

**Professional Services Agreement**  
**By and between**  
**Capitol Region Council of Governments and**  
**ViewPoint Engineering, Inc. for a Regional Permitting System**

1	OVERVIEW, EFFECTIVE DATE AND TERM.....	1
2	TERM OF AGREEMENT.....	1
3	SCOPE OF SERVICES .....	1
3.1	Services to be Provided.....	1
3.2	Changes in Scope.....	1
3.3	Deliverables and Milestones.....	2
3.4	Training.....	2
3.5	Software Developed under the Agreement.....	2
3.6	Maintenance Agreements.....	3
3.7	Performance Standards.....	3
4	COMPENSATION/FEE SCHEDULE .....	3
5	PROJECT MANAGEMENT .....	3
6	RELATIONSHIP WITH MUNICIPALITIES .....	4
7	EVENTS OF DEFAULT AND REMEDIES.....	5
7.1	Definition of Default.....	5
7.2	Election of Remedies.....	5
7.3	Dispute resolution.....	6
8	TERMINATION OF AGREEMENT.....	6
8.1	Termination.....	6
8.2	Termination at Will.....	6
8.3	Compensation upon Termination at Will.....	6
9	WARRANTIES.....	6
10	INFORMATION SECURITY.....	7
11	COMPLIANCE WITH APPLICABLE LAWS.....	8
12	ASSIGNMENT AND SUBLETTING .....	8
13	HINDRANCES AND DELAYS.....	8
14	RELATIONSHIP BETWEEN PARTIES.....	9
15	INSURANCE .....	9
16	HOLD HARMLESS AND INDEMNIFICATION.....	10
17	CONFLICT OF INTEREST.....	10
18	ADDITIONAL TERMS.....	10
18.1	Definitions.....	10
18.2	Warranty.....	10
19	TITLE AND INTELLECTUAL PROPERTY RIGHTS.....	11
19.1.1	Definition of Property .....	11
19.1.2	Contractor Property and License .....	11
20	SUBCONTRACTORS .....	11
21	DISCLAIMER OF AGENCY OR THIRD PARTY BENEFICIARY RIGHTS.....	12

22	REPORTS, INFORMATION AND MAINTENANCE OF RECORDS .....	12
23	AUDITS .....	12
24	COPYRIGHT.....	12
25	ASSIGNABILITY .....	12
26	FINDINGS CONFIDENTIAL.....	12
27	SEVERABILITY .....	13
28	CUMULATIVE REMEDIES .....	13
29	NOTICES .....	13
30	SUCCESSORS.....	13
31	NON-WAIVER .....	14
32	AMERICANS WITH DISABILITIES ACT .....	14
33	TAXPAYER IDENTIFICATION NUMBER.....	14
34	GENDER/NUMBER/TITLE .....	14
35	GOVERNING LAW and Venue .....	15
36	ENTIRE AGREEMENT .....	15
	Exhibit A –Statement of Work .....	16
	Exhibit B – Pricing and Payment Schedule.....	20
	Exhibit C – Annual Support and Maintenance Services.....	22
	Exhibit D – Deployment Schedule .....	28
	Exhibit E – RFP and Proposal, including amendments.....	29

# **Professional Services Agreement**

**By and between**

**Capitol Region Council of Governments  
And**

**ViewPoint Engineering, Inc.  
For  
Regional Permitting System**

## **1 OVERVIEW, EFFECTIVE DATE AND TERM**

The Effective Date is November 4, 2009.

This Agreement sets forth the general terms and conditions under which the Capital Region Council of Governments, hereafter "CRCOG" and member communities may license software and purchase support and maintenance services related to ViewPermit software from ViewPoint, hereafter "ViewPoint", for CRCOG's and its member communities. This Agreement incorporates the following terms and conditions as if fully set forth herein, and any exhibits marked below or hereafter mutually executed by the parties ("Exhibits")

- ⇒ Exhibit A –Statement of Work
- ⇒ Exhibit B – Pricing and Payment Schedule
- ⇒ Exhibit C – Annual Support and Maintenance Services
- ⇒ Exhibit D – Deployment Schedule
- ⇒ Exhibit E – RFP and Proposal, including amendments

## **2 TERM OF AGREEMENT**

The term of this Agreement shall be from the date of contract execution through and including the fifth anniversary of the initial pilot "go live." Prior to said date, this Agreement shall remain in force until terminated by either party in accordance with the terms and provisions as specified in **Section 7 -Termination of Agreement.**

## **3 SCOPE OF SERVICES**

### **3.1 Services to be Provided**

ViewPoint shall provide services as summarized in the Statement of Work (Exhibit A) set forth in Request For Proposals and with the ViewPoint's Proposal dated July 13, 2009 and amended on July 16, 2009 (Exhibit E) all of which are incorporated herein as if fully set forth.

ViewPoint will commence work promptly on the assigned project upon receipt of a Notice to Proceed issued by CRCOG, and subsequent to necessary approvals and will provide status reports for the project in the format and frequency as requested by the CRCOG staff.

### **3.2 Changes in Scope**

The Project Manager of either party to this Agreement may request a change in the scope of this engagement. The Project Manager who would like to request a change in scope for this engagement will provide the suggested change in writing to the other team's Project Manager. The Project Managers will jointly determine whether the change impacts the schedule and/or the ViewPoint's compensation. The parties can mutually agree to the change through a written

amendment to this AGREEMENT executed by the authorized representative of each Party. Said change in scope is not in effect until amendment is signed

### **3.3 Deliverables and Milestones**

ViewPoint will submit the required deliverables specified in this AGREEMENT (Exhibit A) to the CRCOG Project Manager for approval and acceptance in accordance with the Project Deployment Schedule. CRCOG and the Participating Municipalities will review work product for each of the deliverables and evaluate whether each deliverable has clearly met in all material respects the criteria established in this Agreement. Within ten (10) working days of receipt of each deliverable, the CRCOG Project Manager will notify ViewPoint, in writing, of the acceptance or rejection of said deliverable based on a review and evaluation by CRCOG and the Participating Municipalities. A form signed by CRCOG shall indicate acceptance. ViewPoint shall acknowledge receipt of acceptance forms in writing. Any rejection will include a written description of the defects of the deliverable.

ViewPoint will, upon receipt of such rejection, act diligently to correct the specified defects and deliver an updated version of the deliverable to the CRCOG. Upon receipt of the updated version, CRCOG will then have an additional 10 (ten) business days from receipt to notify ViewPoint, in writing, of the acceptance or rejection of the updated deliverable. Any such rejections will include a description of the way in which the updated deliverable fails to correct the previously reported deficiency. Failure of CRCOG to reject a deliverable within either of the above specified notification periods will constitute acceptance by the CRCOG of said deliverable. Following any acceptance of a deliverable which requires additional work to be entirely compliant with the pertinent specifications, and until the next delivery, ViewPoint will use reasonable efforts to provide a prompt correction or workaround

Deliverables will be considered "complete" when all the acceptance criteria set forth in this AGREEMENT have been met or the prescribed review period for each deliverable or task has expired without written response from CRCOG. The task/deliverable numbers are referred to in subsequent sections throughout this AGREEMENT. Milestones in the Project Deployment Schedule shall be adjusted to reflect any additional time required for the completion of the acceptance procedure described above.

### **3.4 Training**

ViewPoint shall coordinate with CRCOG in the identification of all prospective attendees at ViewPoint training who require accommodation, and shall cooperate with CRCOG in its provision of such accommodation. CRCOG and its member communities participating in this project shall provide and cover the cost of accommodation for trainees. Costs for training are provided in detail in Exhibit B. Training will comprise a full-day course at a location convenient to the Participating Municipality or Municipalities. Costs can be reduced by training multiple towns at once, with a maximum of 20 individuals being trained at once.

### **3.5 Software Developed under the Agreement**

Prior to commencing any design work under this Agreement, ViewPoint's Project Manager and design professionals shall meet with CRCOG's Project Manager as part of a project kick-off meeting.

ViewPoint shall test every software deliverable delivered under this Agreement, and any updates, new releases, versions, upgrades, improvements, bug fixes, patches or other modifications to the software ("Enhancements") developed under this agreement in accordance with standard industry practice.

### **3.6 Maintenance Agreements**

Any maintenance agreement entered into by ViewPoint and CRCOG in connection with the system delivered under this Agreement shall require ViewPoint to cooperate with CRCOG in its efforts to resolve interoperability problems that arise during the term of the maintenance agreement related to the use of such system.

### **3.7 Performance Standards**

ViewPoint agrees that all of the services required of it hereunder shall be performed in accordance with the terms and conditions of this Agreement with professional skill and competence and in accordance with standard industry practice.

## **4 COMPENSATION/FEE SCHEDULE**

ViewPoint shall submit billing invoices to:

Winsome Barnaby  
Capitol Region Council of Governments  
241 Main Street  
Hartford, Connecticut 06106

based on the schedule set forth in Exhibit B.

ViewPoint agrees to meet with representatives of CRCOG to discuss subject reports and billings as CRCOG deems necessary. Approval and acceptance of said reports and billings by CRCOG shall constitute an acceptance of the product by CRCOG and shall be prerequisite to payment for the rendered services. Payment will be made within thirty (30) days of acceptance and approval

Payments to ViewPoint will be made according to the payment schedule outlined in Exhibit B. In the event, that CRCOG reasonably determines that ViewPoint has violated or acted inconsistently with the terms of this Agreement or if in CRCOG judgment ViewPoint's provision of services is not satisfactory, CRCOG may take corrective action, including but not limited to the withholding of payment unless or until the situation is rectified.

## **5 PROJECT MANAGEMENT**

ViewPoint and CRCOG shall each assign a single point of contact with respect to this Agreement. It is anticipated that the contact person will not change during the period the Agreement is in force. In the event that a change is necessary, the party requesting the change will provide prompt written notice to the other. In the event a change occurs because of a non-emergency, two-week written notice is required. For a change resulting from an emergency, prompt notice is required. ViewPoint's contact person is Nasser Hajo, Vice President, who can be reached at 385 Concord Ave, Belmont, MA 02478, (617-577-9000 x107, nasser@viewpoint-gis.com. CRCOG's contact is Jocelyn Mathiasen, Special Projects Coordinator, 241 Main Street, Hartford, CT 06106, (860) 522-2217, jmathiasen@crcog.org

Project management of this engagement will be performed by the CRCOG Special Projects Coordinator. The CRCOG's Project Manager will:

- Work closely with the ViewPoint Project Manager to ensure successful completion of the project.
- Consult with the ViewPoint Project Manager to develop the Project Management Plan.
- Review periodic status reports and schedule weekly meetings with ViewPoint, as necessary.

- Acquire CRCOG project team members as needed.
- Coordinate CRCOG's review of the deliverables and sign an acceptance form to signify acceptance for each accepted deliverable.

CRCOG's Jocelyn Mathiasen, Special Projects Coordinator will work directly with the ViewPoint Project Manager. CRCOG's Executive Director will sign this AGREEMENT and all amendments hereto on behalf of CRCOG. Amendments to this agreement are not effective until signed by the Executive Director.

The ViewPoint Project Manager will:

- Serve as an interface between the CRCOG Project Manager and all ViewPoint personnel participating in this engagement.
- Develop and maintain the Project Management Plan, in consultation with the CRCOG Project Manager.
- Facilitate regular communication with the CRCOG Project Manager, including periodic status reports/updates, and review the project performance against the project plan.
- Facilitate periodic project status meetings for the duration of the engagement.
- Sign acceptance forms to acknowledge their receipt from CRCOG.
- Be responsible for the management and deployment of ViewPoint personnel.

Nasser Hajo, Vice President, being an authorized signatory named in the ViewPoint's response to the Regional Permitting System RFP (Exhibit E.), will sign this AGREEMENT and all amendments thereto on behalf of ViewPoint and will serve as the Project Manager for ViewPoint.

All written documents shall be delivered in machine-readable format, capable of being completely and accurately reproduced by computer software on a laser printer. All itemized and/or annotated lists shall be delivered in computer spreadsheets, capable of being imported to Microsoft Excel 2000 or later. All meetings shall be held in CRCOG's headquarters unless agreed to otherwise by the Project Managers. "Virtual" meetings such as teleconferences are an acceptable form of meeting. Both Viewpoint and CRCOG will make best efforts to schedule meetings at least five full business days in advance, with reasonable accommodation of attendees' schedules. All meeting results will be described in a follow-up report generated by the ViewPoint Project Manager and approved by the CRCOG Project Manager.

The Project Managers from each organization bear the primary responsibility for ensuring resolution of disputed issues.

## **6 RELATIONSHIP WITH MUNICIPALITIES**

Under this contract, participating municipalities will receive the services outlined in Section 3.1. Each participating municipality that wishes to benefit from the regional "front end" building permitting system being developed under this Agreement and that wishes to receive the discounted pricing being offered by ViewPoint for its permitting system must enter into a separate Participating Agreement between CRCOG, ViewPoint, and that municipality. The Participating Agreement will clearly outline the respective responsibilities in terms of management, payment, support, and decision-making among the three parties.

## **7 EVENTS OF DEFAULT AND REMEDIES**

### **7.1 Definition of Default**

Any of the following occurrences or acts shall constitute an event of default under this Agreement:

- If ViewPoint, its successors or assigns shall fail to perform or observe any of the covenants, conditions or agreements required on the part of ViewPoint as set forth in this Agreement; or
- If CRCOG, its successors or assigns shall fail to perform or observe any of the covenants, conditions or agreements required on the part of the CRCOG as set forth in this Agreement; or
- If any determination shall have been made by competent authority such as, but not limited to, any federal, state or local government official, or a certified public accountant, that ViewPoint's management or any accounting for its funding, from whatever source, is improper, inadequate or illegal; or
- If a decree or order by a court having jurisdiction in the matter shall have been entered adjudging ViewPoint bankrupt or insolvent or approving as properly filed a petition seeking reorganization, readjustment, arrangement, composition or similar relief for ViewPoint under the federal bankruptcy laws, or any other similar applicable federal or state law;
- If any competent authority shall have determined that ViewPoint is in default of any federal, state or local tax obligation.

In the event of a default by either party, the non-defaulting party shall provide the defaulting party with written notice of its default, and the defaulting party shall have a period of 30 days to cure the default, unless that default cannot reasonably be cured within such 30 days, then the defaulting party may commence action to cure the default and diligently pursues the cure thereafter.

### **7.2 Election of Remedies**

If any event of default by ViewPoint hereunder shall have occurred and be continuing after the cure period provided herein, CRCOG may elect to pursue any one or more of the following remedies, in any combination or sequence:

- Take such action as it deems necessary, including, without limitation, as described herein; and/or
- Suspend the provision of services; and/or
- Require ViewPoint to correct or cure such default to the satisfaction of the CRCOG; and/or
- Terminate this Agreement for cause, and after five (5) days notice in accordance with Section 7 hereof.

If any event of default by CRCOG hereunder shall have occurred and be continuing after the cure period provided herein, ViewPoint may elect to pursue any one or more of the following remedies, in any combination or sequence:

- Suspend the provision of services; and/or
- Require CRCOG to correct or cure such default to the satisfaction of ViewPoint; and/or
- Terminate this Agreement for cause, and after five (5) days notice this Agreement shall be terminated in accordance with Section 7 hereof.

The selection of any remedy shall not prevent or stop either party from pursuing any other remedy and shall not constitute a waiver by either party of any other right or remedy.

In the event of a default resulting in termination of this Agreement by either party, ViewPoint shall be entitled to compensation for all satisfactory work completed and accepted prior to the termination date.

### **7.3 Dispute resolution**

All claims, disputes or controversies between the parties shall be submitted to non-binding mediation prior to and as a condition precedent to the commencement of litigation between the parties, except that either party may seek equitable relief in the form of a temporary or permanent injunction in order to preserve the status quo pending dispute resolution. The American Arbitration Association, or such other person or mediation services as the parties may agree upon, shall conduct the non-binding mediation. The party seeking to initiate mediation shall do so by submitting a formal written request to the other party to this Agreement and to the American Arbitration Association, or such other person or mediation service as the parties may agree upon. All statements of any nature made in connection with the non-binding mediation shall be privileged and shall not be admissible in any subsequent court or other proceeding involving or related to the same claim.

## **8 TERMINATION OF AGREEMENT**

### **8.1 Termination**

"Termination", for purposes of this Agreement, shall mean the cessation, upon the effective date of termination, of both parties' obligations under the terms of this Agreement.

### **8.2 Termination at Will**

Notwithstanding the provisions of Section 7 herein, CRCOG may terminate this Agreement at any time by giving thirty (30) days written notice thereof to ViewPoint.

### **8.3 Compensation upon Termination at Will**

In the event this Agreement is terminated by CRCOG as herein provided, ViewPoint shall receive compensation for services performed and accepted prior to the effective date of termination, which conform to the Scope of Services and the Fee Schedule.

## **9 WARRANTIES**

ViewPoint represents, warrants and covenants to CRCOG the following:

That the System, and all associated services provided to CRCOG by ViewPoint, its subcontractors, and agents under this Agreement shall be fully tested, free of defects and produced and performed in a skillful and workmanlike manner and shall comply with the Scope of Services attached hereto and incorporated herein as Exhibit "A";

That ViewPoint has thoroughly examined all contract documents, and has made all investigations necessary to be thoroughly informed regarding requirements for delivery of products, equipment and/or services as required by the conditions of this Agreement

That ViewPoint (i) is a duly qualified, capable, and experienced entity, (ii) is not in receivership or contemplating same, (iii) has not filed for bankruptcy, and (iv) is not currently delinquent with respect to payment of property taxes within the State of Connecticut.

Further, ViewPoint represents, warrants as covenant that (i) all applicable copyrights, patents, trade secrets, licenses and other proprietary and intellectual property rights that may exist on materials used in the performance of this Agreement have been adhered to and (ii) CRCOG shall not be liable for any infringement of third party intellectual rights by ViewPoint, and any intellectual property rights held by ViewPoint and granted to CRCOG under this Agreement shall apply for the duration of this Agreement. In connection with this warranty, ViewPoint agrees to and shall indemnify, save, defend and hold harmless the Participating Municipalities and/or CRCOG, its officers, agents and employees from all claims, losses, damages, causes of action and liability of every kind including expenses of litigation, court costs and attorney fees for damages to any person or property arising in connection with any alleged or actual infringement of existing copyrights, patents, trade secrets, licenses and other proprietary or intellectual property rights applicable to materials used in the performance of this Agreement.

In the event that an infringement suit or proceeding arises, ViewPoint shall, at its sole cost and expense, secure for CRCOG the right to continue using the System, and all products and services provided under this Agreement, or it shall replace or modify all or part of the System, or product or service that is found to be infringing in order to render it noninfringing. Failure by ViewPoint to secure said right to continue use of the system shall be deemed default for cause in accordance with Section 7 of this agreement.

In connection with the warranties set forth above, CRCOG and the Participating Municipalities reserve the right to perform periodic monitoring (including on-site monitoring) of ViewPoint's compliance with the terms of this Agreement and the adequacy and timeliness of ViewPoint's performance.

ViewPoint expressly acknowledges that CRCOG has relied on ViewPoint's representations about its officers, employees, agents or representatives who will be performing services and duties under this Agreement, including but not limited to their experience and qualifications, and that, if any other person is to replace any such officer, employee, agent or representative, such person shall have equivalent qualifications and experience. ViewPoint agrees to provide CRCOG with such information regarding the qualifications of its staff, including professionals and others, as is required by CRCOG to verify that present and subsequent services are being rendered by competent and trained personnel. Only qualified technicians will be permitted to perform System configuration, data uploads, warranty services, and System maintenance.

## **10 INFORMATION SECURITY**

ViewPoint and CRCOG shall take all reasonable steps necessary to ensure that all goods, supplies or equipment (or any portion thereof) provided under this Agreement, whether on magnetic tape, disk, memory or in any other form, are not made available by ViewPoint or CRCOG, or any of their employees, agents or representatives, to any organizations or individuals not authorized under this Agreement to make use thereof. In particular, ViewPoint and CRCOG recognize that the goods, supplies or equipment provided hereunder may contain information of a proprietary or confidential nature that is subject to protection under applicable patent, copyright, trade secret, or trademark law ("Proprietary Information") and agree as follows:

- a. To use Proprietary Information solely at the sites or locations specified or authorized under this Agreement;
- b. Not to copy or duplicate Proprietary Information, or any component thereof, by any means for any purpose whatsoever except as is required for archival or security storage purposes, without prior written consent of the other party;

- c. To instruct their employees, agents and representatives having access to Proprietary Information not to copy or duplicate such information or provide the same to any third party or unauthorized individual;
- d. To implement and enforce security measures to safeguard Proprietary Information from theft or physical or electronic access by unauthorized persons;
- e. To reproduce the copyright notice and other proprietary or identifying markings on all materials related to or part of the Proprietary Information on which such copyright notice or other proprietary or identifying markings are displayed, including any copies made pursuant to this Contract.

Any modification or enhancements to the Proprietary Information, or any other CRCOG materials related to the Proprietary Information, provided by ViewPoint to CRCOG or by CRCOG to ViewPoint, or otherwise developed or implemented pursuant to this Agreement, shall be subject to all conditions and restrictions contained in this Agreement.

ViewPoint shall not use and shall not allow any person or entity under its control to use personally identifiable or private information collected by ViewPoint for any purpose or to provide it to any third party unless: (i) the System user is given clear prior notice of the possibility of such other use; (ii) the System user affirmatively consents to such use; and (iii) CRCOG agrees to such other use.

ViewPoint shall maintain the security of sensitive information in its custody and the integrity of transactions received through its interfaces and through the System. Redundant levels of security will be deployed as necessary throughout the System. ViewPoint shall not use any sensitive information in its custody for its own purposes or the purposes of its other clients unless CRCOG expressly agrees to the use of that specific information. In the event of a security breach of any kind, ViewPoint will notify CRCOG and the affected municipality without delay.

## **11 COMPLIANCE WITH APPLICABLE LAWS**

ViewPoint shall at all times observe and comply with all Federal, State and local laws, ordinances and regulations including all amendments and revisions thereto, which in any manner apply to ViewPoint or the work completed under this contract, and shall indemnify, defend, save and hold harmless the Participating Municipalities and/or CRCOG against any claim related to or arising from the violation of any such laws, ordinances and regulations whether by ViewPoint, its employees, officers, agents, subcontractors, or representatives. If ViewPoint observes that the work is at variance therewith, it shall promptly notify CRCOG in writing.

## **12 ASSIGNMENT AND SUBLETTING**

ViewPoint agrees to retain control and to give full attention to the fulfillment of this Agreement, that this Agreement shall not be assigned or sublet without the prior written consent of CRCOG, and that no part or feature of the work will be sublet to anyone objectionable to CRCOG. No official, employee, representative or agent of CRCOG has the authority to approve any assignment under this Agreement unless that specific authority is expressly granted by CRCOG. ViewPoint further agrees that the subletting of any portion or feature of the services provided hereunder, or materials required in the performance of this Agreement, shall not relieve ViewPoint from its full obligations to CRCOG as provided by this Agreement.

## **13 HINDRANCES AND DELAYS**

Force Majeure. Neither party shall be liable under this Agreement because of a failure or delay in performing its obligations hereunder on account of riots, insurrection, fires, floods, acts of God, war, terrorism, governmental action, or any other cause which is beyond the reasonable control of such party.

#### 14 RELATIONSHIP BETWEEN PARTIES

ViewPoint is an independent contractor and not an officer, employee or agent of the CRCOG. Therefore, it is mutually agreed that this Agreement is a contract for services and not a contract of employment, and that, as such, ViewPoint and any and all subcontractors shall not be entitled to any employment benefits of CRCOG such as, but not limited to: vacation, sick leave, insurance, worker's compensation, and pension and retirement benefits.

All personnel matters affecting ViewPoint project team members will be the responsibility of ViewPoint and CRCOG shall be notified in writing of any changes of personnel included in said team.

#### 15 INSURANCE

ViewPoint shall be required to furnish a Certificate of Insurance evidencing the following insurance coverage prior to the execution of this Agreement. Failure to maintain insurance coverage as required and to name CRCOG and the Participating Municipalities as the Additional Insured will be grounds for termination of the contract. In addition:

- (a) *The insurance requirements shall apply to all subcontractors and/or consultants.*
  - (b) *All policy forms shall be on the occurrence form. Exceptions must be authorized by CRCOG unless the coverage is for Professional Liability where the common form is claims made.*
  - (c) *Acceptable evidence of coverage will be on the ACORD form or a form with the same format.*
  - (d) *All renewal certificates shall be furnished at least 10 days prior to policy expiration.*
  - (e) *Each certificate shall contain a 30 day notice of cancellation.*
  - (f) *Insurance shall be issued by an insurance company licensed to conduct business in the State of Connecticut which has at least an "A-"VIII policy holders rating according to Best Publications latest edition Key Rating Guide.*
- Comprehensive General Liability Including Contractual Liability, Products/Completed Operations Insurance, as applicable, with limits not less than \$2,000,000 for all damages because of bodily injury sustained by each person as the result of any occurrence and \$1,000,000 bodily injury aggregate per policy year and limits of \$1,000,000 for all property damage sustained by each person as a result of any one occurrence and \$1,000,000 property damage aggregate per policy year or a combined single limit of \$1,000,000. All, if any, deductibles are the sole responsibility of ViewPoint to pay and/or indemnify.
  - Automobile Liability Insurance including non-owned and hired vehicles in the same limits as indicated above.

- Workers' Compensation Insurance at the Connecticut statutory limit including Employers' Liability with limits of \$100,000 each accident, \$500,000 for each disease/policy limit, and \$100,000 for disease for each employee.
- The CRCOG and the Participating Municipalities shall be named as an Additional Insured as its interest may appear on the appropriate coverage
- Professional Liability Insurance with limits up to \$2,000,000 aggregate limit issued on claims made basis for the term of the contract and continuing for two years following the completion of the contract at ViewPoint's cost.

## **16 HOLD HARMLESS AND INDEMNIFICATION**

In addition to its obligation to provide insurance as specified above, ViewPoint, its subcontractors, agents and assigns shall indemnify, defend, save and hold harmless the Participating Municipalities and/or CRCOG, including but not limited to, its elected officials, and its officers, from any and all claims made against the Participating Municipalities and/or CRCOG, including but not limited to, damages, awards, costs and reasonable attorneys fees, to the extent any such claim directly and proximately results from the negligent acts, errors, or omissions in performance of services by ViewPoint during the its performance of this Agreement. CRCOG agrees to give ViewPoint prompt notice of any such claim and absent a conflict of interest, an opportunity to control the defense thereof.

## **17 CONFLICT OF INTEREST**

CRCOG and ViewPoint hereby covenant and agree that no member of the governing body of CRCOG, or its designees or agents, and no other public official, either paid or unpaid, who exercises any functions or responsibilities with respect to this program during the individual's tenure or for one (1) year thereafter, shall have any personal or financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof for work and/or services to be performed in connection with the program assisted under this Agreement.

ViewPoint shall cause to be incorporated, in all subcontracts a provision prohibiting such interest pursuant to the provisions of this paragraph.

## **18 ADDITIONAL TERMS**

### **18.1 Definitions**

The terms used in this Agreement, unless defined herein, shall have the meaning ascribed to them in the other documents that constitute the Agreement between the parties.

### **18.2 Warranty**

ViewPoint makes the following warranties with respect to any deliverables delivered under this Agreement: (1) ViewPoint's services shall be performed in a professional and workmanlike manner and in accordance with the specifications and description of services as set forth in the Agreement; (2) the deliverables will substantially conform with the deliverable descriptions set forth in this Agreement; (3) all media on which ViewPoint provides any software under this Agreement shall be free from defects; and (4) all software delivered by ViewPoint under this Agreement shall be free of Trojan horses, back doors, and other malicious code.

## **19 TITLE AND INTELLECTUAL PROPERTY RIGHTS**

### **19.1.1 Definition of Property**

The intellectual property required by ViewPoint to develop, test, and install ViewPermit (hereinafter the "Property") may consist of computer programs (in object and source code form), scripts, data, documentation, the audio, visual and audiovisual content related to the layout and graphic presentation of ViewPermit, text, photographs, video, pictures, animation, sound recordings, training materials, images, techniques, methods, algorithms, program images, text visible on the Internet, HTML code and images, illustrations, graphics, pages, storyboards, writings, drawings, sketches, models, samples, data, other technical or business information, and other works of authorship fixed in any tangible medium.

### **19.1.2 Contractor Property and License**

ViewPoint will retain all right, title and interest in and to all Property developed by it. CRCOG acknowledges that its possession, installation or use of ViewPoint Property will not transfer to it any title to such property.

CRCOG acknowledges that ViewPoint Property contains or constitutes commercially valuable and proprietary trade secrets of ViewPoint, the development of which involved the expenditure of substantial time and money and the use of skilled development experts. CRCOG acknowledges that ViewPoint Property is being disclosed to CRCOG to be used only as expressly permitted under the terms of the license described in Exhibits A and B. CRCOG shall not disclose such information to third parties except to Participating Municipalities in accordance with the terms set forth in this Agreement, and, if required to do so by legal process, will promptly notify ViewPoint of the imminent disclosure so that ViewPoint can take steps to defend itself against such disclosure.

ViewPoint acknowledges that CRCOG and Participating Municipalities are subject to requirements under the Freedom of Information Act and may be required to disclose certain non-proprietary public information in accordance with the Act if requested to do so under the FOIA.

Except as expressly authorized in the associated Statement of Work, CRCOG will not copy, modify, distribute or transfer by any means, display, sublicense, rent, reverse engineer, decompile or disassemble the ViewPoint Property.

ViewPoint grants to CRCOG and Participating Municipalities a fully-paid, royalty-free, non-exclusive, non-transferable, worldwide, irrevocable, perpetual, and assignable license to make, have made, use, reproduce, distribute, modify, publicly display, publicly perform, digitally perform, transmit and create derivative works based upon ViewPoint Property, in any media now known or hereafter known, but only to the extent reasonably necessary for CRCOG's exploitation of the deliverables to be developed for the purpose or purposes contemplated in this Agreement. During the term of the associated Statement of Work and immediately upon any expiration or termination thereof for any reason, ViewPoint will provide to CRCOG the most current copies of any ViewPoint Property to which CRCOG has rights pursuant to the foregoing, including any related documentation.

Notwithstanding anything contained herein to the contrary, and notwithstanding CRCOG's use of ViewPoint Property under the license created herein, ViewPoint shall have all the rights and incidents of ownership with respect to ViewPoint Property, including the right to use such property for any purpose whatsoever and to grant licenses in the same to third parties.

## **20 SUBCONTRACTORS**

No portions of this work may be subcontracted, unless:

- CRCOG shall give prior written approval to such subcontract in writing; and
- Any document incorporated into any such subcontract shall be approved as to form and legality by CRCOG legal counsel; and
- All of the terms, covenants, conditions and provisions of this Agreement shall have been incorporated in such subcontract and the subcontractor shall have agreed in writing to assume, perform and be bound by this Agreement and all the terms, covenants, conditions and provisions hereof, and shall have made the representation as to its expertise in the same form as set forth in this agreement.
- CRCOG and/or the Participating Municipalities shall not be liable for payment of any wages, materials, or other expenses of any subcontractors and ViewPoint hereby agrees to indemnify, defend, save and hold harmless CRCOG and/or its Participating Municipalities from any such claims.

## **21 DISCLAIMER OF AGENCY OR THIRD PARTY BENEFICIARY RIGHTS**

In no event shall anything in this Agreement be deemed to confer upon any person or entity agency status or third party beneficiary rights against the CRCOG.

## **22 REPORTS, INFORMATION AND MAINTENANCE OF RECORDS**

ViewPoint shall furnish CRCOG with such information and reports concerning the progress and management of this Agreement as may be required from time to time. The form of said reports shall be determined by CRCOG and shall be consistent with CRCOG requirements.

ViewPoint agrees that all records with respect to all matters covered by this Agreement shall be maintained for a period of six (6) years after expiration or termination of this Agreement or any renewal or extension thereof.

## **23 AUDITS**

Upon twenty four (24) hours prior notice and at any time during normal business hours, ViewPoint shall make available to the CRCOG, for examination, all records with respect to all matters covered by this Agreement.

## **24 COPYRIGHT**

No reports or other documents produced in whole or in part under this Agreement shall be subject to an application for copyright by or on behalf of ViewPoint.

## **25 ASSIGNABILITY**

ViewPoint shall not assign or transfer any interest in this Agreement without prior written consent of the CRCOG.

## **26 FINDINGS CONFIDENTIAL**

All of the information, reports, and documents prepared or assembled by ViewPoint, under this agreement, shall become the property of the CRCOG and the Participating Municipalities upon payment of the compensation therefore as provided in this Agreement. ViewPoint agrees that said documents shall not be made available to any individual or organization, other than authorized Federal and State officials, without written approval of the CRCOG.

## **27 SEVERABILITY**

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

## **28 CUMULATIVE REMEDIES**

All rights exercisable by and remedies of either party hereunder shall be cumulative and the exercise or beginning of the exercise by either party of any of its rights or remedies hereunder shall not preclude that party from exercising any other right or remedy granted hereunder or permitted by law.

## **29 NOTICES**

All notices, approvals, demands, requests, or other documents required or permitted under this Agreement, other than routine communications necessary for the day-to-day operation of this project, shall be deemed properly given if hand delivered or sent by United States registered or certified mail, postage prepaid, at the following address:

**As to the CRCOG:**

**Lyle D. Wray, Executive Director  
Capitol Region Council of Governments  
241 Main Street  
Hartford CT 06106**

**As to VIEWPOINT:**

**Nasser Hajo  
ViewPoint GIS  
385 Concord Ave.  
Belmont, MA 02478**

Neither party hereto shall be relieved of such obligation by reason of the failure of the other to comply with or otherwise enforce any of the provisions of this Agreement.

## **30 SUCCESSORS**

This Agreement, to the extent permitted herein, shall inure to the benefit of and be binding upon the parties hereto and any and all successors.

The terms, provisions, covenants, obligations and conditions of this Agreement shall be binding upon and inure to the benefit of the successors in interest and the assigns of the

parties to this Agreement if the assignment or transfer is made in compliance with the provisions of this Agreement.

### **31 NON-WAIVER**

Any failure by CRCOG or ViewPoint to insist upon the strict performance by the other of any of the terms and provisions hereof shall not be a waiver, and each party hereto, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the other, of any and all of the terms and provisions of this Agreement and neither party hereto shall be relieved of such obligation by reason of the failure of the other to comply with or otherwise enforce any of the provisions of this Agreement.

### **32 AMERICANS WITH DISABILITIES ACT**

For purposes of this paragraph, the "Act" shall mean the Americans with Disabilities Act. ViewPoint shall not discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment. No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of ViewPoint, or be subjected to discrimination by ViewPoint. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations provided by ViewPoint.

Any television public service announcement that is produced or funded in whole or in part under this Agreement shall include closed captioning of the verbal content of such announcement. ViewPoint shall not discriminate against any individual because such individual has opposed any act or practice made unlawful by this Act or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

ViewPoint shall not permit coercion, intimidation, threatening, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Act.

### **33 TAXPAYER IDENTIFICATION NUMBER**

The Internal Revenue Service Form W-9, *Request for Taxpayer Identification Number and Certification* as submitted by ViewPoint to the CRCOG, is hereby made a part of this Contract and is incorporated herein by reference. It is understood and agreed that CRCOG shall use the number as listed on the IRS Form W-9 to report any and all compensation paid to ViewPoint under this Agreement. It is further understood and agreed that CRCOG shall not be liable for inaccurate information contained on said IRS Form W-9.

### **34 GENDER/NUMBER/TITLE**

Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held and construed to include the plural, unless the Agreement requires otherwise. In the event of any discrepancy or conflict between the name and title of any person referred to in this Agreement, the title shall prevail.

**35 GOVERNING LAW and Venue**


This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut and the by-laws, policies and procedures of the Capitol Region Council of Governments. The parties agree that the venue for any legal proceeding with respect to this Agreement shall be Connecticut Superior Court, Judicial District of Hartford at Hartford.

**36 ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the parties hereto and supersedes any and all prior understandings, negotiations, and agreements whether written or oral, between them respecting the written subject matter.

IN WITNESS THEREOF, CRCOG and VIEWPOINT, have executed this Agreement on this 4th day of November 2009.

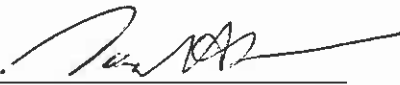
WITNESS:CAPITOL REGION COUNCIL OF GOVERNMENTS

Signature:   
Printed Name: LYLE D. WRAY

By:  
Lyle D. Wray  
Its Executive Director

WITNESS:

VIEWPOINT

Signature:   
By: NASSER HAJO  
Printed Name:

## Exhibit A –Statement of Work

ViewPoint Engineering, Inc. (hereinafter called ViewPoint) proposes to render consultation services to the Capital Region Council of Governments ("CRCOG") to deploy and integrate a Regional Permitting Program - ViewPermit

CRCOG is expected to furnish ViewPoint with all existing information related to the project. CRCOG also is expected to furnish all pertinent information as to its requirements, including any special or extraordinary considerations for this effort or any special services needed.

The following is an outlined scope for this project:

- ViewPoint will deploy an on-line regional permitting program. This interface will provide citizens, businesses, and contractors the tools to register and apply for permits, pay required fees, check permit/plan review status, and receive automated notifications from Town and City officials. Requests for inspections can also be made using the online interface.

The ViewPermit software incorporates the following modules or components:

- Contractor/ Public Front-end
  - Permitting
  - Plan Review
  - Inspections
  - Reporting
  - Planning
  - Zoning
  - Conservation
  - Health
  - Public Works permits
- The proposed system will be based on ViewPoint's response to CRCOG's RFP: *CRCOG Regional Permitting System* including the submitted Business Scenarios as well as the Functional and Technical matrices (Exhibit E).
  - ViewPoint will provide CRCOG and its Participating Municipalities with a site license for unlimited users including all town/city departments. Pricing will be based on the cost schedule outlined in Exhibit B.
  - ViewPoint will establish a link between ViewPermit and the property data residing on CRCOG's server or the individual Town's servers. In the event that a direct link is not possible to Town's property database server, an electronic file of such records will be provided to ViewPoint periodically by CRCOG or the Participating Municipality.

- ViewPermit will flag tax delinquent properties based on electronic lists provided periodically by CRCOG and/or its Participating Municipalities. The lists will identify property owners with outstanding taxes/fees.
- A list of contractors and corresponding license status will be provided periodically in electronic format by the State of Connecticut Department of Consumer Protection (DCP) via CRCOG for integration with ViewPermit.
- ViewPermit will provide the capability to associate an unlimited number of Home Improvement Contractors, Licensees, and Construction Supervisors to a permit application.
- Automatic permit fee calculation will be provided based on local fee structures provided by participating communities for each permit type
- Online payment of permit fees will be provided utilizing CRCOG's member communities' payment partner services (subject to agreement with payment partner and Municipalities' financial reporting requirements).
- Inspection Check Lists and Fees will be provided as well as notes to inspectors.
- Automated Building setback requirements for complex permits based on local zoning classification (if available and provided by the member community) will be provided.
- An integrated reporting mechanism will provide typical municipal and regional permitting reports as well as Education Fee Reimbursement Reporting, Newspaper Report of counts for new buildings, demolitions, temporary and permanent Certificate of Occupancy, and Carpenters Union Report on Building Permits by location and contractor.
- Communities who opted for Option 3 will be provided synchronization between the on-line front end and their locally hosted back end.
- Communities who opted for Option 4 will be provided with an import/export database schema to integrate on-line permit applications and inspection records with existing permitting software currently deployed and hosted locally. Technical specifications and methodology will be determined on a case-by-case basis. Physical integration on the back end side will be performed by the participating community and its current permitting vendor under a separate agreement.
- The vendor will agree to create consistent interface standards which will be maintained for the duration of the contract. This will include:
  - a. Flat File Transaction Format(s) that contains the data element descriptions, element names, field length, maximum/ minimum values, data-type, and key construction (s). This will be expected to serve the purpose of historical data loading to Viewpoint's DBMS. Town's must supply this data in the specified format for mass data loading to Viewpoint by Viewpoint Professional Services or agree to use Online Viewpoint Computer Application facilities to data enter

necessary startup information specified by Viewpoint. Flat File Transaction Format(s) and the Online Viewpoint Computer Application data entry facilities will be specified.

- b. Viewpoint XML Schema expression of Viewpoint's DBMS for the Permitting products being purchased by CRCOG. The XML Schema that is provided by Viewpoint for this contract will be relied upon by the Participating Municipalities during the period of maintenance kept in good standing for data interface purposes to systems other than Viewpoint.
- c. Viewpoint will provide the Internet Web Services "call" formats used to present or retrieve data from Viewpoint Web systems by other applications relying on Town data in Viewpoint systems. Viewpoint will use specified State of Connecticut data Internet Web Service "call" formats to obtain Contractor License information from the State of Connecticut Web based Systems with this data if it is presented for use by Viewpoint during Systems Implementation; and if not, will devise a data loading protocol using the appropriate Flat File Transaction Format committed to in (1) above.

ViewPermit will make non-proprietary interface information available for use by the Town for interface purposes with non-viewpoint systems. Fixed File Formats and technical descriptive information for interface transactions and Web Services calls will be considered non-proprietary. DBMS XML Schema displays from the Vendor's DBMS will be considered proprietary information.

- ViewPermit will integrate local bylaws and ordinances as well as state and federal regulations related to permitting.
- Kickoff Meeting: ViewPoint will coordinate with CRCOG to organize a project kickoff meeting that will include all Pilot Program participants.
- ViewPoint will submit to CRCOG's Project Manager a Project Implementation and Management Plan. The plan will outline the following:
  - Project Summary
  - Project Personnel
  - Project Deliverables
  - Project Plan
  - Project Organization
  - Technical Process Model
  - Software QA/QC
  - Software Documentation
  - Approval Process
  - Acceptance Criteria
- Import existing records related to permitting: CRCOG Participating Municipalities may order directly from ViewPoint the professional services to import existing electronic records related to permitting. Electronic records will be provided by each member community in a standard format agreed upon with ViewPoint. All records must be uniform in design and content. Cost to import existing records

will be negotiated between the member community and ViewPoint on a case-by-case-basis.

- Annual maintenance and support: (Please refer to Exhibit C)
- Training: on-site hands-on regional training for end-users will be provided. Training will cover the Front End as well as the Back End including Applications, Plan Review Workflow, Issuance, Inspections, and Reporting.
- Supplementary training after go-live will be available to member communities. Cost for such services will be based on Exhibit B.
- Compensation: (Please refer to Exhibit B)
- Communities who seek to utilize the GIS geo-processing features embedded in ViewPermit will require an ESRI ArcGIS Engine runtime license. The runtime license is purchased directly from ESRI (approx. \$400). The runtime license is not required if the user has an ArcGIS Desktop license (ArcView, ArcEditor, or ArcInfo) already installed on his/her computer. "Casual Users" who do not intend to utilize the GIS geo-processing features are not required to obtain any additional licensing.
- As part of implementation, ViewPermit will develop in conjunction with Participating Municipalities policies and procedures for:
  - Location, use, and performance metrics for the hosted system
  - System and data backups
  - Disaster recovery
  - System performance monitoring and reporting
  - Notifications to towns related to performance issues
  - Actions to be taken in cases of performance failures.

## Exhibit B – Pricing and Payment Schedule

The following pricing scheme assumes a minimum of five towns participating in the initial program.

**CRCOG Regional On-Line Permitting System Development and Deployment  
Exhibit B - Pricing and Payment Schedule**

							Total
<b>Baseline system configuration, set-up and deployment</b>							<b>\$ 84,400.00</b>
PER TOWN COSTS	Option 1&2 - Front End Plus Hosted Back End				Option 3 - Front End Plus Town- based VP Back End	Option 4 - Front End Plus Town- based 3rd Party Back End	
	Pop 40- 800	Pop 25- 100	Pop 10- 100	Pop 5- 100			
Front end/ back end application	\$ 49,450	\$ 43,000	\$ 38,000	\$ 28,000	\$ 57,000	\$ 27,000	
Custom programming	\$ -	\$ -	\$ -	\$ -	\$ 6,800	\$ 7,800	
Support/ maintenance for years 1 and 2	\$ 13,800	\$ 10,853	\$ 10,607	\$ 8,140	\$ 10,800	\$ 5,200	
<b>TOTAL 2 YEAR COST/TOWN</b>	<b>\$ 63,250</b>	<b>\$ 53,853</b>	<b>\$ 48,607</b>	<b>\$ 36,140</b>	<b>\$ 74,600</b>	<b>\$ 40,000</b>	
Year 3 Costs	\$ 6,900	\$ 5,733	\$ 5,333	\$ 4,021	\$ 6,000	\$ 2,900	
Year 4 Costs	\$ 7,590	\$ 6,307	\$ 5,867	\$ 4,423	\$ 6,600	\$ 3,200	
Year 5 Costs	\$ 8,346	\$ 6,937	\$ 6,453	\$ 4,885	\$ 7,260	\$ 3,500	
# Pilot Towns	-	1	1	1	1	1	
<b>TOTAL 2 YEAR PILOT TOWN PAYMENTS</b>	<b>\$ -</b>	<b>\$ 53,853</b>	<b>\$ 48,607</b>	<b>\$ 36,140</b>	<b>\$ 74,600</b>	<b>\$ 40,000</b>	<b>\$ 253,200.00</b>
<b>Total baseline system configuration, set-up and deployment plus 2 year Pilot town payments (5 towns named in RFP)</b>							<b>\$ 337,600.00</b>
Minimum baseline system configuration, set-up and deployment plus 2 year Pilot town payments* (fewer than 5 towns named in RFP)							<b>\$ 291,400.00</b>

Additional Charges					
Per hour Support	\$110 per hour				
Pilot Team Training	\$ 3,000	\$ 3,000	\$ 3,000	\$ 1,500	\$ 3,000
End-User Training	\$ 3,000	\$ 3,000	\$ 3,000	\$ 1,500	\$ 3,000

**Notes**  
 \*This is the minimum fee payable to ViewPoint. This reflects a reduction of the average cost of one "Option 1 & 2" town participating in the Pilot. If additional towns join the program after the Pilot phase, charges from this price list will be payable to ViewPoint (subject to population and Option selected).

Payment Schedule	
Contract Execution	30%
Project Implementation and Management Plan	10%
Software Loaded	20%
Go Live	25%
Software Acceptance	15%

**Payment Schedule:**

**For the first five towns:**

- 30 % of the baseline system configuration cost plus 30 % of the front end/back end application cost will be paid upon contract signing
- 10 % upon acceptance of a detailed implementation plan

- 20 % when initial software load has been completed and ready for testing
- 25 % at "go live"
- 15 % at post-production sign-off
- 100 % of year 1 support/maintenance on July 1<sup>st</sup> 2010 assuming the system is fully operational at that time
- 100 % of year 2 support/maintenance at 12 months from the year 1 payment

**For subsequent towns:**

- 30 % of the front end/back end application cost will be paid upon contract signing
- 10 % upon acceptance of a detailed implementation plan
- 20 % when initial software load has been completed and ready for testing
- 25 % at "go live"
- 15 % at post-production sign-off
- 100 % of year 1 support/maintenance at post-production sign off
- 100 % of year 2 support/maintenance at 12 months from post-production sign-off

ViewPoint represents and warrants that if it offers a lower price for ViewPermit application software and annual maintenance (on a hosted or non-hosted basis, as specified in Exhibit B) to future customers within the State of Connecticut within the term of this Agreement, that it will give written notice of such an offer to CRCOG and its Participating Municipalities and give those parties the option to accept the reduced rates on a forward-going basis.

## **Exhibit C – Annual Support and Maintenance Services**

The purpose of this Agreement is for ViewPoint Engineering Inc., (herein "ViewPoint") to provide maintenance and support services for the Licensed ViewPermit Software in CRCOG and its member communities (herein "Licensee"), and to provide the online hosting service for participating CRCOG towns.

Such maintenance services will begin on the "go live" date of the first pilot implementations.

1. ViewPoint will furnish the following maintenance and support services ("Services") for the Licensed ViewPermit Software: ViewPoint will correct and repair any failure, malfunction, defect or nonconformity in any Licensed ViewPermit Software provided hereunder, following notification of any failure, malfunction, defect or nonconformity, which prevents the Licensed ViewPermit Software from performing in accordance with printed warranties, documentation, specifications and other materials

Bug fixes and minor releases will be made available as patches by ViewPoint. ViewPoint shall provide maintenance for those Software failures, malfunctions, defects, or nonconformities, which impair Licensee from normal processing for problems which impact the correctness of information produced by the Licensed ViewPermit Software.

Licensee shall notify ViewPoint verbally and in writing when such an occurrence arises. Maintenance may be requested by email (support@viewpoint-gis.com) by the authorized license Representative for maintenance.

Support by phone, email, or online via remote access is included as part of this agreement. On-site support will be based on time and material and will be billed directly to the Licensee.

These services do not include consulting services on advanced customizations, which can be procured by Licensee on a fee basis.

All other requests for service, such as normal Licensed ViewPermit Software discrepancies, will be resolved within the ViewPoint's normal maintenance release process.

Licensee shall notify ViewPoint in writing of requested services to the Licensed ViewPermit Software.

ViewPoint will acknowledge requests in writing within two business days of receipt of such notice.

All Services provided to Licensee hereunder shall be deemed to be a part of the Licensed Software as that term is used in the Contract and all terms and conditions of the Contract not inconsistent with the express provisions of this Agreement shall be applicable to such Services, including without limitation those relating to use, copying,

return of materials, assignments, ownership, copyright, trade secret and patent protection and applicable law.

General releases of revised versions of ViewPermit software do occur, and they will be provided to towns as part of this maintenance agreement at no additional costs.

Service under this agreement does not include customized design enhancements beyond what is included in general releases.

This agreement does not cover support for customization or special configuration of the ViewPermit software.

## 2. Term and Termination.

The term of this Agreement shall be for a period of twelve (12) months.

This Agreement may be terminated by ViewPoint if Licensee fails to comply with any of the terms and conditions herein or Licensee fails to make any payment(s) due as described herein.

This agreement may be terminated by a CRCOG participating municipality at any time with five (5) days advanced notice. ViewPoint will not refund any maintenance fees in the event that the agreement is terminated mid-year.

Notwithstanding anything to the contrary herein, this Agreement shall automatically terminate upon termination of the License Agreement.

If Licensee elects not to procure continuous maintenance and support coverage, but rather allows the maintenance and support to lapse, then Licensee shall not be entitled to any updates performed during the lapsed period.

Should the Licensee wish to re-activate a lapsed maintenance and support agreement, a fee of at least 50% of 1 year of maintenance and support will be imposed on the Licensee in addition to the maintenance costs requested for the current year.

## 3. Limited Warranty.

ViewPoint warrants that under normal use, the Software shall perform the functions specified in its documentation.

This warranty is exclusive and in lieu of all other warranties whether statutory, express, or implied (including all warranties of merchantability and fitness for a particular purpose).

## 4. Liability.

In no event shall ViewPoint be liable for any special, incidental, punitive, indirect or consequential damages, (including loss of economic advantage, business, profits, data, or inaccuracy of data), in connection with or arising out of this agreement or from use of software, whether or not ViewPoint has been advised of the possibility of such damages and regardless of the form of action or legal theory (whether in contract or in tort, including strict tort liability, or based on a warranty) under which the liability may be asserted.

## 5. Force Majeure.

ViewPoint shall not be liable to Licensee for any failure or delay caused by events beyond ViewPoint's reasonable control, including, without limitation, Licensee's failure to furnish necessary information; sabotage; failure or delays in transportation or communication; failures or substitutions of equipment; labor disputes; accidents; shortages of labor, fuel, raw materials or equipment; or technical failures.

#### 6. Service Requests

ViewPoint will acknowledge receipt of service requests submitted by e-mail using a system-generated return receipt. Requests submitted by telephone will be acknowledged during the telephone call. All requests will be entered into the ViewPoint Help Desk system.

### SEVERITY LEVELS

Requests for support will be submitted via e-mail (or, in the case of an Urgent request, via phone call with a follow up e-mail) to ViewPoint via the ViewPoint Help Desk. Each request will be classified as follows:

- ◆ **Urgent:** The problem affects a *group of users* and demonstrates one or more of these characteristics: a major function is not usable or presents incorrect results, the problem cannot be easily avoided, usability of the system is significantly affected, and a workaround is impossible or difficult. Examples include system crash or hang, data loss or corruption, failure of a function to operate.
- ◆ **High:** The problem affects a *single user* and demonstrates one or more of these characteristics: a major function is not usable or presents incorrect results, the problem cannot be easily avoided, usability of the system is significantly affected, or a workaround is impossible or difficult. Examples include user inability to access the system, data loss or corruption, failure of a function to operate.
- ◆ **Medium:** The problem affects a *single user* and demonstrates one or more of these characteristics: a notable discrepancy exists within the function, the problem cannot be easily avoided, and usability of the system is not significantly affected. Examples include operation that is not exactly as defined, user requires information that Tier I support cannot provide.

### ESCALATION PROCEDURES

The ViewPoint escalation procedure will be invoked depending on the severity of the problem as well as the timing of the response as defined below:

#### ViewPoint Escalation Sequence Matrix

Severity Level	Tier 1	Tier 2	Tier 3	Target Resolution
Urgent	1 hour	2 hours	4 hours	24 hours
High	2 hour	4 hours	8 hours	48 hours

Medium	2 days	5 days	N/A	7 days
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**CRCOG Escalation Path**

- Tier 1 ViewPoint’s CRCOG Project Manager
- Tier 2 ViewPoint Vice President
- Tier 3 CRCOG Shared-Services Program Manager

EXAMPLE: An Urgent problem not resolved in one hour will be escalated to the Project Manager no later than 1 hour after receipt of the request, escalated to the Vice President within 2 hours and the CRCOG Program Manager within 4 hours. The resolution should be completed within 24 hours.

**SYSTEM RELIABILITY**

The reliability, at any point in time, of the System shall be determined by the System’s operational capability for productive CRCOG town & public use as configured and installed within the agreed operating environment. Continued acceptability of such System performance reliability shall be based on CRCOG’s experienced rate of recoverable and non-recoverable System operating errors or failures that preclude productive CRCOG participating town & public use of the System according to the agreed requirements and ViewPoint operating specifications.

The required reliability (Computed % Reliability) for the Systems during any calendar month is ninety-eight point five (98.5%) uptime availability for aforesaid productive CRCOG town & public use, computed as follows:

$$\text{Computed Reliability} = \frac{\text{\% (Available-Time-per-Month)} - \text{(Downtime-per-Month)}}{\text{(Available-Time-per-Month)}}$$

Available-Time-per-Month is equated to x hours (x:00 AM thru x:00 PM) times the number of business days (Monday – Friday excluding state observed holidays) in the month, which shall be deemed to correspond to the Primary Period for Maintenance (PPM) during each calendar month. Downtime-per-Month is equated to those hours of Available-Time-per-Month during which the CRCOG participating town or any specified site is precluded from aforesaid productive system use.

EXAMPLE:

Given: July 2010

- Available-Time-per-Month = 231 hours
- Downtime-per-Month = 3.46 hours

Then:

$$\text{Computed \% Reliability} = \frac{231 - 3.46}{231} = 98.5\%$$

A given instance of System downtime shall begin upon receipt of a support request e-mail received during the hours of 7:00am Eastern Time and 6:00pm Eastern Time to remedy any operational System deviation, error or failure condition(s) that preclude productive CRCOG town & public use of the System and end with an e-mail from ViewPoint verifying that such System status has been fully restored to the applicable agreed operational specifications and made ready for CRCOG town & public use. However, the calculated time periods of such an instance of System downtime shall exclude the following periods:

1. Any nonproductive System use time caused by a CRCOG Participating Municipality or its authorized 3<sup>rd</sup> party.
2. Any time during which the CRCOG Participating Municipality fails to make the System available for ViewPoint's remedial service.
3. Any authorized periods of downtime, including without limitation, all periods associated with implementation of upgrades, improvements, or fixes and scheduled maintenance.
4. Any non-productive periods caused by events beyond the control of ViewPoint. Such causes shall include, but are not be limited to, strikes, lockouts, riot, sabotage, rebellion, insurrection, acts of war or the public enemy, acts of terrorism, unavailable raw materials, telecommunication or power failure, fire, flood, earthquake, epidemics, natural disasters, and acts of God.

## ENHANCEMENT CHANGE MANAGEMENT PROCESS

All ViewPoint enhancements will be managed via the agreed to Change Control procedure. Enhancements will include the following:

- ◆ The functionality desired is raised by the participating CRCOG town(s) after system implementation, is not part of the existing application, but improves the application.
- ◆ Through the problem resolution process, and after system implementation, a new feature or function is desired by the affected CRCOG Participating Municipality(s) and is considered a system upgrade. Examples include requests for new reporting capabilities, new screens, and new data.
- ◆ Design Changes requested after system implementation.
- ◆ Changes resulting from modification to Connecticut's statutory or regulatory permitting business process after system implementation.
- ◆ Changes required to support changes in the building permit data model or functions that are impacted after initial system implementation.
- ◆ Changes to methodology used in a given data element after initial system implementation.

Post implementation enhancements that are required in response to changes made by the State of Connecticut or CRCOG will be handled via the Change Order procedure. Any changes that require more than 8 hours of labor may result in additional charges. No additional charges will apply if ViewPoint determines to make the requested change part of its next general software release or if the changes are necessary to comply with changes to local, state, or federal law related to the permitting process. All

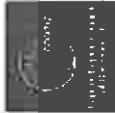
enhancements delivered via a general release shall be deemed paid for via annual support and maintenance charges.

## REPORTING / PERFORMANCE STATISTICS

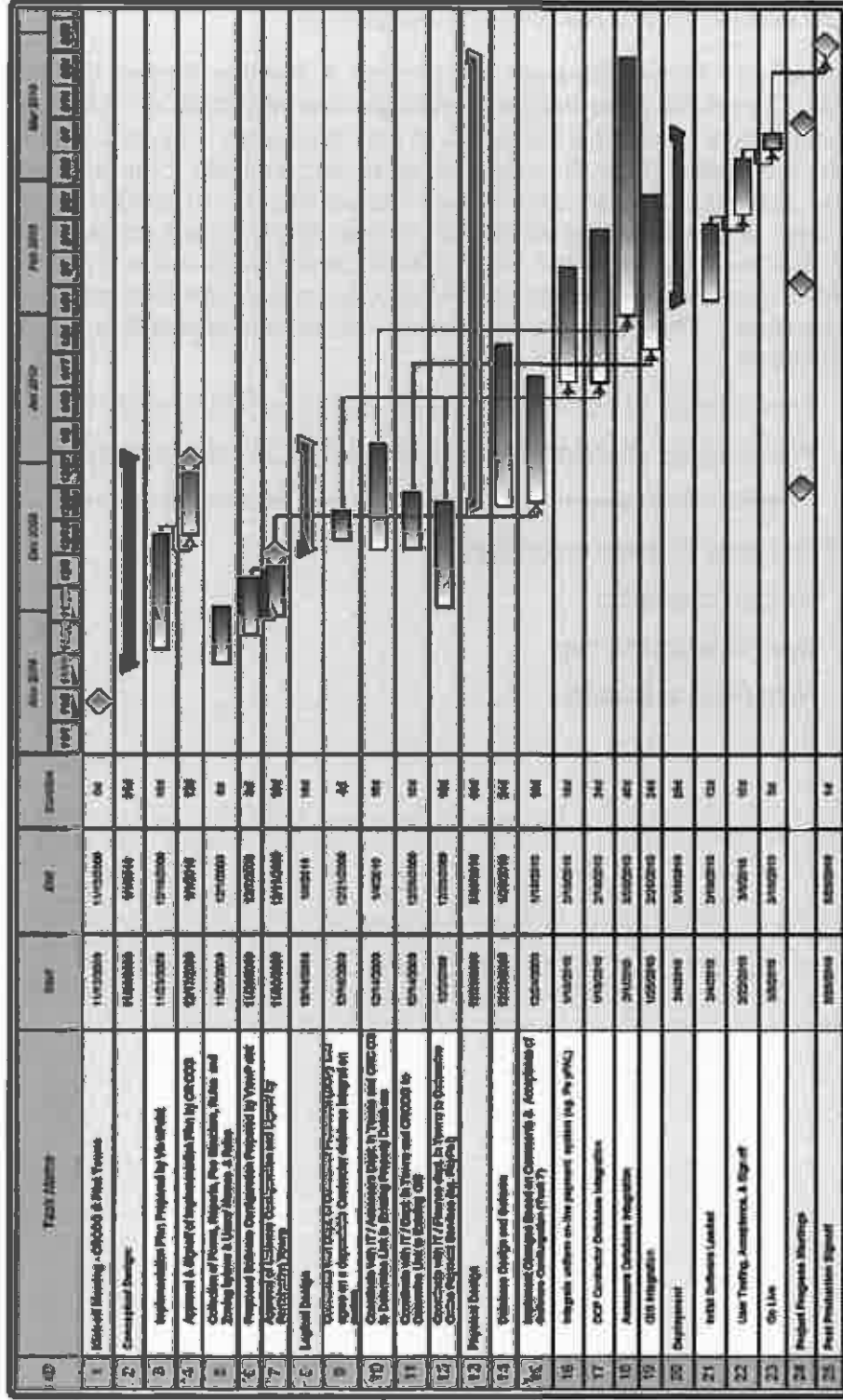
The ViewPoint Project Manager will provide a Monthly Project Status Report to the CRCOG Shared-Services Program Manager that identifies all defects and data fixes, indicating their severity and the status of their resolution. These status reports will also indicate the status of all Change Requests and indicate Change Requests that are pending approval. The Monthly Project Status Report will contain estimated dates for when user testing and implementation of new releases are scheduled. The Monthly Project Status Report will also include Help Desk usage and activities reporting. The ViewPoint Help Desk application will be used to produce problem status reports for Help Desk services. The following information will be included within the Monthly Project Status Report.

- ◆ Total number of problem reports generated and their respective severity
- ◆ Total number of problem reports with current resolution status
- ◆ Problem report severity vs. number of days required to resolve
- ◆ Individual problem report detail
- ◆ System availability
- ◆ System response time
- ◆ Help Desk availability

# Exhibit D



## The Capital Region Council of Governments (CRCOG) ViewPermit Pilot Deployment Schedule



**Exhibit E – RFP and Proposal, including amendments**

