

ETRAK-PLUS PARKS AND RECREATION MANAGEMENT SOFTWARE SERVICES AGREEMENT

Parties:

This agreement ("Agreement") is between **The Town of Miami Lakes ("Town") Department of Community & Leisure Services** and **St. Andrew's Parish Parks & Playground Commission d.b.a. eTrak-plus¹**, ("eTrak-plus"), sometimes collectively referred to herein as the "Parties".

Definitions:

DEPARTMENT means the Town of Miami Lakes Department of Community & Leisure Services, its director, employees, agents, and committees, and successors.

"eTrak-plus" means St. Andrew's Parish Parks & Playground Commission d.b.a. eTrak-plus², whether it is an individual or an entity, and its proprietors, officers, employees, agents successors, assigns, affiliated, sister and parent companies and the insurers of any of them.

TOWN means the Town Council of the Town of Miami Lakes or the Town Manager

"Transaction" means the registrations and reservations authorized by the TOWN regarding constituent use and participation in various facilities and recreation programs within the Town of Miami Lakes Department of Community & Leisure Services. By way of illustration only, such Transactions may include registrations for various programs, leagues, and teams within the Town of Miami Lakes as well as related refunds, transfers, credits, TOWN prior-approved donations to TOWN, and subsequent payments on amounts owed for either registrations or reservations.

Rights and Responsibilities:

This Agreement describes the rights and responsibilities of eTrak-plus and TOWN with regard to web-based registration and reservation software pertaining to the various recreation programs and facilities within The Town of Miami Lakes, using eTrak-plus facilities and capabilities for processing, recording and reporting said Transactions.

1. It is acknowledged that eTrak-plus will be responsible for the storage and security of the current and future TOWN Transaction-related Data (defined below) and provide the software tools necessary to process such Data effectively.
2. The Internet service provided to the DEPARTMENT by eTrak-plus is to be offered as a means of transacting business and will not restrict the DEPARTMENT from permitting Transactions using alternate methods (such as Data entry by DEPARTMENT staff). The DEPARTMENT may select the dates and the number of Transactions, as well as when said Transactions for each class registration or facility reservation request may be processed via the Internet. Additionally, the DEPARTMENT may provide counter service, mail-in, fax-in, and phone registrations per the dates and quantities that the DEPARTMENT selects.
3. For continuing services provided herein, TOWN will pay annually to eTrak-plus in accordance with fee schedule attached hereto as Exhibit "A" and incorporated by reference herein. The initial year's payment shall be made in two (2) installments. The Town shall pay \$20,000 after execution of the Agreement, and upon receipt of an invoice. The remaining \$10,000 shall be paid by the Town upon "go live" and receipt of an invoice. Subsequent annual payments will be due thirty (30) days prior to the anniversary date of the contract effective date, which shall be paid upon receipt of an invoice.

¹St. Andrew's Parish Parks & Playground Commission (eTrak-plus is owned and operated by St. Andrew's Parish Parks & Playground as an Enterprise Fund)



Independent Contractor:

In the course of eTrak-plus' performance pursuant to this Agreement, eTrak-plus shall be deemed to be an independent contractor.

It is the understanding and intention of the Parties hereto that no relationship of employee and employer or principal and agent shall exist between TOWN and the employees, agents, or representatives of eTrak-plus. Such employees, agents or representative shall, at all times, be under the direct and sole supervision and control of eTrak-plus as to the manner and means of the performance pursuant to this Agreement.

eTrak-plus shall be responsible for all acts and omissions of its contractors and subcontractors of any tier.

Governing Law and Venue:

It is agreed and stipulated that, except to the extent that conflicts of law rules would require the application of other law, the law of the State of Florida shall govern this Agreement and any questions or disputes arising hereunder. It is further agreed and stipulated that the law of the State of Florida shall govern this Agreement regardless of whether the law of the State of Florida applies to this Agreement by its own force.

It is agreed and stipulated that the venue of any litigation of questions or disputes arising under this Agreement shall be in Miami-Dade County Florida.

Term of Agreement:

This Agreement will remain effective from **July 18, 2013 and concluding at 11:59 PM EDST on July 17, 2018 ("Original Term")**.

After the expiration of the Original Term, TOWN may extend this Agreement for five (1) year renewals by providing written notice to eTrak-plus at least ninety (90) days prior to the concluding date of the term then in effect. All terms and conditions of the Agreement are to remain the same except that for annual support/maintenance as defined in "Costs" section below. After the Original Term expires, the annual Support & Maintenance Fee will increase by 3% or the standard Federal Cost of Living increase, whichever is higher at time of renewal.

Termination of Agreement:

At any time, TOWN may, in its sole discretion and with or without cause, terminate this Agreement by providing thirty (30) days prior written notice of such termination to eTrak-plus.

Addresses:

Statements and notices will be submitted to TOWN at:

Town of Miami Lakes

Attn: Alex Rey, Town Manager

Address: 6601 Main Street

Phone: Miami Lakes, Florida 33014

Email: reya@miamilakes-fl.gov

Copy to:

Attn: Gary Fabrikant, Procurement Manager

Address: 6601 Main Street

Phone: Miami Lakes, Florida 33014



Email: fabrikantg@miamilakes-fl.gov

Notices and other communication shall be submitted to eTrak-plus at:
St. Andrew's Parish Parks & Playground Commission d.b.a. eTrak-plus
Attn: Kevin Walsh, CEO
Address: 1095 Playground Road, Charleston, SC, 29412
Phone: (877) 513-8725

Costs:

See Exhibit A.

Transaction Processing:

eTrak-plus will pass all TOWN authorized Transactions to the TOWN selected vendor of choice.

Data Storage & Data Backup:

It is acknowledged that the data, including personal information pertaining to residents such as contact information, payment information & records, services purchased (hereinafter referred to as "Data"), provided by TOWN on behalf of the participating resident will be secured and managed from the eTrak-plus NOC³, located at 1095 Playground Road, Charleston, SC (Corporate Office), or at other locations as approved by eTrak-plus and TOWN in a secured room with separate key access.

Confidentiality, Security & Ownership of Data:

eTrak-plus agrees:

1. To comply with all applicable TOWN policies, Florida laws and regulations, federal laws and regulations, and industry best management practices. This includes all applicable provisions of the federal 'CAN-SPAM Act of 2003' (Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003).
2. To comply with best management practices regarding municipal auditing and with any TOWN auditor requests and recommendations as may be relayed by TOWN Records must remain available for audit purposes for at least three (3) years after the completion of the Agreement.
3. To conduct all transactions with Secure Socket Layer (SSL) protocol and with a valid "transaction security certificate" from **Verisign, Thawte, GeoTrust**, or another TOWN approved certifying authority.
4. To hold all Data completely confidential, providing it only to the authorized TOWN staff - only for the purposes required by this Agreement.
5. Not to sell or provide any Data to anyone except as directed in writing by TOWN. Necessary information provided to the entity responsible for authorizing the credit card / debit card / check payments is expressly allowed under this Agreement.
6. That if eTrak-plus would cease to operate; the hardware (if any) and software would remain available for TOWN to use as long as needed. eTrack-plus shall make every effort to provide the TOWN a minimum of one year advance notice should eTrak-plus plan to cease operations.

³ Network Operation Center (NOC)



7. That eTrak-plus has not/will not infringe anyone's patents, trademarks or other protected rights. Should there be a claim of patent infringement which adversely impact the TOWN's ability to use the software eTrak shall resolve the matter at its own cost in a manner that allows the TOWN to continue to use the software.
8. That eTrak-plus is PCI/DSS⁴ compliant, and will have a PCI/DSS certificate of compliance current at all times with a copy on file with TOWN.
9. All data provided to eTrak remains the property of the TOWN and all data entered into the eTrak plus software is the property of the TOWN. At the completion of the Agreement eTrak plus shall provide the data to the TOWN in an electronic format and language that is acceptable to the TOWN.

Warranty:

eTrak-plus warrants that all work performed pursuant to this Agreement shall be done with due diligence, in a good and workmanlike manner, using skilled, competent and experienced personnel, in accordance with good practices in eTrak-plus' industry, and to the satisfaction of the TOWN and in full accordance with this Agreement and any specifications received from TOWN. All materials, equipment, supplies, and manufactured articles furnished by eTrak-plus shall be selected and used with good practice for their respective purposes, and shall be free from defects in workmanship.

INDEMNIFICATION:

AS PART OF THE CONSIDERATION FOR THIS AGREEMENT, ETRAK-PLUS HEREBY AGREES TO PROTECT, DEFEND, INDEMNIFY AND SAVE TOWN HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION (INCLUDING ATTORNEY'S FEES) OF EVERY KIND AND CHARACTER, INCLUDING WITHOUT LIMITATION, DAMAGE CAUSED BY THE SOLE, JOINT, COMPARATIVE OR CONTRIBUTORY NEGLIGENCE, OR STRICT LIABILITY OF ETRAK-PLUS, ARISING OUT OF OR RELATED TO ETRAK-PLUS' ACTIVITIES UNDER THIS AGREEMENT, IN FAVOR OF ANY PERSON OR ENTITY, INCLUDING, WITHOUT LIMITATION, TOWN, ETRAK-PLUS, THEIR CONTRACTORS AND SUBCONTRACTORS OF ANY LEVEL, THEIR OFFICERS, DIRECTORS, EMPLOYEES, INVITEES, OR AGENTS REGARDLESS OF WHETHER THE NEGLIGENCE OR STRICT LIABILITY OF TOWN IS THE SOLE, JOINT, COMPARATIVE, OR CONTRIBUTING CAUSE OF ANY CLAIM, DEMAND, CAUSE OF ACTION, OR LIABILITY INDEMNIFIED AGAINST.

THE INDEMNITY GRANTED HEREIN IS WITHOUT REGARD TO THE CAUSE, CAUSES OR REASON FOR THE CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING WITHOUT LIMITATION, DAMAGE, LOSS OR LOSS OF USE OF PROPERTY OR PERSONAL OR BODILY INJURY AND/OR DEATH INDEMNIFIED AGAINST.

ETRAK-PLUS SHALL INDEMNIFY TOWN AS REQUIRED HEREIN, REGARDLESS OF THE CAUSE OF SUCH DAMAGE OR LOSS EVEN CAUSED BY THE SOLE, JOINT, COMPARATIVE, ACTIVE, PASSIVE, CONCURRENT OR CONTRIBUTORY NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL FAULT OF TOWN, ITS PARENT, SUBSIDIARY AND AFFILIATED COMPANIES, AGENTS, EMPLOYEES, DIRECTORS, OFFICERS, OR SERVANTS.

THE ALLOCATIONS OF RESPONSIBILITY, INDEMNITY OBLIGATIONS, AND EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH IN THIS AGREEMENT THAT APPLY TO AN INCIDENT OR CONDITION THAT OCCURS DURING THE PERFORMANCE OF THIS AGREEMENT SHALL SURVIVE AND NOT BE AFFECTED BY THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

⁴ Payment Card Industry/Data Security Standards (PCI/DSS)



ETRAK-PLUS SHALL BE LIABLE AND SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS TOWN FROM AND AGAINST ANY AND ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) AND LIABILITIES, CLAIMS, DEMANDS, CAUSES OF ACTION OR DAMAGES OF EVERY KIND AND CHARACTER ARISING OUT OF OR IN CONNECTION WITH THE ETRAK-PLUS' ACTIVITIES PURSUANT TO THIS AGREEMENT, REGARDLESS OF WHETHER THEY ARE MERITORIOUS OR MERITLESS.

THIS ARTICLE SHALL SURVIVE THE TERMINATION OR COMPLETION OF THE AGREEMENT.

Advertising:

TOWN may advertise that their residents may, register for a program or request a reservation over the Internet by visiting the TOWN webpage. These advertisements will appear in the usual media, including but not limited to other websites, brochures, catalogues, fliers, print advertisements, TV ads, PSAs⁵ and signage.

Statement of Confidentiality:

All information obtained under this Agreement and all data, reports and records pertaining to performance under this Agreement shall be considered confidential and shall not be used or disclosed to any person or entity without the prior written consent of TOWN.

Security:

eTrak-plus Environment

Provided (below) is the current and existing operational environment within which the eTrak-plus Recreation Management solution is housed and operates.

To prevent the sniffing of Data during transmission, **all** Data (not just financial Data) is encrypted. The firewall(s) are Linux GuardDog and GuideDog, which front-end IP Tables limiting open ports to only those needed.

The firewall forwards all web traffic to the application server (a separate server running Apache and Tomcat.) The application runs in Tomcat, both Tomcat and the application are written in Java. Only the application server and a very small number of users coming in over a secure shell login (needed for maintenance) can access the data server (a separate server.)

Internal users (within the organization) require a higher level of security because they have access to the data for many people. Therefore, security is enhanced by requiring that internal computers be authenticated against a list of known computers for that organization. External users (customers) can only access their information and that of their families.

The physical security of the South Carolina servers is provided by 24/7 monitoring of the offices either by a person physically located at the office or by an alarm system. eTrak-plus servers are mirrored in Livonia, Michigan using the same operating procedures.

Insurance

Some of the work will be performed on Town property and as such eTrak-plus must provide insurance coverage, specifically, Comprehensive General Liability, Worker's Compensation Insurance, and Business Auto Insurance (owned & non-owned) that is acceptable to the Town. The Town must be named as an additional insured.

⁵ Public Service Announcements (PSA's)



Materiality and Waiver of Breach

Town and Contractor agree that each requirement, duty, and obligation set forth in the Agreement is substantial and important to the formation of the Agreement and, therefore, is a material term hereof. The Town's failure to enforce any provision of the Agreement shall not be deemed a waiver of such provision or modification of the Agreement. A waiver of any breach of a provision of the Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of the Agreement.

Severability

In the event any provision of the Agreement is determined by a Court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision shall be excised from this Agreement, and the remainder of the Agreement shall continue in full force and effect. Notwithstanding the foregoing, if the result of the deletion of such provision will materially and adversely affect the rights of either party, such party may elect, at its option, to terminate the Agreement in its entirety. An election to terminate the Agreement based upon this provision shall be made within seven (7) calendar days after the finding by the court becomes final.

Complete Agreement:

This Agreement, as may be amended from time to time, expresses the complete agreement of the Parties as of the time of execution, and all prior written or oral, and contemporary oral agreements are hereby superseded by this Agreement.

EXECUTED on this the 21st day of August, 2013.

The Town of Miami Lakes ("Town,

By: [Signature] Andrea Agha for Alex Rey 8/22/13
Alex Rey, Town Manager

Attest: [Signature]
Marjorie Tejeda, Town Clerk

St. Andrew's Parish Parks & Playground Commission d.b.a. eTrak-plus⁶

By: [Signature]
Kevin Walsh, CEO



PARKS & RECREATION MANAGEMENT SOFTWARE

EXHIBIT A

PRICING YEAR 1 TO YEAR 5			
ETRAK-PLUS SERVICE/FEATURE	PURCHASE PRICE	RECURRING	GRAND TOTAL
Service Year 1	\$30,000.00	No	\$30,000
Support and Maintenance Year 2	\$8,000.00	Yes	\$8,000
Support and Maintenance Year 3	\$8,000.00	Yes	\$8,000
Support and Maintenance Year 4	\$8,000.00	Yes	\$8,000
Support and Maintenance Year 5	\$8,000.00	Yes	\$8,000
Facility Reservations & Management	\$0.00	Included	\$0.00
Facility Reservations	\$0.00	Included	\$0.00
League Scheduling	\$0.00	Included	\$0.00
Pass Management	\$0.00	Included	\$0.00
Point of Sale (PoS) with Inventory Management	\$0.00	Included	\$0.00
Campground Reservation & Management	\$0.00	Included	\$0.00
Marina Reservation & Management	\$0.00	Included	\$0.00
Personal Trainer / Instructor Management	\$0.00	Included	\$0.00
Financial Reports (customized)	\$0.00	Included	\$0.00
Quarterly Training	\$0.00	Included	\$0.00
24/7 Unlimited Technical Support	\$0.00	Included	\$0.00
Travel (for all trainers)	\$0.00	Included	\$0.00
Upgrades	\$0.00	Included	\$0.00
Platform Security	\$0.00	Included	\$0.00
PCI Compliance	\$0.00	Included	\$0.00
Seat Licenses (unlimited)	\$0.00	Included	\$0.00
Hardware (scanners, printers, etc.)	TBD	TBD	TBD
Platform Management	\$0.00	Included	\$0.00
Platform Hosting	\$0.00	Included	\$0.00
Future Development & Upgrades	\$0.00	Included	\$0.00
YEAR 1			\$30,000.00
YEAR 2			\$8,000.00
YEAR 3			\$8,000.00
YEAR 4			\$8,000.00
YEAR 5			\$8,000.00
FIVE (5) YEAR TOTAL COST OF OWNERSHIP			\$62,000.00

eTrak-plus provides all client with Net-30 payment terms (from time of contract signature).

