

**FIRST AMENDMENT TO HOSTING SERVICES AGREEMENT
BETWEEN
LAKE COUNTY, FLORIDA AND
RON TURLEY ASSOCIATES, INC.
FOR FLEET MANAGEMENT SOFTWARE**

This is the First Amendment to the Hosting Services Agreement between Lake County, Florida, a political subdivision of the State of Florida (Customer), by and through its Board of County Commissioners, and Ron Turley Associates, Inc., an Arizona corporation authorized to do business in the State of Florida (RTA).

WITNESSETH:

WHEREAS, Customer and RTA desire to enter into an agreement for fleet management software services (the Agreement) attached as **Attachment A** in accordance with the quote attached as **Attachment B**; and

WHEREAS, Customer desires to amend the Agreement to comply with Florida law and Customer's procedures; and

WHEREAS, executing the Agreement is in the best interests of Customer and the residents of Lake County.

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, understandings, conditions, promises, covenants set forth in this First Amendment, and intending to be legally bound, the parties hereby agree as follows:

1.1 The above recitals are true and correct and incorporated in this First Amendment.

1.2 **Arbitration.**

Arbitration will not be considered as a means of dispute resolution regarding any dispute that arises under the Agreement.

1.3 **Governing Law, Venue, and Trial.**

Section 7(d) of the Agreement is hereby amended to state as follows:

The Agreement is made under, and in all respects will be interpreted, construed, and governed by and in accordance with, the laws of the State of Florida. RTA hereby waives its right to a jury trial for any action arising from the Agreement.

The last sentence of Section 8 is hereby deleted.

1.4 **Public Records.**

To the extent that Section 119.0701, Florida Statutes, is applicable to RTA, it shall comply with the Florida Public Records' laws, and shall:

1. Keep and maintain public records required by Customer to perform the services identified in this Agreement.
2. Upon request from Customer's custodian of public records, provide Customer with a copy of the requested records or allow the records to be inspected or copied

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11/29/12

within a reasonable time at a cost that does not exceed the cost provided for 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 RTA does not transfer the records to Customer.
4. Upon completion of the contract, transfer, at no cost, to Customer all public records in possession of RTA or keep and maintain public records required by Customer to perform the service. If RTA transfers all public records to Customer upon completion of the contract, RTA shall destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If RTA keeps and maintains public records upon completion of the contract, RTA shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Customer, upon request from Customer's custodian of public records, in a format that is compatible with the information technology systems of Customer.

IF RTA HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ELEVAN'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, SANDRA ROGERS, AT LAKE COUNTY PROCUREMENT SERVICES, 352-343-9839, P.O. BOX 7800, TAVARES, FL 32778-7800, OR VIA EMAIL AT SROGERS@LAKECOUNTYFL.GOV.

Failure to comply with this subsection will be deemed a breach of the contract and enforceable as set forth in Section 119.0701, Florida Statutes.

1.5 E-Verify.

RTA shall utilize the U.S. Department of Homeland Security's E-Verify system in accordance with the terms governing use of the system to confirm the employment eligibility of all new persons hired by RTA during the term of the Agreement.

RTA shall include in all contracts with subcontractors performing work pursuant to any contract arising from the Agreement an express requirement that the subcontractors utilize the U.S. Department of Homeland Security's E-Verify system in accordance with the terms governing use of the system to confirm the employment eligibility of all new employees hired by the subcontractors during the term of the subcontract.

1.6 Certification Regarding Scrutinized Companies that Boycott Israel.

By executing this Agreement, RTA hereby certifies that, pursuant to Section 287.135, Florida Statutes, it is not listed on the Scrutinized Companies that Boycott Israel and is not participating in a boycott of Israel. RTA understands that pursuant to Section 287.135, Florida Statutes, the submission of a false certification may subject it to civil penalties, attorneys' fees, and costs. RTA further understands that any contract with Company for goods or services may be terminated at the option of Company if RTA is found to have submitted a false certification or has been listed on the Scrutinized Companies that Boycott Israel list or is participating in a boycott of Israel.

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4/27/18

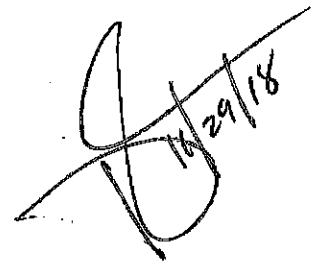
1.7 **Public Entity Crimes.**

Pursuant to Section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction of a public entity crime may not be awarded or perform work as a contractor, supplier, subcontractor, or contractor under a contract with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

1.8 **Effect of Amendment.**

All other provisions of the Agreement will remain in full force and effect unless otherwise formally amended by the parties. To the extent this First Amendment conflicts with the Agreement, this First Amendment will govern.

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First Amendment to Hosting Services Agreement Between Lake County, Florida and Ron Turley Associates, Inc. for Fleet Management Software

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: Customer by and through its Office of Procurement Services Director, and by RTA through its duly authorized representative.

RTA

RON TURLEY ASSOCIATES, INC.

By: _____

Printed Name: _____

Title: _____

This _____

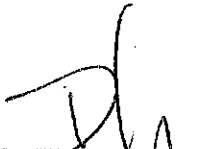
day of _____

November 2018

First Amendment to Hosting Services Agreement Between Lake County, Florida and Ron Turley Associates, Inc. for Fleet Management Software

CUSTOMER

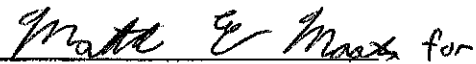
LAKE COUNTY, FLORIDA



Barnett Schwartzman, Procurement Services Director

This 29th day of November, 2018.

Approved as to form and legality:



Melanie Marsh
County Attorney

ATTACHMENT A

**Hosting Services Agreement for Cloud Hosted RTA Fleet Management Software
by Ron Turley Associates**

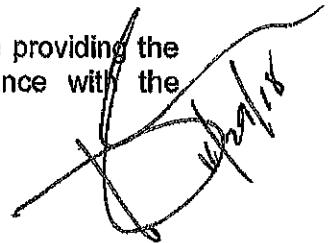
This Hosting Services Agreement for Cloud Hosted RTA Fleet Management Software ("Agreement") is between *Ron Turley Associates, Inc.* ("RTA"), 17437 N 71st Drive, Suite 110, Glendale, AZ 85308, and the *Lake County, Florida, a political subdivision of the State of Florida, by and through its Board of County Commissioners* ("COMPANY"), 315 W. Main St., Tavares, Florida 32778. RTA or COMPANY may modify this Agreement from time to time, subject to the terms in Section 8 (Changes to this Agreement).

1) RTA's Service Provided and COMPANY's Use of the Service

- a) RTA will allow COMPANY to access software provided by RTA through use of an encrypted and password protected RemoteApp. RTA will provide software, including installation, maintenance, support, and periodic upgrades; and database administration services (dba), including operating system/security (collectively the "Service").
- b) COMPANY is hereby granted a non-exclusive, non-transferable, limited license to access and use the Service subject to the terms and conditions contained in the Agreement.
- c) RTA does not review or pre-screen the contents of electronic data uploaded or posted to the Service ("Content") by the COMPANY, and RTA claims no intellectual property rights with respect to the Content.
- d) COMPANY agrees not to reproduce, duplicate, copy, sell, resell, or exploit access to the Service, use of the Service, or any portion of the Service, including, but not limited to the HTML or any visual design elements without the express written permission from RTA.
- e) COMPANY agrees not to modify, reverse engineer, adapt or otherwise tamper with the Service or modify another website so as to falsely imply that it is associated with the Service, RTA, or any other software or service provided by RTA.
- f) COMPANY agrees not to use the Service in any manner which may infringe copyright or intellectual property rights or in any manner which is unlawful, offensive, threatening, libelous, defamatory, pornographic, and obscene or in violation of the Agreement.
- g) The Service is protected by United States and international copyright laws and treaties, as well as other laws and treaties. Except for the non-exclusive license granted pursuant to the Agreement, COMPANY acknowledges and agrees that all ownership, license, intellectual property and other rights and interests in and to the Service shall remain solely with RTA.
- h) RTA reserves the rights at any time, and from time to time, to modify or discontinue, temporarily or permanently, any feature associated with the Service, with 30 day written notice.
- i) RTA reserves the right to temporarily suspend access to the Service for operational purposes, including, but not limited to, maintenance, repairs, or installation of upgrades, and will endeavor to provide 24 hour notice prior to any such suspension. Refer to the Service Level Agreement for details.

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11/24/18

- j) COMPANY understands and acknowledges that RTA utilizes a SSAE 16 SOC II Type II certified data center and network equipment provided by a third party company. While RTA has taken steps to ensure that all information is held in a secure fashion, the possibility exists that the data center may fail and the COMPANY's data may be lost. Additionally, RTA cannot be held responsible for any data loss occasioned by the actions or inactions of the third party.
 - k) RTA will provide access to data backups on an automated, scheduled interval should COMPANY desire to archive a local copy of the data backup files. Email hosting@rtafleet.com to request this additional service option. No additional fee is charged for this optional service.
 - l) The COMPANY understands and agrees that RTA cannot and does not control the flow of data to or from the network or on other portions of the internet. At times, actions or inactions of third parties may impair or disrupt COMPANY's connections to the internet or portions thereof. The COMPANY releases RTA from any liability resulting from or relating to such events. Refer to the Service Level Agreement for details.
- 2) **Payment**
- a) COMPANY will pay RTA on a recurring basis due on or before the first day of each period as outlined in the pricing proposal provided by an RTA Account Manager.
 - b) Such payments will begin upon execution of the Agreement and will continue on the recurring basis as specified in the pricing proposal following execution of the Agreement. Any payments made are non-refundable. Any payments received after the first day of each calendar month are subject to a late fee equal to one and one-half percent per month, calculated on a daily basis.
 - c) No refunds or credits will be issued for partial months that COMPANY utilizes the Service.
 - d) If COMPANY fails to pay any payment due within Thirty (30) days of the due date, RTA shall have the right to suspend the COMPANY's access to the Service or take any other steps necessary to ensure payment.
 - e) COMPANY may purchase upgrades to the software or service at any time during the term of the agreement, such as additional vehicle asset licenses, additional user licenses, or software add-on modules. Applicable pricing increase for the upgrades will be applied to the next billing cycle or the following month, whichever is closest.
 - f) If at anytime, service is shut off due to non-payment of outstanding invoices, a \$250.00 Service Fee will be invoiced to restore service.
- 3) **Term of Service**
- a) If COMPANY should wish to cancel the Agreement, it may do so by providing thirty (30) days notice to RTA of intent to cancel, and paying all outstanding charges. The Agreement shall be for an initial term of one (1) year. COMPANY reserves the right to unilaterally extend the term of this contract for up to four (4) optional one-year extensions. All terms of this Agreement are subject to mutual cancellation at any time upon thirty (30) day written notice from one party to the other.
 - b) RTA, in its sole discretion, has the right to suspend or discontinue providing the Service to COMPANY, with 30 days notice, for non-compliance with the Agreement, and pursue any other remedy legally available to it.



- c) Upon cancellation or termination of the Agreement, RTA will provide a system backup which will be made available for download by COMPANY, if COMPANY has purchased the Fleet Management Software and paid for it in full.
 - d) Upon cancellation or termination of the Agreement, all Content associated with such subscription will be irrevocably deleted from the Service after 90 days, and RTA will have no obligations to maintain such Content thereafter.
 - e) Upon cancellation or termination of the Agreement, RTA will provide the option to purchase the software and include a system backup to COMPANY, if COMPANY is leasing the Fleet Management Software or is purchasing the software but has not yet paid for it in full.
 - f) All outstanding balances must be paid in full prior to system backups being delivered to COMPANY per sections 3e or 3f.
- 4) COMPANY Obligations**
- a) COMPANY shall designate, in writing, contact information for at least two representatives, including emergency contact information. Such representatives shall be notified in the event of any emergency situation related to the Service. Any obligation of RTA related to any emergency situation shall be completed once RTA contacts either of the representatives either by telephone or by sending an email message to a representative. If COMPANY fails to designate such emergency contacts, RTA shall have no obligation in an emergency situation.
 - b) COMPANY shall comply with all reasonable requests of RTA, including, but not limited to, delivering information to RTA such as is necessary to perform the Service. RTA shall not be liable for any failure to deliver the Service that is caused by the failure of COMPANY to comply herewith.
- 5) Representations of the Parties**
- a) Each party hereto represents and warrants that as of now, and at all times throughout the Agreement, (1) it is duly organized and has the legal right and authority to enter into the Agreement and to perform its obligations under the Agreement; and (2) the performance of its obligations under the Agreement does not violate any laws or regulations and does not breach any agreements with third parties.
- 6) Warranty and Limitation of Liability**
- a) RTA warrants that the Services and intellectual property rights provided by RTA or used by RTA to provide the Services do not infringe on the intellectual property rights of any third party in the United States.
 - b) RTA and its officers, employees and affiliates shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, damage to COMPANY's equipment, goodwill, use, data or other intangible losses, regardless of whether RTA had notice of the possibility of such damages, resulting from the use of the Service, except in the event of such damages arising out of or relating to the negligent act or omission of RTA, its officers, employees, agents or affiliates.
 - c) Notwithstanding anything to the contrary in this Agreement, RTA shall abide by all of its established security procedures and its online privacy policy, if applicable, in all respects; shall at all times comply with its privacy policy and all applicable laws, rules and regulations, and shall use commercially reasonable efforts to prevent the accidental unauthorized use, copying or disclosure of COMPANY's personal information. RTA shall maintain reasonable security measures designed to ensure the confidentiality of such personally identifiable data and to protect it from

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unwarranted, accidental or unauthorized access, disclosure, modification or destruction.

- d) RTA will defend, indemnify and hold harmless COMPANY and its affiliates, its respective shareholders, directors, officers, employees, subcontractors, agents and representatives during and after the Term of this Agreement from and against any and all third-party claims, demands, suits, judgments, settlements, losses, liabilities, deficiencies, and expenses of any nature (including reasonable attorneys' fees) exclusively resulting from, or arising exclusively out of RTA's performance under this Agreement, including, but not limited to, any actual or alleged: (i) negligent acts or omissions attributable exclusively to RTA; (ii) any breach of a third party's intellectual property rights allegedly caused exclusively by RTA and/or, for additional clarity, any claim that intellectual property rights furnished by RTA infringes on the intellectual property rights of any third party. RTA specifically disclaims any duties or obligation to defend, indemnify, or pay for any losses, liabilities, claims, deficiencies, and expenses of any nature (including attorneys' fees) incurred by COMPANY arising out of its own negligence (including passive or active), nonfeasance, or malfeasance or other breach arising out of this Agreement.

7) Miscellaneous Provisions

- a) COMPANY shall not assign the Agreement without the express written consent of RTA, which shall not be unreasonably withheld. Any assignment contrary to this provision will be null and void. RTA may assign the Agreement or delegate its duties under the Agreement.
- b) Any notice required to be given under the Agreement shall be in writing and may be made either by over-night mail or by electronic mail with return receipt requested. Such notice will be deemed given the following business day regardless of the manner in which it was sent. Notice to COMPANY shall be delivered to the email address for COMPANY's primary contact on file. Notice to RTA shall be given to the following email address: hosting@rtafleet.com.
- c) RTA may not use the name of COMPANY in its marketing efforts or any other use of the name of COMPANY without prior written consent from COMPANY.
- d) **Governing Law:** The Agreement shall be construed in accordance with the laws of the State of Arizona, without regard to conflict or choice of laws principles.
- e) **Dispute Discussion.** In the event of a dispute between the Parties arising out of this Agreement, representatives of each Party shall meet (either in person or by telephone), within 10 days after receipt of a notice from either Party specifying the nature of the dispute, to review a Party's claims for the basis of such dispute and attempt to resolve in all such claims. Thereafter, if the Parties are unable to resolve the dispute within such time period, the matter shall be escalated to a Vice President (or a more senior officer) of each party, who will meet, either in person or by telephone, within 15 days of such escalation. If the dispute remains unresolved after such escalation, then the Parties may proceed with all remedies available at law or equity.
- f) **Severability; Waiver.** If any provisions of the Agreement are held to be invalid, illegal, or unenforceable under present or future laws, such provisions will be struck from the Agreement or amended, but only to the extent of their invalidity, illegality or unenforceability. The parties remain legally bound by the remaining terms of the Agreement, and the Agreement will be deemed reformed in a manner as consistent as reasonably possible with the original intent of the parties as

11/29/18

expressed in the Agreement. Failure of either party to enforce any right under the Agreement will not be deemed a waiver of such right and will not constitute a waiver of its future enforcement of such right or any other rights.

- g) **Integration; Modification.** The Agreement expresses the complete and final understanding of the parties with respect to the subject matter hereof, and supersedes all prior communications between the parties, whether written or oral, with respect to the subject matter hereof. No modification of the Agreement will be binding upon the parties hereto, unless in writing and executed by COMPANY and RTA. Any additional or different terms in any purchase order or other response by COMPANY shall be deemed objected to by RTA without need of further notice of objection, and shall be of no effect and in no way binding upon RTA.
 - h) **Headings; Number and Gender.** All headings and captions are for convenience only and are of no meaning in the interpretation or effect of the Agreement. Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender or no gender include all genders.
 - i) **The respective rights and obligations of RTA and COMPANY, which by their nature would continue beyond the termination or expiration of the Agreement, including without limitation, the rights and obligations regarding payment, ownership, confidentiality, limitation of liability, and indemnification, shall survive the termination or expiration of the Agreement.**
- 8) Changes to this Agreement**
- a) RTA or COMPANY may update or modify this Agreement from time to time. Any updates or modifications must be done in writing and mutually executed. If the parties mutually agree to modify the Agreement during the License Term or Subscription Term, the modified version will be effective upon the next renewal of a License Term, Support and Maintenance term, or Subscription Term, as applicable.

This Agreement remains valid until superseded by a revised agreement mutually agreed upon by RTA and COMPANY. This Agreement **supersedes** and replaces any prior **agreements**, representations or understandings, whether written, oral or implied, between RTA and COMPANY regarding the Agreement described herein. The terms of this Agreement shall be constructed and interpreted under, and all respective rights and duties of the parties shall be governed by, the laws of the State of Arizona.

A handwritten signature in black ink, appearing to be 'K. [unclear]', with the date '11/29/18' written below it.

ATTACHMENT B

11/28/2018

Quote



Quote
9/7/18

RTA FLEET MANAGEMENT SOFTWARE
http://www.rtafleet.com
17437 N 71st Dr., #110
Glendale, Arizona 85308
United States
1 (623) 581-2447

QUOTE #
000531
BILLED TO NIKKI WRIGHT
Lake County Fleet Management
20423 Independence Blvd.
Groveland, FL 34736
United States

PRODUCT	QUANTITY	TOTAL
SaaS Heavy Duty <i>Track Unlimited Assets, 20 Named-User Logins, Technical Support, Updates and Enhancements, Simultaneous Backups, Unlimited Attendance at Phoenix Training Classes, RTA Users Group Membership, Yearly 1-on-1 Remote Consult</i>	1	\$9,360.00
SQL Database Upgrade <i>Upgrading to a SQL system ties everything together for maximum security, performance, data availability, database administration, and hardware configuration</i>	1	\$0.00
Best of Crystal Reporting <i>B/O Crystal custom reports</i>	1	\$0.00
Paperless Inspections <i>Mechanic and Drivers inspections</i>	1	\$0.00
Paperless Shop <i>Priced at Unlimited Vehicles, Paperless Shop improves shop performance and efficiency. Create and assign work orders, post parts to the jobs the instant they are used, and quickly clock mechanics on to the next job.</i>	1	\$0.00

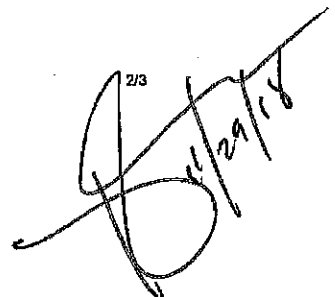
<https://sy350.infusionsoft.com/app/quotes/027876dd-a609-4bf0-9e8f-74d6060d11c0>

11/28/2018

Quote

PRODUCT	QUANTITY	TOTAL
EFI <i>Electronic Fueling Interface priced for Unlimited Vehicles</i>		\$0.00
EFI Autoloader <i>Priced at Unlimited Vehicles</i>	1	\$0.00
Driver Reports <i>Allow your drivers to enter their inspections via a kiosk. These inspections show up on the shop screen and can then be moved to a work order, deferred, or "ignored". Once a driver reported problem has been corrected the driver is notified</i>	1	\$0.00
Key Performance Indicators <i>Obtain data for Vehicles, Parts, Work Orders, Fuel, Tires, Purchase Orders, Paperless Shop and Motor Pool in a chart or numerical format. Data compares information for highs/lows/averages and totals.</i>	1	\$0.00
Best Practices	1	\$0.00
Dashboard Bundle (alerts/email)	1	\$0.00
RTA Messenger	1	\$0.00
RTA Guides	1	\$0.00
Image Viewer <i>Attach and view any document directly to an Asset, Part, or Work Order</i>	1	\$0.00
Tool Checkout <i>Check tools in and out of inventory, thus keeping control of organization and accountability</i>	1	\$0.00
Mobile App Access	1	\$0.00
Partner Interface <i>Interface for GPS Insight, Zonar, PeopleNet DVIR, McLeod Loadmaster, Napa IBS</i>	1	\$0.00
Shop Scheduler	1	\$0.00
Accident Tracking <i>Facilitates the tracking of the multitude of information needed when an accident occurs. Whether it's a police report, a picture, an insurance form or some</i>	1	\$0.00

<https://sy350.infusionsoft.com/app/quotes/027876cd-a809-4bf0-9e8f-74c8d60d1fcc>

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 11/29/18

11/28/2018

Quote

~~Product~~ *Product transaction --these can all be tracked for each accident in your fleet*

QUANTITY TOTAL

Road Call 1 \$0.00

Motor Pool 1 \$0.00

Allows you to do reservations for vehicles within your fleet that are considered motor pool vehicles. Users can request vehicles and multiple rate structures are available for billing of the rental period.

TOTAL \$9,360.00

Terms and Conditions: See <https://www.rtafleet.com/terms-and-conditions/>

Quote does not include applicable sales tax and shipping charges.

<https://sy350.infusionsoft.com/app/quotes/027876dd-a609-4b10-9e6f-74d0060dfbc0>

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