

RESOLUTION
R 45-22

**A RESOLUTION AUTHORIZING SIGNATURE OF
PRESIDENT AND CLERK ON AN AGREEMENT**

WHEREAS, the Corporate Authorities of the Village of Lombard have received a software as a service agreement extension from DACRA Governmental Systems, LLC, as attached hereto and marked Exhibit "A"; and

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS as follows:

SECTION 1: That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said agreement as attached hereto.

SECTION 2: That the Village Clerk be and hereby is authorized to attest said agreement as attached hereto.

Adopted this 20th day of October, 2022.

Ayes: Trustee LaVaque, Puccio, Dudek, Honig, and Bachner

Nays: None

Absent: Trustee Militello

Approved by me this 20th day of October, 2022.


Keith Giagnorio
Village President

ATTEST:


Elizabeth Brezinski
Village Clerk

DACRA Municipal Enforcement Software

Terms and Conditions

A. Agreement Definitions

"Municipality" and "You" and "Your" refers to the governmental entity that has executed DACRA's Municipal Compliance System Software as a Service Pricing Agreement (the "Pricing Agreement") that accompanies and incorporates these Terms and Conditions (the Pricing Agreement and these Terms and Conditions are collectively referred to as the "Agreement"). Software as a service consists of system administration, system management, and system monitoring activities that DACRA performs for its Municipal Compliance System (collectively, the "Services"). The term "Program Documentation" refers to materials provided by DACRA as part of the Services. The term "Municipal Compliance System" refers to the software products owned or distributed by DACRA to which DACRA grants You access as part of the Services. The term "Users" shall mean those individuals authorized by You or on Your behalf to use the Services.

B. Rights Granted

Upon DACRA's acceptance of Your order and for the duration of the Term of this Agreement, You have the nonexclusive, non-assignable, royalty free, worldwide limited right to use the Services solely for Your municipality's ordinance and code compliance purposes and subject to the terms of the Agreement. You may allow Your Users to use the Services for this purpose and You are responsible for Your Users' compliance with the Agreement. You acknowledge that DACRA has no delivery obligation and will not ship copies of the software that runs DACRA's Municipal Compliance System to You as part of the Services. You agree that You do not acquire under the Agreement any right to use the Municipal Compliance System beyond the scope or the duration of the Term of this Agreement. Upon the end of the Term, Your right to access or use the Services shall terminate.

C. Third-Party Agreements

It may be necessary for You to enter into additional contracts with third-party vendors in order to use some of DACRA's features. DACRA has no control and is not liable with respect to the services provided to You by third-party vendors and any price increases from such third-party vendors shall be Your responsibility.

D. Your Data

You retain all ownership in and to Your Data. The term "Your Data" refers to the all citation and hearing data collected on behalf of You with respect to the Services. As part of DACRA's Services, reciprocal access to Your Data is provided to authorized DACRA users in other municipalities, in return for allowing Your authorized Users to access similar data in such participating municipalities. You may opt out of this reciprocal data sharing arrangement by providing written notice to DACRA. DACRA will undertake all reasonable measures to protect Your Data from unauthorized access and will comply with the *DACRA Services Privacy Policy*, which can be found on DACRA's website. Upon termination of the Agreement, DACRA will provide You an electronic copy of Your Data within sixty days after the effective date of termination.

E. DACRA's Intellectual Property

DACRA or its licensors retain all ownership and intellectual property rights to the Services and to its Municipal Compliance System. DACRA retains all ownership and intellectual property rights to anything delivered under the Agreement, including any future developments, regardless of whether You, or any of Your employees or agents, had any input or in any way assisted in any such new development. You may not:

- Allow access to the Services available in any manner to any third-party or for any purpose not authorized by this Agreement unless such access is expressly permitted by DACRA;
- copy, reproduce, distribute, republished, download, display, post or transmit in any form or by any means, any of the Program Materials, except for the use of Your authorized Users; and,
- modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Services (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs).

F. Pricing and Billing

The Monthly Usage Fee pricing set forth in the Pricing Agreement will remain fixed during the Initial Term. After the expiration of the Initial Term, DACRA reserves the right to modify the Monthly Usage Fee pricing by providing You a minimum of 90 days advanced written notice before such price change goes into effect. You agree to remit full payment of DACRA's invoices within thirty (30) days of receipt. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that DACRA must pay based on the Services, except for taxes based on DACRA's income. For any partial month during the Term, the Monthly Usage Fee (including the minimum fee) shall be prorated based on the number of days that the Services were provided for such month. DACRA may audit Your use of the Services. You agree to cooperate with DACRA's audit and provide reasonable assistance and access to information.

G. Termination

You shall have the right to terminate this Agreement for any reason (or no reason at all) by providing DACRA a minimum of 90 days advanced written notice of the effective date of the termination of Services.

DACRA may immediately suspend Your password, account, and access to or use of the Services (i) if You fail to pay any sums due DACRA under the Agreement within ten days after written notice from DACRA of the payment default, or (ii) if You violate any other provision of this Agreement and you do not cure said default within thirty days after written notice from DACRA.

Regardless of the reason for the termination of this Agreement, you agree to pay all fees due DACRA which accrue or are incurred prior to the termination of the Agreement.

H. Limitation of Liability

DACRA DOES NOT GUARANTEE THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT DACRA WILL CORRECT ALL SERVICES ERRORS. YOU ACKNOWLEDGE THAT DACRA DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. DACRA IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

IN THE EVENT THERE IS A SERVICE INTERRUPTION WHICH LASTS MORE THAN 24 HOURS DUE TO THE FAULT OF DACRA, DACRA WILL REMIT A SERVICES FEE CREDIT TO YOU CALCULATED AT TEN PERCENT (10%) OF NET MONTHLY USAGE FEE FOR THE MONTH IN WHICH THE BREACH OCCURRED. THIS CREDIT WILL BE PROVIDED ONLY TOWARDS ANY OUTSTANDING BALANCE FOR SERVICES OWED TO DACRA, AND THE REMITTANCE OF SUCH CREDIT WILL REPRESENT YOUR EXCLUSIVE REMEDY, AND DACRA'S SOLE LIABILITY, FOR ANY BREACHES OF THIS AGREEMENT. TO THE EXTENT NOT PROHIBITED BY LAW, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES FOR MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE.

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS. DACRA'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS SOFTWARE AS A SERVICE AGREEMENT, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID TO DACRA FOR THE SERVICES IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. ANY DAMAGE IN YOUR FAVOR AGAINST DACRA SHALL BE REDUCED BY ANY REFUND OR CREDIT RECEIVED BY YOU UNDER THIS AGREEMENT AND ANY SUCH REFUND AND CREDIT SHALL APPLY TOWARDS THE LIMITATION OF LIABILITY.

I. Other

1. Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or employment relationship between the parties, nor shall either party have the right, power, or authority to create any obligation or duty, express or implied, on behalf of the other.

2. DACRA may assign this Agreement by providing written notice of the assignee who will assume DACRA's obligations under this Agreement. You may not assign this Agreement without DACRA's prior written consent.

3. You shall obtain at Your sole expense any rights and consents from third-parties necessary for DACRA and its subcontractors to perform the Services under the Agreement.

4. The Agreement is governed by the substantive and procedural laws of Illinois. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Chicago, Illinois before one arbitrator. The arbitration shall be administered by JAMS in accordance with JAMS' Streamlined Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction.

5. Except for actions for nonpayment or breach of DACRA's proprietary rights, no action, regardless of form, arising out of or relating to the Agreement may be brought by either party more than two years after the cause of action has accrued.

6. Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either of us may cancel unperformed Services upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Your obligation to pay for the Services.

7. You agree (i) that DACRA may identify You as a recipient of Services in sales presentations and marketing materials.

8. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and each of which together shall constitute a single instrument. Copies of this Agreement (as well as any documents related to this Agreement) signed and transmitted by a party by electronic transmission shall be deemed for all purposes as containing the original signature of the transmitting party and legally binding upon such transmitting party.

9. You agree that this Agreement is the complete agreement for the services ordered by You, and that this Agreement supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such services. The Agreement may not be modified, and the rights and restrictions may not be altered or waived except in a writing signed by authorized representatives of You and of DACRA.

Amendment #1
to
DACRA MUNICIPAL ENFORCEMENT SYSTEM
Software License Agreement
Village of Lombard

This Amendment #1 (the "**Amendment #1**") is dated September 23, 2022 and shall be effective on October 1, 2022 (the "**Amendment #1 Effective Date**") by and among Village of Lombard ("**Village of Lombard**") and DACRA Tech LLC ("**DACRA**").

Whereas Village of Lombard and DACRA are parties to the DACRA Municipal Enforcement System Software License Agreement executed on April 19, 2019 (the "**Original Agreement**").

Whereas the parties have agreed to modify and extend the Term certain terms of the Original Agreement as follows:

1. Incorporation of Recitals: The foregoing recitals are herein incorporated herein in this paragraph as if set forth herein in their entirety.
2. The Term, as outlined in Clause E of the Original Agreement, is modified to include the following:

The Initial Term shall terminate on October 31, 2022 (the "**Initial Term**"). After the Initial Term, this agreement shall be extended to December 31, 2025 (the "**Extended Term**"). After the Extended Term, this Agreement shall automatically renew in successive periods of two (2) year each, beginning on January 1 of each year, unless either party serves written notice to the other 90 days prior to the end of the relevant term then in effect (each a "**Renewal Term**" and collectively the "**Renewal Terms**"). During each of the Renewal Terms, if any, all terms and conditions in this Agreement shall continue unchanged except that the Monthly Subscription Fee (Monthly Minimum Fee & Monthly Usage Fee) shall increase 4.5% for each 12-month period of the renewal period. The Initial Term, Extended Term, and the Renewal Terms shall collectively be referred to as the "**Term**".

3. The Monthly Usage Fee, as outlined in Clause A of the Original Agreement, shall be modified to include the following:

In exchange for the licensed use of DACRA Municipal Enforcement System, as defined in the Original Agreement (the "**Service**"), Village of Lombard shall pay a Monthly Subscription Fee calculated by taking the greater of: a) Monthly Usage Fee (based on the number of citations issued each month according to the Monthly Usage Fee chart below, and b) the Minimum

Monthly Fee (the “**Minimum Monthly Fee**”). The amount due each month shall be the greater of the Monthly Minimum Fee and the Monthly Usage Fee (the “**Monthly Subscription Fee**”).

Monthly Subscription Fee		
Minimum Monthly Fee:		
	Date	Amount
	October 31, 2022 to December 31, 2023	\$1,500.00 per month
	January 1, 2024 to December 31, 2024	\$1,500.00 per month
	January 1, 2025 – December 31, 2025	\$1,500.00 per month
Monthly Usage Fee:		
	Date	Amount
October 31, 2022 to December 31, 2023	Citations Issued: Tier 1 First 10,000 Citations Issued Annually Tier 2 Second 10,000 Citations Issued Annually Tier 3 Above 20,000 Citations Issued Annually Tier 1 First 10,000 Citations Adjudicated Annually Tier 2 Second 10,000 Citations Adjudicated Annually Tier 3 Above 20,000 Citations Adjudicated Annually	Citations Issued: Tier 1 - \$2.00 per Citation Issued Tier 2 - \$1.50 per Citation Issued Tier 3 - \$1.00 per Citation Issued Tier 1 - \$2.00 per Citation Adjudicated Tier 2 - \$1.50 per Citation Adjudicated Tier 3 - \$1.00 per Citation Adjudicated
January 1, 2024 to December 31, 2024	Citations Issued: Tier 1 First 10,000 Citations Issued Annually Tier 2 Second 10,000 Citations Issued Annually Tier 3 Above 20,000 Citations Issued Annually Tier 1 First 10,000 Citations Adjudicated Annually	Citations Issued: Tier 1 - \$2.00 per Citation Issued Tier 2 - \$1.50 per Citation Issued Tier 3 - \$1.00 per Citation Issued Tier 1 - \$2.00 per Citation Adjudicated

	Tier 2 Second 10,000 Citations Adjudicated Annually Tier 3 Above 20,000 Citations Adjudicated Annually	Tier 2 - \$1.50 per Citation Adjudicated Tier 3 - \$1.00 per Citation Adjudicated
January 1, 2025 to December 31, 2025	Citations Issued: Tier 1 First 10,000 Citations Issued Annually Tier 2 Second 10,000 Citations Issued Annually Tier 3 Above 20,000 Citations Issued Annually Tier 1 First 10,000 Citations Adjudicated Annually Tier 2 Second 10,000 Citations Adjudicated Annually Tier 3 Above 20,000 Citations Adjudicated Annually	Citations Issued: Tier 1 - \$2.00 per Citation Issued Tier 2 - \$1.50 per Citation Issued Tier 3 - \$1.00 per Citation Issued Tier 1 - \$2.00 per Citation Adjudicated Tier 2 - \$1.50 per Citation Adjudicated Tier 3 - \$1.00 per Citation Adjudicated

4. Except as set forth in this Amendment #1, the Original Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this Amendment #1 and the Original Agreement, the terms of this Amendment #1 shall prevail.
5. This Amendment #1 may be executed in two or more counterparts, each of which shall be deemed to be an original, and each of which together shall constitute a single instrument. Execution of this Amendment #1 may be by electronic signature, including but not limited to PDF, and shall be valid and binding and shall be deemed as if executed in the original. Copies of this Amendment #1 signed and transmitted by a party by electronic transmission, including but not limited to PDF, shall be deemed for all purposes as containing the original signature of the transmitting party and legally binding upon such transmitting party.

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IN WITNESS WHEREOF, the parties have executed this Amendment #1 as of the date written below.

Village of Lombard

DACRA Tech LLC

By: _____

By:  _____

Printed Name: _____

Printed Name: Robert L. Schur

Title: _____

Title: Chief Executive Officer

Date: _____

Date: September 16, 2022