

**LEE COUNTY PORT AUTHORITY**  
**FIRST AMENDMENT TO SERVICE PROVIDER AGREEMENT FOR**  
**GROUND TRANSPORTATION MANAGEMENT SYSTEM SOFTWARE SOLUTION**  
**24-05NJD**

THIS FIRST AMENDMENT is made and entered this \_\_\_\_ day of June, 2024, between LEE COUNTY PORT AUTHORITY, a dependent special district of the state of Florida (Authority), at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida 33913, and GATEKEEPER SYSTEMS, INC., a for-profit corporation authorized to do business in the state of Florida (Provider), whose business address is located at 880 Blue Gentian Road, Suite 140, Eagan MN 55121, Federal Identification Number 41-1887879 (collectively the Authority and Provider are referred to as the Parties).

**WITNESSETH**

**WHEREAS**, Authority and Provider entered into a Service Provider Agreement ("Agreement") for a Ground Transportation Management System Software Solution on May 16, 2024 pursuant to Request for Proposal (RFP) 24-05NJD for the Southwest Florida International Airport in Fort Myers, Florida; and,

**WHEREAS**, the Agreement requires Provider to guarantee successful software implementation and integration with a performance bond or irrevocable letter of credit, which was supplied by Provider as required; and,

**WHEREAS**, the Irrevocable Letter of Credit, has been reviewed and found to be acceptable by Authority for inclusion into the Agreement as Exhibit H; and,

**WHEREAS**, as a condition of acceptance Authority requires Provider's continued guarantee of performance if full implementation of the system is not achieved at the time the issuing entity of the irrevocable letter of credit issues notice of non-renewal; and,

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants contained herein, the parties agree to amend the Agreement as follows:

1. ARTICLE 17-INSURANCE. Section 17.2, Performance Guarantee is amended to read, in its entirety, as follows:

Performance Guarantee: Provider guarantees successful software implementation and integration with a performance bond, or irrevocable letter of credit, in the amount equal to 100% of the total amount of the system, installed and fully integrated, attached as Exhibit H.

Provider agrees to replace the irrevocable letter of credit shown in Exhibit H within thirty (30) days of the date of notice of non-renewal provided by the issuing entity to guarantee the successful software implementation and integration including completion of all punch list items and system testing, if the work is not completed. Authority agrees to release the irrevocable letter of credit within thirty (30) days of the date upon successful completion of Milestones 1-8, as evidenced by a complete and executed Exhibit C, Milestone Completion Acceptance, for every milestone.

In lieu of a performance bond, certified check or cashier's check provided as performance guarantee, Provider may submit an irrevocable letter of credit in favor of the Authority, in an amount equal to 100% of the total amount of the system installed and fully integrated, guaranteeing full and satisfactory implementation of the system to the satisfaction of the Authority.

2. EXHIBIT H. Exhibit H is amended, and attached, to include the performance guarantee in the Agreement.

3. ACCEPTANCE. Acceptance of this Amendment is indicated by the signatures of the authorized representatives of the Parties below. Electronic signature of the authorized signatory is the act of and attributed to the authorized signatory.

4. ENTIRE AGREEMENT. Except as amended by this First Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

***the remainder of this page is intentionally left blank***

**IN WITNESS WHEREOF**, the Parties have executed this First Amendment as of the date above first written.

**GATEKEEPER SYSTEMS INC.**

DocuSigned by:  
By: Brian Richardson  
C2DA7412C98C422...  
Brian Richardson, President

**BOARD OF PORT COMMISSIONERS**

By: \_\_\_\_\_  
Mike Greenwell, Chair

Attest: Kevin Karnes  
Clerk of the Circuit Clerk

Approved as to Form for the Reliance  
of Lee County Port Authority Only:

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Port Authority Attorney's Office

**EXHIBIT H**  
**PERFORMANCE GUARANTEE**

**See Next Page**

# IRREVOCABLE LETTER OF CREDIT

**Borrower:** Gatekeeper Systems, Inc.  
880 Blue Gentian Rd. STE 140  
Eagan, MN 55121

**Lender:** Choice Financial Group  
Eagan  
2640 Eagan Woods Drive  
Eagan, MN 55121  
(651) 289-2222

**Beneficiary:** Lee County Port Authority  
11000 Terminal Access Road, Suite 8671  
Fort Myers, FL 33913

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**NO.: 2201465**

**EXPIRATION DATE.** This letter of credit shall expire upon the close of business on 05-16-2025 and all drafts and accompanying statements or documents must be presented to Lender on or before that time (the "Expiration Date").

**AMOUNT OF CREDIT.** Lender hereby establishes at the request and for the account of Borrower, an Irrevocable Letter of Credit in favor of Beneficiary for a sum of Three Hundred Fifty-seven Thousand One Hundred Sixty-five & 00/100 Dollars (\$357,165.00) (the "Letter of Credit"). These funds shall be made available to Beneficiary upon Lender's receipt from Beneficiary of sight drafts drawn on Lender at Lender's address indicated above (or other such address that Lender may provide Beneficiary in writing) during regular business hours and accompanied by the signed written statements or documents indicated below.

**WARNING TO BENEFICIARY:** PLEASE EXAMINE THIS LETTER OF CREDIT AT ONCE. IF YOU FEEL UNABLE TO MEET ANY OF ITS REQUIREMENTS, EITHER SINGLY OR TOGETHER, YOU SHOULD CONTACT BORROWER IMMEDIATELY TO SEE IF THE LETTER OF CREDIT CAN BE AMENDED. OTHERWISE, YOU WILL RISK LOSING PAYMENT UNDER THIS LETTER OF CREDIT FOR FAILURE TO COMPLY STRICTLY WITH ITS TERMS AS WRITTEN.

**DRAFT TERMS AND CONDITIONS.** Lender shall honor drafts submitted by Beneficiary under the following terms and conditions: DRAFT PAYMENT MUST BE ACCOMPANIED BY A LETTER FROM AN AUTHORIZED OFFICIAL FROM LEE COUNTY PORT AUTHORITY THAT GATEKEEPER SYSTEMS, INC. HAS FAILED TO HONOR THEIR CONTRACTUAL AGREEMENT WITH LEE COUNTY PORT AUTHORITY.

Upon Lender's honor of such drafts, Lender shall be fully discharged of Lender's obligations under this Letter of Credit and shall not be obligated to make any further payments under this Letter of Credit once the full amount of credit available under this Letter of Credit has been drawn.

Beneficiary shall have no recourse against Lender for any amount paid under this Letter of Credit once Lender has honored any draft or other document which complies strictly with this Letter of Credit, and which on its face appears otherwise in order but which is signed, issued, or presented by a party or under the name of a party purporting to act for Beneficiary, purporting to claim through Beneficiary, or posing as Beneficiary without Beneficiary's authorization. By paying an amount demanded in accordance with this Letter of Credit, Lender makes no representation as to the correctness of the amount demanded and Lender shall not be liable to Beneficiary, or any other person, for any amount paid or disbursed for any reason whatsoever, including, without limitation, any nonapplication or misapplication by Beneficiary of the proceeds of such payment. By presenting upon Lender or a confirming bank, Beneficiary certifies that Beneficiary has not and will not present upon the other, unless and until Beneficiary meets with dishonor. Beneficiary promises to return to Lender any funds received by Beneficiary in excess of the Letter of Credit's maximum drawing amount.

**USE RESTRICTIONS.** All drafts must be marked "DRAWN UNDER Choice Financial Group IRREVOCABLE LETTER OF CREDIT NO. 2201465 DATED 05-16-2024," and the amount of each draft shall be marked on the draft. Only Beneficiary may complete a draft and accompanying statements or documents required by this Letter of Credit and make a draw under this Letter of Credit. This original Letter of Credit must accompany any draft drawn hereunder.

Partial draws are permitted under this Letter of Credit. Lender's honor of a partial draw shall correspondingly reduce the amount of credit available under this Letter of Credit. Following a partial draw, Lender shall return this original Letter of Credit to Beneficiary with the partial draw noted hereon; in the alternative, and in its sole discretion, Lender may issue a substitute Letter of Credit to Beneficiary in the amount shown above, less any partial draw(s).

**PERMITTED TRANSFEREES.** The right to draw under this Letter of Credit shall be nontransferable, except for:

- A. A transfer (in its entirety, but not in part) by direct operation of law to the administrator, executor, bankruptcy trustee, receiver, liquidator, successor, or other representative at law of the original Beneficiary; and
- B. The first immediate transfer (in its entirety, but not in part) by such legal representative to a third party after express approval of a governmental body (judicial, administrative, or executive).

**TRANSFEREES REQUIRED DOCUMENTS.** When the presenter is a permitted transferee (i) by operation of law or (ii) a third party receiving transfer from a legal representative, as described above, the documents required for a draw shall include a certified copy of the one or more documents which show the presenter's authority to claim through or to act with authority for the original Beneficiary.

**COMPLIANCE BURDEN.** Lender is not responsible for any impossibility or other difficulty in achieving strict compliance with the requirements of this Letter of Credit precisely as written. Beneficiary understands and acknowledges: (i) that unless and until the present wording of this Letter of Credit is amended with Lender's prior written consent, the burden of complying strictly with such wording remains solely upon Beneficiary, and (ii) that Lender is relying upon the lack of such amendment as constituting Beneficiary's initial and continued approval of such wording.

**NON-SEVERABILITY.** If any aspect of this Letter of Credit is ever declared unenforceable for any reason by any court or governmental body having jurisdiction, Lender's entire engagement under this Letter of Credit shall be deemed null and void ab initio, and both Lender and Beneficiary shall be restored to the position each would have occupied with all rights available as though this Letter of Credit had never occurred. This non-severability provision shall override all other provisions in this Letter of Credit, no matter where such provision appears within this Letter of Credit.

**GOVERNING LAW.** This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Minnesota without regard to its conflicts of law provisions, and except to the extent such laws are inconsistent with the 2007 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, ICC Publication No. 600. This Agreement has been accepted by Lender in the State of Minnesota.

**EXPIRATION.** Lender hereby agrees with Beneficiary that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to Lender on or before the Expiration Date unless otherwise provided for above.

**AUTO RENEW ND LETTER OF CREDIT.** This CLEAN IRREVOCABLE LETTER OF CREDIT expires on 5/16/2025, but will be automatically extended for additional and consecutive one year terms if you have not received by certified mail notification of our intention not to renew this CLEAN IRREVOCABLE LETTER OF CREDIT (60) days prior to the original expiry date and each subsequent expiry date. .

IRREVOCABLE LETTER OF CREDIT  
(Continued)

Loan No: 2201465

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Dated: May 16, 2024

LENDER:

CHOICE FINANCIAL GROUP

By:   
Eric Thorn, AVP, Commercial Loan Officer

ENDORSEMENT OF DRAFTS DRAWN:

| Date | Negotiated By | Amount<br>In Words | Amount<br>In Figures |
|------|---------------|--------------------|----------------------|
|      |               |                    |                      |