
- 1.8. "Severity 1 Error" means an Error which renders the Software completely inoperative (e.g., a User cannot access the Software due to unscheduled downtime or an Outage).
- 1.9. "Severity 2 Error" means an Error in which Software is still operable; however, one or more significant features or functionality are unavailable (e.g., a User cannot access a core component of the Software).
- 1.1. "Severity 3 Error" means any other error that does not prevent a User from accessing a significant feature of the Software (e.g., User is experiencing latency in reports).
- 1.2. "Severity 4 Error" means any error related to Documentation or a Customer Enhancement request.
- 1.3. "Status Update" means if the initial Workaround or Fix cannot resolve the Error, notification of the Customer regarding the progress of the Workaround or Fix.
- 1.4. "Online Support" means information available through ESO's website (www.eso.com), including frequently asked questions and bug reporting via Live Chat.
- 1.5. "Support Representative" shall be ESO employee(s) or agent(s) designated to receive Error notifications from Customer, which Customer's Administrator has been unable to resolve.
- 1.6. "Update" means an update or revision to Software, typically for Error Correction.
- 1.7. "Upgrade" means a new version or release of Software or a particular component of Software, which improves the functionality or which adds functional capabilities to the Software and is not included in an Update. Upgrades may include Enhancements.
- 1.8. "Workaround" means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing Customer's use of the Software.

2. SUPPORT SERVICES.

- 2.1. Customer will provide at least one administrative employee (the "Administrator" or "Administrators") who will handle all requests for first-level support from Customer's employees with respect to the Software. Such support is intended to be the "front line" for support and information about the Software to Customer's Users. ESO will provide training, documentation, and materials to the Administrator to enable the Administrator to provide technical support to Customer's Users. The Administrator will notify a Support Representative of any Errors that the Administrator cannot resolve and assist ESO in information gathering.
- 2.2. ESO will provide Support Services consisting of (a) Error Correction(s); Enhancements, Updates and Upgrades that ESO, in its discretion, makes generally available to its customers without additional charge; and (c) E-mail Support, telephone support, and Online Support. ESO may use multiple forms of communication for purposes of submitting periodic status reports to Customer, including but not limited to, messages in the Software,

messages appearing upon login to the Software or other means of broadcasting Status Update(s) to multiple customers affected by the same Error, such as a customer portal.

- 2.3. ESO's support desk will be staffed with competent technical consultants who are trained in and thoroughly familiar with the Software and with Customer's applicable configuration. Telephone support and all communications will be delivered in intelligible English.
- 2.4. Normal business hours for ESO's support desk are Monday through Friday 7:00 am to 7:00 pm CT. Customer will receive a call back from a Support Representative after-hours for a Severity 1 Error.
- 2.5. ESO will provide responses to a technology and/or security assessment of reasonable detail (a "Tech Assessment") upon request prior to (or in connection with) implementation. ESO will provide responses to any subsequent Tech Assessments provided that Customer compensates ESO at its then-current and standard consulting rates for all work performed in connection with such Tech Assessments.
3. **ERROR PRIORITY LEVELS.** Customer will report all Errors to ESO via e-mail (support@eso.com) or by telephone (866-766-9471, option #3). ESO shall exercise commercially reasonable efforts to correct any Error reported by Customer in accordance with the priority level reasonably assigned to such Error by ESO.
 - 3.1. **Severity 1 Error.** ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within four hours; (iii) initiate Management Escalation promptly; and (iv) provide Customer with a Status Update within four hours if ESO cannot resolve the Error within four hours.
 - 3.2. **Severity 2 Error.** ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within eight hours; (iii) initiate Management Escalation within 48 hours if unresolved; and (iv) provide Customer with a Status Update within forty-eight hours if ESO cannot resolve the Error within forty-eight hours.
 - 3.3. **Severity 3 Error.** ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within three business days; and (iii) provide Customer with a Status Update within seven calendar days if ESO cannot resolve the Error within seven calendar days.
 - 3.4. **Severity 4 Error.** ESO shall (i) provide an Initial Response within seven calendar days.
4. **CONSULTING SERVICES.** If ESO reasonably believes that a problem reported by Customer is not due to an Error in the Software, ESO will so notify Customer. At that time, Customer may request ESO to proceed with a root cause analysis at Customer's expense as set forth herein or in a separate SOW. If ESO agrees to perform the investigation on behalf of Customer, then ESO's then-current and standard consulting rates will apply for all work performed in connection with such analysis, plus reasonable related expenses incurred. For the avoidance of doubt, Consulting Services will include customized report writing by ESO on behalf of Customer.
5. **EXCLUSIONS.**
 - 5.1. ESO shall have no obligation to perform Error Corrections or otherwise provide support for: (i) Customer's repairs, maintenance or modifications to the Software (if permitted); (ii) Customer's misapplication or unauthorized use of the Software; (iii) altered or damaged Software not caused by ESO; (iv) any third-party software; (v) hardware issues; (vi) Customer's breach of the Agreement; and (vii) any other causes beyond the ESO's reasonable control.
 - 5.2. ESO shall have no liability for any changes in Customer's hardware or software systems that may be necessary to use the Software due to a Workaround or Fix.
 - 5.3. ESO is not required to perform any Error Correction unless ESO can replicate such Error on its own software and hardware or through remote access to Customer's software and hardware.
 - 5.4. Customer is solely responsible for its selection of hardware, and ESO shall not be responsible the performance of such hardware even if ESO makes recommendations regarding the same.
6. **MISCELLANEOUS.** The parties acknowledge that from time-to-time ESO may update its support processes specifically addressed in this Exhibit and may do so by posting such updates to ESO's website or otherwise notifying Customer of such updates. Customer will accept updates to ESO's support procedures and any other terms in this Exhibit; provided however, that they do not materially decrease the level of Support Services that Customer will receive from ESO. THESE TERMS AND CONDITIONS DO NOT CONSTITUTE A PRODUCT WARRANTY. THIS EXHIBIT IS AN ADDITIONAL PART OF THE AGREEMENT AND DOES NOT CHANGE OR SUPERSEDE ANY TERM OF THE AGREEMENT EXCEPT TO THE EXTENT UNAMBIGUOUSLY CONTRARY THERETO.

EXHIBIT C
HIPAA BUSINESS ASSOCIATE ADDENDUM

Customer and ESO Solutions, Inc. ("Business Associate") agree that this HIPAA Business Associate Addendum is entered into for the benefit of Customer, which is a covered entity under the Privacy Standards ("Covered Entity").

Pursuant to the Master Subscription and License Agreement (the "Agreement") into which this HIPAA Business Associate Addendum (this "Addendum") has been incorporated, Business Associate may perform functions or activities involving the use and/or disclosure of PHI on behalf of the Covered Entity, and therefore, Business Associate may function as a business associate. Business Associate, therefore, agrees to the following terms and conditions.

1. **Scope.** This Addendum applies to and is hereby automatically incorporated into all present and future agreements and relationships, whether written, oral or implied, between Covered Entity and Business Associate, pursuant to which PHI is created, maintained, received or transmitted by Business Associate from or on behalf of Covered Entity in any form or medium whatsoever.
2. **Definitions.** For purposes of this Addendum, the terms used herein, unless otherwise defined, shall have the same meanings as used in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), or the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and any amendments or implementing regulations, (collectively "HIPAA Rules").
3. **Compliance with Applicable Law.** The parties acknowledge and agree that, beginning with the relevant effective date, Business Associate shall comply with its obligations under this Addendum and with all obligations of a business associate under HIPAA, HITECH, the HIPAA Rules, and other applicable laws and regulations, as they exist at the time this Addendum is executed and as they are amended, for so long as this Addendum is in place.
4. **Permissible Use and Disclosure of PHI.** Business Associate may use and disclose PHI as necessary to carry out its duties to a Covered Entity pursuant to the terms of the Agreement and as required by law. Business Associate may also use and disclose PHI (i) for its own proper management and administration, and (ii) to carry out its legal responsibilities. If Business Associate discloses Protected Health Information to a third party for either above reason, prior to making any such disclosure, Business Associate must obtain: (i) reasonable assurances from the receiving party that such PHI will be held confidential and be disclosed only as required by law or for the purposes for which it was disclosed to such receiving party; and (ii) an agreement from such receiving party to immediately notify Business Associate of any known breaches of the confidentiality of the PHI.
5. **Limitations on Use and Disclosure of PHI.** Business Associate shall not, and shall ensure that its directors, officers, employees, subcontractors, and agents do not, use or disclose PHI in any manner that is not permitted by the Agreement or that would violate Subpart E of 45 C.F.R. 164 ("Privacy Rule") if done by a Covered Entity. All uses and disclosures of, and requests by, Business Associate for PHI are subject to the minimum necessary rule of the Privacy Rule.
6. **Required Safeguards to Protect PHI.** Business Associate shall use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 ("Security Rule") with respect to electronic PHI, to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Addendum.
7. **Reporting to Covered Entity.** Business Associate shall report to the affected Covered Entity without unreasonable delay: (a) any use or disclosure of PHI not provided for by the Agreement of which it becomes aware; (b) any breach of unsecured PHI in accordance with 45 C.F.R. Subpart D of 45 C.F.R. 164 ("Breach Notification Rule"); and (c) any security incident of which it becomes aware. With regard to Security Incidents caused by or occurring to Business Associate, Business Associate shall cooperate with the Covered Entity's investigation, analysis, notification and mitigation activities, and except for Security Incidents caused by Covered Entity, shall be responsible for reasonable costs incurred by the Covered Entity for those activities. Notwithstanding the foregoing, Covered Entity acknowledges and shall be deemed to have received advanced notice from Business Associate that there are routine occurrences of: (i) unsuccessful attempts to penetrate computer networks or services maintained by Business Associate; and (ii) immaterial incidents such as "pinging" or "denial of services" attacks.
8. **Mitigation of Harmful Effects.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of the Agreement, including, but not limited to, compliance with any state law or contractual data breach requirements.
9. **Agreements by Third Parties.** Business Associate shall enter into an agreement with any subcontractor of Business Associate that creates, receives, maintains or transmits PHI on behalf of Business Associate. Pursuant to such agreement, the subcontractor shall agree to be bound by the same or greater restrictions, conditions, and requirements that apply to Business Associate under this Addendum with respect to such PHI.
10. **Access to PHI.** Within five business days of a request by a Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to the Covered Entity such PHI for so long as such information is maintained by Business Associate in the Designated Record Set, as required by 45 C.F.R. 164.524. In the event any individual delivers directly to Business Associate a request for access to PHI, Business Associate shall within five (5) business days forward such request to the Covered Entity.
11. **Amendment of PHI.** Within five business days of receipt of a request from a Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to the Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. 164.526. In the event any individual delivers directly to Business Associate a request for amendment to PHI, Business Associate shall within five business days forward such request to the Covered Entity.
12. **Documentation of Disclosures.** Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528 and HITECH.

13. **Accounting of Disclosures.** Within five business days of notice by a Covered Entity to Business Associate that it has received a request for an accounting of disclosures of PHI, Business Associate shall make available to a Covered Entity information to permit the Covered Entity to respond to the request for an accounting of disclosures of PHI, as required by 45 C.F.R. 164.528 and HITECH.
14. **Other Obligations.** To the extent that Business Associate is to carry out one or more of a Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with such requirements that apply to the Covered Entity in the performance of such obligations.
15. **Judicial and Administrative Proceedings.** In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, the affected Covered Entity shall have the right to control Business Associate's response to such request, provided that, such control does not have an adverse impact on Business Associate's compliance with existing laws. Business Associate shall notify the Covered Entity of the request as soon as reasonably practicable, but in any event within seven business days of receipt of such request.
16. **Availability of Books and Records.** Business Associate hereby agrees to make its internal practices, books, and records available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules.
17. **Breach of Contract by Business Associate.** In addition to any other rights a party may have in the Agreement, this Addendum or by operation of law or in equity, either party may: i) immediately terminate the Agreement if the other party has violated a material term of this Addendum; or ii) at the non-breaching party's option, permit the breaching party to cure or end any such violation within the time specified by the non-breaching party. The non-breaching party's option to have cured a breach of this Addendum shall not be construed as a waiver of any other rights the non-breaching party has in the Agreement, this Addendum or by operation of law or in equity.
18. **Effect of Termination of Agreement.** Upon the termination of the Agreement or this Addendum for any reason, Business Associate shall return to a Covered Entity or, at the Covered Entity's direction, destroy all PHI received from the Covered Entity that Business Associate maintains in any form, recorded on any medium, or stored in any storage system. This provision shall apply to PHI that is in the possession of Business Associate, subcontractors, and agents of Business Associate. Business Associate shall retain no copies of the PHI. Business Associate shall remain bound by the provisions of this Addendum, even after termination of the Agreement or Addendum, until such time as all PHI has been returned or otherwise destroyed as provided in this Section. For the avoidance of doubt, de-identified Customer Data shall not be subject to this provision.
19. **Injunctive Relief.** Business Associate stipulates that its unauthorized use or disclosure of PHI while performing services pursuant to this Addendum would cause irreparable harm to a Covered Entity, and in such event, the Covered Entity shall be entitled to institute proceedings in any court of competent jurisdiction to obtain damages and injunctive relief.
20. **Owner of PHI.** Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI created or received by Business Associate on behalf of a Covered Entity.
21. **Safeguards and Appropriate Use of Protected Health Information.** Covered Entity is responsible for implementing appropriate privacy and security safeguards to protect its PHI in compliance with HIPAA. Without limitation, it is Covered Entity's obligation to:
 - 21.1. Not include PHI in information Covered Entity submits to technical support personnel through a technical support request or to community support forums. In addition, Business Associate does not act as, or have the obligations of a Business Associate under the HIPAA Rules with respect to Customer Data once it is sent to or from Covered Entity outside ESO's Software over the public Internet; and
 - 21.2. Implement privacy and security safeguards in the systems, applications, and software Covered Entity controls, configures and connects to ESO's Software.
22. **Third Party Rights.** The terms of this Addendum do not grant any rights to any parties other than Business Associate and the Covered Entity.
23. **Signatures.** The signatures to the Agreement (or the document evidencing the parties' adoption thereof) indicate agreement hereto and shall be deemed signatures hereof, whether manual, electronic or facsimile.

TRANSPARENCY IN CITY GOVERNMENT DISCLOSURE FORM

**APPLICABLE TO ALL CITY CONTRACTS AND APPOINTMENTS
NOT GOVERNED BY STATE COMPETITIVE BID LAWS**

INSTRUCTIONS:

This form must be fully completed by each individual, firm, group, agency, non-profit and other entity (hereinafter referred to as "you" or "Applicant") seeking to do business with the City, provide services to the City, enter into a contract or appointment with the City, or apply for City funding.

Submit completed forms to the *Mayor's Office, Third Floor City Hall – Attention: Internal Audit and Contract Compliance Division*. Answer all questions applicable to you. Respond "Not applicable" or "NA" if a question does not apply to you. Attach additional pages if needed. Completed forms will be submitted to the Birmingham City Council along with the Applicant's proposed contract, appointment and/or funding request.

-
1. Name of Applicant: ESO Solutions, Inc.

 2. Physical Street Address of Applicant: 11500 Alterra Parkway, Suite 100
Austin Texas 78758

 3. Mailing Address of Applicant (if different from street address): n/a

 4. Phone Number of Applicant: 866-766-9471

 5. Key Contact Person for Applicant: Robert Munden

 6. Identify all officers, directors, owners, substantial investors in (5% or more of Applicant's stock) and partners of the Applicant:

Zilker Midco, Inc.
Chris Dillie
Cortney Johnson
Ryan Atlas
Stephen Foster
Robert Munden

City of Birmingham Transparency in City Government Disclosure Form

7. Are any of these persons City employees? No.
8. Are any of these persons related by blood or by marriage to City officials or employees? If yes, list all pertinent relationships. No.
9. Identify all key employees or personnel of the Applicant:
Chris Dillie
Cortney Johnson
Robert Munden
10. Are any of these persons City employees? No.
11. Are any of these persons related by blood or by marriage to City officials or employees? If yes, list all pertinent relationships. No.
12. Has the Applicant ever received City funding, entered into a contract or appointment with the City, or provided services to the City? Yes
13. If you answered "Yes" to Question No. 12:
- a) State the amount of funds received or amount of the contract or appointment. Historical unknown. Current ARR \$ \$138,651.90, Total Current Booking \$ \$148,531.90
- b) Describe in detail the work performed, scope of appointment, or purpose for which the funds were used, and attach supporting documentation such as receipts and invoices.
Applicant will be hosting the following software for the City :
- Fire Record Management Software
 - Asset Management/Checklist Software (with one time Training and Implementation)

City of Birmingham Transparency in City Government Disclosure Form

- Education Software (EMS1 & FireRescue1 Academy with ESO Integration Recurring EMS1 & FireRescue1 Academy Implementation and Configuration)
- ESO Fire Software with
 - Telestaff Integration
 - Fire Incidents CAD Integration
 - Fire Setup & Online Training
 - One-time Properties/Inspections Data Import
 - One-time NFPA 101 - 2015 Codeset
 - One-time IFC 2015 - National Codeset
 - One-time Fire Incidents NFIRS Data Import

c) Attach a copy of the contract or appointment.

See Attached Quotes

14. Attach resumes of Applicant's key personnel. n/a
15. Attach Applicant's articles of incorporation if applicable. n/a
16. Attach Applicant's 501(c)(3) letter from Internal Revenue Service if applicable. n/a
17. Attach Applicant's City of Birmingham business license, if applicable. n/a
18. Describe in detail the work Applicant seeks to perform for the City. Applicant will be hosting the following software for the City :
 - Fire Record Management Software
 - Asset Management/Checklist Software (with one time Training and Implementation)
 - Education Software (EMS1 & FireRescue1 Academy with ESO Integration Recurring EMS1 & FireRescue1 Academy Implementation and Configuration)
 - ESO Fire Software with
 - Telestaff Integration
 - Fire Incidents CAD Integration
 - Fire Setup & Online Training
 - One-time Properties/Inspections Data Import
 - One-time NFPA 101 - 2015 Codeset
 - One-time IFC 2015 - National Codeset

City of Birmingham Transparency in City Government Disclosure Form

- One-time Fire Incidents NFIRS Data Import

19. Identify all sources and amounts of public funding (federal, state and local) the Applicant has received within the past three (3) years.

ESO has over 10,000 clients, the substantial majority of whom are governmental entities at the federal, state, county or local level.

20. Has the Applicant ever been suspended or barred from participating in federal contracts or other federal assistance? If yes, explain.

No.

21. Has any individual associated with the Applicant ever been suspended or barred from participating in federal contracts or other federal assistance? If yes, explain.

No.

22. During the past three (3) years, has Applicant retained, hired or paid any lobbyist, political consultant or attorney to assist Applicant in its bid to perform work for the City or obtain a City contract, appointment or funding? If yes, identify by individual name, firm name, address and telephone number any such lobbyist, political consultant or attorney.

No; n/a

23. Identify any business or firm in which:

- a) The Applicant or its key personnel owns 5% or more of the stock;

Zilker Ultimate Topco, Inc.

- b) The Applicant or its key personnel serves as an officer or director;

None, other than controlled affiliates of Applicant.

- c) The Applicant or its key personnel is a partner.

None, other than controlled affiliates of Applicant.

Applicant's failure to file a Transparency in City Government Disclosure Form is punishable by state or local law to the maximum allowed by law and subject to any federal penalties required by the U.S. Code Annotated.

City of Birmingham Transparency in City Government Disclosure Form

I declare under penalty of perjury that the Applicant's answers to each and every question on the City of Birmingham Transparency in City Government Disclosure Form are true and correct to my knowledge:


Signature

Robert Munden
Print Name

December 2, 2021
Date

Chief Legal & Compliance Officer
Title/Position with Applicant



Quote Date: 09/22/2021
 Customer Name: Birmingham Fire / EMS
 Quote #: Q-46880
 Quote Expiration date: 12/31/2021
 ESO Account Manager: Travis Winzeler

CUSTOMER CONTACT

Customer Birmingham Fire / EMS
 Name Matthew Lamonte
 Email matthew.lamonte@birmingham.al.gov
 Phone 205-254-2052

BILLING CONTACT

Payor Birmingham Fire / EMS Address 1808 7th Ave. North
 Name Joseph "Donald" Richardson Birmingham AL, 35203
 Email josephd.richardson@birminghamal.gov Billing Frequency Annual
 Phone 205-254-2990 Initial Term 12 months

Fire RMS Bundle				
Product	Price	Discount	Total	Fee Type
FIRE RMS Bundle	\$79,707.00	(\$3,985.35)	\$75,721.65	Recurring
RMS Bundle - ESO Fire Incidents RMS Bundle - ESO Inspections RMS Bundle - ESO Properties RMS Bundle - Personnel Management RMS Bundle - ESO Hydrants RMS Bundle - ESO Activities				

Asset Management/Checklist					
Product	Volume	Price	Discount	Total	Fee Type
Assets-Checklist Bundle	100 Vehicles	\$25,195.00	(\$1,259.75)	\$23,935.25	Recurring
Asset Management and Checklist - Training and Implementation	100 Vehicles	\$2,995.00	(\$2,995.00)	\$0.00	One-time

Education					
Product	Volume	Price	Discount	Total	Fee Type
EMS1 & FireRescue1 Academy with ESO Integration	650 Employees	\$36,400.00	(\$0.00)	\$36,400.00	Recurring
EMS1 & FireRescue1 Academy-Implementation and Configuration	650 Employees	\$2,500.00	(\$0.00)	\$2,500.00	One-time

Fire					
Product	Volume	Price	Discount	Total	Fee Type
Telestaff Integration	55000 Incidents	\$2,595.00	(\$0.00)	\$2,595.00	Recurring
Fire Incidents CAD Integration	55000 Incidents	\$3,995.00	(\$3,995.00)	\$0.00	Recurring
Fire Setup & Online Training	12 Sessions	\$7,140.00	(\$7,140.00)	\$0.00	One-time
Properties/Inspections Data Import	32 Stations	\$7,040.00	(\$7,040.00)	\$0.00	One-time
NFPA 101 - 2015 Codeset	32 Stations	\$3,440.00	(\$0.00)	\$3,440.00	One-time
IFC 2015 - National Codeset	32 Stations	\$3,440.00	(\$0.00)	\$3,440.00	One-time
Fire Incidents NFIRS Data Import	55000 Incidents	\$10,995.00	(\$10,995.00)	\$0.00	One-time

*Additional fees may be applied by Customer's billing or CAD vendor for certain integrations or interfaces, and Customer is encouraged to discuss this with the applicable vendor.



Quote Date: 09/22/2021
Customer Name: Birmingham Fire / EMS
Quote #: Q-46880
Quote Expiration date: 12/31/2021
ESO Account Manager: Travis Winzeler

Personnel Management					
Product	Volume	Price	Discount	Total	Fee Type
Personnel Management Data Migration	650 Employees	\$500.00	(\$0.00)	\$500.00	One-time

Total Recurring Fees	\$	147,892.00
Total One-Time Fees	\$	38,050.00
Discounts	\$	(37,410.10)
TOTAL FEES	\$	148,531.90



Quote Date: 09/22/2021
Customer Name: Birmingham Fire / EMS
Quote #: Q-46880
Quote Expiration date: 12/31/2021
ESO Account Manager: Travis Winzeler

TERMS AND CONDITIONS:

1. If the Customer indicated above has an ESO Master Subscription and License Agreement (MSLA) dated on or after February 20, 2017, then that MSLA will govern this Quote. **Otherwise, Customer intends and agrees that this Quote adopts and incorporates the terms and conditions of the MSLA and associated HIPAA business associate agreement hosted at the following web address, and that the products and services ordered above are subject thereto:**

<https://www.eso.com/legal-terms/>

2. The Effective Date of this Quote shall be the final date of signature.

3. Customer shall be responsible for the payment of all Fees listed herein. If Customer has elected to use a Third Party Payor (as indicated above as Payor) and such party has executed an appropriate agreement with ESO, ESO shall accept payment of Fees from such Third Party Payor.

Birmingham Fire / EMS

Signature: _____

Print Name: _____

Title: _____

Date: _____

For Fire, Personnel Management, Asset Management/Checklist, Education, the following payment terms apply:

Fees are invoiced at the Billing Frequency 15 days after the Effective Date, with recurring fees due on the anniversary.



Quote Date: 09/22/2021
Customer Name: Birmingham Fire / EMS
Quote #: Q-46880
Quote Expiration date: 12/31/2021
ESO Account Manager: Travis Winzeler

Fire

Product	Description
IFC 2015 - National Codeset	Complete set of IFC 2015 codes to be used within the Inspections application.
Fire Incidents NFIRS Data Import	Data migration from previous RMS platform.
NFPA 101 - 2015 Codeset	
Properties/Inspections Data Import	Data migration of Properties data and inspection reports into ESOs Properties and Inspections applications from a previously used RMS.
Telestaff Integration	Integration with Telestaff Rostering to place staff on the appropriate calls.
Fire Incidents CAD Integration	Allows for integration of CAD data into the FIRE application. Ongoing maintenance included. Additional fees from your CAD vendor may apply.
Fire Setup & Online Training	Setup and Webinar Training Session for ESO Fire.
RMS Bundle - ESO Fire Incidents	Includes Auto EHR-import or Auto-CAD import, federal NFIRS data reporting, software updates and upgrades.
RMS Bundle - ESO Inspections	Includes the ability to manage multiple code sets, using those to develop customized Check-lists for inspections. The application allows you to schedule, manage, execute and finalize inspections as well as reschedule any required follow up inspections.
RMS Bundle - ESO Properties	Includes CAMEO integration, Pre-Plan view. Stores property and occupant history (presence of chemicals and tanks, incidents, and previous inspections).
RMS Bundle - ESO Hydrants	Inventory and document testing and status of hydrants.
RMS Bundle - ESO Activities - Fire and Fire/EMS Agencies	Application for tracking non-response activities, including Operations and Community Risk Reduction and Daily Log.

Personnel Management

Product	Description
Personnel Management Data Migration	Migration of information in Personnel Management that includes Demographics, Training Classes, Certifications, and Drivers License Information.
RMS Bundle - ESO Personnel Management	Includes tracking of Training classes, certifications, credentials, immunization records. Discounted as a part of the RMS Bundle.

Asset Management/Checklist

Product	Description
Assets-Checklist Bundle	Web-based asset management and apparatus checklist for Fire and EMS.
Asset Management and Checklist - Training and Implementation	Training and configuration to include; group admin training, agency specific web-based sessions, online training and pre-recorded end user training.

Education

Product	Description
EMS1 & FireRescue1 Academy with ESO Integration	Track and report training and access to accredited CAPCE and NFPA standards online courses, with ESO integration.
EMS1 & FireRescue1 Academy-Implementation and Configuration	Implementation and Configuration of EMS1 and FireRescue1 Academy.



Quote Date: 11/16/2021
 Customer Name: Birmingham Fire / EMS
 Quote #: Q-51027
 Quote Expiration date: 12/31/2021
 ESO Account Manager: Travis Winzeler

CUSTOMER CONTACT

Customer Birmingham Fire / EMS
 Name Matthew Lamonte
 Email matthew.lamonte@birminghamal.gov
 Phone 205-254-2052

BILLING CONTACT

Payor Birmingham Fire / EMS Address 1808 7th Ave. North
 Name Joseph "Donald" Richardson Birmingham AL, 35203
 Email josephd.richardson@birminghamal.gov Billing Frequency Annual
 Phone 205-254-2990 Initial Term 12 months

Fire RMS Bundle

Product	Price	Discount	Total	Fee Type
FIRE RMS Bundle	\$79,707.00	(\$3,985.35)	\$75,721.65	Recurring
RMS Bundle - ESO Fire Incidents RMS Bundle - ESO Inspections RMS Bundle - ESO Properties RMS Bundle - Personnel Management RMS Bundle - ESO Hydrants RMS Bundle - ESO Activities				

Fire

Product	Volume	Price	Discount	Total	Fee Type
Telestaff Integration	55000 Incidents	\$2,595.00	(\$0.00)	\$2,595.00	Recurring
Fire Incidents CAD Integration	55000 Incidents	\$3,995.00	(\$3,995.00)	\$0.00	Recurring

Education

Product	Volume	Price	Discount	Total	Fee Type
EMS1 & FireRescue1 Academy with ESO Integration	650 Employees	\$36,400.00	(\$0.00)	\$36,400.00	Recurring

Asset Management/Checklist

Product	Volume	Price	Discount	Total	Fee Type
Assets-Checklist Bundle	100 Vehicles	\$25,195.00	(\$1,259.75)	\$23,935.25	Recurring

*Additional fees may be applied by Customer's billing or CAD vendor for certain integrations or interfaces, and Customer is encouraged to discuss this with the applicable vendor.



Quote Date: 11/16/2021
Customer Name: Birmingham Fire / EMS
Quote #: Q-51027
Quote Expiration date: 12/31/2021
ESO Account Manager: Travis Winzeler

Total Recurring Fees	\$	147,892.00
Total One-Time Fees	\$	0.00
Discounts	\$	(9,240.10)
TOTAL FEES	\$	138,651.90



Quote Date: 11/16/2021
Customer Name: Birmingham Fire / EMS
Quote #: Q-51027
Quote Expiration date: 12/31/2021
ESO Account Manager: Travis Winzeler

TERMS AND CONDITIONS:

1. If the Customer indicated above has an ESO Master Subscription and License Agreement (MSLA) dated on or after February 20, 2017, then that MSLA will govern this Quote. **Otherwise, Customer intends and agrees that this Quote adopts and incorporates the terms and conditions of the MSLA and associated HIPAA business associate agreement hosted at the following web address, and that the products and services ordered above are subject thereto:**

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2. The Effective Date of this Quote shall be the final date of signature.

3. Customer shall be responsible for the payment of all Fees listed herein. If Customer has elected to use a Third Party Payor (as indicated above as Payor) and such party has executed an appropriate agreement with ESO, ESO shall accept payment of Fees from such Third Party Payor.

Birmingham Fire / EMS

Signature: _____

Print Name: _____

Title: _____

Date: _____

For Fire, Personnel Management, Asset Management/Checklist, Education, the following payment terms apply:

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Quote Date: 11/16/2021
Customer Name: Birmingham Fire / EMS
Quote #: Q-51027
Quote Expiration date: 12/31/2021
ESO Account Manager: Travis Winzeler

Fire

Product	Description
Telestaff Integration	Integration with Telestaff Rostering to place staff on the appropriate calls.
Fire Incidents CAD Integration	Allows for integration of CAD data into the FIRE application. Ongoing maintenance included. Additional fees from your CAD vendor may apply.
RMS Bundle - ESO Fire Incidents	Includes Auto EHR-Import or Auto-CAD Import, federal NFIRS data reporting, software updates and upgrades.
RMS Bundle - ESO Inspections	Includes the ability to manage multiple code sets, using those to develop customized Check-lists for inspections. The application allows you to schedule, manage, execute and finalize inspections as well as reschedule any required follow up inspections.
RMS Bundle - ESO Properties	Includes CAMEO integration, Pre-Plan view. Stores property and occupant history (presence of chemicals and tanks, incidents, and previous inspections).
RMS Bundle - ESO Hydrants	Inventory and document testing and status of hydrants.
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Personnel Management

Product	Description
RMS Bundle - ESO Personnel Management	Includes tracking of Training classes, certifications, credentials, immunization records. Discounted as a part of the RMS Bundle.

Asset Management/Checklist

Product	Description
Assets-Checklist Bundle	Web-based asset management and apparatus checklist for Fire and EMS.

Education

Product	Description
EMS1 & FireRescue1 Academy with ESO Integration	Track and report training and access to accredited CAPCE and NFPA standards online courses, with ESO integration.

Public Safety Committee Meeting

FY 2022 Submission Sheet

Date Submitted: March 17, 2022

For Meeting Date: March 22, 2022

Detailed description of item as it should appear on agenda: *(Please Submit Supporting Documents)*

A Resolution pursuant to §11-40-1 of the Code of Alabama, 1975 authorizing the Mayor to execute and deliver an agreement with ESO Solutions, Inc. to allow the EMS billing office to complete and submit electronic patient care reports to the insurance companies within 24-hours for a term not to exceed three (3) years. The cloud-based program will increase HIPPA compliance and reliability for mandatory State reporting.

Submitted by: Annette C. Harris

Dept: IMS Enterprise

Extension: 254-2751

Submit agenda items via email to Brandon McCray Brandon.Mccray@birminghamal.gov and to Councilor LaTonya Tate at LaTonya.Tate@birminghamal.gov, extension 2302, no later than 12:00 p.m. on the Wednesday before the upcoming committee meeting date.

Committee ONLY

Reviewed By: _____ Date: _____

_____ ** Approved

_____ ** Denied

Comments: _____

MASTER SUBSCRIPTION AND LICENSE AGREEMENT

This Master Subscription and License Agreement (this "**Agreement**") is entered into as of _____ ("**Effective Date**"), by and between ESO Solutions, Inc., a Texas corporation having its principal place of business at 11500 Alterra Parkway, Suite 100 Austin, TX 78758, including its controlled subsidiaries, (collectively, "**ESO**") and City of Birmingham, Alabama, having its principal place of business at 1808 7th Ave. North Birmingham, Alabama 35203 ("**Customer**"). This Agreement consists of the General Terms & Conditions below and any Addenda (as defined below) executed by the parties, including any attachments to such Addenda.

The parties have agreed that ESO will provide Customer certain technology products and/or services and that Customer will pay ESO certain fees. Therefore, in consideration of the covenants, agreements and promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows.

GENERAL TERMS AND CONDITIONS

1. **DEFINITIONS.** Capitalized terms not otherwise defined in this Agreement have the meanings below:

"Add-On Software" means any complementary software components or reporting service(s) that ESO makes available to customer through its Software.

"Addendum" means a document addressing the order of a specific set of products or services which is executed by authorized representatives of each party. An Addendum may be (a) an ESO sales form or "Quote", (b) a Statement of Work, or (c) another writing the parties intend to be incorporated by reference into this Agreement.

"Anonymized Data" means Customer Data from which all personally identifiable information is removed, as well as the names and addresses of Customer and any of its Users and/or Customer's clients (and which, as a consequence, is neither PHI nor identifiable to or by Customer).

"Customer Data" means information, data and other content in electronic form that is submitted, posted, or otherwise transmitted by or on behalf of Customer through the Software.

"Deliverable" means software, report, or other work product created pursuant to a Statement of Work.

"Documentation" means the Software's user guides and operating manuals.

"Feedback" refers to any suggestion or idea for improving or otherwise modifying ESO's products or services.

"Intellectual Property" means trade secrets, copyrightable subject matter, patents and patent applications, and other proprietary information, activities, and any ideas, concepts, innovations, inventions and designs.

"Licensed Software" means the executable, object code version of software that ESO provides to Customer for its use and installation on Customer's own equipment. For the avoidance of doubt, Licensed Software does not include Add-on Software or SaaS.

"New Version" means any new version of Licensed Software (excluding SaaS Software) that ESO may from time to time introduce and market generally as a distinct licensed product, as may be indicated by ESO's designation of a new version number, brand or product.

"Outage" means Customer is unable to access SaaS, or such access is materially delayed, impaired or disrupted, in each case as caused or controlled by ESO.

"Professional Services" means professional services provided by ESO under a Statement of Work.

"Protected Health Information" or "**PHI**" has the meaning set forth in HIPAA. All references herein to PHI shall be construed to include electronic PHI, or ePHI, as that term is defined by HIPAA.

"Reporting Services" means, collectively, the different tools or features in the Software allowing Customer to generate compilations of data, including but not limited to ad-hoc reports, analytics, benchmarking or any other reporting tool provided through the Software.

"SaaS" means software-as-a-service that ESO hosts (directly or indirectly) for Customer's use on a periodic subscription basis. For the avoidance of doubt, SaaS does not include Licensed Software.

"Scheduled Downtime" means periods when ESO intentionally interrupts SaaS to perform system maintenance or otherwise correct service errors during non-peak hours (except for critical circumstances), typically between midnight and 6 a.m. Central Time on a fortnightly basis.

"Software" means any ESO computer program, programming or modules specified in the Agreement or any Addendum. For the avoidance of doubt, Add-on Software, SaaS, and Licensed Software are collectively referred to as Software.

"Support Services" means those services described in Exhibit B.

"Third-Party Data" means data not owned by ESO but which is (or access to which is) provided by ESO under a Software Schedule.

"Third-Party Service" means a service not provided by ESO but which is made available by ESO in connection with its Software under a Software Schedule or Addendum.

"Third-Party Software" means software not owned by ESO but which is (or access to which is) provided by ESO under a Software Schedule or Addendum.

"Use Restrictions" means the restrictions imposed on Customer's use of Software as described in Section 3.3.

"User" means any individual who uses the Software on Customer's behalf or through Customer's account or passwords.

2. **SOFTWARE ORDERS.** During the Term, Customer may order Software from ESO by signing an appropriate Addendum. Customer's license to Licensed Software and its subscription to SaaS are set forth below. Each such Addendum is incorporated herein by reference.

3. LICENSE/SUBSCRIPTION TO SOFTWARE

3.1. **Grant of Subscription: SaaS.** For SaaS, during the Term Customer may access and use the SaaS and Reporting Services, with the access and volume limitations set forth on the applicable Addendum, subject to Customer's compliance with the Use Restrictions and other limitations contained in this Agreement.

3.2. **Grant of License: Licensed Software.** For Licensed Software, during the Term ESO hereby grants Customer a limited, non-exclusive, non-transferable, non-assignable, non-sublicensable, revocable license to copy and use the Licensed Software, in such quantities as are set forth on the applicable Addendum and as necessary for Customer's internal business purposes, in each case subject to Customer's compliance with the Use Restrictions and other limitations and obligations contained in this Agreement.

3.3. **Use Restrictions.** Except as provided in this Agreement or as otherwise authorized by ESO, Customer has no right to, and shall not: (a) decompile, reverse engineer, disassemble, print, copy or display the Software or otherwise reduce the Software to a human-perceivable form in whole or in part; (b) publish, release, rent, lease, loan, sell, distribute or transfer the Software to another person or entity; (c) reproduce the Software for the use or benefit of anyone other than Customer; (d) alter, modify or create derivative works based upon the Software either in whole or in part; or (e) use or permit the use of the Software for commercial time-sharing arrangements or providing service bureau, data processing, rental, or other services to any third party (including any affiliate not specifically listed in the applicable Addendum).

- 3.4. **Ownership.** The rights granted under the provisions of this Agreement do not constitute a sale of the Software. ESO retains all right, title, and interest in and to the Software, including without limitation all software used to provide the Software and all graphics, user interfaces, logos and trademarks reproduced through the Software, except to the limited extent set forth in this Agreement. This Agreement does not grant Customer any intellectual property rights in the Software or any of its components, except to the limited extent that this Agreement specifically sets forth Customer's rights to access, use, or copy the Software during the Term. Customer acknowledges that the Software and its components are protected by copyright and other laws.
- 3.5. **Third-Party Software and Services.** This Section 3.5 applies to Third-Party Software and Services offered by ESO. Refer to the product table following the Agreement for applicability.
- 3.5.1. ESO neither accepts liability for, nor warrants the functionality, utility, availability, reliability or accuracy of, Third-Party Software or Third-Party Services. The Third-Party Software "EMS1 Academy" and/or "FireRescue1 Academy" and/or "EMS1 & FireRescue1 Academy - Implementation and Configuration" and/or "Learning Management System" and/or "EVALS Implementation" (collectively, "Education") is offered by ESO in collaboration with Lexipol, f/k/a The Praetorian Group. If Customer subscribes to Education, Customer acknowledges and agrees to the terms and conditions of the Praetorian license agreement, located at <http://www.praetoriantdigital.com/LMS-Master-Service-Agreement>, which shall supersede this Agreement as it applies to Customer's use of Education and any Customer Data stored therein.
- 3.5.2. **Third-Party Data.** If Customer (as indicated on an Addendum) elects to license Third-Party Data (e.g., fire codes), then subject to the terms hereof, ESO hereby grants Customer a non-exclusive, non-sublicensable, and non-transferable license during the Term to use such Third-Party Data via the Software solely for Customer's internal purposes. Customer will not (i) allow greater access than that set forth in the applicable Addendum, (ii) disclose, release, distribute, or deliver Third-Party Data, or any portion thereof, to any third party (iii) copy, modify, or create derivative works of Third-Party Data, (iv) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available Third-Party Data, (v) attempt to output in any form more than 10% of the Third-Party Data or otherwise circumvent the usage limitations included in the Software, (vi) remove any proprietary notices included within Third-Party Data or Software, or (vii) use Third-Party Data in any manner or for any purpose that infringes or otherwise violates any proprietary right of a person, or that violates applicable law. ESO does not warrant the functionality, reliability, accuracy, completeness or utility of, Third-Party Data, or accept any liability therefor. Additional terms and limitations applicable to Third-Party Data may be provided on the applicable Addendum.
4. **HOSTING, SLA & SUPPORT SERVICES**
- 4.1. **Hosting & Management.** Customer shall be responsible for hosting and managing any Licensed Software on systems meeting the requirements specified by ESO. ESO shall be responsible for hosting and managing any SaaS.
- 4.2. **Service Level Agreement.** If an Outage, excluding Scheduled Downtime (as defined below), results in the service level uptime falling below 99% for any three-month period (the "Uptime Commitment"), then Customer may immediately terminate this Agreement, in which case ESO will refund any prepaid, unearned Fees to Customer. This is Customer's sole remedy for ESO's breach of the Uptime Commitment.
- 4.3. **Scheduled Downtime.** ESO will endeavor to provide reasonable (72 hour) notice of Scheduled Downtime to Customer's Users. Notice of Scheduled Downtime may be provided from within the Software or via email. Scheduled Downtime shall never constitute a failure of performance or Outage by ESO. Notification timelines and the frequency of Scheduled Downtime are subject to the emergence of security concerns outside of ESO's control.
- 4.4. **Support and Updates.** During the Term, ESO shall provide to Customer the Support Services, in accordance with Exhibit B, which is incorporated herein by reference.
5. **FEES**
- 5.1. **Fees.** In consideration of the rights granted hereunder, Customer agrees to pay ESO the fees for the Software and Professional Services as set forth in the Addendum(s) (collectively, "Fees"). The Fees are non-cancelable and non-refundable, except as expressly provided herein. Customer (or Third-Party Payer, if applicable) shall pay all invoices within 30 days of receipt.
- 5.2. **Third-Party Payer.** If Customer desires to use a third-party to pay some or all of the Fees on behalf of Customer (a "Third-Party Payer"), then (i) each applicable Addendum will identify such arrangement, (ii) the Third-Party Payer will enter into a written agreement with ESO regarding such arrangement, (iii) Customer may replace the Third-Party Payer by written notice to ESO (provided that no such change shall be made until the then-current Term's renewal), (iv) references within this Section 5 to Customer's responsibility for Fees shall be understood to refer to the Third-Party Payer when applicable, and (v) Customer shall remain responsible for payment if the Third-Party Payer does not pay the Fees.
- 5.3. **Uplift on Renewal.** Fees for Software, which recur annually, shall increase by 3% each year this Agreement is in effect.
- 5.4. **Taxes and Fees.** The Fees are exclusive of all taxes and credit card processing fees, if applicable. Unless and until Customer provides ESO a tax exemption certificate, Customer will be responsible for and will remit (or will promptly reimburse ESO for) all taxes of any kind, including sales, use, duty, customs, withholding, property, value-added, and other similar federal, state or local taxes (other than taxes based on ESO's income) related to this Agreement.
- 5.5. **Appropriation of Funds.** If Customer is a city, county or other government entity, Customer may terminate the Agreement at the end of the Customer's fiscal term if Customer provides evidence that its governing body did not appropriate sufficient funds for the next fiscal year. Notwithstanding the foregoing, this provision shall not excuse Customer from past payment obligations or other Fees earned and unpaid.
- 5.6. **Usage Monitoring.** Customer is solely responsible for its own adherence to volume and use limitations indicated on the applicable Addendum. ESO may monitor Customer's use of the Software, and if Customer's usage exceeds the level indicated in the applicable Addendum (an "Overage"), Customer shall owe ESO the Fee corresponding to such usage level at a rate no higher than ESO's then-standard pricing for new customers at an equivalent usage level. ESO may invoice for Overages immediately.
6. **TERM AND TERMINATION**
- 6.1. **Term.** The term of this Agreement (the "Term") commences on the Effective Date and continues for a period of one year (or any longer period provided in an Addendum). Thereafter, the Term will renew for successive one-year periods unless written notice is provided at least 60 days prior to the anniversary of the Effective Date.
- 6.2. **Termination for Cause.** Either party may terminate this Agreement or any individual Addendum for the other party's uncured material breach by providing written notice. The breaching party shall have 30 days from receipt to cure such breach to the reasonable satisfaction of the non-breaching party.
- 6.3. **Effect of Termination.**
- 6.3.1. If Customer terminates this Agreement or any Addendum as a result of ESO's material breach, then to the extent Customer prepaid any Fees, ESO shall refund to Customer those prepaid Fees on a pro-rata basis from the date Customer actually ceases use of the Software.
- 6.3.2. Upon termination of this Agreement or any Addendum, Customer shall cease all use of the Software and delete, destroy or return all

copies of the Documentation and Licensed Software in its possession or control, except as required by law. Customer shall remain obligated to pay appropriate Fees at ESO's then-current rates if Customer continues to use or access Software after the termination or expiration of this Agreement. If Customer's Agreement includes a multi-year discount plan with diminishing discounts, and Customer terminates the Agreement prior to the completion of the discount plan, Customer shall promptly pay ESO's invoice recouping such discounts for a maximum of two years prior to the date of termination.

6.3.3. Termination of this Agreement is without prejudice to any other right or remedy and shall not release a party from any liability.

6.4. **Delivery of Data.** ESO will provide Customer its Customer Data in a searchable .pdf format upon request made within 60 days of the expiration or termination of this Agreement. Customer acknowledges that ESO has no obligation to retain Customer Data more than 60 days after expiration or termination of this Agreement.

7. REPRESENTATIONS AND WARRANTIES

7.1. **Material Performance of Software.** After it is fully implemented (and subject to Customer's adherence to Sections 3.3, 4.1 and 13.4), ESO warrants that the Software will reliably collect, transmit, store and/or permit access to data in compliance with applicable law and industry standards.

7.2. **Due Authority.** Each party's execution, delivery and performance of this Agreement and each agreement or instrument contemplated by this Agreement is duly authorized by all necessary corporate or government action.

7.3. **Customer Cooperation.** Customer agrees to use current operating systems and reasonably and timely cooperate with ESO, including providing ESO reasonable access to its equipment, software and data as necessary for the implementation and operation of the Software.

8. **DISCLAIMER OF WARRANTIES.** EXCEPT AS OTHERWISE PROVIDED IN SECTION 7, ESO DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, TITLE, NON-INFRINGEMENT, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7, CUSTOMER ACCEPTS THE SOFTWARE "AS-IS" AND "AS AVAILABLE."

9. CONFIDENTIALITY

9.1. "**Confidential Information**" refers to the following items: (a) any document marked "Confidential"; (b) any information orally designated as "Confidential" at the time of disclosure, provided the disclosing party confirms such designation in writing within five business days; (c) the Software and Documentation, whether or not designated confidential; (d) ESO's security controls, policies, procedures, audits, or other information concerning ESO's internal security posture; (e) any other nonpublic, sensitive information reasonably treated as trade secret or otherwise confidential; and (f) Customer Data which does not comprise PHI. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in the other party's possession at the time of disclosure free of duty of non-disclosure; (ii) is independently developed without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of the receiving party's improper action or inaction; (iv) is approved for release in writing by the disclosing party; (v) as to ESO, Customer's Feedback; or (vi) is PHI (which shall be governed by the Business Associate Agreement rather than this Section).

9.2. **Non-disclosure.** Each party shall use Confidential Information of the other party solely to fulfill the terms of this Agreement (the "**Purpose**"). Each party shall (a) ensure that its employees or contractors are bound by confidentiality obligations no less restrictive than those contained herein, and (b) not disclose Confidential Information to any other third party without prior written consent from the disclosing party. Without limiting the generality of the foregoing, the receiving

party shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. A receiving party shall promptly notify the disclosing party of any misuse or misappropriation of Confidential Information of which it is aware.

9.3. **Termination & Return.** With respect to each item of Confidential Information, the obligations of nondisclosure will terminate three years after the date of disclosure; provided that, such obligations related to Confidential Information constituting ESO's trade secrets shall continue so long as such Information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement, a party shall return all copies of Confidential Information to the other or certify the destruction thereof.

9.4. **Retention of Rights.** This Agreement does not transfer ownership of Confidential Information or grant a license thereto.

9.5. **Open Records and Other Laws.** Notwithstanding anything in this Section to the contrary, the parties expressly acknowledge that Confidential Information may be disclosed if such Confidential Information is required to be disclosed by law, a lawful public records request, or judicial order, provided that prior to such disclosure, written notice of such required disclosure shall be given promptly and without unreasonable delay by the receiving party in order to give the disclosing party the opportunity to object to the disclosure and/or to seek a protective order. The receiving party shall reasonably cooperate in this effort. In addition, Customer may disclose the contents of this Agreement solely for the purpose of completing its review and approval processes under its local rules, if applicable.

10. **INSURANCE.** Throughout the Term (and for a period of at least three years thereafter for any insurance written on a claims-made form) ESO shall maintain in effect the insurance coverage described below:

10.1. Commercial general liability insurance with a minimum of \$1 million per occurrence and \$1 million aggregate;

10.2. Commercial automobile liability insurance covering use of all non-owned and hired automobiles with a minimum limit of \$1 million for bodily injury and property damage liability;

10.3. Worker's compensation insurance and employer's liability insurance or any alternative plan or coverage as permitted or required by applicable law, with a minimum employer's liability limit of \$1 million each accident or disease; and

10.4. Computer processor/computer professional liability insurance (a/k/a technology errors and omissions) covering the liability for financial loss due to error, omission or negligence of ESO, and privacy and network security insurance ("cyber coverage") covering losses arising from a disclosure of confidential information (including PHI) with a combined aggregate amount of \$1 million.

11. INDEMNIFICATION

11.1. **IP Infringement.** Subject to the limitations in Section 12, ESO shall defend and indemnify Customer from any damages, costs, liabilities, expenses (including reasonable attorney's fees) ("**Damages**") actually incurred or finally adjudicated as to any third-party claim or action alleging that the Software delivered pursuant to this Agreement infringe or misappropriate any third party's patent, copyright, trade secret, or other intellectual property rights enforceable in the applicable jurisdiction (each, an "**Indemnified Claim**"). If Customer makes an Indemnified Claim under this Section or if ESO determines that an Indemnified Claim may occur, ESO shall at its option: (a) obtain a right for Customer to continue using such Software; (b) modify such Software to make it a non-infringing equivalent or (c) replace such Software with a non-infringing equivalent. If (a), (b), or (c) above are not reasonably practicable, either party may, at its option, terminate the relevant Addendum, in which case ESO will refund any pre-paid Fees on a pro-rata basis for such Addendum. Notwithstanding the foregoing, ESO shall have no obligation hereunder for any claim resulting or arising from (x) Customer's breach of this Agreement; (y) modifications made to the Software not performed or provided by or

on behalf of ESO or (z) the combination, operation or use by Customer (and/or anyone acting on Customer's behalf) of the Software in connection with any other product or service (the combination or joint use of which causes the alleged infringement). This Section 11 states ESO's sole obligation and liability, and Customer's sole remedy, for potential or actual Intellectual property infringement by the Software.

11.2. **Indemnification Procedures.** Upon becoming aware of any matter which is subject to the provisions of Sections 11.1 (a "Claim"), Customer must give prompt written notice of such Claim to ESO, accompanied by copies of any written documentation regarding the Claim received by the Customer. ESO shall compromise or defend, at its own expense and with its own counsel, any such Claim. Customer will have the right, at its option, to participate in the settlement or defense of any such Claim, with its own counsel and at its own expense; provided, however, that ESO will have the right to control such settlement or defense. ESO will not enter into any settlement that imposes any liability or obligation on Customer without the Customer's prior written consent. The parties will cooperate in any such settlement or defense and give each other full access to all relevant information, at ESO's expense.

12. LIMITATION OF LIABILITY

12.1. **LIMITATION OF DAMAGES.** NEITHER ESO NOR CUSTOMER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, INCLUDING CLAIMS FOR DAMAGES FOR LOST PROFITS, GOODWILL, USE OF MONEY, INTERRUPTED OR IMPAIRED USE OF THE SOFTWARE, AVAILABILITY OF DATA, STOPPAGE OF WORK OR IMPAIRMENT OF OTHER ASSETS RELATING TO THIS AGREEMENT.

12.2. **SPECIFIC LIABILITY.** LIABILITY SHALL BE LIMITED AS FOLLOWS:

- (a) ESO'S OBLIGATIONS UNDER SECTION 11 SHALL BE LIMITED TO \$500,000.
- (b) DAMAGES ARISING FROM A PARTY'S BREACH OF CONFIDENTIALITY OBLIGATIONS (INCLUDING A BREACH OF OBLIGATIONS REGARDING PROTECTED HEALTH INFORMATION), SHALL BE LIMITED TO \$1,000,000.
- (c) DAMAGES ARISING FROM A PARTY'S WILLFUL MISCONDUCT OR CRIMINAL CONDUCT SHALL NOT BE LIMITED.

12.3. **GENERAL LIABILITY.** EXCEPT AS EXPRESSLY PROVIDED "SPECIFIC LIABILITY," ESO'S MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS OF LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID BY (OR ON BEHALF OF) CUSTOMER WITHIN THE PRECEDING 12-MONTH PERIOD UNDER THE APPLICABLE ADDENDUM OR EXHIBIT GIVING RISE TO THE CLAIM.

12.4. THE FOREGOING LIMITATIONS, EXCLUSIONS, DISCLAIMERS SHALL APPLY REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT OR OTHERWISE. IN SO FAR AS APPLICABLE LAW PROHIBITS ANY LIMITATION HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION SHALL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION PERMITTED TO THE FULLEST EXTENT POSSIBLE UNDER SUCH LAW. THE PARTIES AGREE THAT THE LIMITATIONS SET FORTH HEREIN ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR ESO'S SOFTWARE AND SERVICES TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSES OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES.

12.5. THIS SECTION 12 SHALL SURVIVE EXPIRATION OR TERMINATION OF THE AGREEMENT.

13. CUSTOMER DATA & PRIVACY

13.1. **Ownership of Data.** As between ESO and Customer, all Customer Data shall be owned by Customer.

13.2. **Use of Customer Data.** Unless it receives Customer's prior written consent, ESO shall not grant any third-party access to Customer Data, except (a) subcontractors that are subject to a reasonable nondisclosure agreement or (b) authorized participants in the case of Software designed to permit Customer to transmit Customer Data. ESO may only use and disclose Customer Data to fulfill its obligations under this Agreement or as required by applicable law or legal or governmental authority. ESO shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise contest such required disclosure, at Customer's expense.

13.3. **Anonymized Data.** CUSTOMER ACKNOWLEDGES AND AGREES THAT, NOTWITHSTANDING ANY OTHER PROVISION HEREIN, ESO MAY USE ANONYMIZED DATA FOR INTERNAL AND EXTERNAL PURPOSES (INCLUDING BENCHMARKING AND RESEARCH), PROVIDED THAT ESO WILL NOT SELL ANONYMIZED DATA TO THIRD PARTIES FOR COMMERCIAL USE. Without limiting the foregoing, ESO will own all right, title and interest in all Intellectual Property of any aggregated and de-identified reports, summaries, compilations, analysis, statistics or other information derived therefrom.

13.4. **Internet Access.** Customer is solely responsible for obtaining, maintaining, and securing its network connections, and acknowledges such connections are essential to the effective operation of the Software. ESO makes no representations to Customer regarding the reliability, performance or security of any network or service provider not provided or managed by ESO.

14. WORK PRODUCT

14.1. **Work Product Ownership.** In the event Customer hires ESO to perform Professional Services, ESO alone shall hold all right, title, and interest to all proprietary and intellectual property rights of the Deliverables (including, without limitation, patents, trade secrets, copyrights, and trademarks), as well as title to any copy of software made by or for Customer (if applicable). Customer hereby explicitly acknowledges and agrees that nothing in this Agreement or a separate Addendum gives the Customer any right, title, or interest to the intellectual property or proprietary know-how of the Deliverables.

15. GOVERNMENT PROVISIONS

15.1. **Compliance with Laws.** Both parties shall comply with and give all notices required by all applicable federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on use of the Software and the performance of this Agreement.

15.2. **Business Associate Addendum.** The parties agree to the terms of the Business Associate Addendum attached as Exhibit B and incorporated herein by reference.

15.3. **Equal Opportunity.** The parties shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a), and the posting requirements of 29 CFR Part 471, appendix A to subpart A, if applicable (prohibiting discrimination on the basis of protected veteran status, disability, race, color, religion, sex, sexual orientation, gender identity or national origin).

15.4. **Excluded Parties List.** ESO agrees to report to Customer if an employee or contractor is listed by a federal agency as debarred, excluded or otherwise ineligible for participation in federally funded health care programs.

16. PHI ACCURACY & COMPLETENESS

16.1. **Customer Responsibilities.** The Software allows Customer and its Users to enter, document, and disclose Customer Data, and as such, ESO gives no representations or guarantees about the accuracy or completeness of Customer Data (including PHI) entered, uploaded or disclosed through the Software. Customer is solely responsible for any decisions or actions taken involving patient care or patient care management, whether those decisions or actions were made or taken using information received through the Software.

- 16.2. **HDE Customer Certifications.** In the interest of furthering community health through the power of data, ESO encourages Customers subscribing to ESO's Health Data Exchange ("HDE") Software to empower joint healthcare providers by incorporating relevant, HIPAA-compliant data elements in Customer's outgoing patient care records delivered through HDE. ESO shall annually accredit qualifying customers with Gold, Silver, or Bronze level certifications in accordance with Exhibit C, and Customer may reference such certification in marketing materials.
17. **MISCELLANEOUS**
- 17.1. **Independent Contractors.** The parties are independent contractors. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that no ESO employee or contractor is or will be considered an employee of Customer.
- 17.2. **Notices.** Notices provided under this Agreement must be in writing and delivered by (a) certified mail, return receipt requested to a party's principal place of business as forth in the recitals on page 1 of this Agreement, (b) hand delivered, (c) facsimile with receipt of a "Transmission Confirmed" acknowledgment, (d) e-mail to a person designated in writing by the receiving party, or (e) delivery by a reputable overnight carrier service. In the case of delivery by facsimile or e-mail, the notice must be followed by a copy of the notice being delivered by a means provided in (a), (b) or (e). The notice will be deemed given on the day the notice is received.
- 17.3. **Merger Clause.** In entering into this Agreement, neither party is relying upon any representations or statements of the other that are not fully expressed in this Agreement; rather, each party is relying on its own judgment and due diligence and expressly disclaims reliance upon any representations or statement not expressly set forth in this Agreement. In the event the Customer issues a purchase order, letter or any other document addressing the Software or Services to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that any such writing is for the Customer's internal purposes only, and that any terms, provisions, and conditions contained therein shall in no way modify this Agreement.
- 17.4. **Severability.** To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. If a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 17.5. **Subcontracting.** Except for training and implementation services related to the Software, neither party may subcontract or delegate its obligations to each other hereunder, nor may it contract with third parties to perform any of its obligations hereunder except as contemplated in this Agreement, without the other party's prior written consent.
- 17.6. **Modifications and Amendments.** This Agreement may not be amended except through a written agreement signed by authorized representatives of each party, provided that the Customer agrees that ESO may rely on informal writings (including emails) of Customer's authorized representatives to (i) terminate Software products and services and (ii) approve or ratify rate or tier increases for Software products and services then in use by Customer.
- 17.7. **Force Majeure.** No delay, failure, or default will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control (collectively, "Force Majeure"). In such event, however, the delayed party must promptly provide the other party notice of the Force Majeure. The delayed party's time for performance will be excused for the duration of the Force Majeure, but if the event last longer than 30 days, the other party may immediately terminate the applicable Addendum.
- 17.8. **Marketing.** If requested by ESO, Customer agrees to reasonably cooperate with ESO's preparation and issuance of a public announcement regarding the relationship of the parties.
- 17.9. **Waiver & Breach.** Neither party will be deemed to waive any rights under this Agreement except through an explicit written waiver made by an authorized representative. No waiver of a breach of this Agreement will constitute a waiver of any other breach hereof.
- 17.10. **Survival of Terms.** Unless otherwise stated, all of ESO's and Customer's respective obligations, representations and warranties under this Agreement which are not, by the expressed terms of this Agreement, fully to be performed while this Agreement is in effect shall survive the termination of this Agreement.
- 17.11. **Ambiguous Terms.** This Agreement will not be construed against any party by reason of its preparation.
- 17.12. **Governing Law.** This Agreement, any claim dispute or controversy hereunder (a "Dispute") will be governed by (i) the laws of the State of Texas, or (ii) if Customer is a city, county, municipality or other governmental entity, the law of state where Customer is located, in each case foregoing without regard to its conflicts of law. The UN Convention for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply. In any Dispute, each party will bear its own attorneys' fees and costs and expressly waives any statutory right to attorneys' fees.
- 17.13. **New Versions & Sunset.** If ESO releases a New Version of Licensed Software (i.e., not SaaS), Customer may elect to receive such New Version, subject to a relicensing fee of 75% of the standard price for such new version. All New Versions provided under this Agreement will constitute Licensed Software and be subject to the terms and conditions of this Agreement. ESO may discontinue Support Services for Licensed Software upon 12 months' notice to Customer.
- 17.14. **No Class Actions.** NEITHER PARTY SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER ESO CUSTOMERS, OR PURSUE ANY CLAIM AS A REPRESENTATIVE OR CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.
- 17.15. **Dispute Resolution.** Customer and ESO will attempt to resolve any Dispute through negotiation or by utilizing a mediator agreed to by the parties, rather than through litigation. Negotiations and mediations will be treated as confidential. If the parties are unable to reach a resolution within 30 days of notice of the Dispute to the other party, the parties may pursue all other courses of action available at law or in equity.
- 17.16. **Technology Export.** Customer shall not: (a) permit any third party to access or use the Software in violation of any U.S. law or regulation; or (b) export any software provided by ESO or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer shall not permit any third party to access or use the Software in, or export such software to, a country subject to a United States embargo (as of the Effective Date - Cuba, Iran, North Korea, Sudan, and Syria).
- 17.17. **Order of Precedence.** In the event of any conflict between this Agreement, Addenda or other attachments incorporated herein, the following order of precedence will govern: (1) the General Terms and Conditions; (2) any Business Associate Agreement; (3) the applicable Addendum, with most recent Addendum taking precedence over earlier ones; and (4) any ESO policy posted online, including without limitation its privacy policy. No amendments incorporated into this Agreement after execution of the General Terms and Conditions will amend such General Terms and Conditions unless it specifically states its intent to do so and cites the section or sections amended.

17.18. **Counterparts.** This Agreement may be executed in one or more counterparts. Each counterpart will be an original, and all such counterparts will constitute a single instrument.

17.19. **Signatures.** Electronic signatures on this Agreement or on any Addendum (or copies of signatures sent via electronic means) are the equivalent of handwritten signatures.

17.20. **Immigration Law Compliance.** (a) Consultant represents and warrants that it does not knowingly employ, hire for employment, or continue to employ, in Alabama, an "unauthorized alien," as defined by the Beason-Hamilton Alabama Taxpayer and Citizen Protection Act, §31-13-1, et seq., Code of Alabama 1975, as amended (the "Act"). (b) Consultant represents and warrants that it will enroll in the E-Verify program prior to performing any work on the project in Alabama and shall provide documentation establishing that Consultant is enrolled in the E-Verify program. During the performance of this Agreement, Consultant shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations. (c) Consultant agrees to comply with all applicable provisions of the Act with respect to its subcontractors by entering into an agreement with or by obtaining an affidavit from such subcontractors providing work for Consultant on the Project in Alabama, that such subcontractors are in compliance with the Act with respect to their participation in the E-verify program. Consultant represents and warrants that Consultant shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which Consultant knows is not in compliance with the Act. (d) By signing this Contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

17.21. **Offset for Overdue Fees, Taxes, Etc.** Pursuant to Executive Order of the Mayor of Birmingham No. 76-09 (effective as of August 21, 2009), Consultant acknowledges and agrees that the City has the right to deduct from the total amount of consideration to be paid,

if any, to Consultant under this Agreement all unused prepaid Fees due the City from Consultant.

17.22. **Non-Discrimination.** During the performance of this contract the contractor agrees as follows:

(i) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender identity, sexual orientation, disability, familial status, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, gender identity, sexual orientation, disability, familial status, or national origin. Such action shall include but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. (ii) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further municipal contracts.

17.23 **Historically Underutilized Business Enterprises.** Consultant acknowledges that the City, as a matter of public policy and to the extent required under applicable law, encourages participation of minority-owned, women owned and disadvantaged business enterprises to the maximum extent possible and seeks to provide opportunities for and to actively include Disadvantaged Business Enterprises (DBEs) and Historically Underutilized Business Enterprises (HUBE's) which includes architectural firms, engineering firms, investment banking firms, other professional service providers, and construction contractors as part of the City's business, economic and community revitalization programs. To the extent applicable for the performance of Services in this Agreement, Consultant agrees to comply with this policy, and to include and retain those firms, contractors and consultants as sub-contractors or participants in other capacities to assist Consultant to complete the Services.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

ESO Solutions, Inc.

City of Birmingham, Alabama

By: 
(signature)

By: _____
(signature)

Name: Robert Munden
(print name)

Name: _____
(print name)

Title: Chief Legal & Compliance Officer
(print title)

Title: _____
(print title)

ATTEST:

_____ Date: _____

Lee Frazier, City Clerk

Approved as to Form Office of the City Attorney

 Date: 3.17.22

Assistant City Attorney

EXHIBIT A-1

SAAS SOFTWARE SCHEDULE

(Applications - ESO EHR, ESO Fire, ESO PM, FIREHOUSE Cloud, IFC Codes, EMS1 Academy, FireRescue1 Academy, Staff Scheduling, Assets, Inventory, Checklist)

The SaaS subscription term shall begin 15 calendar days after the Effective Date (existing Renewal Date ("SaaS Subscription Start Date"). Customer shall be deemed to have accepted the SaaS on the SaaS Subscription Start Date. The parties will make reasonable efforts to ensure that Customer is able to use the SaaS as contemplated as quickly as possible, but in no event will the SaaS Subscription Start Date be modified for implementation delays.

The following SaaS may be ordered under this Exhibit:

- 2.1. ESO Electronic Health Record ("EHR") is a SaaS software application for prehospital patient documentation (<http://www.eso.com/software/ehi>).
- 2.2. ESO Personnel Management ("PM") is a SaaS software application for tracking personnel records, training courses and education history (<http://www.eso.com/software/personnel-management>).
- 2.3. ESO Fire is a SaaS software application for NFIRS reporting (<http://www.eso.com/software/fire>).

The following Third-Party Data and/or Software may be ordered under this Exhibit: 2018 International Fire Code, 2015 International Fire Code, 2012 International Fire Code, Education (see section 3.5).

Third-Party Payer is responsible for the following products and Fees:

EHR						
Product	Volume	Price	Discount	Total	Fee Type	
ESO EHR	85000 Incidents	\$102,990.00	(\$13,388.70)	\$89,601.30	Recurring	
EHR CARES Extract	85000 Incidents	\$1,295.00	(\$168.35)	\$1,126.65	Recurring	
QuickSpeak	85000 Incidents	\$2,799.00	(\$363.87)	\$2,435.13	Recurring	
EHR Cardiac Monitor Integration	85000 Incidents	\$2,495.00	(\$324.35)	\$2,170.65	Recurring	
EHR Fax	85000 Incidents	\$9,000.00	(\$1,170.00)	\$7,830.00	Recurring	
EHR ODMAPS Integration	85000 Incidents	\$1,295.00	(\$168.35)	\$1,126.65	Recurring	
EHR Billing Interface	85000 Incidents	\$1,295.00	(\$1,295.00)	\$0.00	Recurring	
EHR CAD Integration	85000 Incidents	\$4,495.00	(\$584.35)	\$3,910.65	Recurring	
NEMSIS Data Import - one-time	85000 Incidents	\$11,995.00	(\$0.00)	\$11,995.00	One-time	
EHR Setup & Online Training	8 Sessions	\$4,760.00	(\$0.00)	\$4,760.00	One-time	
				Total Recurring Fees	\$	125,664.00
				Total One-Time Fees	\$	16,755.00
				Discounts	\$	(17,462.97)
				TOTAL FEES	\$	124,956.03

Customer acknowledges that the discounts provided in this Exhibit are added solely to reflect that the Third-Party Payer shall pay all Fees for the products ordered herein by Customer. If the Payer does not pay the fees, the Customer shall be responsible for the payment of all Fees herein at the non-discounted rates, subject to any applicable annual fee increase.

All the Fees above will be invoiced by ESO as follows:

- 6.1. Training and Training Travel Fees shall be invoiced on the Effective Date.
- 6.2. During the first year, 100% of the remaining Fees shall be invoiced on the SaaS Subscription Start Date.

6.3. During the second year and any renewal years thereafter, 100% of the recurring Fees shall be due on the anniversary of the SaaS Subscription Start Date.

EXHIBIT B
SUPPORT SERVICES ADDENDUM

1. DEFINITIONS. Capitalized terms not defined below shall have the same meaning as in the General Terms & Conditions.

- 1.1. "Enhancement" means a modification, addition or new release of the Software that when added to the Software, materially changes its utility, efficiency, functional capability or application.
- 1.2. "E-mail Support" means ability to make requests for technical support assistance by e-mail at any time concerning the use of the then-current release of Software.
- 1.3. "Error" means an error in the Software, which significantly degrades performance of such Software as compared to ESO's then-published Documentation.
- 1.4. "Error Correction" means the use of reasonable commercial efforts to correct Errors.
- 1.5. "Fix" means the repair or replacement of object code for the Software or Documentation to remedy an Error.
- 1.6. "Initial Response" means the first contact by a Support Representative after the incident has been logged and a ticket generated. This may include an automated email response depending on when the incident is first communicated.
- 1.7. "Management Escalation" means, if the initial Workaround or Fix does not resolve the Error, notification of management that such Error(s) have been reported and of steps being taken to correct such Error(s).
- 1.8. "Severity 1 Error" means an Error which renders the Software completely inoperative (e.g., a User cannot access the Software due to unscheduled downtime or an Outage).
- 1.9. "Severity 2 Error" means an Error in which Software is still operable; however, one or more significant features or functionality are unavailable (e.g., a User cannot access a core component of the Software).
- 1.1. "Severity 3 Error" means any other error that does not prevent a User from accessing a significant feature of the Software (e.g., User is experiencing latency in reports).
- 1.2. "Severity 4 Error" means any error related to Documentation or a Customer Enhancement request.
- 1.3. "Status Update" means if the initial Workaround or Fix cannot resolve the Error, notification of the Customer regarding the progress of the Workaround or Fix.
- 1.4. "Online Support" means information available through ESO's website (www.eso.com), including frequently asked questions and bug reporting via Live Chat.
- 1.5. "Support Representative" shall be ESO employee(s) or agent(s) designated to receive Error notifications from Customer, which Customer's Administrator has been unable to resolve.
- 1.6. "Update" means an update or revision to Software, typically for Error Correction.
- 1.7. "Upgrade" means a new version or release of Software or a particular component of Software, which improves the functionality or which adds functional capabilities to the Software and is not included in an Update. Upgrades may include Enhancements.
- 1.8. "Workaround" means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing Customer's use of the Software.

2. SUPPORT SERVICES.

- 2.1. Customer will provide at least one administrative employee (the "Administrator" or "Administrators") who will handle all requests for first-level support from Customer's employees with respect to the Software. Such support is intended to be the "front line" for support and information about the Software to Customer's Users. ESO will provide training, documentation, and materials to the Administrator to enable the Administrator to provide technical support to Customer's Users. The Administrator will notify a Support Representative of any Errors that the Administrator cannot resolve and assist ESO in information gathering.
- 2.2. ESO will provide Support Services consisting of (a) Error Correction(s); Enhancements, Updates and Upgrades that ESO, in its discretion, makes generally available to its customers without additional charge; and (c) E-mail Support, telephone support, and Online Support. ESO may use multiple forms of communication for purposes of submitting periodic status reports to Customer, including but not limited to, messages in the Software.

messages appearing upon login to the Software or other means of broadcasting Status Update(s) to multiple customers affected by the same Error, such as a customer portal.

- 2.3. ESO's support desk will be staffed with competent technical consultants who are trained in and thoroughly familiar with the Software and with Customer's applicable configuration. Telephone support and all communications will be delivered in intelligible English.
 - 2.4. Normal business hours for ESO's support desk are Monday through Friday 7:00 am to 7:00 pm CT. Customer will receive a call back from a Support Representative after-hours for a Severity 1 Error.
 - 2.5. ESO will provide responses to a technology and/or security assessment of reasonable detail (a "Tech Assessment") upon request prior to (or in connection with) implementation. ESO will provide responses to any subsequent Tech Assessments provided that Customer compensates ESO at its then-current and standard consulting rates for all work performed in connection with such Tech Assessments.
3. **ERROR PRIORITY LEVELS.** Customer will report all Errors to ESO via e-mail (support@eso.com) or by telephone (866-766-9471, option #3). ESO shall exercise commercially reasonable efforts to correct any Error reported by Customer in accordance with the priority level reasonably assigned to such Error by ESO.
- 3.1. **Severity 1 Error.** ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within four hours; (iii) initiate Management Escalation promptly; and (iv) provide Customer with a Status Update within four hours if ESO cannot resolve the Error within four hours.
 - 3.2. **Severity 2 Error.** ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within eight hours; (iii) initiate Management Escalation within 48 hours if unresolved; and (iv) provide Customer with a Status Update within forty-eight hours if ESO cannot resolve the Error within forty-eight hours.
 - 3.3. **Severity 3 Error.** ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within three business days; and (iii) provide Customer with a Status Update within seven calendar days if ESO cannot resolve the Error within seven calendar days.
 - 3.4. **Severity 4 Error.** ESO shall (i) provide an Initial Response within seven calendar days.
4. **CONSULTING SERVICES.** If ESO reasonably believes that a problem reported by Customer is not due to an Error in the Software, ESO will so notify Customer. At that time, Customer may request ESO to proceed with a root cause analysis at Customer's expense as set forth herein or in a separate SOW. If ESO agrees to perform the investigation on behalf of Customer, then ESO's then-current and standard consulting rates will apply for all work performed in connection with such analysis, plus reasonable related expenses incurred. For the avoidance of doubt, Consulting Services will include customized report writing by ESO on behalf of Customer.
5. **EXCLUSIONS.**
- 5.1. ESO shall have no obligation to perform Error Corrections or otherwise provide support for: (i) Customer's repairs, maintenance or modifications to the Software (if permitted); (ii) Customer's misapplication or unauthorized use of the Software; (iii) altered or damaged Software not caused by ESO; (iv) any third-party software; (v) hardware issues; (vi) Customer's breach of the Agreement; and (vii) any other causes beyond the ESO's reasonable control.
 - 5.2. ESO shall have no liability for any changes in Customer's hardware or software systems that may be necessary to use the Software due to a Workaround or Fix.
 - 5.3. ESO is not required to perform any Error Correction unless ESO can replicate such Error on its own software and hardware or through remote access to Customer's software and hardware.
 - 5.4. Customer is solely responsible for its selection of hardware, and ESO shall not be responsible the performance of such hardware even if ESO makes recommendations regarding the same.
6. **MISCELLANEOUS.** The parties acknowledge that from time-to-time ESO may update its support processes specifically addressed in this Exhibit and may do so by posting such updates to ESO's website or otherwise notifying Customer of such updates. Customer will accept updates to ESO's support procedures and any other terms in this Exhibit; provided however, that they do not materially decrease the level of Support Services that Customer will receive from ESO. THESE TERMS AND CONDITIONS DO NOT CONSTITUTE A PRODUCT WARRANTY. THIS EXHIBIT IS AN ADDITIONAL PART OF THE AGREEMENT AND DOES NOT CHANGE OR SUPERSEDE ANY TERM OF THE AGREEMENT EXCEPT TO THE EXTENT UNAMBIGUOUSLY CONTRARY THERETO.

EXHIBIT C
HIPAA BUSINESS ASSOCIATE ADDENDUM

Customer and ESO Solutions, Inc. ("Business Associate") agree that this HIPAA Business Associate Addendum is entered into for the benefit of Customer, which is a covered entity under the Privacy Standards ("Covered Entity").

Pursuant to the Master Subscription and License Agreement (the "Agreement") into which this HIPAA Business Associate Addendum (this "Addendum") has been incorporated, Business Associate may perform functions or activities involving the use and/or disclosure of PHI on behalf of the Covered Entity, and therefore, Business Associate may function as a business associate. Business Associate, therefore, agrees to the following terms and conditions.

1. **Scope.** This Addendum applies to and is hereby automatically incorporated into all present and future agreements and relationships, whether written, oral or implied, between Covered Entity and Business Associate, pursuant to which PHI is created, maintained, received or transmitted by Business Associate from or on behalf of Covered Entity in any form or medium whatsoever.
2. **Definitions.** For purposes of this Addendum, the terms used herein, unless otherwise defined, shall have the same meanings as used in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), or the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and any amendments or implementing regulations, (collectively "HIPAA Rules").
3. **Compliance with Applicable Law.** The parties acknowledge and agree that, beginning with the relevant effective date, Business Associate shall comply with its obligations under this Addendum and with all obligations of a business associate under HIPAA, HITECH, the HIPAA Rules, and other applicable laws and regulations, as they exist at the time this Addendum is executed and as they are amended, for so long as this Addendum is in place.
4. **Permissible Use and Disclosure of PHI.** Business Associate may use and disclose PHI as necessary to carry out its duties to a Covered Entity pursuant to the terms of the Agreement and as required by law. Business Associate may also use and disclose PHI (i) for its own proper management and administration, and (ii) to carry out its legal responsibilities. If Business Associate discloses Protected Health Information to a third party for either above reason, prior to making any such disclosure, Business Associate must obtain: (i) reasonable assurances from the receiving party that such PHI will be held confidential and be disclosed only as required by law or for the purposes for which it was disclosed to such receiving party; and (ii) an agreement from such receiving party to immediately notify Business Associate of any known breaches of the confidentiality of the PHI.
5. **Limitations on Use and Disclosure of PHI.** Business Associate shall not, and shall ensure that its directors, officers, employees, subcontractors, and agents do not, use or disclose PHI in any manner that is not permitted by the Agreement or that would violate Subpart E of 45 C.F.R. 164 ("Privacy Rule") if done by a Covered Entity. All uses and disclosures of, and requests by, Business Associate for PHI are subject to the minimum necessary rule of the Privacy Rule.
6. **Required Safeguards to Protect PHI.** Business Associate shall use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 ("Security Rule") with respect to electronic PHI, to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Addendum.
7. **Reporting to Covered Entity.** Business Associate shall report to the affected Covered Entity without unreasonable delay: (a) any use or disclosure of PHI not provided for by the Agreement of which it becomes aware; (b) any breach of unsecured PHI in accordance with 45 C.F.R. Subpart D of 45 C.F.R. 164 ("Breach Notification Rule"); and (c) any security incident of which it becomes aware. With regard to Security Incidents caused by or occurring to Business Associate, Business Associate shall cooperate with the Covered Entity's investigation, analysis, notification and mitigation activities, and except for Security Incidents caused by Covered Entity, shall be responsible for reasonable costs incurred by the Covered Entity for those activities. Notwithstanding the foregoing, Covered Entity acknowledges and shall be deemed to have received advanced notice from Business Associate that there are routine occurrences of: (i) unsuccessful attempts to penetrate computer networks or services maintained by Business Associate; and (ii) immaterial incidents such as "pinging" or "denial of services" attacks.
8. **Mitigation of Harmful Effects.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of the Agreement, including, but not limited to, compliance with any state law or contractual data breach requirements.
9. **Agreements by Third Parties.** Business Associate shall enter into an agreement with any subcontractor of Business Associate that creates, receives, maintains or transmits PHI on behalf of Business Associate. Pursuant to such agreement, the subcontractor shall agree to be bound by the same or greater restrictions, conditions, and requirements that apply to Business Associate under this Addendum with respect to such PHI.
10. **Access to PHI.** Within five business days of a request by a Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to the Covered Entity such PHI for so long as such information is maintained by Business Associate in the Designated Record Set, as required by 45 C.F.R. 164.524. In the event any individual delivers directly to Business Associate a request for access to PHI, Business Associate shall within five (5) business days forward such request to the Covered Entity.
11. **Amendment of PHI.** Within five business days of receipt of a request from a Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to the Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. 164.526. In the event any individual delivers directly to Business Associate a request for amendment to PHI, Business Associate shall within five business days forward such request to the Covered Entity.
12. **Documentation of Disclosures.** Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528 and HITECH.

13. **Accounting of Disclosures.** Within five business days of notice by a Covered Entity to Business Associate that it has received a request for an accounting of disclosures of PHI, Business Associate shall make available to a Covered Entity information to permit the Covered Entity to respond to the request for an accounting of disclosures of PHI, as required by 45 C.F.R. 164.528 and HITECH.
14. **Other Obligations.** To the extent that Business Associate is to carry out one or more of a Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with such requirements that apply to the Covered Entity in the performance of such obligations.
15. **Judicial and Administrative Proceedings.** In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, the affected Covered Entity shall have the right to control Business Associate's response to such request, provided that, such control does not have an adverse impact on Business Associate's compliance with existing laws. Business Associate shall notify the Covered Entity of the request as soon as reasonably practicable, but in any event within seven business days of receipt of such request.
16. **Availability of Books and Records.** Business Associate hereby agrees to make its internal practices, books, and records available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules.
17. **Breach of Contract by Business Associate.** In addition to any other rights a party may have in the Agreement, this Addendum or by operation of law or in equity, either party may: i) Immediately terminate the Agreement if the other party has violated a material term of this Addendum; or ii) at the non-breaching party's option, permit the breaching party to cure or end any such violation within the time specified by the non-breaching party. The non-breaching party's option to have cured a breach of this Addendum shall not be construed as a waiver of any other rights the non-breaching party has in the Agreement, this Addendum or by operation of law or in equity.
18. **Effect of Termination of Agreement.** Upon the termination of the Agreement or this Addendum for any reason, Business Associate shall return to a Covered Entity or, at the Covered Entity's direction, destroy all PHI received from the Covered Entity that Business Associate maintains in any form, recorded on any medium, or stored in any storage system. This provision shall apply to PHI that is in the possession of Business Associate, subcontractors, and agents of Business Associate. Business Associate shall retain no copies of the PHI. Business Associate shall remain bound by the provisions of this Addendum, even after termination of the Agreement or Addendum, until such time as all PHI has been returned or otherwise destroyed as provided in this Section. For the avoidance of doubt, de-identified Customer Data shall not be subject to this provision.
19. **Injunctive Relief.** Business Associate stipulates that its unauthorized use or disclosure of PHI while performing services pursuant to this Addendum would cause irreparable harm to a Covered Entity, and in such event, the Covered Entity shall be entitled to institute proceedings in any court of competent jurisdiction to obtain damages and injunctive relief.
20. **Owner of PHI.** Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI created or received by Business Associate on behalf of a Covered Entity.
21. **Safeguards and Appropriate Use of Protected Health Information.** Covered Entity is responsible for implementing appropriate privacy and security safeguards to protect its PHI in compliance with HIPAA. Without limitation, it is Covered Entity's obligation to:
 - 21.1. Not include PHI in information Covered Entity submits to technical support personnel through a technical support request or to community support forums. In addition, Business Associate does not act as, or have the obligations of a Business Associate under the HIPAA Rules with respect to Customer Data once it is sent to or from Covered Entity outside ESO's Software over the public Internet; and
 - 21.2. Implement privacy and security safeguards in the systems, applications, and software Covered Entity controls, configures and connects to ESO's Software.
22. **Third Party Rights.** The terms of this Addendum do not grant any rights to any parties other than Business Associate and the Covered Entity.
23. **Signatures.** The signatures to the Agreement (or the document evidencing the parties' adoption thereof) indicate agreement hereto and shall be deemed signatures hereof, whether manual, electronic or facsimile.

TRANSPARENCY IN CITY GOVERNMENT DISCLOSURE FORM

**APPLICABLE TO ALL CITY CONTRACTS AND APPOINTMENTS
NOT GOVERNED BY STATE COMPETITIVE BID LAWS**

INSTRUCTIONS:

This form must be fully completed by each individual, firm, group, agency, non-profit and other entity (hereinafter referred to as "you" or "Applicant") seeking to do business with the City, provide services to the City, enter into a contract or appointment with the City, or apply for City funding.

Submit completed forms to the *Mayor's Office, Third Floor City Hall – Attention: Internal Audit and Contract Compliance Division*. Answer all questions applicable to you. Respond "Not applicable" or "NA" if a question does not apply to you. Attach additional pages if needed. Completed forms will be submitted to the Birmingham City Council along with the Applicant's proposed contract, appointment and/or funding request.

-
1. Name of Applicant: ESO Solutions, Inc.

 2. Physical Street Address of Applicant: 11500 Alterra Parkway, Suite 100
Austin Texas 78758

 3. Mailing Address of Applicant (if different from street address): n/a

 4. Phone Number of Applicant: 866-766-9471

 5. Key Contact Person for Applicant: Robert Munden

 6. Identify all officers, directors, owners, substantial investors in (5% or more of Applicant's stock) and partners of the Applicant:

Zilker Midco, Inc.
Chris Dillie
Cortney Johnson
Ryan Atlas
Stephen Foster
Robert Munden

City of Birmingham Transparency in City Government Disclosure Form

7. Are any of these persons City employees? No.
8. Are any of these persons related by blood or by marriage to City officials or employees? If yes, list all pertinent relationships. No.
9. Identify all key employees or personnel of the Applicant:
Chris Dillie
Cortney Johnson
Robert Munden
10. Are any of these persons City employees? No.
11. Are any of these persons related by blood or by marriage to City officials or employees? If yes, list all pertinent relationships. No.
12. Has the Applicant ever received City funding, entered into a contract or appointment with the City, or provided services to the City? Yes
13. If you answered "Yes" to Question No. 12:
- a) State the amount of funds received or amount of the contract or appointment. Historical unknown. Current ARR \$ \$138,651.90, Total Current Booking \$ \$148,531.90
- b) Describe in detail the work performed, scope of appointment, or purpose for which the funds were used, and attach supporting documentation such as receipts and invoices.
Applicant will be hosting the following software for the City :
- Fire Record Management Software
 - Asset Management/Checklist Software (with one time Training and Implementation)

City of Birmingham Transparency in City Government Disclosure Form

- Education Software (EMS1 & FireRescue1 Academy with ESO Integration Recurring EMS1 & FireRescue1 Academy Implementation and Configuration)
- ESO Fire Software with
 - Telestaff Integration
 - Fire Incidents CAD Integration
 - Fire Setup & Online Training
 - One-time Properties/Inspections Data Import
 - One-time NFPA 101 - 2015 Codeset
 - One-time IFC 2015 - National Codeset
 - One-time Fire Incidents NFIRS Data Import

c) Attach a copy of the contract or appointment.

See Attached Quotes

14. Attach resumes of Applicant's key personnel. n/a
15. Attach Applicant's articles of incorporation if applicable. n/a
16. Attach Applicant's 501(c)(3) letter from Internal Revenue Service if applicable. n/a
17. Attach Applicant's City of Birmingham business license, if applicable. n/a
18. Describe in detail the work Applicant seeks to perform for the City.
Applicant will be hosting the following software for the City :
 - Fire Record Management Software
 - Asset Management/Checklist Software (with one time Training and Implementation)
 - Education Software (EMS1 & FireRescue1 Academy with ESO Integration Recurring EMS1 & FireRescue1 Academy Implementation and Configuration)
 - ESO Fire Software with
 - Telestaff Integration
 - Fire Incidents CAD Integration
 - Fire Setup & Online Training
 - One-time Properties/Inspections Data Import
 - One-time NFPA 101 - 2015 Codeset
 - One-time IFC 2015 - National Codeset

City of Birmingham Transparency in City Government Disclosure Form

- One-time Fire Incidents NFIRS Data Import

19. Identify all sources and amounts of public funding (federal, state and local) the Applicant has received within the past three (3) years.

ESO has over 10,000 clients, the substantial majority of whom are governmental entities at the federal, state, county or local level.

20. Has the Applicant ever been suspended or barred from participating in federal contracts or other federal assistance? If yes, explain.

No.

21. Has any individual associated with the Applicant ever been suspended or barred from participating in federal contracts or other federal assistance? If yes, explain.

No.

22. During the past three (3) years, has Applicant retained, hired or paid any lobbyist, political consultant or attorney to assist Applicant in its bid to perform work for the City or obtain a City contract, appointment or funding? If yes, identify by individual name, firm name, address and telephone number any such lobbyist, political consultant or attorney.

No; n/a

23. Identify any business or firm in which:

- a) The Applicant or its key personnel owns 5% or more of the stock;

Zilker Ultimate Topco, Inc.

- b) The Applicant or its key personnel serves as an officer or director;

None, other than controlled affiliates of Applicant.

- c) The Applicant or its key personnel is a partner.

None, other than controlled affiliates of Applicant.

Applicant's failure to file a Transparency in City Government Disclosure Form is punishable by state or local law to the maximum allowed by law and subject to any federal penalties required by the U.S. Code Annotated.

City of Birmingham Transparency in City Government Disclosure Form

I declare under penalty of perjury that the Applicant's answers to each and every question on the City of Birmingham Transparency in City Government Disclosure Form are true and correct to my knowledge:


Signature

Robert Munden
Print Name

December 2, 2021
Date

Chief Legal & Compliance Officer
Title/Position with Applicant



Quote Date: 09/22/2021
 Customer Name: Birmingham Fire / EMS
 Quote #: Q-46880
 Quote Expiration date: 12/31/2021
 ESO Account Manager: Travis Winzeler

CUSTOMER CONTACT

Customer Birmingham Fire / EMS
 Name Matthew Lamonte
 Email matthew.lamonte@birminghamal.gov
 Phone 205-254-2052

BILLING CONTACT

Payor Birmingham Fire / EMS Address 1808 7th Ave. North
 Name Joseph "Donald" Richardson Birmingham AL, 35203
 Email josephd.richardson@birminghamal.gov Billing Frequency Annual
 Phone 205-254-2990 Initial Term 12 months

Fire RMS Bundle				
Product	Price	Discount	Total	Fee Type
FIRE RMS Bundle	\$79,707.00	(\$3,985.35)	\$75,721.65	Recurring
RMS Bundle - ESO Fire Incidents RMS Bundle - ESO Inspections RMS Bundle - ESO Properties RMS Bundle - Personnel Management RMS Bundle - ESO Hydrants RMS Bundle - ESO Activities				

Asset Management/Checklist					
Product	Volume	Price	Discount	Total	Fee Type
Assets-Checklist Bundle	100 Vehicles	\$25,195.00	(\$1,259.75)	\$23,935.25	Recurring
Asset Management and Checklist - Training and Implementation	100 Vehicles	\$2,995.00	(\$2,995.00)	\$0.00	One-time

Education					
Product	Volume	Price	Discount	Total	Fee Type
EMS1 & FireRescue1 Academy with ESO Integration	650 Employees	\$36,400.00	(\$0.00)	\$36,400.00	Recurring
EMS1 & FireRescue1 Academy-Implementation and Configuration--	650 Employees	\$2,500.00	(\$0.00)	\$2,500.00	One-time

Fire					
Product	Volume	Price	Discount	Total	Fee Type
Telestaff Integration	55000 Incidents	\$2,595.00	(\$0.00)	\$2,595.00	Recurring
Fire Incidents CAD Integration	55000 Incidents	\$3,995.00	(\$3,995.00)	\$0.00	Recurring
Fire Setup & Online Training	12 Sessions	\$7,140.00	(\$7,140.00)	\$0.00	One-time
Properties/Inspections Data Import	32 Stations	\$7,040.00	(\$7,040.00)	\$0.00	One-time
NFPA 101 - 2015 Codeset	32 Stations	\$3,440.00	(\$0.00)	\$3,440.00	One-time
IFC 2015 - National Codeset	32 Stations	\$3,440.00	(\$0.00)	\$3,440.00	One-time
Fire Incidents NFIRS Data Import	55000 Incidents	\$10,995.00	(\$10,995.00)	\$0.00	One-time

*Additional fees may be applied by Customer's billing or CAD vendor for certain integrations or interfaces, and Customer is encouraged to discuss this with the applicable vendor.



Quote Date: 09/22/2021
Customer Name: Birmingham Fire / EMS
Quote #: Q-46880
Quote Expiration date: 12/31/2021
ESO Account Manager: Travis Winzeler

Personnel Management

Product	Volume	Price	Discount	Total	Fee Type
Personnel Management Data Migration	650 Employees	\$500.00	(\$0.00)	\$500.00	One-time

Total Recurring Fees	\$	147,892.00
Total One-Time Fees	\$	38,050.00
Discounts	\$	(37,410.10)
TOTAL FEES	\$	148,531.90



Quote Date: 09/22/2021
Customer Name: Birmingham Fire / EMS
Quote #: Q-46880
Quote Expiration date: 12/31/2021
ESO Account Manager: Travis Winzeler

TERMS AND CONDITIONS:

1. If the Customer indicated above has an ESO Master Subscription and License Agreement (MSLA) dated on or after February 20, 2017, then that MSLA will govern this Quote. **Otherwise, Customer intends and agrees that this Quote adopts and incorporates the terms and conditions of the MSLA and associated HIPAA business associate agreement hosted at the following web address, and that the products and services ordered above are subject thereto:**

<https://www.eso.com/legal-terms/>

2. The Effective Date of this Quote shall be the final date of signature.

3. Customer shall be responsible for the payment of all Fees listed herein. If Customer has elected to use a Third Party Payor (as indicated above as Payor) and such party has executed an appropriate agreement with ESO, ESO shall accept payment of Fees from such Third Party Payor.

Birmingham Fire / EMS

Signature: _____

Print Name: _____

Title: _____

Date: _____

For Fire, Personnel Management, Asset Management/Checklist, Education, the following payment terms apply:

Fees are invoiced at the Billing Frequency 15 days after the Effective Date, with recurring fees due on the anniversary.



Quote Date: 09/22/2021
Customer Name: Birmingham Fire / EMS
Quote #: Q-46880
Quote Expiration date: 12/31/2021
ESO Account Manager: Travis Winzeler

Fire

Product	Description
IFC 2015 - National Codeset	Complete set of IFC 2015 codes to be used within the Inspections application.
Fire Incidents NFIRS Data Import	Data migration from previous RMS platform.
NFPA 101 - 2015 Codeset	
Properties/Inspections Data Import	Data migration of Properties data and inspection reports into ESOs Properties and Inspections applications from a previously used RMS.
Telestaff Integration	Integration with Telestaff Rostering to place staff on the appropriate calls.
Fire Incidents CAD Integration	Allows for integration of CAD data into the FIRE application. Ongoing maintenance included. Additional fees from your CAD vendor may apply.
Fire Setup & Online Training	Setup and Webinar Training Session for ESO Fire.
RMS Bundle - ESO Fire Incidents	Includes Auto EHR-import or Auto-CAD import, federal NFIRS data reporting, software updates and upgrades.
RMS Bundle - ESO Inspections	Includes the ability to manage multiple code sets, using those to developed customized Check-lists for inspections. The application allows you to schedule, manage, execute and finalize inspections as well as reschedule any required follow up inspections.
RMS Bundle - ESO Properties	Includes CAMEO integration, Pre-Plan view. Stores property and occupant history (presence of chemicals and tanks, incidents, and previous inspections).
RMS Bundle - ESO Hydrants	Inventory and document testing and status of hydrants.
RMS Bundle - ESO Activities - Fire and Fire/EMS Agencies	Application for tracking non-response activities, including Operations and Community Risk Reduction and Daily Log.

Personnel Management

Product	Description
Personnel Management Data Migration	Migration of Information in Personnel Management that includes Demographics, Training Classes, Certifications, and Drivers License information.
RMS Bundle - ESO Personnel Management	Includes tracking of Training classes, certifications, credentials, immunization records. Discounted as a part of the RMS Bundle.

Asset Management/Checklist

Product	Description
Assets-Checklist Bundle	Web-based asset management and apparatus checklist for Fire and EMS.
Asset Management and Checklist - Training and Implementation	Training and configuration to include; group admin training, agency specific web-based sessions, online training and pre-recorded end user training.

Education

Product	Description
EMS1 & FireRescue1 Academy with ESO Integration	Track and report training and access to accredited CAPCE and NFPA standards online courses, with ESO integration.
EMS1 & FireRescue1 Academy-Implementation and Configuration	Implementation and Configuration of EMS1 and FireRescue1 Academy.



Quote Date: 11/16/2021
Customer Name: Birmingham Fire / EMS
Quote #: Q-51027
Quote Expiration date: 12/31/2021
ESO Account Manager: Travis Winzeler

CUSTOMER CONTACT

Customer Birmingham Fire / EMS
Name Matthew Lamonte
Email matthew.lamonte@birmingham
al.gov
Phone 205-254-2052

BILLING CONTACT

Payor Birmingham Fire / EMS Address 1808 7th Ave. North
Name Joseph "Donald"
Richardson Birmingham AL, 35203
Email josephd.richardson@birmi
nghamal.gov Billing Frequency Annual
Phone 205-254-2990 Initial Term 12 months

Fire RMS Bundle				
Product	Price	Discount	Total	Fee Type
FIRE RMS Bundle RMS Bundle - ESO Fire Incidents RMS Bundle - ESO Inspections RMS Bundle - ESO Properties RMS Bundle - Personnel Management RMS Bundle - ESO Hydrants RMS Bundle - ESO Activities	\$79,707.00	(\$3,985.35)	\$75,721.65	Recurring

Fire					
Product	Volume	Price	Discount	Total	Fee Type
Telestaff Integration	55000 Incidents	\$2,595.00	(\$0.00)	\$2,595.00	Recurring
Fire Incidents CAD Integration	55000 Incidents	\$3,995.00	(\$3,995.00)	\$0.00	Recurring

Education					
Product	Volume	Price	Discount	Total	Fee Type
EMS1 & FireRescue1 Academy with ESO Integration	650 Employees	\$36,400.00	(\$0.00)	\$36,400.00	Recurring

Asset Management/Checklist					
Product	Volume	Price	Discount	Total	Fee Type
Assets-Checklist Bundle	100 Vehicles	\$25,195.00	(\$1,259.75)	\$23,935.25	Recurring

*Additional fees may be applied by Customer's billing or CAD vendor for certain integrations or interfaces, and Customer is encouraged to discuss this with the applicable vendor.



Quote Date: 11/16/2021
Customer Name: Birmingham Fire / EMS
Quote #: Q-51027
Quote Expiration date: 12/31/2021
ESO Account Manager: Travis Winzeler

Total Recurring Fees	\$	147,892.00
Total One-Time Fees	\$	0.00
Discounts	\$	(9,240.10)
TOTAL FEES	\$	138,651.90



Quote Date: 11/16/2021
Customer Name: Birmingham Fire / EMS
Quote #: Q-51027
Quote Expiration date: 12/31/2021
ESO Account Manager: Travis Winzeler

TERMS AND CONDITIONS:

1. If the Customer indicated above has an ESO Master Subscription and License Agreement (MSLA) dated on or after February 20, 2017, then that MSLA will govern this Quote. **Otherwise, Customer intends and agrees that this Quote adopts and incorporates the terms and conditions of the MSLA and associated HIPAA business associate agreement hosted at the following web address, and that the products and services ordered above are subject thereto:**

<https://www.eso.com/legal-terms/>

2. The Effective Date of this Quote shall be the final date of signature.

3. Customer shall be responsible for the payment of all Fees listed herein. If Customer has elected to use a Third Party Payor (as indicated above as Payor) and such party has executed an appropriate agreement with ESO, ESO shall accept payment of Fees from such Third Party Payor.

Birmingham Fire / EMS

Signature: _____

Print Name: _____

Title: _____

Date: _____

For Fire, Personnel Management, Asset Management/Checklist, Education, the following payment terms apply:

Fees are invoiced at the Billing Frequency 15 days after the Effective Date, with recurring fees due on the anniversary.



Quote Date: 11/16/2021
Customer Name: Birmingham Fire / EMS
Quote #: Q-51027
Quote Expiration date: 12/31/2021
ESO Account Manager: Travis Winzeler

Fire

Product	Description
Telestaff Integration	Integration with Telestaff Rostering to place staff on the appropriate calls.
Fire Incidents CAD Integration	Allows for integration of CAD data into the FIRE application. Ongoing maintenance included. Additional fees from your CAD vendor may apply.
RMS Bundle - ESO Fire Incidents	Includes Auto EHR-import or Auto-CAD import, federal NFIRS data reporting, software updates and upgrades.
RMS Bundle - ESO Inspections	Includes the ability to manage multiple code sets, using those to developed customized Check-lists for inspections. The application allows you to schedule, manage, execute and finalize inspections as well as reschedule any required follow up inspections.
RMS Bundle - ESO Properties	Includes CAMEO integration, Pre-Plan view. Stores property and occupant history (presence of chemicals and tanks, Incidents, and previous inspections).
RMS Bundle - ESO Hydrants	Inventory and document testing and status of hydrants.
RMS Bundle - ESO Activities - Fire and Fire/EMS Agencies	Application for tracking non-response activities, including Operations and Community Risk Reduction and Daily Log.

Personnel Management

Product	Description
RMS Bundle - ESO Personnel Management	Includes tracking of Training classes, certifications, credentials, immunization records. Discounted as a part of the RMS Bundle.

Asset Management/Checklist

Product	Description
Assets-Checklist Bundle	Web-based asset management and apparatus checklist for Fire and EMS.

Education

Product	Description
EMS1 & FireRescue1 Academy with ESO Integration	Track and report training and access to accredited CAPCE and NFPA standards online courses, with ESO Integration.