

SERVICES ORDER FORM

Customer: Town of Oak Island	Contact: David Kelly, Town Manager
Address: 4601 E. Oak Island Drive	Phone: 910-278-5011
Oak Island, NC 28465	e-mail: dkelly@oakislandnc.com
Services: <i>Delivery of the “SurfCAST by Otto Connect” mobile application as offered by Otto Connect, Inc. (the “SaaS Service(s)”), with the parking management administration and enforcement services provided in connection with SurfCAST (the “Additional Parking Services,” and collectively with the SaaS Services, the “Services”), all as further described in the Statement of Work attached as Exhibit A hereto.</i>	
Services Fees: SurfCAST = 30% of consumer parking fees collected and 30% of Violation fees collected	Initial Service Term: Two (2) Years Automatically renewed for subsequent one (1) year periods unless cancelled 90 days prior to the end of the current year period.
Implementation Services: Company will use commercially reasonable efforts to provide Customer the services described in the Statement of Work attached as Exhibit A hereto (“Implementation Services”), and Customer shall pay Company the Implementation Fee in accordance with the terms herein.	
Implementation Fee (one-time): \$0.00	
Pilot Use: None	

SERVICES AGREEMENT

This Services Agreement (“Agreement”) is entered into on this _____ day of _____, 2023 (the “Effective Date”) between Otto Connect, Inc. with a place of business at 9107 Maria Luisa Pl, Raleigh, NC 27617 and 816A N. Topsail Dr, Surf City, NC 28445 (“Company” or “Otto”), and the Customer listed above (“Customer” or “Town”). This Agreement includes and incorporates the above Order Form, as well as the attached Terms and Conditions and contains, among other things, warranty disclaimers, liability limitations and use limitations.

Otto Connect, Inc.:

Town of Oak Island:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act.

Town Finance Officer

TERMS AND CONDITIONS

1. SAAS SERVICES AND SUPPORT

1.1 Subject to the terms of this Agreement, Company will use reasonably diligent efforts to provide Customer the SaaS Services in accordance with the Service Level Terms attached hereto as Exhibit B. As part of the registration process, Customer will identify an administrative username and password for Customer's Company account. Company reserves the right to refuse registration of or cancel passwords it deems inappropriate.

1.2 Subject to the terms hereof, Company will provide Customer with reasonably diligent technical support services.

2. ADDITIONAL PARKING SERVICES

2.1 Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Additional Parking Services (as defined in the Services Order Form).

2.2 In connection with the provision of the Additional Parking Services, Customer authorizes Company to: (a) collect parking and related fees in accordance with Customer's policies therefor; (b) enforce any parking requirements or conditions on behalf of Customer, including issuing citations and towing or immobilization of automobiles; and (c) enforce Customer's collection policy for delinquent citation fees, including providing notices, instituting collection proceedings, and the engagement of collection services for the same. With written mutual agreement, Company may subcontract or delegate to any entity or individual all or any portion of the Additional Parking Services. [NOTE: Company sub-contracts collection services through Financial Data Systems of Wilmington, NC as noted in Exhibit E].

2.3 Upon the written request of Customer, Company agrees to remove and replace any personnel providing the Additional Parking Services that commits any act involving moral turpitude, dishonesty, harassing or indecent conduct, or illegal or unethical conduct that is detrimental to the interest and well-being of the Customer or which impairs or injures the reputation of the Customer.

3. RESTRICTIONS AND RESPONSIBILITIES

3.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the SaaS Services or any software, documentation or data related to the SaaS Services ("Software"); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the SaaS Services); use the SaaS Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.

3.2 Further, Customer may not remove or export from the United States or allow the export or re-export of the SaaS Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

3.3 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with Company's policies as agreed by the Parties and in compliance with stated Customer policies attached hereto as Exhibit E (the "Policy") and all applicable laws and regulations. The Policy may be modified by mutual agreement from time to time; provided, that in no event shall such modification materially and adversely affect Customer's use of the Services or otherwise conflict with any of the terms and conditions set forth in this Agreement. Customer hereby agrees to indemnify and hold harmless Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer's use of Services.

3.4 Although Company has no obligation to monitor Customer's use of the SaaS Services, Company may do so and may prohibit any use of the SaaS Services it believes may be (or alleged to be) in violation of the foregoing.

3.5 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the SaaS Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Any unique or special requirements for Customer's technical environment will be set forth in the Statement of Work. Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

3.6 Customer shall cooperate with Company in its performance of the Additional Parking Services and provide reasonable access to Customer's parking areas or equipment as

reasonably required to enable Company to provide the Additional Parking Services. Customer alone is responsible for the maintenance and upkeep of Customer's parking areas. Company is not an insurer or guarantor of security or personal safety in such parking areas and in no event shall be liable for damage thereto. Company assumes no liability for any failure of any individual to pay any parking fees or other charges due in connection therewith.

4. CONFIDENTIALITY; PROPRIETARY RIGHTS

4.1 Subject to the provisions of Chapter 132 of the North Carolina General Statutes, each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of Customer includes non-public data provided by Customer to Company to enable the provision of the Services ("Customer Data"). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

4.2 Company shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, (c) any data that is based on or derived from the Customer Data and provided to Customer as part of the Services; and (d) all intellectual property rights related to any of the foregoing.

4.3 Notwithstanding anything to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

5. PAYMENT OF FEES

5.1 In consideration of the Services, Company will be entitled to the then applicable fees described in the Order Form for the Services and Implementation Services in accordance with the terms therein (the "Fees"). If Customer's use of the Services exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email).

5.2 Subject to Section 5.3, the Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Company thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company's net income.

5.3 For SurfCAST, Company will collect all fees and retain the agreed percentage of collected fees for each category of service on a monthly basis. All remaining fees collected will be distributed to Customer on the same monthly schedule. In connection therewith, Company agrees to maintain accurate records relating to the Services provided to the Customer under this Agreement. During the Term and for a period of two (2) years thereafter, upon Customer's written request, the Company will allow Customer or Customer's representative to inspect and make copies of such records, provided that any such inspection shall take place during regular business hours with at least ten (10) business days' advance written notice.

6. TERM AND TERMINATION

6.1 Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Order Form and shall be automatically renewed for additional periods noted on the order form (collectively, the "Term"), unless either party requests termination at least ninety (90) days prior to the end of the then-current term.

6.2 In addition to any other remedies it may have, either party may also terminate this Agreement, if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

7. WARRANTY AND DISCLAIMER

Company shall use reasonably diligent efforts consistent with prevailing industry standards to maintain the SaaS Services in a manner which minimizes errors and interruptions in the SaaS Services and shall perform the Additional Parking Services and Implementation Services in a professional and workmanlike manner. SaaS Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

8. INDEMNITY

Company shall hold Customer harmless from liability to third parties resulting from infringement by the SaaS Service of any United States patent or any copyright or misappropriation of any trade secret, provided Company is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume lead counsel over the defense and settlement of said claims; Company will not be responsible for any settlement it does not approve in writing. The foregoing obligations do not apply with respect to portions or components of the SaaS Service (i) not supplied by Company, (ii) made in whole or in part in accordance with Customer specifications, (iii) that are modified after delivery by Company, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of the SaaS Service is not strictly in accordance with this Agreement. If, due to a claim of infringement, the SaaS Services are held by a court of competent jurisdiction to be or are believed by Company to be infringing, Company may, at its option and expense (a) replace or modify the SaaS Service to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Customer a license to continue using the SaaS Service, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide

Customer a refund of any prepaid, unused fees for the Service.

9. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AND AFFILIATES, SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE GREATER OF: (I) FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY AND (II) PROCEEDS OF THE COMPANY'S AVAILABLE INSURANCE COVERAGE, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The provisions of this Section 9 are for the sole and exclusive benefit of the Company and the other parties named herein and shall not be construed to limit any recourse that may be available to the Customer against any other party, including Company's employees and contractors.

10. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sub-licensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement with Customer's consent, said consent shall not unreasonably withheld. Notwithstanding the foregoing, the Company may assign its rights and obligations hereunder, without the consent of the Customer, to any other corporation, person, or entity acquiring all or substantially all of the assets or ownership interest of the Company or to any other corporation, person, or entity into which the Company may be merged or consolidated. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer

does not have any authority of any kind to bind Company in any respect whatsoever. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of North Carolina without regard to its conflict of law provisions. The parties shall work together in good faith to issue at least one mutually agreed upon press release within 90 days of the Effective Date, and Customer otherwise agrees to reasonably cooperate with Company to serve as a reference account upon request.

EXHIBIT A

Statement of Work

Company will deliver SurfCAST, encompassing the mobile app and web-based solution for the Town, specifically:

- The parking management SaaS capability for collection of parking fees, issuing citation, managing citations, and violation fee collection.
- The company will provide personnel who will perform all enforcement checking, citations, and customer service via phone, email, or via the feedback capability on the app. It should be noted that the app-based feedback capability is currently limited to email communication back to the parking customer.

SurfCAST, as used by Oak Island provides all the features and support requirements needed for quick and low-cost implementation of parking management. Key components include:

1. Various parking pass options – specially for hour and day periods of parking or vehicle type as noted below
2. Parking enforcement enabled for the Town via periodic license plate scan and verification of an active parking permit – or violation notice and appropriate parking citation/ticket if there is no active paid permit or parking in a No Parking zone as defined by Town Ordinances south of Oak Island Dr.
3. Collection of all parking fees with monthly payment to the Town based on the fees identified in the Order Form approximately one (1) week following the close of the calendar month. Collection of delinquent fees will be via 3rd party collection service as contracted by Company.
4. Monthly auditable reports and web-based dashboard

Otto Connect, Inc. via the SurfCAST application will provide:

1. Free mobile app download for all participants with full function capability – covering Zone and Parking Fee with selectable period (hour, day, week, or annual) for Apple and Android devices (with limitations for supported versions of the Operating System)
2. QRCode to a secure web-link for on-line payments
3. Website access: <https://surfcast.ottoconnect.us/pay>
4. Phone Number for Customer Service: 910-200-1497
5. Simple, all-inclusive fees as a percentage of parking rates and collected citations as noted in the order form
6. Customized Dashboard – standard and unique requirements based on needs of the Town as noted below
7. Monthly auditable reports of all fees, tickets, and payments
8. Customer inquiries via email or phone (grievances, issues, ticket or charge concerns)

Otto Connect, Inc. will establish an office in space provided by the Town of Oak Island in the Town Hall for any customer support issues or actions starting April 1st, 2023. Traffic will be monitored by the Otto team, and when traffic is less than 10 persons per day for a period of 2 weeks through May and June, Otto will review the value of the office and alternative information available (i.e., flyers and signage) with the Town for closure of the office. Hours will be 9:00 AM – 4:00 PM Monday through Friday.

The Town of Oak Island will be responsible for identification of valid parking areas, parking spaces, and appropriate signage identifying “SurfCAST by Otto Connect” as the tool to use to pay for parking privileges. Company will provide templates of the signs for Town approval. Company may provide procurement of signs and/or installation of signs as agreed via separate agreement.

Oak Island – SurfCAST parking permit and enforcement details

Dates/Times/Enforcement:

April 1st, through Sept 30th

9:00AM to 5:00PM

Enforcement will be via random scan of license plates, 2 times per day, with 3-4 times on Saturdays between Memorial and Labor Day. Coverage will include all parking zones and side-streets south of Oak Island Dr. and will issue citations as applicable based on the list below or as may be updated in writing and agreed by both parties.

App Access:

“SurfCAST by Otto” via: Apple App Store and Google Play
 QRcode – link to secure website: <https://surfcaster.ottoconnect.us/pay>
 Web Direct: <https://surfcaster.ottoconnect.us/pay>
 Phone: 910-200-1497 – available on the Dates/Times noted above.

Resident Parking Privileges

- Town will provide details of grandfathered Decal Permits from 2022 for parking through 2023 for Otto to include in the SurfCAST system
 - Name
 - Address
 - License Plate/State of Registration for each vehicle
- New accounts will use their water account number for authentication and will pay \$10 per vehicle to register up to 3 vehicles. Additional vehicles will pay the Visitor Parking Rates noted below. Exceptions, such as property owners without a water account, will be handled on a case-by-case basis with Town verification and Otto issuing a Unique Owner Code to be used in lieu of the water account number.
- Starting in 2024, all accounts will require registration annually
- Parking Privileges will allow registered vehicles to park in any Town designated parking area without additional charges.

Visitor Parking Rates for each licensed vehicle in all designated parking areas will be: **[to be determined by Town Council]**

- \$TBD per hour for up to 4 hours
- \$TBD per day and for any duration greater than 4 hours
- \$TBD per week for 7 consecutive days
- \$TBD season permit (may include cap on number of permits sold)

Parking Zone Types will have financials split between them. Where annual permits are used, they will be split between the two zone types based on volume of spaces in each type:

- On-Street = 71% **[or as finalized based on percentage of on vs. off-street parking spaces]**
- Off-Street = 29%

Parking Permit upgrade to Day

- Individual parking permits per license plate will be tracked for amount spent. When the total in a day reaches the equivalent of a day permit, the system will automatically upgrade the permit for that vehicle to a day permit.

Parking Permit upgrade to Annual [dependent on the Visitor Season Permit and Council approval]

- Individual parking permits per license plate will be tracked for amount spent. When the total in a calendar year reaches the equivalent of an annual permit, the system will automatically upgrade the permit for that vehicle to an annual permit.

Parking Violations and Citation Fees [this section to be updated pending ordinance updates by Town Council]

Listed below are the violations that will result in a parking citation – or as may be updated in Exhibit E by mutual agreement:

Violation fine of \$25 Same Day Violation (SDV) payment by midnight of the day of the issued citation, then \$50 next day thru day 30, then \$25 late payment penalty = \$75. Note: SDV use is limited to 3 times per account and license plate.

- Parking without a valid paid permit in an authorized parking area (Section xx.xx)

The following violations will carry a fine of \$50 if paid within 30 days. After 30 days, a \$25 late payment penalty will be applied = \$75

- Parking within 25 feet of a Street Intersection (Section xx.xx)

- *Parking in a Crosswalk, Sidewalk, or Pedestrian Access ways (Section xx.xx)*
- *Parking blocking a driveway or mailbox (Section xx.xx)*
- *Parking facing opposing traffic (Section xx.xx)*
- *Parking in a No Parking Zone, or within Right-of Way (Section xx.xx)*
- *Parking on any portion of the roadway or travel lane (Section xx.xx)*

The following violations will carry a fine of \$250

- *Parking adjacent to (within 15 feet) or blocking a Fire Hydrant, Fire Lane, or Emergency Access (Section xx.xx)*
- *Parking in a designated Handicap space without proper license plate or hangtag (Section xx.xx)*
 - *Note: Handicap space violations will be referred to the Police Dept for verification prior to issuing a citation.*

Citation Payments:

- *Can be made directly on the SurfCAST mobile app*
- *Can be made directly on the website noted above*
- *Can be made via phone to Otto Connect customer service @ 910-200-1497*
- *Can be mailed in with check, payable to:*
 - *Otto Connect, Inc. – Attn. Parking Services*
 - *PO Box 2448*
 - *Surf City, NC 28445*
- *Can be made in person at the Otto Connect office at Town Hall (based on usage noted above)*
 - *9:00 AM to 4:00 PM Monday through Friday*

Citation Appeals will be provided by Otto Connect, Inc. via:

- *Email: surfcaster@ottoconnect.us*
- *Phone: 910-200-1497*
- *Can be made in person at the Otto Connect office at Town Hall (based on usage noted above)*
 - *9:00 AM to 4:00 PM Monday through Friday*

Dashboard Access will be provided to:

- *Town Manager and their designated appointees*

Dashboard content will include:

- ***Standard Features – Financials by Month and Year to Date as Gross and Net to the Town***
 - *Permits purchased – by type and by upgrade*
 - *Violations Paid – by type*
 - *On-street vs. Off-street payment*
 - *Note: Dashboard values are not official, only the Audited Monthly Report is the official record of Financial transactions.*
- ***Standard Features - Statistics – a Daily and Weekly view of parking activity***
 - *Permits sold by type*
 - *Enforcement Scans*
 - *Citations issued with breakout between designated parking areas and No Zone violations*
 - *Zone (or Zone type) utilization*
- ***New Features for 2023***
 - *Month-to-Month and Year-to-Year trends*
 - *Permits*
 - *Revenue (Gross/Net)*
 - *Year-to-Date (YTD) Summary*
 - *By Month Revenue (Gross/Net)*
 - *Parking Permits by Month by Type*

- *Citation Statistics (Net of issues such as mis-typed license plate or state of registration)*
 - *No Zone (outside of designated parking areas)*
 - *No Permit in a designated parking area*
 - *Violation rate (as a percent of Total Parked Vehicles by Month and YTD)*
 - *Violation Payment Rate (before Collections / after Collections)*
- *Parked Vehicles by Month and Total YTD with breakout details of:*
 - *By Parking area (group of zones)*
 - *By State of Registration*
 - *By Local Zip Code in southeast North Carolina*
 - *By Resident vs. Visitor*

EXHIBIT B

Availability of Services

The SaaS Services shall be available 99%, measured monthly, including holidays and weekends and excluding scheduled maintenance (to be scheduled overnight). If Customer requests maintenance during any specific hours, any uptime or downtime calculation will exclude periods affected by such maintenance. Further, any downtime resulting from outages of third-party connections or utilities or other reasons beyond Company's control will also be excluded from any such calculation. Customer's sole and exclusive remedy, and Company's entire liability, in connection with SaaS Service availability shall be that for each period of downtime lasting longer than one hour, Company will credit Customer 50% of the average parking fees expected during the period of downtime. Average parking fees will be calculated based on the hour of the day and day of the week for a four (4) week running average and will be net of any service fees that would have been due to Company. (For clarity, downtime from 2:00 to 3:00 PM on a Wednesday will use the average parking fees paid to Customer for the previous four weeks on Wednesdays from 2:00 – 3:00 PM.) Downtime shall begin to accrue as soon as it is discovered that downtime is taking place and continues until the availability of the SaaS Services is restored. Company agrees to provide Customer with a record of such downtime for each month. In order to receive downtime credit, Customer must send a written request to Company via email, or via text within 72 hours from the end of the downtime, and failure to provide such notice will forfeit the right to receive downtime credit. Downtime credit may not be redeemed for cash. Credit shall accrue for no more than 8 hours for each day, and for no more than 7 such days in any single month. Company will apply credit within the ninety (90) days immediately following the restoration of the SaaS Services. If the Customer accrues the maximum amount of downtime credit permitted hereunder for two (2) consecutive months, then Customer may terminate this Agreement with immediate effect upon delivery of written notice thereof.

EXHIBIT C
Support Terms

Company will provide Technical Support to Town via electronic communication using the mobile app, email, or direct contact via phone any day during the Enforcement Period (All Year) during the hours of 9:00 am through 5:00 pm Eastern time, with the exclusion of Federal Holidays (“**Support Hours**”).

Company will use commercially reasonably diligent efforts to respond to all notices within one (1) business day.

Phone support from 9:00AM to 5:00 PM daily during the Enforcement Period via 910-200-1497.

Email support via surfcast@ottoconnect.us.

EXHIBIT D
Additional Terms

1. Emergency Services

As noted in Exhibit C: Support Terms

2. Permanent Additions, Deletions and Changes to Services

The Town will have the right to request additions, deletions, or changes for any of the Services, in its sole discretion, in response to its changing needs. The Town will submit all notices for revisions in Services in writing with reasonable advance notice to the Company. In the event of an emergency situation, the Town and Company will work with each other in good faith to implement required Service changes as quickly as possible. Town agrees that Company will manage any additions to the Services as described herein (for example if Town should add new parking lots) and Company agrees to assess and respond to such additional Services in a timely manner but not more than two (2) weeks from the date received to include feasibility, and if accepted, an implementation plan and additional Service rates consistent with existing rates with the Town. For any Services not originally contemplated by this Agreement, the Company will provide such Services at rates that do not exceed those being charged to similar clients for similar services upon the written agreement of Town.

3. Subcontracting

Company acknowledges and agrees that it shall be the prime contractor and shall remain fully responsible for the performance of all obligations required to be performed by the Company or any subcontractors under this Agreement. Upon the Town's written request, the Company shall submit to the Town organizational charts and qualifications of subcontractor personnel for any portions of the Services proposed to be performed by subcontractors.

4. Indemnification

To the fullest extent permitted by law, the Company shall indemnify, defend and hold harmless the Town and the Town's officers, agents and employees from and against any and all claims, losses, damages, obligations, liabilities and expenses (including reasonable attorneys' fees) that arise directly or indirectly from any negligent or intentional act(s), error(s) or omission(s) or willful misconduct by the Company or any of its agents, employees or subcontractors (or any allegations of any of the foregoing), including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal.

The indemnification obligation under this Section 4 shall apply to all matters involving injured employees of the Company or any supplier or subcontractor of any tier and shall not be limited by any provisions of applicable workers' compensation laws, and in particular shall apply regardless of the exclusive remedy and/or immunity provisions of those laws.

5. Insurance

The Company shall purchase and maintain during the life of this Agreement with an insurance company companies licensed to do business in North Carolina with a general policyholder's ratings of at least A- and a financial rating of at least VI in the most current Best's Insurance Reports available on the Commencement Date, or if the Best's ratings are changed or discontinued, the parties shall agree to a comparable method of rating insurance companies:

a) Commercial General Liability

Bodily injury and property damage liability as shall protect the Company and any subcontractor performing work under this Agreement from claims of bodily injury or property damage which arise from operation of this Agreement whether such operations are performed by Company, any subcontractor or any person directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1 Million combined single limit per occurrence and \$2 Million in general aggregate for bodily injury & property damage & \$2 Million general aggregate for products/completed operations. Comprehensive General Liability insurance shall include endorsements for property damage; personal injury; contractual liability; completed operations, products liability, & independent contractors' coverage. This coverage shall be on an occurrence basis.

- b) **Workers' Compensation Insurance**
Meeting the statutory requirements of the State of North Carolina and Employers Liability- \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit, providing coverage for employees and owners.
- c) **Theft, Disappearance and Destruction Coverage – as may be covered by Crime or Cyber Crime policies.**
Protecting against loss of money and securities, inside the premises and outside the premises in the care and custody of a messenger in an amount not less than \$500,000.
- d) **Crime Insurance**
Covering the Company, its agents or employees, in an amount not less than \$100,000.

All insurance policies provided hereunder shall include a deductible amount of not less than \$2500, and the deductible amount of any claims shall be paid as a reasonable expense of the operation.

The Town of Oak Island shall be included and endorsed as an additional insured under the commercial general liability insurance for operations and services rendered under this Agreement. Certificates of all required insurance shall be furnished to the Town at the time of execution of this Agreement and shall contain the provision that the Town will be given 30 day written notice of any intent to amend or terminate by either the insured or the insuring company.

- e) **Automobile Liability**
The Town shall purchase and maintain during the life of this Agreement on all vehicles owned by the Town and used by Company with an insurance company acceptable to Company and authorized to do business in the State of North Carolina the following insurance:

Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit each occurrence/aggregate.

6. General Compliance with Laws and Regulations

The Company shall comply with all Federal, State, and local laws, ordinances, and regulations applicable to the Services provided herein. If, due to conflicts between two or more such ordinances, statutes, laws, rules, and regulations (the "Regulations") or due to conflicts in the interpretation or enforcement of such Regulations by courts or governing bodies having jurisdiction over the Services, the Company is unable to comply with such Regulations, the Company shall exercise usual and customary professional care in the exercise of his professional judgment in complying with such conflicting Regulations. The Company further agrees that it will at all times during the term of this Agreement be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act, the Americans with Disabilities Act (ADA), the Family and Medical Leave Act, and all Occupational Safety and Health Administration (OSHA) regulations applicable to the work.

- a) **Non-Discrimination**
The Company agrees that it has adopted and will maintain and enforce a policy of non-discrimination on the basis of race, color, religion, sex, age, national origin, or disability. The Company agrees that it will inform the Town of any alleged violation(s) of employment practices involving any employees who provide Services which are asserted in any claims filed with the Equal Employment Opportunity Commission, Labor Department or any other federal or state compliance agency. Also, the Company will inform the Town of the final disposition of such cases.
- b) **Equal Opportunity**
The Town is committed to promoting equal opportunities for all and to eliminating prohibited discrimination in all forms. Prohibited discrimination means discrimination against any person, business or other entity in contracting or purchasing practices on the basis of race, color, sex or national origin. Without limiting the foregoing, prohibited discrimination also includes retaliating against any person, business or other entity for

reporting any incident of prohibited discrimination. It is understood and agreed that not only is prohibited discrimination improper for legal and moral reasons, prohibited discrimination is also an anti-competitive practice that tends to increase the cost of goods and services to the Town and others.

As a condition of entering into this Agreement, the Company further agrees to: (a) promptly provide to the Town all information and documentation that may be requested by the Town from time to time regarding the solicitation and selection of subcontractors. Failure to maintain or failure to provide such information constitutes grounds for the Town to terminate or withhold payment under this Agreement.

c) Harassment

The Company agrees to make itself aware of and comply with the Town's Harassment Policy. The Town will not tolerate or condone acts of harassment based upon race, sex, religion, national origin, color, age, or disability.

d) Safety

The Company will have sole responsibility for ensuring its employees have been trained in appropriate safety procedures in connection with providing Services to the Town. Company's employees will not create safety hazards in the course of providing the Services.

7. Drug Free Workplace Requirement

The Company shall provide a drug-free workplace during the performance of this Agreement. This obligation includes:

1. Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Company's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
2. Establishing a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the Company's policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation, and employee assistance programs and (iv) the penalties that may be imposed upon employees for drug abuse violations;
3. Notifying each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlined in this Article and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace not later than five (5) days after such conviction;
4. Notifying the Town within ten (10) days after receiving from an employee a notice of a criminal drug statute conviction or after otherwise receiving actual notice of such conviction, unless otherwise forbidden to communicate such information to third parties under the Company's drug-free awareness program or other restrictions;
5. Imposing a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by an employee convicted of drug crime;
6. Making a good faith effort to continue to maintain a drug-free workplace for employees; and
7. Requiring any party to which it subcontracts any portion of the work under the Agreement to comply with the provisions above.

Failure to comply with the above drug-free workplace requirements during the performance of the Agreement shall be grounds for suspension, termination or debarment.

8. Miscellaneous

Relationship of The Parties

The relationship of the parties established by this Agreement is solely that of independent contractors, and nothing contained in this Agreement shall be construed to (i) give any party the power to direct or control the day-to-day activities of the other; or (ii) constitute such parties as partners, joint venturers, fiduciaries, co-owners or otherwise

as participants in a joint or common undertaking; or (iii) make either party an agent of the other for any purpose whatsoever. Neither party nor its agents or employees is the representative of the other for any purpose, and neither has power or authority to act as agent or employee to represent, act for, bind, or otherwise create or assume any obligation on behalf of the other. Town agrees that neither it shall employ, in any capacity, any person that Company has employed as a Supervisor, Manager or Assistant Manager during the term of this Agreement. This provision shall survive the expiration or other termination of this Agreement for a period of one (1) year.

Amendment

No amendment or change to this Agreement shall be valid unless in writing and signed by both parties to this Agreement.

Governing Law and Jurisdiction

The parties acknowledge that this Agreement is made and entered into in Oak Island, North Carolina. This Agreement has been fully negotiated between two sophisticated parties and shall be construed without regard to any presumption or rule of law or equity regarding construction of this Agreement against the party causing this Agreement to be drafted or prepared. The parties further acknowledge and agree that North Carolina law shall govern all rights, obligations, duties, and liabilities of the parties to this Agreement, and that North Carolina law shall govern interpretation of this Agreement and any other matters relating to this Agreement (all without regard to North Carolina conflicts of laws principles).

The parties further agree that any and all legal actions or proceedings relating to this Agreement shall be brought in a state or federal court sitting in Wake County, North Carolina. By execution of this Agreement, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections that they may have with respect to venue in any of the above courts.

Binding Nature and Assignment

This Agreement shall bind the parties and their successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other. Any assignment attempted without the written consent of the other party will be void.

Force Majeure

The Company shall not be liable for any failure or delay in the performance of its obligations pursuant to this Agreement and such failure or delay shall not be deemed a default of this Agreement or grounds for termination hereunder, except as set forth below, if all of the following conditions are satisfied:

- If and to the extent such failure or delay is caused by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, pandemic, riots, civil disorders, rebellions or revolutions, strikes, lockouts or court order (each, a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the Company shall be excused from any further performance of those of its obligations pursuant to this Agreement affected by the Force Majeure Event for as long as: i) such Force Majeure Event continues and ii) Company continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- The Company shall promptly notify the Town by telephone or other means available (to be confirmed by written notice within five (5) business days of the beginning of the failure or delay) of the occurrence of a Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than thirty (30) days, the Town may terminate this Agreement.

Severability

The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of the Agreement can be determined and effectuated. If any provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

Approvals

All approvals or consents required under this Agreement must be in writing and signed by an appropriate representative of the respective party.

Waiver

No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Agreement shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party waiving the rights.

Conflict of Interest

The Company covenants that its officers, employees, shareholders and subcontractors have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

No Bribery

The Company certifies that to the best of its knowledge, information, and belief, neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed, or attempted to bribe, an officer or employee of the Town in connection with this Agreement.

Change in Control

The Company shall notify the Town within thirty (30) days of the occurrence of a change in control. As used in this Agreement, the term "control" means the possession, direct or indirect, of either:

- The ownership of or ability to direct the voting of, as the case may be, fifty- one percent (51%) or more of the equity interests, value or voting power in the Company; or
- The power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.
- In the event of a Change in Control of Company as defined in this Section 8, the Town may, in its sole discretion, terminate this Agreement upon thirty (30) days written notice to Company.

Company Access to Town Facilities

Arrangements for access to Town facilities will be made between the Town Manager and the Company. The Company will be required to sign for all keys when issued and return all keys upon termination of the Agreement. The Company shall report any loss or misuse of keys immediately will promptly reimburse the Town for any re-keying as a result of such loss or misuse.

Revenue

All revenue collected and penalty payments received by the Company, resulting from the enforcement of off-street and on-street parking regulations, as well as payments received for any other citation, shall be the property of the Town.

Town's Right to Dismiss Fees and Fines

The Town has the unilateral right to dismiss any individual parking ticket or other citation and/or direct the Company to reimburse any fines or fees.

9. Public Information and the Media

Advertising, sales promotion or other materials of the Company or its agents or representatives shall limit the identification or reference to this Agreement to the general description of the Services. As a condition of entering into this Agreement, the Company further agrees to refrain from the following, absent the Town's prior written approval: (1) making any statement to the media or public regarding the subject matter of this Agreement or the Town's position on any issue

relating to this Agreement; or (2) making any statement to the media or public on any issue which is in the Town's judgment likely to cast doubt on the competence or integrity of the Town or Company. Failure to comply with this Article by the Company shall constitute a material breach and, without limiting any other remedies the Town may have, shall entitle the Town to terminate this Agreement for default.

All of the information, reports, cost estimates, plans, specifications and documents prepared or assembled by the Company under this Agreement are the property of the Town. The Company agrees that any such documents may not be made available to any individual or organization other than appropriate Town officials without prior written approval of the Town. Nothing contained in this paragraph shall be construed to prevent the Company from making information, reports and documents available to those individuals or firms directly concerned with the services described herein with prior written agreement of the Town.

10. Immunity not Waived

This Agreement is governmental in nature for the benefit of the public and is not intended to be for private profit or gain and the Town is not waiving any immunities it enjoys by entering into this Agreement.

11. Pre-Audit

This Contract has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Exhibit E

Policies for Enforcement Personnel

This policy set is effective as of the date of signing the Services Order Form – and may be updated periodically by mutual agreement.

1. If Parked in a designated parking zone without an Active Permit or in a No Parking area:
 - a. Immediate Citation with reason noted on the ticket
 - b. 2nd unpaid Violation will receive a citation. No other action at this time for multiple violations.
 - c. 3rd unpaid Violation will be reported to the Police Dept for towing action
 - d. Citations remaining unpaid after 60 days will be referred to a collection agency on behalf of the Town. The collection agency under contract with Otto Connect, Inc. is Financial Data Systems located in Wilmington, NC.
2. Active Permit – incorrect Zone/Lot or other infraction
 - a. If parked in an equivalent lot - No Action – allowed to park. The app will allow movement from any valid Town zone to any other equivalent zone within the Permit Period.
 - b. If parked in a lot specified for a different vehicle type (i.e., large car or truck parked in an LSV lot), or parked incorrectly per town ordinances (i.e., not parked in the direction of travel) – then a citation will be issued for the identified infraction.
3. Violations to be supported by SurfCAST:
 - a. As noted in Exhibit A – Statement of Work, or as updated in this Exhibit E.
 - i. No updates at this time
4. Violation
 - a. 1st Offense – immediate citation
 - i. Allow for 15-minute grace period after the paid period has ended before issuing a citation
 - ii. Notification on the app at 15 min prior to the end of the paid period
 - iii. Notification on the app at the termination of the paid period
5. Parked on the Street or Right of Way (any non-designated parking space):
 - a. Immediate Citation
 - b. If impeding traffic or causing a safety issue, call the police non-emergency line for support and potential tow
6. Handicap allowances
 - a. Handicap parking is free with license plate or hangtag depicting current handicap status when the vehicle is parked in a Handicap space.
 - b. If a Handicap vehicle is in a regular space, they must have a valid permit or receive a citation.
7. Vehicles
 - a. 1 vehicle allowed per app account for hour, day, week permits – where each vehicle must have a parking permit
 - i. Note: multiple vehicles can be entered, but each must have an individual, active permit when parked in a designated parking space.
 - b. Each vehicle must have a parking permit including cars, trucks, LSVs (including Golf Carts), etc.
 - c. License Plate Changes are permitted at the start of a parking session, except for resident and annual permits which can only be changed once each year
 - d. A License Plate may be registered on more than one account – but only one can have an active permit at any given point in time.
8. Temporary License Plate
 - a. Will be treated as a regular plate and scanned for an active permit

Town Manager – David Kelly

Otto Connect, Inc. – Jim Varner

Signature: _____

Signature: _____

Date: _____

Date: _____