

# City of South Daytona

## Office of the City Manager

1672 S. Ridgewood Avenue • South Daytona, FL 32121 • 386/322-3014



### MEMORANDUM

To: James L. Gillis Jr., City Manager  
From: Becky Witte, Deputy City Clerk  
Re: Consideration of Agreement with Orange  
Lien Data, Inc for property research requests  
Date: August 18, 2021

## AGENDA ITEM

Item # D15

Date: September 13, 2021

Per Section 2-7 of the City of South Daytona Code of Ordinances, the fee for research for outstanding liens, assessments and other fees is fifteen dollars (\$15.00) per parcel of real property. City staff receives between 10 and 20 requests weekly, and many requests are repetitive. The requests take valuable staff time researching existing liens, utility bills, open code enforcement cases and open or expired permits on specified properties. The lien requests are routed to four internal departments (Finance, Utility Billing, Code Compliance and Permitting) and each request requires five (5) to fifteen (15) minutes of research per department.

Instead of the numerous requests, staff members would send a weekly update to Orange Data, Inc who will maintain a database. Title companies, real estate professionals and the like will be directed to Orange Data for their inquiries. The requestor will pay \$30.00 to Orange Data, Inc and receive an efficient response. Expedited services are also available. The City of South Daytona will continue to receive \$15.00 per request and no additional costs are required.

Staff conducted research found that most cities charge \$40 to \$60 per request. Requestors will see an increase of \$15.00 per request with this change which is still less than most municipalities.

The City of Delray Beach awarded a competitive bid to Orange Lien Data Inc in March 2019 for three years. Staff is requesting to piggyback the City of Delray Beach's contract.

## Service Agreement

This Service Agreement (the "Agreement") is made by and between PROLOGIX, LLC, d/b/a ORANGE DATA SYSTEMS ("ORANGE DATA"), located at 5901 N. Honore Ave., Ste. 200, Sarasota, FL 34243, and the City of South Daytona, located at 1672 S Ridgewood Ave South Daytona, FL 32119. ORANGE DATA and the South Daytona may also be referred to in the singular as "Party" and in the Plural as "Parties".

### RECITALS

**WHEREAS** the MUNICIPALITY desires to retain ORANGE DATA to perform the services described herein.

**WHEREAS** ORANGE DATA 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 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:** ORANGE DATA shall respond to requests for information from third-party organizations for information on behalf of the MUNICIPALITY. The MUNICIPALITY will automatically provide information on debts owed to the MUNICIPALITY for code enforcement, whether a lien has been filed or not, utility and permit fees and any other debt owed to the MUNICIPALITY from its constituents, on a weekly basis.

### 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 the other Party and that consent shall not be reasonably 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

ORANGE DATA'S INITIALS BG THE MUNICIPALITY'S INITIALS \_\_\_\_\_



Payment for the Services shall be paid by the requesting third-party organization directly to ORANGE DATA. The MUNICIPALITY is not responsible for payment of the Service Fee. Payment upon ordering is required for all third-party requestors except those whose credit has been established with ORANGE DATA. 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 ORANGE DATA will incur if amounts due are not paid on time. Fees shall be \$30.00 per Lien Search Report and can be modified at the discretion of the MUNICIPALITY. The total Service Fee for ORANGE DATA shall be \$15.00 per Lien Search Report generated by ORANGE DATA. ORANGE DATA will collect the entire lien search fee on behalf of the MUNICIPALITY and will retain \$15.00 as payment for producing report. The remainder shall be remitted to the MUNICIPALITY.

#### **Section IV LITIGATION**

If ORANGE DATA is requested to produce documents, witnesses, or general assistance pursuant to litigation, arbitration, or mediation in support of the MUNICIPALITY, and to which ORANGE DATA is not an adverse party, the MUNICIPALITY shall reimburse ORANGE DATA for all direct expenses and time in accordance with ORANGE DATA's current Rate Schedule. Unless otherwise required by law, ORANGE DATA may in its sole discretion determine whether to comply with such a production request.

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

ORANGE DATA warrants that all Services provided hereunder will conform to the requirements reasonably set forth by the MUNICIPALITY and will be performed consistent with generally prevailing professional and industry standards. The MUNICIPALITY must notify ORANGE DATA 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, ORANGE DATA 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 ORANGE DATA remain the property of ORANGE DATA. ORANGE DATA does not grant the MUNICIPALITY any right or license to any such intellectual property.

#### **Section VIII CONFIDENTIALITY**

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

#### **Section IX INDEMNIFICATION**

ORANGE DATA'S INITIALS BG THE MUNICIPALITY'S INITIALS \_\_\_\_\_



ORANGE DATA will indemnify the MUNICIPALITY for all losses due to errors committed by ORANGE DATA that are transmitted to third-parties provided that ORANGE DATA received accurate information from the MUNICIPALITY to create such reports. The foregoing indemnification shall be limited to direct monetary damages, not to exceed the amount of professional liability/errors and omissions insurance coverage maintained by ORANGE DATA and applicable to such loss.

The MUNICIPALITY will indemnify ORANGE DATA for any losses due to incorrect, incomplete, inaccurate, or untimely information provided by the MUNICIPALITY to ORANGE DATA.

#### **Section X FORCE MAJEURE**

ORANGE DATA 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 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.

PROPLOGIX, LLC d/b/a ORANGE DATA  
SYSTEMS

5901 N. Honore Ave., Ste. 200  
Sarasota, FL 34243  
ATTN: Legal Department  
Email: legal@proplogix.com

City of South Daytona

1672 S Ridgewood Ave  
South Daytona, FL 32119  
ATTN: James L. Gillis, Jr.,  
Email: lgillis@southdaytona.org

Operational and regular course of dealings communications should be directed to David Harrington (david@orangedata.com).

#### **Section XIII DISPUTE RESOLUTION**

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.

ORANGE DATA'S INITIALS

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THE MUNICIPALITY'S INITIALS \_\_\_\_\_

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**Section XIV  
GOVERNING LAW & JURISDICTION**

This Agreement shall be governed in accordance with the laws of the State of Florida. Each Party (a) consents to the exclusive jurisdiction and venue of the state courts located in Volusia 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, including appellate fees, if any.

**Section XVI  
TERM OF AGREEMENT**

This Agreement is effective from the date of execution for a period of three (3) years unless terminated by the Parties as allowable hereunder. This Agreement will automatically renew for an additional two (2) years if the 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, ORANGE DATA retains the right to pursue payment from the MUNICIPALITY or the third-party requestors for all orders which were placed prior to the termination date.

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  
MISCELLANEOUS**

- a) The captions of each paragraph of this Agreement are inserted solely for 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

ORANGE DATA'S INITIALS BC THE MUNICIPALITY'S INITIALS \_\_\_\_\_

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) ORANGE DATA is an independent contractor, and neither ORANGE DATA nor ORANGE DATA's personnel shall be deemed employees of the MUNICIPALITY. Nothing in this Agreement is intended to constitute a partnership, joint venture, employment, agency, or any other similar relationship by or between the Parties.
- e) This Agreement was drafted and negotiated with the participation of both Parties. This Agreement shall not be construed with prejudice against the drafter.
- f) The rights and obligations of the Parties which by their nature must survive termination or expiration of this Agreement in order to achieve their fundamental purpose shall survive in perpetuity any termination or expiration of this Agreement.
- g) 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.

**NOW THEREFORE**, the Parties to this Agreement have caused it to be executed on the date indicated below.

**PROLOGIX, LLC d/b/a ORANGE DATA SYSTEMS**

By:  \_\_\_\_\_  
Ben Goldberg, CRO

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

**City of South Daytona**

By: \_\_\_\_\_  
James L. Gillis, Jr., as its City Manager  
Date: \_\_\_\_\_



**CITY OF SOUTH DAYTONA, FLORIDA**  
**STANDARD CONTRACT ADDENDUM**

THIS STANDARD CONTRACT ADDENDUM is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF SOUTH DAYTONA, a Florida municipality, hereinafter referred to as the "City", and PropLogix, LLC d/b/a Orange Data Systems, hereinafter referred to as "Contractor", concerning that certain agreement entitled \_\_\_\_\_ Seervices Agreement, dated \_\_\_\_\_ ("Agreement").

**WITNESSETH:**

**WHEREAS**, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor's compliance for Florida's Public Records Act; and

**WHEREAS**, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

**WHEREAS**, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency's statutorily mandated annual budget approval process; and

**WHEREAS**, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

**WHEREAS**, Section 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists.

**NOW, THEREFORE**, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

**1. Amendment.** This Addendum hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of the Addendum, the terms of the Addendum shall prevail.

**2. Public Records Compliance.** Contractor agrees that, to the extent that it may "act on behalf" of the City within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency 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 or as otherwise provided by law.



- (c) 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 the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: James L. Gillis, Jr., City Manager, (386) 322-3014, lgillis@southdaytona.org, 1672 S. Ridgewood Ave., South Daytona, FL 32119.

**3. Public Records Compliance Indemnification.** Contractor agrees to indemnify and hold the City harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Volusia County Circuit Court on an expedited basis to enforce the requirements of this section.

**4. Compliance/Consistency with Section 768.28, Fla. Stat.** Any indemnification or agreement to defend or hold harmless by City specified in the Agreement shall not be construed as a waiver of City's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by City in the Agreement in derogation hereof shall be void and of no force or effect.

**5. Non-appropriation.** City's performance and obligation to pay under this Agreement is contingent upon an appropriation during the City's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the City Manager or designee that funds have not been



appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the City subject to the City paying all invoices for services rendered during the period the Agreement was funded by appropriations.

**6. E-Verify Compliance.** Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Fla. Stat.

**7. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with City for goods or services of any amount may be terminated at the option of City if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of City if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

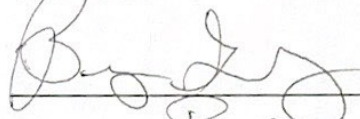
**8. Venue and Jurisdiction.** Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Volusia County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement.

9. **Additional Terms.** Notwithstanding any of other provision to the contrary, the parties agree as follows:

A. None.

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

**Contractor:**



**Print Name:** Benjamin A Goldberg

**Title:** CRO

**Company:** Proplogix<sup>LLC</sup> dba Orange Data

**City of South Daytona**

\_\_\_\_\_  
**Print Name:** \_\_\_\_\_