

TOWN OF NOLENSVILLE
Post Office Box 547
Nolensville, Tennessee 37135

RESOLUTION #15-02

**A RESOLUTION OF THE BOARD OF MAYOR AND ALDERMEN TO ENTER
INTO AN AGREEMENT WITH M & M MICRO SYSTEMS**

WHEREAS, the Board of Mayor and Aldermen of the Town of Nolensville, Tennessee passed Resolution 14-21, on August 7, 2014; and,

WHEREAS, Resolution 14-21 authorized the Mayor and/or his designee to make application for grant funding with the U.S. Department of Justice, Office of Justice Programs, JAG Program through the State of Tennessee; and,

WHEREAS, on September 2, 2014, the State of Tennessee, Department of Finance and Administration announced the Town was awarded the grant for records management system software; and,

WHEREAS, on September 4, 2014, the Board of Mayor and Aldermen passed Resolution 14-28 authorizing the Mayor to sign the proper contract and paper work to accept the grant award; and,

WHEREAS, on December 4, 2014, the Board of Mayor and Aldermen passed Resolution 14-37, awarding the bid to M & M Micro Systems; and,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE TOWN OF NOLENSVILLE, TENNESSEE, the following:

Section 1. The Mayor and/or his designee is authorized to enter into an agreement with the M & M Micro Systems and any further documentation from M & M Micro Systems to finalize the purchase of the approved software.

Section 2. The agreement is attached and made part of this Resolution.

RESOLVED this 3rd day of February 2015.

Jimmy Alexander, Mayor

Kali Mogul, Town Recorder

Passed: _____

AGREEMENT FOR SERVICES

THIS AGREEMENT FOR SERVICES (the "Agreement") is made and entered into this ____ day of _____, 20__, and executed on the date and year hereinafter set forth by and between M & M MICRO SYSTEMS, INC., a Tennessee corporation ("Service Provider"), and TN NOLENSVILLE POLICE DEPARTMENT, (hereinafter referred to as "Customer").

RECITALS

WHEREAS, Service Provider acquires and develops computer software and owns various computer software systems; and

WHEREAS, Service Provider is familiar with law enforcement communication procedures and has discussed specific software needs with Customer; and

WHEREAS, Customer, believing the System (as defined below) is suitable for its use, desires to purchase and utilize a computer software system from Service Provider; and

NOW, THEREFORE, in consideration of the above premises, the parties do hereby agree as follows:

1. Definitions. As used in this Agreement, unless the context otherwise requires, the following terms shall have the meanings set forth below:

(a) "Hardware" shall mean computer systems, upgrades, printers, modems and network accessories. Customer will provide hardware ready for installation of software. Service Provider is supplying only hardware listed on the Sales Order (as defined herein).

(b) "Programming" shall mean programming Service Provider makes available to Customer. Service Provider will furnish such programming as may be requested by Customer provided that such programming is available to Service Provider or developed by Service Provider as outlined in the system proposal.

(c) "Programming Service" shall mean such services as the manufacturer or Service Provider generally make available without separate charge in connection with programming. For purposes of this Agreement, the terms "Programming" and "Programming Services" do not include Service Provider's programs and hardware manufacturer programs and services that are available for a separate charge or which are offered under separate written software license agreements (i.e., any programs that are not listed in the Sales Order).

(d) "Consulting Services" shall mean the consulting services provided by Service Provider to Customer with respect to matters regarding records and jail management software, including, without limitation, SOMS. "Consulting Services" involves the exchange of ideas and new features of the SOMS software and work with Customer to convert current data to the new System.

(e) “Sales Order” shall mean Sales Order attached hereto and incorporated herein.

(f) “SOMS” shall mean the System more particularly described as the Sheriff’s Office Management Systems.

(g) “System” shall mean the computer software and services itemized on the system proposal provided by Service Provider to Customer and is more particularly described as, SOMS.

2. Services.

(a) Purchase of the System and Installation. Service Provider agrees to sell and Customer agrees to purchase the System as specified in the Sales Order and as set forth herein. Service Provider will install the System at TN Nolensville Police Department. Remote Installation is scheduled will occur prior to onsite visit. Service Provider will visit Customer location and perform onsite training in February 2015. No data conversion will occur.

(b) Software License. Service Provider hereby grants to Customer a non-exclusive, non-transferrable, non-assignable, limited right and license to use SOMS without the right to sub-license, reuse, publish, modify, produce, reproduce, display, distribute, transmit, parse, perform, translate into any language, convert to speech, make derivative works, make compilations, sell, transfer, or otherwise dispose of SOMS in any form or format whatsoever.

(c) Scope. Service Provider will provide Customer with the licensing and installation of SOMS, data conversion, service support, and training at the prices set forth in the Sales Order. Service Provider shall also provide Customer with the iAnywhere Advantage Database Software license. Service Provider will provide only hardware listed on Sales Order. It is customer responsibility to keep track of equipment. Equipment will have a one year warranty from the date of invoice.

3. Compensation.

(a) Purchase Price. The total price for SOMS, training with regard to SOMS, and the annual software support agreement is Twenty-One Thousand and 00/100 U.S. Dollars (\$21,000) (the “Purchase Price”) as specified in the Sales Order. Service Provider will send an invoice to Customer for the Purchase Price. Customer shall pay the Purchase Price in full within sixty (60) days of the date of the invoice. The Purchase Price is exclusive of all federal, state, municipal, or other political subdivision excise, sales, use, property, occupational, or like taxes now in force or as may be enacted in the future and are therefore subject to an increase equal to any such taxes that Service Provider may be required to collect or pay upon the sale or delivery of Hardware, the System, or the Consulting Services purchased or licensed hereunder. Should Customer fail to pay the Purchaser Price within sixty (60) days of the date of the invoice, Customer shall pay to Service Provider, to compensate Service Provider for the added expense and inconvenience incurred by Service Provider and caused by delay in payment, a late charge in the amount of Five percent (5%) of the amount of the Purchase Price not paid within sixty (60)

days of the date of the invoice. Any portion of the Purchase Price that is not paid to Service Provider within ninety (90) days of the date of the invoice shall also be assessed an interest charge of twelve percent (12%) of the outstanding amount above and beyond the late fee referenced above. It is acknowledged by Customer and Service Provider that the actual amount necessary to adequately compensate Service Provider in the event Customer fails to make timely payments of the Purchase Price would be impractical and difficult to calculate, and therefore, Service Provider and Customer agree that the amount of such late charge and additional interest charge is reasonable and shall be as set forth in this Section.

(b) Term. The term of this Agreement shall be for one year beginning at 12:00 a.m. EST on January 15, 2015 and ending at 11:59 p.m. EST on January 15, 2016 (the "Term"). Installation of the System is scheduled to occur in February 2015, and Service Provider may begin training Customer (and its personnel) on the System prior to onsite installation.

(c) Ownership and Security Interest. Ownership and title of the Hardware does not pass to Customer until such time as the Purchase Price is paid in full to Service Provider. Prior to such time, Service Provider does hereby retain a security interest in the Hardware and System outlined in the system proposal and Sales Order in the amount of the Purchase Price plus any costs of collection, including, without limitation, reasonable attorneys' fees. The security interest will be satisfied and release by payment in full of the Purchase Price.

(d) Annual Software Support Renewal. Service Provider will provide software support for the System during the Term. So long as Customer is in compliance with this Agreement and Customer has not provided Service Provider with written notice of cancellation of software support at least sixty (60) days prior to the end of the Term, the software support shall automatically renew at a cost of Three Thousand and 00/100 U.S. Dollars (\$3,000.00) (the "Renewal Rate") per year until such time as either Service Provider or Customer terminates said software support agreement. Said Renewal Rate is due and payable to Service Provider in a lump sum within sixty (60) days of the date of the invoice for the renewal.

4. Confidentiality.

(a) Either party may disclose to the other party any information that the disclosing party would normally freely disclose to the other members of the scientific community at large, whether by publication, by presentation, or in informal discussions.

(b) Definition of Confidential Information. All Confidential Information, in any form, disclosed or supplied to Customer by, or at the direction of, Service Provider will be treated as confidential as provided in this Agreement. The term "Confidential Information" shall include, but not be limited to, the following: information related to this Agreement, SOMS, the System, or training regarding SOMS, Service Provider's, or any of Service Provider's affiliates' past, present, or future research, development, or business activities, designs, drawings, specifications, techniques, models, data, source code, object code, documentation, diagrams, copyrights, flow charts, research, development, processes, procedures, "know-how," new

product or new technology information, product prototypes, product copies, operational and data processing capabilities, systems, software or hardware and the documentation thereof, development or marketing techniques and materials, development or marketing timetables, business relationships, methods of transacting business, strategies and development plans, trade secrets, trade names, trademarks, customers, suppliers, customer lists, supplier lists, sub-contractors, dealers, employees, independent contractors, owners, personnel, current or future cost, pricing information, pricing policies, financial statements, financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets or non-public business information, including, without limitation, the terms or conditions of this Agreement.

(c) Exceptions. For purposes of this Agreement, Confidential Information shall not include information or documentation that: (a) was in the lawful and unrestricted possession of Customer prior to its disclosure by Service Provider; (b) is or becomes generally available to the public by acts other than those of Customer after receiving it; or (c) is shown by acceptable evidence to have been independently developed by Customer without reference to the information disclosed by Service Provider.

(d) Form of Confidential Information. Customer acknowledges that Confidential Information may be written, electronic, or oral and may be stored in printed or electromagnetic forms and may be furnished to it by Service Provider or at the direction of Service Provider or otherwise in connection with this Agreement. Information shall be deemed Confidential Information whether or not marked or otherwise identified as “Confidential” or “Proprietary”.

(e) No Publicity. Except with respect to Section 4(h) below, without the prior written consent of Service Provider, Customer will not, and will direct its Authorized Persons (as defined below) not to, disclose to any person, entity, or third party whatsoever all or any portion of the Confidential Information.

(f) Ownership and Protection. All Confidential Information shall: (i) remain the property of Service Provider; (ii) be treated as confidential and held in strict confidence by Customer, taking such actions as shall be necessary or desirable to preserve and protect the confidentiality of the Confidential Information using means not less than those used to protect its own confidential information, but in no event, less than a reasonable degree of care; (iii) be used solely for purposes of operating the System, and for no other purpose; and (iv) be held in complete confidence. Customer shall not disclose, produce, publish, permit access to, or reveal the Confidential Information disclosed hereunder other than to such of its officers, directors, employees, financial advisors, consultants, accountants, attorneys, subsidiaries, or affiliates, and such subsidiaries’ and/or affiliates’ officers, directors, employees, financial advisors, consultants, accountants, and attorneys as are strictly necessary to operate the System and on a “need to know” basis (each an “Authorized Person” and collectively, “Authorized Persons”), without Service Provider’s prior written consent (it being understood that such Authorized Persons shall be informed by Customer of the confidential nature of the Confidential Information and shall agree in writing to treat the Confidential Information confidentially and to comply with the terms of this Agreement). Customer shall implement appropriate administrative, technical, and

physical safeguards to protect the security, confidentiality, and integrity of the Confidential Information, such safeguards to be designed to ensure the security and confidentiality of the Confidential Information, protect against any anticipated threats or hazards to the security or integrity of the Confidential Information, and protect against unauthorized access to or use of the Confidential Information.

(g) Unauthorized Use or Disclosure. Customer will notify Service Provider immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement and will reasonably cooperate with Service Provider to regain possession of the Confidential Information and prevent further unauthorized use and disclosure of the Confidential Information. In any event, Customer shall be responsible for any breach of this Agreement by any of its Authorized Persons and agrees, at its sole expense, to take all reasonable measures (including but not limited to court proceedings) to restrain its Authorized Persons from disclosure or use of the Confidential Information that is prohibited or not authorized by the terms of this Agreement. Customer further agrees that neither it nor its Authorized Persons will copy, photograph, photocopy, alter, modify, disassemble, reverse engineer, decompile, or in any manner reproduce any materials containing or constituting Confidential Information without the express prior written consent of Service Provider; provided, however, that Customer may reproduce and distribute Confidential Information to its Authorized Persons as Customer deems reasonably necessary to operate the System.

(h) Protective Orders. In the event that Customer or any of its Authorized Persons becomes legally compelled (including, without limitation, by law or regulation) to disclose any of the Confidential Information, Customer shall provide Service Provider with prompt written notice of such requirement, provided Customer is not prohibited from doing so by applicable law, so that Service Provider may seek a protective order or other appropriate remedy or waive compliance with this paragraph. If, failing the entry of a protective order, Customer is, in the opinion of its counsel, compelled to disclose any Confidential Information, it may disclose that portion of the Confidential Information that its counsel advises that it is compelled to disclose and will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to that portion of the Confidential Information that is being disclosed. In any event, Customer will not oppose action by Service Provider to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

(i) Return of Confidential Information. Customer will return all materials containing or constituting Confidential Information, together with any copies thereof, upon the request of Service Provider. Additionally, upon request of Service Provider, Customer will destroy materials received or prepared by Customer that contain Confidential Information. Within ten (10) days after the request of Service Provider, Customer shall certify in writing that all Confidential Information has been so returned or destroyed and that neither Customer nor Customer's Authorized Person(s) will retain any copies, extracts or other reproductions in whole or in part, mechanical or electronic, of such material; provided, however, that Customer shall not be required to delete or destroy such Confidential Information on its servers, backup tapes, or other backup media made in the ordinary course of business. Notwithstanding the return or

destruction of the Confidential Information or the termination of this Agreement for any reason, the parties shall continue to be bound by their obligations of confidentiality hereunder.

(j) Injunctive Relief. Customer recognizes that a breach of this Agreement may cause irreparable harm to Service Provider, and that actual damages may be difficult to ascertain and in any event may be inadequate. Accordingly, Customer agrees that in the event of such breach, Service Provider may be entitled to specific performance or injunctive relief upon posting of a bond in the amount of Five Hundred Dollars (\$500.00) and without the necessity of showing actual damages in addition to any other legal or equitable remedies as may be available. Any such remedy shall not be deemed to be the exclusive remedy for breach of this Agreement, but shall be in addition to all other remedies available at law or equity to the parties.

(k) Export Controls. Customer agrees that it will not export outside the United States, if a United States company or citizen, or re-export, if a foreign company or citizen, any Confidential Information or direct product thereof, except as permitted by the laws and regulations of the United States and by Service Provider in writing.

5. No Warranties. Service Provider hereby disclaims any and all warranties, express or implied, with regard to the Hardware, the System, and SOMS, including without limitation, warranties of merchantability, fitness for a particular purpose, or otherwise.

6. Limitation of Liability. Service Provider's liability to Customer (either one of them) for any losses or damages, wither direct or indirect, arising out of this Agreement for any cause whatsoever, including, without limitation, operation of the System, is limited to actual damages not to exceed the Purchase Price. Under no circumstances shall Service Provider be responsible for special, speculative, remote, punitive, or consequential damages, including, without limitation, loss of profits, idle time, labor, or loss of business, or inability to perform. Further, Service Provider is specifically not responsible for any liability or damages whatsoever occurring because of negligence or failure on the part of Customer or Customer's employees, independent contractors, and consultants to utilize the System, the Hardware, and SOMS properly and accurately.

7. Force Majeure. Service Provider shall be absolved from its obligations under the terms of this Agreement in the event Service Provider is unable to perform because of war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war,

8. Assignment. Customer hereby agrees that it will not mortgage, pledge, or otherwise encumber, sub-license, assign, trade, gift, sell, convey, donate, or otherwise transfer (collectively and individually, a "Transfer or Encumbrance") any interest in the System or this Agreement without the prior written consent of Service Provider, which consent may be withheld in Service Provider's sole and absolute discretion. If Customer affects a Transfer or Encumbrance without the prior written consent of Service Provider, Service Provider shall be entitled to exercise any and all of its rights remedies, at equity or law, and further, Customer agrees that damages for such Transfer or Encumbrance shall equal at a minimum the Purchase Price and shall remit the same upon request by Service Provider. It is acknowledged by Customer and Service Provider that the actual amount necessary to adequately compensate

Service Provider in the event Customer affects a Transfer or Encumbrance would be impractical and difficult to calculate, and therefore, Service Provider and Customer agree that the amount of the Purchase Price as a minimum of damages is reasonable compensation for such violation(s). In the event that Service Provider consents to such encumbrance or transfer, Customer shall not be released from, and Customer shall remain principally and primarily liable for, the full and prompt performance of each and every term and provision contained in this Agreement. Acceptance of any monies by Service Provider shall not be deemed a waiver of any right or remedy of Service Provider hereunder. Service Provider may assign its interest in this Agreement or in the System, and in such event, the assignee shall be entitled to exercise all of the rights and remedies of Service Provider provided hereunder.

9. Indemnification. Customer hereby releases, indemnifies, and waives and agrees to defend, save, indemnify, and hold Service Provider harmless in whole or in part from any and all liabilities of any nature, including, but not limited to, personal injury, bodily harm, or wrongful death (including personal injury, bodily harm, or wrongful death of an employee), claims, charges, losses, damages, expenses (including reasonable attorney's fees and costs), actions, or lawsuits of any kind or nature whatsoever arising out of or in connection with Customer's use of the Hardware, the System, SOMS, or Customer's performance hereunder.

10. Events of Default. One or more of the following shall constitute an event of default hereunder by Customer:

(a) Failure of Customer to pay the Purchase Price or the renewal price according to Section 3; and/or

(b) Failure by Customer to comply with or perform any provision of this Agreement, including, without limitation, Section 8 herein.

11. Remedies. Upon an event of default by Customer that is not corrected within ten (10) days after receipt of written notice from Service Provider of said event of default, Service Provider shall be entitled to exercise any and all of its rights and remedies, at law or equity, including, without limitation, accelerating the full amount due under this Agreement. In the event Service Provider places this account in the hands of a collection agency, attorney, or otherwise for collection, Customer agrees to pay all costs of collection, including, without limitation, attorney fees. Further, if legal proceedings are commenced to collect all or any portion of the indebtedness, Customer shall pay any and all costs of collection, including, without limitation, attorney fees, incurred in an effort to recover from Customer.

12. Notice. All notices, requests, demands, or other communications shall be sent to the address and person or entity set forth below or such other address as the parties may from time to time designate in writing, in the manner provided herein and shall be in writing and shall be deemed to have been delivered (i) on the same day if by personal delivery, (ii) on the date of mailing if mailed by certified first-class mail, postage prepaid, or (iii) three (3) business days after it is mailed if mailed via regular mail, postage prepaid., and addressed to the addresses listed.

Service Provider:

M & M Micro Systems, Inc.
c/o Allison F. Elder
1905 High Park Circle
Maryville, TN 37803

Customer:

TN Nolensville Police Department
Chief Troy Huffines
7218 Nolensville Road
Nolensville, Tennessee 37135

13. No Waiver. No waiver or acquiescence of Service Provider for any event of default, breach, right, liability, or other obligation of Customer shall operate as a waiver of future event of default, breach, right, liability, or other obligation of any character.

14. Governing Law; Venue and Jurisdiction. This Agreement shall be governed by, enforced, and interpreted in accordance with the laws of the State of Tennessee. Jurisdiction for any dispute hereunder shall exclusively lie in the courts in Nashville, Tennessee.

15. Miscellaneous.

(a) Binding Effect. This Agreement shall not be binding upon any party until the same has been executed by an authorized individual of each party. All of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, provided that nothing in this Section shall be deemed to permit any assignment contrary to the provisions of Section 8 hereof. This Agreement shall not be construed so as to confer any right or benefit on any party not a party hereto, other than their respective successors, assigns, heirs, executors and administrators.

(b) Further Assurances. The parties hereby agree to execute and deliver all of the agreements, documents, and instruments required to be executed and delivered by them in this Agreement and to execute and deliver such additional instruments and documents and to take such additional actions as may reasonably be required from time to time in order to effectuate the transactions contemplated by this Agreement.

(c) Severability. If any term or provision of this Agreement be finally determined by a court of competent jurisdiction to be void, invalid, unenforceable, or contrary to law, public policy, or equity for any reason, the offending term or provision shall be modified and limited (or if strictly necessary, deleted) only to the extent required to conform to the requirements of law and the remainder of this Agreement, and shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

(d) Counterparts. This Agreement may be executed in any number of counterparts, each of which may be executed by only one party, which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument.

(e) Entire Agreement; Amendment. This Agreement and the other documents delivered pursuant hereto constitute the full and entire understanding and agreement among the parties with regard to the subjects hereof and thereof and supersede all prior agreements and understandings relating thereto. Neither this Agreement nor any term hereof may be amended, waived, discharged, or terminated other than by a written instrument signed by the party against whom enforcement of any such amendment, waiver, discharge, or termination is sought.

(f) Attorney Fees. In connection with any litigation, including appellate proceedings, arising under this Agreement or any related agreement contemplated herein, the prevailing party or parties in such litigation shall be entitled to recover reasonable attorney fees and other legal costs and expenses from the non-prevailing party or parties.

(g) Headings. The headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

(h) Time. Time is of the essence with respect to each and every obligation contained herein.

(i) Future Prices. The Purchase Price and other fees and rates quoted in this Agreement are applicable only to the items and services set forth on the Service Order. Said Purchase Price, fees, and rates are not binding on Service Provider as to future purchases of any kind by Customer.

(j) Actions. No lawsuit or action arising out of the sale, license, or use of the Hardware, the System, SOMS, service, training, software support and maintenance, performance of the Hardware, the System, SOMS, or under this Agreement may be brought by either party more than one (1) year after date of installation has been completed; provided, however, Service Provider may bring any action for non-payment against Customer within three (3) years of the date of the last payment made or if no payment is made from the date of installation, and Service Provider may enforce the provisions hereof with respect to the Confidential Information and Section 8 of this Agreement at any time in accordance with the applicable statutes of limitation.

(k) Scope of Software Support. Service Provider's agreement to provide software support for the System covers only software modifications by Service Provider. Any interfaces developed by companies other than Service Provider without prior written consent from Service Provider will render this Agreement null and void and will release Service Provider from any obligation to provide software maintenance and support to Customer.

(l) Data Protection. The parties understand and agree that much of the data that will be entered into the System is confidential in nature. Customer assumes full

responsibility for the protection of said confidential data and hereby indemnifies and holds Service Provider harmless with respect to any claims or liabilities arising out of any release of said confidential data.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first written above.

SERVICE PROVIDER:

M & M MICRO SYSTEMS, INC., a Tennessee corporation

By: _____
Allison F. Elder

CUSTOMER:

TN Nolensville Police Department

By: _____
Its: _____

Exhibit A

(Attach Sales Order)

DRAFT