# INTERGOVERNMENTAL AGREEMENT FOR THE COLLABORATIVE USE OF THE LAKE COUNTY MOBILE CITATION SYSTEM (BRAZOS)

This Intergovernmental Agreement ("**Agreement**") is between the County of Lake, a body politic and corporate operating under 55 ILCS 5/1-1001 *et seq.*, acting in concert with the Lake County Sheriff, an elected official (together, simply "**Sheriff**"), and Round Lake Park, a municipal corporation operating under 65 ILCS 5/1-1-1 *et seq.* ("**Municipality**"). Together, the Sheriff and Municipality may be referred to below as "**Party/Parties**."

## Recitals

**Whereas:**

1. The County and Municipality are units of local government authorized to enter into this Agreement under the Constitution of the State of Illinois of 1970, Article VII, Section 10, and the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*

2. As part of a collaborative process through which 21 municipalities and law enforcement entities sought a provider for a variety of law enforcement software solutions, the County, in conjunction with the Lake County Sheriff, contracted with Tyler Technologies to license and support a law enforcement mobile citation (e-ticketing) system, which carries the brand name "**Brazos**."

3. The Sheriff-Tyler contract includes a site license "for the licensed Records, Field Reporting, Corrections and Brazos software for any agency in the geographic confines of Lake County." This Agreement relates only to the Brazos components of the Sheriff-Tyler contract. A separate but similar IGA governs participation in the Records Management System (RMS).

4. Municipality is located within the geographic confines of Lake County, Illinois.

5. Municipality seeks to join the Sheriff in using Brazos, and is willing to pay its proportionate cost for the maintenance of the system under the terms set forth below.

**In light of the foregoing, the Parties agree as follows:**

Article 1.    **Services Provided; Implementation; Additional Services.**

1.1    **Services.** The Brazos services included in the contract with Tyler, and which Municipality can use under this Agreement and the terms of the Tyler license, are listed on **Exhibit A** to this Agreement.

1.2    **Location.** Brazos is cloud-hosted and accessed through a web browser. Equipment need to access the service is detailed in Exhibit B to this Agreement.

1.3    **Technical Support; FOIA.**

1.3.1 Brazos is hosted by Tyler Technologies and technical issues related to the application's support and maintenance will be addressed to Tyler. The Sheriff's Office and its IT personnel, which are on-call 24/7, will assist Municipality in escalating application issues to Tyler. Costs that arise because they are outside the scope of the Tyler-Sheriff maintenance agreement shall be brought to the Brazos Working Group, defined below, for discussion and consensus decision making.

1.3.2 Freedom of Information Act requests directed at the data of any particular municipality or agency shall be the responsibility of that municipality or agency. The Sheriff's Office may provide assistance to access information, when needed.

1.4 **Implementation Costs.** During the Sheriff's initial implementation of Brazos, the cost and terms of participating in Brazos is set forth on **Exhibit C** to this Agreement. Payment of the data conversion fee, as well as any modules selected by Municipality, shall be at the prices set forth in Exhibit C and be due upon the effective date of this Agreement. Implementation costs are separate from and in addition to the ongoing cost-sharing payments that shall be regularly due in six-month intervals, once the maintenance and support costs begin, which is scheduled for May 2023.

1.5 **Additional Services.** Any services not set forth on Exhibit A shall be "**Additional Services.**" Additional Services may be added only with (a) the Sheriff's written consent, which shall be made in consultation with the Brazos Working Group and the Chief's Advisory Committee (described below) and, if necessary, (b) a Statement of Work from Tyler, outlining the cost, which Municipality shall bear if the Additional Services are for the benefit of Municipality (as opposed to for the benefit of all Brazos Users).

Article 2.     **Terms of Use.**

2.1 **Brazos Working Group.** Collaborative governance of Brazos shall occur through a Brazos Working Group made up of one representative from each municipality or agency that uses Brazos, including Municipality. Among other tasks, the Brazos Working Group shall be tasked with creating policies and procedures related to the use, functionality, and further development of Brazos.

2.2 **Chiefs' Advisory Committee.** Each law enforcement agency participating in Brazos shall have the right to have its Chief (or, for the County, its Sheriff) participate in periodic meetings of a "Chief's Advisory Committee," the frequency of which shall be set by the Committee. A Chief or the Sheriff may also participate in the Committee through a designee. The Chiefs' Advisory Committee shall provide input and guidance on major decisions related to the operational policies and further development of Brazos, and shall be responsible for fostering continuity and collaborative governance of Brazos and its continued use.

2.3 **Conditions of Use.** The Sheriff shall provide Brazos to the Municipality by assisting the Municipality's staff in setting up a connection through which the Municipality can access and otherwise use Brazos. Such assistance shall encompass configuring Brazos to accommodate the users for which Municipality pays (with each agency or municipality being made up of multiple users), under the payment terms listed further below. Any integration assistance that cannot be performed by the Sheriff may require a statement of work (SOW) from Tyler Technologies, for which the Municipality must separately pay. If such an SOW is necessary, then the Sheriff will assist Municipality in obtaining it.

Use of Brazos shall be conditioned on the following:

2.3.1 **Authority to Modify Brazos.** For the benefit of all Brazos users, including Municipality, the Sheriff, in consultation with the Brazos Working Group or the Chiefs' Advisory Committee, shall retain the exclusive authority to request modifications to Brazos and its systems. Where modifications are implemented to Brazos and its systems, the Sheriff shall provide reasonable notice of changes that will affect Brazos users. For any significant changes that may affect Municipality's ability to access Brazos on a more-than-temporary basis, the Sheriff—once made aware of the changes from Brazos— will notify the Municipality as soon as possible and work collaboratively to mitigate any service interruptions.

2.3.2 **Additional Agencies.** The Sheriff, with input from the Brazos Working Group and Chiefs' Advisory Committee, retains the exclusive right to approve any additional agencies or units of local government that seek access to Brazos and its systems through Municipality or otherwise, under terms consistent with this Agreement. Any entities joining that exist outside of the geographic confines of Lake County may require the additional approval of Tyler Technologies.

2.3.3 **Connection; Equipment.** Municipality must at all times provide proper equipment and connections to Brazos servers to connect Municipality's users to Brazos. Municipality shall be responsible for the procurement of all third-party software and a sufficient internet connection (e.g., software for a firewall; a subscription to a business-grade internet connection) including updates, upgrades, service/maintenance packs, and hardware necessary to operate the system on its premises or in its vehicles.

2.3.4 **Payment.** Use of Brazos shall at all times be conditioned upon timely payment of the invoices issued every six months.

2.3.5 **Misuse of System.** Municipal or agency users who misuse the Brazos system may have their access terminated. Misuse shall include without limitation: (a) accessing the system for purposes outside the scope of a user's employment; (b) creating security issues (including without limitation data breaches) that jeopardize the integrity of the system;

(c)violating the policies and procedures created by the Brazos Working Group. Notice of any such termination shall be provided in advance, where feasible, but may also occur without notification in emergency situations. The Brazos Working Group shall assist in adjudicating disputes about access termination, or about the right to reestablish access to the system. Termination of a user's access for misusing the system shall not entitle Municipality to a pro rata refund of any invoice that has already been issued.

2.4 **Underlying License and Support Agreements; Changes.** The Sheriff shall maintain the Brazos software license and maintenance and support agreement with Tyler Technologies to ensure the Brazos services remain available and supported throughout the term (including renewal terms) of this Agreement. Additionally, the Sheriff agrees to notify Municipality if the Sheriff issues a request for proposals or begins other procurement processes to change from Tyler Technologies to another vendor. The Sheriff shall make any procurement documents available to Municipality at the time they are issued.

Article 3. **Cost-Sharing; Payment Terms.**

3.1 **Licensing Costs.** No license costs shall be due under the terms of this Agreement.

3.2 **Cost-Share Calculation.** To provide for Brazos's maintenance and support, Municipality agrees to share the total such costs with all other users of Brazos, pro rata (each Municipality or agency will have multiple "users," which are the individuals who access Brazos). In addition, along with similar funding from the Sheriff's Office, Municipality agrees to fund an account that shall be dedicated to paying for future enhancements to Brazos. Money to fund the Future Enhancements Account shall be derived from a nonrefundable 10% surcharge on each invoice, and shall accrue until sufficient, either alone or with additional contributions, to pay for an enhancement that will benefit all Lake County-based users of Brazos. The decision to fund future enhancements from the Future Enhancements Account shall be made in consultation with the Brazos Working Group. The Sheriff's Office shall fund the Future Enhancements Account under the same terms as Municipality.

By way of example, costs shall be calculated and invoiced every six months by calculating the number of system users and dividing that number by one-half the cost of the annual maintenance and support fee. By way of example, the first year's maintenance and support fee totals $186,008.

The **Sheriff** has **550 users,**
**Municipality A** has **50 users,** and
**Municipality B** has **50 users.**

The 6-month cost for to use Brazos would be:

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$$(\$186{,}008 \div 650) \times [\text{\# of Municipality Users}, \textit{e.g. 50}] \div 2 = \$7{,}154$$

3.3     **Invoices; Payment Terms.** Invoices for Municipality's cost-sharing amount shall be issued in May and November, starting in May 2023, using the invoicing template set forth in Exhibit D. All payments under this Agreement shall be made under the terms of the Illinois Prompt Payment Act, 50 ILCS 505/1 *et seq.*, which generally requires approval of a bill within 30 days of receiving the invoice for
the services contained in it, and payment within an additional 30

days. Article 4.     **Designated Representative and Notices.**

4.1     The Sheriff and Municipality shall each provide contact information for Designated Representatives who shall coordinate the services governed by this Agreement.

*The Sheriff's Initial Designated Representative is: Jim Chamernik*

*Municipality's Initial Designated Representative is: Daniel J. Burch*

4.2     **Change in Designated Representative.** The Parties may change their Designated
Representative by providing notice of such change with the contact information for the new Designated Representative in accordance with the "Notices" section of this Agreement.

4.3     **Notices.**
Notice may be given by email to the officials listed below, at their then-current email address, but shall not be deemed received unless the recipient acknowledges receipt.

In addition to or in lieu of email, all notices and other communications regarding the terms of this Agreement shall be in writing and shall be deemed received within three business days after being deposited in the U.S. Mail, proper postage prepaid, if properly addressed as follows, respectively:

*To the Sheriff:*
Attn: Jim Chamernik
25 S M.L.K. Jr
Ave. Waukegan,
IL 60085
Email: JChamernik@lakecountyil.gov

*To Municipality:*
Daniel J. Burch, Chief of Police
215 East Main Street
Round Lake Park, IL 60073
Email: dburch@rlpil.com

Article 5.    **Acknowledgements and Other Provisions.**

5.1    **Force majeure.** (a) If a Force Majeure Event occurs, the party that is prevented by that Force Majeure Event from performing any one or more obligations under this agreement (the "**Nonperforming Party**") will be excused from performing those obligations, on condition that (1) the Nonperforming Party used reasonable efforts to perform those obligations, (2) the Nonperforming Party's inability to perform those obligations is not due to its failure to take reasonable measures to protect itself against the event or circumstance giving rise to the Force Majeure Event, and (3) the Nonperforming Party complies with its obligations under section 5.1(c).

(b) For purposes of this agreement, "**Force Majeure Event**" means, with respect to a party, any event or circumstance, regardless of whether it was foreseeable, that was not caused by that party and that prevents a party from complying with any of its obligations under this agreement (other than an event or circumstance that results in a party's not having sufficient funds to comply with an obligation to pay money), except that a Force Majeure Event will not include a strike or other labor unrest that affects only one party, an increase in prices, or a Change in Law.

(c) Upon occurrence of a Force Majeure Event, the Nonperforming Party shall promptly notify the other party of occurrence of that Force Majeure Event, its effect on performance, and how long that party expects it to last. Thereafter the Nonperforming Party shall update that information as reasonably necessary. During a Force Majeure Event, the Nonperforming Party shall use reasonable efforts to limit damages to the other party and to resume its performance under this agreement.

5.2    **Non-exclusivity.** Nothing in this Agreement shall be interpreted to prevent or limit the right of the Sheriff (or to require the consent of the Municipality) to provide any services, including those similar to those at issue in this Agreement, to other governmental or nongovernmental entities.

5.3    **Exhibits.** The exhibits to this Agreement are incorporated into and a material part of it.

5.4    **Modification; Entire Agreement.** No amendment of this agreement will be effective unless it is in writing and signed by the parties. This agreement constitutes the entire agreement of the parties relating to the subject matter of this agreement and supersedes all other oral or written agreements.

5.5    **Severability.** If any provision of this agreement is unenforceable to any extent, the remainder of this agreement (or application of that provision to any persons or circumstances other than those as to which it is held unenforceable) will not be affected by that unenforceability and will be enforceable to the fullest extent permitted by law.

5.6    **Governing law; venue.** The laws of Illinois, without giving effect to principles of conflict of laws, govern all matters arising under this agreement, including all tort

claims, and all lawsuits shall be brought only in the Nineteenth Judicial Circuit of Lake County, Illinois.

5.7 **Term; Termination.** Upon becoming effective, this Agreement shall remain in effect for an initial period of one year, unless terminated sooner in accordance with this agreement.

After the initial year, the Agreement will thereafter continue in force and effect from year to year, but either party may terminate it by giving written notice to the other party 90 days prior to the termination date identified in the notice, unless the agreement is otherwise terminated in accordance with this Agreement.

5.7.1 **Data Ownership; Data Transfer Upon Termination.** At all times under this Agreement, data entered into Brazos by a Municipality (or Agency, as the case may be) shall be considered and remain the data of that Municipality or Agency. If a Municipality or Agency elects to terminate its participation in this Agreement, the Sheriff, in collaboration with Tyler Technologies where necessary, will assist in transferring the Municipality's or Agency's data to the entity in a customarily used database format (e.g., MS SQL). Any third-party costs (using resources outside of the Sheriff's Office) will be the responsibility of the Municipality or Agency requesting the data.

5.8 **Waivers.** No term or condition of this Agreement shall be deemed waived by either party unless the term or condition to be waived and the circumstances giving rise to such waiver are set forth specifically in a duly authorized and written waiver of such party. No waiver by any party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition of this Agreement, nor shall waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or a different provision of this Agreement.

5.9 **No Third-Party Beneficiaries.** Nothing in this Agreement shall create, or be construed or interpreted to create, any third party beneficiary rights.

5.10 **Relationship of the Parties.** In providing services under this Agreement, the Sheriff shall act as an independent contractor.

5.11 **Assignments.** A party may assign this Agreement only with the express written consent of the other party.

5.12 **Insurance.**
Each party agrees that it shall maintain insurance coverage sufficient to cover its operations and employees during the term of this Agreement, including:

(a) Unemployment and Workers Compensation Coverage.

(b) Comprehensive General Liability Insurance with minimum limits of $1,000,000 per occurrence.

(c) Automobile Liability Insurance with minimum limits of $1,000,000 per

occurrence covering all owned or leased motor vehicles.

Upon request, each party will provide to the other party a certificate of insurance, in form reasonably acceptable to the requesting party, evidencing the existence of the insurance required under this paragraph. The Parties expressly intend this provision to be construed as maintaining an independent contractor relationship between them, and to foreclose the creation of "special employer" relationships under Illinois law.

5.13 **Indemnification.**

    5.13.1 The Sheriff agrees to indemnify Municipality for all third-party claims, demands, damages, liabilities and costs incurred by Municipality that directly or indirectly result from, or arise in connection with, any negligent act or omission of the Sheriff, its agents, or employees, pertaining to its activities and obligations under this Agreement.

    5.13.2 Municipality agrees to indemnify the Sheriff for all third-party claims, demands, damages, liabilities and costs that directly or indirectly result from, or arise in connection with, any negligent act or omission of Municipality, its agents, or employees, pertaining to its activities and obligations under this Agreement.

5.14 **Counterparts.** The parties may sign this agreement in several counterparts, each of which will be deemed an original but all of which together will constitute one instrument.

5.15 **Recitals.** The recitals above are incorporated into the body of this agreement.

5.16 **Effective Date.** This Agreement will become effective when all of the parties have signed it, and the date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be deemed the "Effective Date" of this Agreement. If a party signs but fails to date a signature, the date that the other party receives the signing party's signature will be deemed to be the date that the signing party signed this agreement, and the other party may inscribe that date as the date associated with the signing party's signature.

**Signed:**

**The County of Lake**

_____
By its

**Municipality**

_____
By its

**Date:**_____

**Date:**_____

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