

# Service Agreement

This Agreement ("Agreement") to Provide Services is made by and between FRS Data, LLC, ("FRS"), 317 Northlake Blvd., Suite 1000, Altamonte Springs, FL 32701 and The City of Naples, 735 Eighth Street South, Naples, FL 34102 (the "City"). FRS and the City may also be referred to in the singular as "Party" and in the Plural as "Parties".

## RECITALS

**WHEREAS**, The City desires to retain FRS to perform the Services described herein;

**WHEREAS**, FRS desires to provide the services described herein and agrees to do so under the terms and conditions set forth in this Agreement;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is acknowledged by the signatures of the Parties hereto, the Parties agree as follows:

## DEFINITIONS

**Date of execution:** Shall mean the date on which this Agreement is signed by the last Party as indicated on the signature page of this Agreement.

**Days:** Shall mean calendar days unless otherwise specified.

## Section I PROFESSIONAL SERVICES

The Parties agree to perform the Services described below in accordance with the specifications, terms, and conditions, including compensation and expenses, set forth herein.

**Services:** FRS shall respond to requests for information from third-party organizations relating to outstanding debts due to the City. FRS will conduct a search using FRS's proprietary software and prepare estoppel reports relating to the debt owed. The City will automatically provide information on debts owed the City for code enforcement matters, whether a lien has been filed or not, utility and permit fees and any other debt owed the City from its constituents on a weekly basis in order for FRS to have the most updated information possible to prepare the estoppel reports.

The estoppel payment amount will be made directly to the City.

## Section II ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns provided that it may not be assigned by either Party without consent of

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the other Party and that consent shall not be unreasonably withheld. It is expressly intended and agreed that no third-party beneficiaries are created by this Agreement, and that the rights and remedies provided herein shall inure only to the benefit of the Parties to this Agreement.

### **Section III PAYMENTS**

The total Service Fee shall be \$12.50 per estoppel report generated by FRS. Payment for the Services shall be paid by the requesting third party organization directly to FRS Payment upon ordering is required for all third-party requestors except those whose credit has been established with FRS. The City is not responsible for payment of the Service Fee discussed above. Any invoice not paid within thirty (30) days shall be deemed past due and subject to interest at 1.5% per month. The parties agree that this late charge is a reasonable estimate of the damage FRS will incur if amounts due are not paid on time.

### **Section IV LITIGATION**

If FRS is requested to produce documents, witnesses, or general assistance pursuant to litigation, arbitration, or mediation in support of the City, and to which FRS is not an adverse party, the City shall reimburse FRS for all direct expenses and time in accordance with FRS's current Rate Schedule.

### **Section V PERFORMANCE WARRANTY AND REMEDY**


FRS warrants that all Services provided hereunder will conform to the requirements set forth by the City, and will be performed the Services consistent with generally prevailing professional and industry standards. The City must notify FRS in writing of any deficiencies under this section within thirty (30) days of discovering the deficiency.

### **Section VI DISCLAIMER AND LIMITATIONS OF LIABILITY**

With the exception of the express warranties in this Agreement, FRS makes NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

### **Section VII INTELLECTUAL PROPERTY**

All rights to patents, trademarks, copyrights, and trade secrets owned by FRS remain the property of FRS. FRS does not grant the City any right or license to any such intellectual property.

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**Section VIII  
CONFIDENTIALITY**

FRS shall use reasonable efforts to keep confidential all data and information which is marked confidential and furnished to FRS by the City under this Agreement.

**Section IX  
INDEMNIFICATION**

FRS will indemnify the City for all losses due to errors or omissions directly committed by FRS that are transmitted to third-parties when FRS received accurate information from the City to create reports.

The City will indemnify, to the extent permitted by law, FRS for any losses due to incorrect information provided by the City to FRS.

**Section X  
FORCE MAJEUR**

FRS shall not be liable for delay in delivery or performance of Services and is excused from any failure to perform due to causes beyond its reasonable control.

**Section XI  
ENTIRE AGREEMENT**

This Agreement shall constitute the entire agreement between the Parties and any prior understanding or representation of any kind proceeding the date of this Agreement shall not be binding upon either Party except to the extent incorporated herein.

**Section XII  
DELIVERY OF COMMUNICATIONS**

All notices and other communications required by this Agreement shall be in writing and shall be delivered either by personal delivery, by mail, or e-mail. If delivered by mail, notices shall be sent by Express Mail or by certified or registered mail, return receipt requested, with postage and charges prepaid. Electronic mail is an acceptable means of communication and all e-mail communications shall be sent to the e-mail addresses below.

All notices and other written communications under this Agreement shall be addressed as indicated below, or as specified by subsequent written notice delivered by the Party whose address has changed.

FRS'S INITIALS



THE CITY'S INITIALS \_\_\_\_\_

FRS Data, LLC  
317 Northlake Blvd., Suite 1000  
Altamonte Springs, FL 32701

ATTN: Stewart Holley  
Email: [info@frsdata.com](mailto:info@frsdata.com)

The City  
Name: City of Naples Finance Department  
Address: 735 Eighth Street South  
Naples, FL 34102-6796  
ATTN: Lisa Douglass  
Email: [ldouglass@naplesgov.com](mailto:ldouglass@naplesgov.com)

### **Section XIII DISPUTE RESOLUTION**

*Parties' Good Faith Attempt to Resolve Disputes.* The Parties agree that every dispute or difference between them arising under this Agreement, including a failure to reach a decision as described in this Agreement, shall be settled first by a meeting of the Parties attempting to confer and resolve the dispute in a good faith manner.

### **Section XIV GOVERNING LAW & JURISDICTION**

This Agreement shall be governed in accordance with the laws of the State of Florida, County of Collier. Each Party (a) consents to the exclusive jurisdiction and venue of the state courts located in Collier County, Florida; (b) waives any objection it might have to jurisdiction or venue of such forum or that the forum is inconvenient; and (c) agrees not to bring any such action in any other jurisdiction or venue to which either Party might be entitled by domicile or otherwise.

### **Section XV ATTORNEY'S FEES AND COSTS**


The prevailing Party shall have the right to collect from the other Party its reasonable costs and necessary disbursements and attorneys' fees incurred in enforcing this Agreement.

### **Section XVI TERM OF AGREEMENT**

This Agreement is effective from the date of execution for a period of three (3) years through September 29, 2019 unless terminated by the Parties as allowable hereunder. This Agreement will automatically renew for an additional two (2) years if Agreement is not terminated per Section XVII of this Agreement.

### **Section XVII TERMINATION**

This Agreement may be terminated by either party on not less than thirty (30) days' prior written notice before the expiration of the original term. In the event of such termination, FRS retains the right to pursue payment of the Service Fee for all reports generated prior to the effective date of the Termination from the third-party requestors.

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This Agreement may be terminated by written notice by either Party for material breach of this Agreement, provided the terminating Party has given the breaching Party at least fourteen (14) days written notice of, and opportunity to cure such breach. Termination for breach does not constitute waiver of any other rights or remedies that non-breaching party may have for breach of this Agreement.

**Section XVIII  
ADDITIONAL TERMS  
MAINTENANCE OF RECORDS**

- a) FRS will keep adequate records and supporting documentation which concern or reflect its services hereunder. The records and documentation will be retained by FRS for a minimum of five 5 years from the date of termination of this Agreement or the date the Project is completed, whichever is later. The CITY, or any duly authorized agents or representatives of the CITY, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the 5 year period noted above; provided, however, such activity shall be conducted only during normal business hours. If FRS desires to destroy records prior to the minimum period, it shall first obtain permission from the CITY in accordance with the Florida Public Records laws.

- b) **5.2 119.0701 F.S. CONTACT INFORMATION FOR CITY OF NAPLES CUSTODIAN OF PUBLIC RECORDS, CITY CLERK'S OFFICE**

**If FRS has questions regarding the application of Chapter 119, Florida Statutes, to FRS'S duty to provide public records relating to this contract, contact the City of Naples Custodian of Public records, the City Clerk at: Email: PublicRecordsRequests@naplesgov.com or Telephone: 239-213-101; Address: 735 8<sup>th</sup> Street South, Naples, Florida 34102. Mailing address: same as street address.**

- c) **FRS shall:**

1. Keep and maintain public records required by the CITY to perform the service.
2. Upon request from the CITY'S custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter 119.0701 F.S. or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if FRS does not transfer the records to the CITY.

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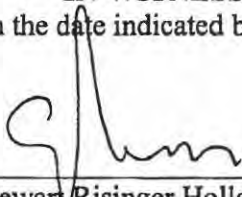
4. Upon completion of the contract, transfer, at no cost, to the CITY all public records in possession of FRS or keep and maintain public records required by the CITY to perform the service. If FRS transfers all public records to the CITY upon completion of the contract, FRS shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If FRS keeps and maintains public records upon completion of the contract, FRS shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY'S custodian of public records, in a format that is compatible with the information technology systems of the CITY.

### **Section XIX MISCELLANEOUS**

- a) The captions of each paragraph of this Agreement are inserted solely for the reader's convenience and are not to be constructed as part of this Agreement.
- b) If any provision in this Agreement is determined by a competent authority to be unenforceable, all other provisions of this Agreement shall continue in full force and effect. Similarly, if any provision is determined to be unenforceable due to terms exceeding that which is allowable under the law, that provision shall be enforced to the fullest extent allowable under the law.
- c) The failure of either Party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be constructed as waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no forbearance or waiver occurred.
- d) FRS is an independent contractor and nothing in this Agreement makes FRS nor FRS's staff an employee, partner, agent of, or joint venture with the City for any purpose. FRS is, and will remain, an independent contractor for the entire term of this Agreement. The City is not responsible for withholding taxes from compensation paid to FRS, if any, regardless of method of payment listed above. FRS shall have no claim against the City under this Agreement or otherwise for vacation pay, sick leave, retirement benefits, social security, workers compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.
- e) This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement. Digital or electronic signatures shall have the same force and effect as an original.

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IN WITNESS WHEREOF, the parties to this Agreement have caused it to be executed on the date indicated below.



Stewart Risinger Holley

FRS Data, LLC

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

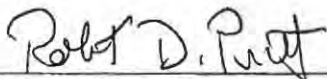


A. William Moss, City Manager

City of Naples

Date: 10/24/16

Approved as to form and legality:



Robert D. Pritt, City Attorney