

Jerome Delvin
District 1
Shon Small
District 2
Will McKay
District 3

Board of County Commissioners

Jerrod MacPherson
County Administrator

Matt Rasmussen
Deputy County Administrator



To view items in detail,
click on highlighted areas.

Notice: Meeting provided in-person, by live-broadcast and telephonically via WebEx as follows:

Live-Broadcast @ link below:

<https://www.co.benton.wa.us/agenda/commissioners>

AGENDA
BOARD OF BENTON COUNTY COMMISSIONERS
Regular Board Meeting
Tuesday, February 1, 2022
Benton County Courthouse, Prosser, WA

9:00 AM

Call to Order

Pledge of Allegiance

Approval of Minutes

❖ **January 25, 2022**

Review Agenda

Consent Agenda

Assessor

a. Agreement w/Just Appraised for Tracking & Auditing Business Personal Properties & Exemptions

Fairgrounds

b. Lease Agreement w/Tri-City Racing Association

IT

c. Add-On Software License Agreement w/I3 Imagesoft

Public Works

d. Interlocal Agreement w/City of Richland for Equipment & Services

Purchasing

e. First Amendment w/Schindler Elevator for Maintenance & Repair

Public Comment ~for public engagement during Commissioners' meetings, please use the public comments phone line @: Dial: 509 460-4941

Other Business

Draft

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting
Benton County Courthouse, Prosser, WA
Tuesday, January 25, 2022, 9:00 a.m.

Meeting provided in-person, by Video Live-Broadcast and Telephonically

Present: Chairman Pro Tem Will McKay
Commissioner Shon Small via/WebEx
Commissioner Jerome Delvin
County Administrator Jerrod MacPherson
Clerk of the Board Cami McKenzie

Benton County Employees Present During All or a Portion of the Meeting: Deputy County Administrator Matt Rasmussen; Robert Heard, IT Manager; Karlee Ainsworth, Assistant HR Manager; Greg Wendt, Community Development Director; Adam Fyall, Sustainable Development Manager; County Engineer Doug D'Hondt; Treasurer Ken Spencer; Commander Clarke via/WebEx; Shyanne Palmus, Communications Coordinator.

Pledge of Allegiance

The Board recited the Pledge of Allegiance.

Approval of Minutes

The Minutes of January 11, 2022 were approved.

Agenda Review

- Cancellation of February 22, 2022 meeting
- March 1 meeting – 1st Quarter – potentially in Kennewick
- Long term care premiums
- Executive Session – Review performance of public employee

Consent Agenda

MOTION: Commissioner Delvin moved to approve the consent agenda items “a” through “oo”. Commissioner McKay seconded and upon vote, the Board approved the following:

Auditor

- a. Surplus & Disposition of Personal Property
- b. 2020 Accountability Audit Management Representation Letter

Building

- c. Contract w/Northwest Code Professionals for Inspections and Plan Review Services

Commissioners

- d. Benton County Tax Levy for 2022
- e. Historical Preservation Disbursement Correction for the Historic Preservation Grant
- f. Appointment of Angie Pacheco to the Mid-Columbia Libraries

Corrections

- g. Line Item Transfer, Fund No. 0000-101, Dept. 120

Human Resources

- h. Reappointing Paul Hart to the Benton County Civil Service Commission
- i. Reappointing Mary Hutchins to the Benton County Civil Service Commission
- j. GovernmentJobs.Com, dba NeoGov, Ordering Form for Job Postings, Interview Scheduling & Training
- k. Compliance Settlement Agreement w/Teamsters Union Regarding Overpayments ULP
- l. Collective Bargaining Agreement w/Benton-Franklin Juvenile Court Guild Representing Juvenile Court Unit
- m. Amendment 1 for the Collective Bargaining Agreement w/AFSCME Representing Courthouse Union
- n. Collective Bargaining Agreement w/Teamsters Local 839, Representing Sheriff's Office & Corrections Department Clerical
- o. Collective Bargaining Agreement w/Teamsters Local 839, Representing Bailiffs
- p. Collective Bargaining Agreement w/AFSCME Representing Appraisers

Human Services

- q. First Amended Agreement w/WA State Department of Commerce Community Service & Housing Assistance Unit Treasury Rent Assistance Program
- r. Agreement w/Tri-Cities Hispanic Chamber of Commerce for Treasury Rental Assistance Program

Juvenile

- s. Contract w/Johnson Controls Fire Protection for Fire Alarm & Sprinkler Inspections
- t. Notice of Termination of Personal Services Contract w/Jennifer Azure
- u. Line Item Transfer, Fund No. 0115-101, Dept. 171

Office of Public Defense

- v. Amended Superior Court Public Defense Agreement w/Shelley Ajax

Parks

- w. Appointment of Sarah Funk to the Benton County Park Board
- x. Appointment of Kit McBurney to the Benton County Park Board

Prosecuting Attorney

- y. Line Item Transfer, Fund No. 0000-101, Dept. 117

Public Works

- z. Digital Submittal Certification of the 2022 Road Levy Certification and Estimated Revenue
- aa. Coding Correction Between ER&R and Protective Inspection Services
- bb. Solid Waste Financial Assistance Grant from WA State Dept. of Ecology

Purchasing

- cc. Contract w/Banlin Construction for the Justice Center Front Entrance Security Upgrade Project

- dd. Payment Authorization to Paramount Communications for Pulling Additional Fiber Runs @ the Justice Center
- ee. Contract w/Booth & Sons Construction for the Moderate Risk Waste Facility Project
- ff. Contract w/CKJT Architects for Architectural & Engineering Design of Justice Center Tenant Improvement Project
- gg. Interlocal Agreement w/City of Prosser for General Equipment and/or Services
- hh. Purchase from Avery Dennison for Sign Materials for the TrafficJet Print System
- ii. Payment to Wilbur-Willis Company for Purchase of Herbicides
- jj. Contract w/Apollo Mechanical Contractors for the Courtroom IT HVAC Project

Risk Management

- kk. Engagement Letter w/Pricewaterhousecoopers for Self-Insured Workers Compensation & Liability Programs
- ll. Contract w/Embark Safety to Monitor Driver Records Monthly

Sheriff

- mm. Memorandum of Understanding w/US Marshal for the Joint Law Enforcement Operations Task Force
- nn. 2021 Federal Equitable Sharing Agreement Certification

Treasurer

- oo. Cancelling Taxes Assessed Upon Personal Property Determined to be Uncollectible

Public Comment

Dr. Raul Garcia, said he worked in emergency services in Tri-Cities, and talked about the health care crisis shortage of staffing in the counties and the rest of the state. Additionally, he said there was a shortage of mental health staffing, and they were trying to find solutions. He expressed his concern that GCBH terminated a very large contract with Lourdes for mental health, with no reason or cause and asked Benton County to investigate this further and bring the truth to light.

Commissioner Delvin said that Commissioner Small represented Benton County on that issue and he agreed they needed to find out the reasons behind the termination.

Jim Atkins, Prosser, WA, via/WebEx asked if there was an update on allowing the public to use the arena at the Fairgrounds.

Adam Fyall said they were in the middle of creating the master plan and hoped to have it complete in the May/June time frame and this proposal was included in the discussion. He said they were not going to make further decisions, for liability and personnel reasons, on whether they wanted to make that change until after the master plan was complete. However, they would bring the information to the Board when the master plan was completed.

Mr. Atkins again asked why the community could not use the arena as it was already being allowed throughout the State of Washington at other entities. Mr. Fyall said they would get him an answer once the master plan was complete.

Shon Small (via/WebEx) said there was not a “back deal” with the ASO going a different direction regarding the contract with Lourdes for mental health. He said the transition from county to private was very smooth and expected it to be smooth for the next level.

Agreement w/WA State Parks & Recreations Commission - Boating Safety & Education Services

Commander Clarke via/videoconference presented the Agreement with the Washington State Parks & Recreation Commission for Boating Safety & Education. He said this agreement would establish a relationship and cooperative framework to accomplish boating safety and education through use of grant.

MOTION: Commissioner Delvin moved to approve the Intergovernmental Agreement # LE: MLE1200 between Washington State Parks and Recreation Commission and Benton County Sheriff’s Office for the performance of boating safety and education services and authorize the Benton County Sheriff to sign said Agreement. Commissioner McKay seconded and upon vote, the motion carried.

Grant Award from WA State Parks & Recreation Commission for the 2022 Federal Financial Assistant Grant Program & Boating Safety

Commander Clarke via/videoconference presented the award of the Boating Safety Program Grant in the amount of \$12,173.96.

MOTION: Commissioner Delvin moved to approve the Recreational Boating Safety Federal Financial Assistance Grant Award from the Washington State Parks and Recreation Commission in the amount of \$12,173.96, for the use of marine enforcement, vessel safety inspections, education, training, and equipment for recreational boating safety, and hereby authorizes the Benton County Sheriff to sign the attached Agreement No. MLE 123-109. Commissioner McKay seconded and upon vote, the motion carried.

Grant Agreement w/WA Traffic Safety Commission for Tri-Cities Walker Safety Project

Commander Clarke via/videoconference presented the Agreement with the WA Traffic Safety Commission for the Walker Safety Grant. Benton County’s portion was \$1,500 for overtime related to high-visibility enforcement traffic safety.

MOTION: Commissioner Delvin moved to approve the attached Interlocal Agreement between BCSO and WTSC and authorizes the Benton County Sheriff to sign Agreement 2022-AG-4410-Tri-Cities Walker Safety Project. as presented. Commissioner McKay seconded and upon vote, the motion carried.

Amending Social Media Policy & Procedures

Shyanne Palmus presented the updated policy that was originally approved in 2017. A revision was necessary to include additional definitions, clarifications and expand upon removing or blocking comments.

MOTION: Commissioner Small moved to approve the Benton County Social Media Policy & Procedures as presented. Commissioner Delvin seconded and upon vote, the motion carried.

2022 Federal Legislative Agenda

Shyanne Palmus presented the Federal Legislative Agenda priorities that outlined the policies, projects, and programs Benton County wanted to emphasize during the federal legislative session and the remaining year.

MOTION: Commissioner Delvin moved to approve Resolution adopting the Benton County 2022 Federal Legislative Agenda as presented. Commissioner Small seconded and upon vote, the motion carried.

Benton County Economic Development Plan

Adam Fyall presented the updated plan regarding Benton County's philosophy and approach to economic development. He said that Benton County relied on partners to do a lot of the work, including Ports, non-governmental groups, and some cities to do the recruitment, retention, etc. for economic development. Additionally, they were including funding specifically for Ports in this plan, as it was required to be able to fund projects from the Rural County economic fund (.09 money). He said he received comments from staff and commissioners and partners and would be making a few more revisions and would bring it back in three weeks for Board approval. Then it would be put on a 2-year cycle during budget years for revision.

Position Request for Transportation Planning Coordinator

Karlee Ainsworth and Doug D'Hondt presented the request for a new Transportation Planning Coordinator position. They identified a need and there was a current vacant Engineering Tech III position so they wanted to change the Engineering Tech III position to a Transportation Planning Coordinator.

MOTION: Commissioner Delvin moved to approve the following resolutions:

- Establishing the Transportation Planning Coordinator Position
- Establish the Transportation Planning Coordinator as a grade 17 on the Benton County Non-Bargaining Salary Schedule
- Line Item Transfer of Funds Within County Roads to create the Transportation Planning Coordinator position
- Public Works Department Organizational Chart

Commissioner Small seconded and upon vote, the motion carried.

Position Request for Principal Planner

Karlee Ainsworth and Greg Wendt presented the request for a new Principal Planner position. The position was originally budgeted as a Principal Planner and was later changed to a Senior Planner. However, they were now requesting to revert it back to a Principal Planner as there had been some staff movement and they wanted to advertise and were looking for someone with more experience. Mr. Wendt pointed out it was a budget neutral request.

MOTION: Commissioner Delvin moved to approve the following resolutions:

- Establishing the Classification Description for the Principal Planner
- Establishing Salary Placement for the Principal Planner as a grade 18 on the Benton County Non-Bargaining salary schedule
- LIT to transfer funds within Current Expense Fund Number 0000101, Dept. 116 to create a Principal Planner

Commissioner Small seconded upon vote, the motion carried.

Other Business

February 22, 2022 - Meeting Cancellation

Mr. MacPherson reminded the Board would there not be a meeting on February 22, 2022 due to the Presidents' Day holiday on Monday, February 21.

Quarterly Meetings in Kennewick

As requested by the Board to review, Mr. MacPherson said that state law allowed Benton County to hold quarterly meetings outside the County seat, however, it did require more extensive notice of at least 30 days prior to the meeting. He suggested March 1, 2022 as the first quarterly meeting and suggested the first meeting of the last month of each quarter to hold the meetings.

The Board agreed. Chairman Pro Tem McKay requested to hold the meetings at night and recommended 6:00 p.m. The Board agreed to try the night meetings and agreed to March 1, 2022 at 6:00 pm in Kennewick.

Long Term Care Premium Discussion

Ms. Ainsworth said the Governor put a hold on the collecting the premiums, and the Board decided it would not collect in January, 2022 while waiting to see what the State was going to do.

She said the House voted to delay collection by 18 months and it was expected the Senate would vote this week.

The Board recommended holding off on February collections to see what the Senate decided.

MOTION: Commissioner Delvin moved to have Administration notify the County Auditor to not to collect February State mandated long term care tax on employees for the month of February 2022. Commissioner Small seconded.

Discussion

There was a discussion regarding employees purchasing their own long-term care plans in lieu of this tax and they asked if Ms. Ainsworth had a recommendation. She said she had heard, and would caution people, that the insurance companies were stating that once you were out, you were out for good and that she would not recommend anyone cancel at this time.

Upon vote, the motion carried.

The Board briefly recessed, reconvening at 9:52 a.m.

Executive Session – Review Performance of Public Employee

The Board went into executive session at 9:52 a.m. for up to 20 minutes to review the performance of a public employee. Commissioner Small appeared via/teleconference. Also present were Jerrod MacPherson and Cami McKenzie.

The Board came out at 10:11 a.m. No decisions were made in executive session, but direction was given.

Other Business

Commissioner McKay said he spoke to Representative Matt Boehnke and Representative Perry Dozier regarding the wind farm legislation, and they were on Benton County's side regarding this issue.

Tort Claims

CC 2022-02: Received from Jerry Hatcher on January 13, 2022

CC 2022-03: Received from Christopher Pedersen on January 27, 2022

Payroll

Check Date: 01/18/2022

Payroll Draw Checks

Total all funds: \$109,113.50

Warrant #: 243490

Direct Deposit #: 168351-168495

Payroll Draw Deductions/Transfers
Total all funds: \$20,131.22
Taxes #: 101220115

Payroll Deductions/Transfers
Total all funds: \$43,125.00
Taxes #: 101220116

Accounts Payable

Check Date: 01/14/2022

Warrants #: 226626-226710
Total all funds: \$393,714.19

Transfers #: 01142208-1142213
Total all funds: \$1,670,265.84

Warrants #: 226330-226625
Total all funds: \$1,776,568.49

EFT's #: 2107-2111
Transfers #: 01142201-01142207
Total all funds: \$784,380.20

Check Date: 01/21/2022

Warrants #: 226770-226868
Total all funds: \$342,480.83

EFT's #: 2112-2113
Transfers #: 01212206-01212208
Total all funds: \$271,017.75

Warrants #: 226869-227027
Total all funds: \$1,114,713.01

EFT's #: 2114-2117
Transfers #: 01212201-01212203
Total all funds: \$23,275.21

Resolutions

2022-050: Surplus & Disposition of Personal Property
2022-051: Contract w/Northwest Code Professionals for Inspections and Plan Review Services

2022-052: Benton County Tax Levy for 2022

2022-053: Historical Preservation Disbursement Correction for the Historic Preservation Grant

2022-054: Appointment of Angie Pacheco to the Mid-Columbia Libraries

2022-055: Line Item Transfer, Fund No. 0000-101, Dept. 120

2022-056: Reappointing Paul Hart to the Benton County Civil Service Commission

2022-057: Reappointing Mary Hutchins to the Benton County Civil Service Commission

2022-058: GovernmentJobs.Com, dba NeoGov, Ordering Form for Job Postings, Interview Scheduling & Training

2022-059: Compliance Settlement Agreement w/Teamsters Union Regarding Overpayments ULP

2022-060: Collective Bargaining Agreement w/Benton-Franklin Juvenile Court Guild Representing Juvenile Court Unit

2022-061: Amendment 1 for the Collective Bargaining Agreement w/AFSCME Representing Courthouse Union

2022-062: Collective Bargaining Agreement w/Teamsters Local 839, Representing Sheriff's Office & Corrections Department Clerical

2022-063: Collective Bargaining Agreement w/Teamsters Local 839, Representing Bailiffs

2022-064: Collective Bargaining Agreement w/AFSCME Representing Appraisers

2022-065: First Amended Agreement w/WA State Department of Commerce Community Service & Housing Assistance Unit Treasury Rent Assistance Program

2022-066: Contract w/Tri-Cities Hispanic Chamber of Commerce for Treasury Rental Assistance

2022-067: Contract w/Johnson Controls Fire Protection for Fire Alarm & Sprinkler Inspections

2022-068: Notice of Termination of Personal Services Contract w/Jennifer Azure

2022-069: Line Item Transfer, Fund No. 0115-101, Dept. 171

2022-070: Superior Court Public Defense Agreement w/Shelley Ajax

2022-071: Appointment of Sarah Funk to the Benton County Park Board

2022-072: Appointment of Kit McBurney to the Benton County Park Board

2022-073: Line Item Transfer, Fund No. 0000-101, Dept. 117

2022-074: Digital Submittal Certification of the 2022 Road Levy Certification and Estimated Revenue

2022-075: Coding Correction Between ER&R and Protective Inspection Services

2022-076: Solid Waste Financial Assistance Grant from WA State Dept. of Ecology

2022-077: Contract w/Banlin Construction for the Justice Center Front Entrance Security Upgrade Project

2022-078: Payment Authorization to Paramount Communications for Pulling Additional Fiber Runs @ the Justice Center

2022-079: Contract w/Booth & Sons Construction for the Moderate Risk Waste Facility Project

2022-080: Contract w/CKJT Architects for Architectural & Engineering Design of Justice Center Tenant Improvement Project

2022-081: Interlocal Agreement w/City of Prosser for General Equipment and/or Services

2022-082: Purchase from Avery Dennison for Sign Materials for the TrafficJet Print System

2022-083: Payment to Wilbur-Willis Company for Purchase of Herbicides

- 2022-084: Contract w/Apollo Mechanical Contractors for the Courtroom IT HVAC Project
2022-085: Engagement Letter w/Pricewaterhousecoopers for Self-Insured Workers Compensation & Liability Programs
2022-086: Contract w/Embark Safety to Monitor Driver Records Monthly
2022-087: Memorandum of Understanding w/US Marshal for the Joint Law Enforcement Operations Task Force
2022-088: 2021 Federal Equitable Sharing Agreement Certification
2022-089: Cancelling Taxes Assessed Upon Personal Property Determined to be Uncollectible
2022-090: Authorizing Sheriff to Sign the Intergovernmental Agreement Between Washington State Parks and Recreation Commission for Boating Safety and Education Services
2022-091: Awarding Grant Funding from Washington State Parks & Recreation Commission for the 2022 Federal Financial Assistance Grant - Boating Safety Program - Authorize Sheriff to Sign the Subrecipient Grant Agreement No. MLE 123-109
2022-092: Authorizing Sheriff to Sign the Interagency Agreement Between Benton County Sheriff's Office and Washington Traffic Safety Commission Providing Grant Funding for the Tri-Cities Walker Safety Project
2022-093: In The Matter of Amending the Benton County Social Media Policy and Procedures - Rescinding Resolution 2017-589
2022-094: Adopting the Benton County 2022 Federal Legislative Agenda
2022-095: Establishing a Transportation Planning Coordinator Classification Description
2022-096: Establishing the Salary Grade for Transportation Planning Coordinator
2022-097: Transfer of Funds Within County Road Fund 0101101 Dept. 500
2022-098: Approving Updated Benton County Public Works Organizational Chart
2022-099: Establishing a Principal Planner Classification Description
2022-100: Establishing the Salary Grade the Principal Planner
2022-101: Transfer of Funds Within Current Expense Fund 0000-101 Dept. 116

There being no further business before the Board, the meeting adjourned at approximately 10:11 a.m.

Clerk of the Board

Chairman

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	February 1 st , 2022
Subject:	AN AGREEMENT WITH JUST APPRAISED FOR THE ASSESSOR'S OFFICE
Presenter:	Bill Spencer
Prepared By:	Bill Spencer
Reviewed By:	Bill Spencer
PA Review, Approval to Form:	☒ Yes ☐ No ☐ N/A (If no, include reasoning for no approval)
Type of Agenda Item:	Type of Action Needed: (Multiple boxes can be checked, if necessary)
☐ Consent Agenda ☐ Public Hearing ☒ Scheduled Business	☐ Discussion Only ☐ Decision / Direction ☐ Sign Letter / Document ☐ Pass Motion ☒ Pass Resolution ☐ Pass Ordinance ☒ Execute Contract

Summary / Background Information

Just Appraised will be providing professional services to help the Assessor's office with the tasks involved in Business Personal Property & Exemptions. Through the tools outlined the office will be able to use a platform that allows taxpayers to sign up, open, and submit Business Personal Property & Exemptions Renditions. This creates a workflow that is designed to allow staff to process applications more quickly. This also includes the ability to import the files submitted by taxpayers into the CAMA software used by the Assessor's office. This will provide more time to audit the files while reducing the potential for error. The current process requires intensive keying of each Business Personal Property & Exemptions account.

The Reet tech. fund (594.240.6430) was set by the state for this purpose

Fiscal Impact

Amount: not to exceed \$28,000 for the first year

Fund: 594.240.6430

Recommendation

That the Benton County board of Commissioners approve the Just Appraised contract.

Suggested Motion

That the Board of Benton County Commissioners, Benton County Washington authorizes the Personal Services Contract for the agreement with Just Appraised not to exceed \$28,000 excluding Washington State Sales Tax for the first year with a renewal not to exceed 5% each year for 60 months; and the Initial term limits will begin with twelve months from the completion of Phase four found in the Statement of Work and Order form and will renew automatically every twelve months for 60 months unless Benton County provides Just Appraised written notice at least 60 days prior to the end of the annual term.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING AN AGREEMENT WITH JUST APPRAISED FOR THE ASSESSOR'S OFFICE

WHEREAS, an important yet time and labor-intensive task of the Assessor's office is tracking, entering, and auditing the Business Personal Property & Exemptions accounts within Benton County for tax purposes; and

WHEREAS, the Benton County Assessor has determined a need for further help in developing efficiency of the processes within the County Assessor's office. The Benton County Assessor has observed and determined that the labor-intensive function that is Business Personal Property & Exemptions for tax purposes is not yet being fully met to the standards that the Benton County Assessor has concluded appropriate for this office. The Benton County Assessor has sought out different options to solve this problem and has resolved that by using current technology the office will begin to fully meet the high standards of the office in performing the tasks that are required in Business Personal Property & Exemptions. This includes the tracking, importing, and entering the Business Personal Property & Exemptions information and most important the auditing of the Business Personal Property & Exemptions accounts; and

WHEREAS, after review, the Benton County Assessor has chosen to employ the services of Just Appraised; and

WHEREAS, Just Appraised will be providing professional services to help the Assessor's office with the tasks involved in Business Personal Property & Exemptions. Through the tools outlined the office will be able to use a platform that allows taxpayers to sign up, open, and submit Business Personal Property & Exemptions Renditions. This creates a workflow that is designed to allow staff to process applications more quickly. This also includes the ability to import the files submitted by taxpayers into the CAMA software used by the Assessor's office. This will provide more time to audit the files while reducing the potential for error. The current process requires intensive keying of each Business Personal Property & Exemptions account and all items included therein; and

WHEREAS, the Assessor and Deputy Prosecuting Attorney Reid Hay have reviewed the Personal Services Contract, and recommend Just Appraised; and

BE IT RESOLVED that the Board of Benton County Commissioners, Benton County Washington authorizes the Personal Services Contract for the agreement with Just Appraised not to exceed \$28,000 excluding Washington State Sales Tax for the first year with a renewal not to exceed 5% each year for 60 months; and

BE IT FURTHER RESOLVED, Initial term limits will begin with twelve months from the completion of Phase four found in the Statement of Work and Order form and will renew automatically every twelve months for 60 months unless Benton County provides Just Appraised written notice at least 60 days prior to the end of the annual term.

Dated this _____ day of _____, _____

Chairman of the Board

Member

Member

Attest: _____
Clerk of the Board

of Benton County, Washington.

JUST APPRAISED

SAAS SERVICES AGREEMENT

This SaaS Services Agreement (“Agreement”) is entered into effective as of February 1, 2022 (the “Effective Date”) between Just Appraised Inc., with a place of business at 2261 Market Street #4074 San Francisco CA, 94114 (“Company”), and the undersigned Customer (“Customer”).

BACKGROUND

- A. Company provides a sales verification software-as-a-service application that aggregates various data sources about real estate transactions and creates a workflow that is designed to allow staff members to process real estate sales more quickly (collectively, the “Platform”).
- B. Company also provides support and maintenance services related to its platform, and may offer consulting, implementation and other professional services.
- C. Customer wishes to utilize the Platform and related services as provided herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the Parties hereto agree as follows:

1. PLATFORM ACCESS.

1.1 Subject to the terms and conditions of this Agreement, Company hereby grants Customer and its Users a non-exclusive, non-transferable (except for permitted assignments under Section 9) right, during the Term (as defined below), to access and use the Platform solely for Customer’s internal business purposes in accordance with the applicable Order Form. As used herein, “User” means an employee, representative, consultant, contractor or agent of Customer who is authorized to use the Platform and has been supplied a user identification and password by Customer (or by Company at Customer’s request).

1.2 As used herein, “Order Form” means a quote, order form in substantially the form attached as Exhibit A, or other ordering document detailing the Customer’s access to the Platform and any associated fees therefor and any transaction-specific terms and conditions. Upon mutual execution (or, in the case of quotes, confirmation and placement of the order by Customer), Order Form(s) will be governed by the terms and conditions hereof and are deemed incorporated herein by this reference. If the parties agree, an Order Form may be used in connection with, or in lieu of, an SOW (as defined below).

1.3 As part of the registration process, Customer will identify an administrative user name and password for Customer’s Company account. Company reserves the right to refuse registration of, or cancel passwords it deems inappropriate. Customer may only allow that number of Users as is specified in the applicable Order Forms(s) to use the Platform at any one time.

Customer acknowledges that Company may include in its Platform functionality to track the number of active Users and to disallow use by more than the authorized number of Users. Customer is responsible for all activities that occur under Customer’s User accounts. Customer shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Platform, and shall promptly notify Company of any known unauthorized use. Customer will ensure that (a) all Users given access to the Platform have the right to access the information and Customer Data made accessible to them by Customer through the Platform and (b) any User granting Company access to any Customer Data has the right and authority to grant such access.

2. SUPPORT AND PROFESSIONAL SERVICES

2.1 Subject to the terms hereof, Company will provide Customer with reasonable technical support services in accordance with the Company’s standard practice.

2.2 In connection with Customer’s use of the Platform, Company and Customer may agree in an Order Form and/or a separate mutually executed Statement of Work (an “SOW”) upon training, implementation, consulting or other professional services to be performed by Company (collectively the “Professional Services”). Customer agrees to provide Company with any required Customer materials needed for Company to perform the Professional Services, and hereby grants Company a royalty-free, non-exclusive, worldwide license to use such materials for the sole purpose of enabling Company to perform the Professional Services. Company will use commercially reasonable efforts to meet any schedules set forth in an SOW or Order Form, and

Customer agrees to cooperate in good faith to allow Company to achieve completion of such Professional Services in a timely and professional manner. If achievement of any particular milestone is dependent upon performance of tasks by Customer or by a third party outside of Company's control, any projected dates for accomplishing such milestones will be approximately adjusted to reflect any changes in such tasks. Company retains all right, title and interest in and to (i) anything it uses or develops in connection with performing Professional Services for Customer, including, among other things, software, tools, specifications, ideas, concepts, inventions, processes, techniques, and know-how and (ii) anything it delivers to Customer during the course of performing Professional Services (collectively, "Deliverables") ((i) and (ii) being collectively referred to herein as the "Professional Services IP"), unless otherwise specified in the applicable Order Form or SOW. Company hereby grants to Customer and its Users, a non-exclusive, non-transferable (except for permitted assignments under Section 9), worldwide, royalty-free, limited-term license to use the Deliverables during the Term solely in conjunction with Customer's use of the Platform. Customer may not copy, modify, or otherwise create derivative works of any Deliverables without Company's prior written consent in each case.

3. RESTRICTIONS AND RESPONSIBILITIES

3.1 Customer and its Users will not, directly or indirectly, (i) 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 Platform or any software, documentation or data related to the Platform ("Software"); (ii) modify, copy, translate, or create derivative works based on the Platform or any Software (except to the extent expressly permitted by Company or authorized within the Platform); (iii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make the Platform available to any third party, except for Users; (iv) use the Platform to send spam or unsolicited messages, collect data regarding others without their consent, transmit unlawful, immoral, libelous, tortuous, infringing, defamatory, threatening, vulgar or obscene material or material harmful to minors, transmit viruses or other harmful computer code; (v) attempt to interfere with or disrupt the performance of the Platform or the data contained therein; (vi) attempt to gain unauthorized access to the Platform or networks related to the Platform; (vii) interfere with another's use of the Platform; (viii) create "links" to or from the Platform, or "frame" or "mirror" any of Company's content; (ix) use the Platform in any manner or for any purpose that is unlawful under applicable laws; (x) access the Platform to build a competitive service, reproduce features of the Platform, or resell the Platform; or (xi) remove any proprietary notices or labels from the Company IP (as defined below).

3.2 Further, Customer may not remove or export from the United States or allow the export or re-export of the Platform, 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 Platform only in compliance with Company's standard published policies then in effect (the "Policy"), if reasonable, and all applicable laws and regulations. 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 Platform. Although Company has no obligation to monitor Customer's use of the Platform, Company may do so and may prohibit any use of the Platform it believes may be (or alleged to be) in violation of the foregoing.

3.4 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Platform, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). 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.

4. CONFIDENTIALITY; PROPRIETARY RIGHTS

4.1 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). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Platform 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 During the Term, Customer will provide, or otherwise make available, to Company the Customer Data. As used herein, “Customer Data” means all data and other information that is provided to Company through Customer’s use of the Platform or is otherwise made available to Company by Customer (or at the direction of Customer). Customer Data may be provided or made available to Company directly by Customer or indirectly by authorizing Customer’s third-party vendors to provide such Customer Data to Company. Customer hereby grants to Company a non-exclusive, non-transferable, non-sublicenseable, royalty-free, paid-up, revocable, perpetual license to use, copy, execute, reproduce, display, perform, disclose, distribute and prepare derivative works of the Customer Data for the purposes of (i) providing the Platform and Professional Services to Customer, and (ii) to improve and develop the Platform, Professional Services and Company’s other products and services. Customer represents and warrants that it has all necessary rights, consents, approvals and authorizations to collect, process, disclose, license, use and give Company access to the Customer Data as contemplated by this Agreement. However, Company recognizes that Customer is a government entity dealing with taxpayer information that is often private and protected by law. Nothing in this Section 4 or contained elsewhere in this Agreement shall be interpreted as permitting Company to divulge to any third person any confidential or privileged tax information protected by Washington law, including but not limited to RCW 84.08.210 and RCW 84.40.340.

4.3 Company shall own and retain all right, title and interest in and to (a) the Platform and Software, all improvements, enhancements, derivative works, or modifications thereto, (b) all Professional Services IP, and (c) all intellectual property rights related to any of the foregoing (collectively, the “Company IP”).

4.4 Company hereby acknowledges that Customer is a governmental entity and as such is subject to the requirements of the Public Records Act, Chapter 42.56 RCW. Accordingly, Company understands that to the extent a proper request is made, the Customer may be required by virtue of that Act to disclose any records related to this Contract actually in its possession or in Company’s possession. This may include records that Company regards as confidential or proprietary. To the extent that Company provides any records to the Customer that it regards as confidential or proprietary, Company agrees to conspicuously mark the records as such. The Company also hereby waives any and all claims or causes of action for any injury it may suffer by virtue of Customer’s release of records covered under the Public Records Act. Customer agrees to take all reasonable steps to notify Company in a timely fashion of any request made under the Public Records Act that will require disclosure of any records marked by Company as confidential or proprietary, so that Company may seek a judicial order of protection if necessary.

4.5 Notwithstanding anything to the contrary, the 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 Platform and Professional Services rendered to Customer and related systems and technologies (including, Customer Data and data derived therefrom), and Company will be free (during and after the Term as applicable) to use and disclose such information and data (a) to improve and enhance the Platform, and (b) for other development, improvement, diagnostic and corrective purposes in connection with providing the Platform and other Company offerings to Customer and to third parties.

4.6 During the Term, Customer may provide Company with feedback concerning the Platform and/or Professional Services, or Customer may provide Company with other comments and suggestions for new products, features, or improvements (collectively, “Feedback”). Customer acknowledges that Company will own all right, title, and interest in and to the Feedback, and Customer hereby irrevocably transfers and assigns to Company all of its right, title and interest in such Feedback, including all intellectual property rights therein. At Company’s request and expense, Customer agrees to execute documents or take such further actions as Company may reasonably request to help Company acquire, perfect, and maintain its rights in the Feedback. All Feedback provided by Customer to Company shall be provided on an “as is” basis with no warranty. For the sake of clarity, Customer is not obligated to provide Company with any Feedback under this Agreement.

5. PAYMENT OF FEES

5.1 Customer will pay Company the then applicable fees described in the Order Form(s) and SOW(s) for the Platform and Professional Services in accordance with the terms therein (the “Fees”). The Pilot Fee (as defined in the applicable Order Form) will be invoiced monthly upfront during the Pilot Period (as defined in the applicable Order Form). License Fees (as defined in the applicable Order Form) will be invoiced annually promptly following the completion of Phase 4 (entitled “Full Data Integration Roll Out”) of the SOW and each annual anniversary thereof, and such invoices will be paid in accordance with Section 5.2 below. Unless an Order Form of SOW provides otherwise, any initial Implementation Fees, Training Fees and/or Integration Fees (collectively, “Professional Services Fees”) specified in the Order Form or an SOW will be invoiced promptly following the Effective Date of the applicable Order Form and/or SOW and will be paid in accordance with Section 5.2 below. Any subsequent Professional Services Fees will be invoiced and paid in accordance with the applicable Order Form and/or SOW. If Customer’s use of the Platform 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 Term (as defined in the applicable Order Form)

or then-current Renewal Term (as defined in the applicable Order Form), upon thirty (30) days prior notice to Customer (which may be sent by email), provided that such increases shall not exceed any limitations on increases specified in the Order Form. If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department.

5.2 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 Platform other than U.S. taxes based on Company's net income.

6. TERM AND TERMINATION

6.1 The term of this Agreement will begin on the Effective Date and, unless terminated earlier as provided herein, will continue in effect for so long as there is an Order Form or SOW outstanding (the "Term"). Each Order Form (including Customer's obligation to pay the applicable License Fees) will automatically renew as set forth therein. Neither SOWs nor those portions of Order Forms that Customer uses to order Professional Services will automatically renew.

6.2 In addition to any other remedies it may have, either party may also terminate this Agreement (or an Order Form or SOW) with written notice (or without notice in the case of nonpayment) if the other party materially breaches any of the terms or conditions of this Agreement (or an Order Form or SOW) and does not cure such breach within thirty (30) days of receiving written notice of such breach from the other party. Customer will pay in full for the Platform up to and including the last day on which the Platform is provided.

6.3 Customer may terminate this Agreement or an any Order Form for convenience by providing Company with sixty (60) days written notice. In the event of such a termination, Customer will still be responsible for paying Company all Fees for the full Pilot Term (if any), the Initial Term or then-current Renewal Term, as applicable, and Customer will not receive a refund of any prepaid fees.

6.4 Sections 4, 5, 6.4 and 7-9 will survive expiration or termination of this Agreement for any reason.

7. WARRANTY AND DISCLAIMER

Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Platform in a manner which minimizes errors and interruptions in the Platform and shall perform the Professional Services in a professional and workmanlike manner. The Platform 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 PLATFORM WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE PLATFORM. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE PLATFORM AND PROFESSIONAL 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. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR INDEMNIFICATION OBLIGATIONS THAT ARISE UNDER SECTION 9 OF THIS AGREEMENT, OR BODILY INJURY OF A PERSON, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES 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; OR (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL.;

9. INDEMNIFICATION

a. The Company shall hold harmless, indemnify, and defend the Customer and its officers, officials, employees, and agents from and against any and all claims, actions, suits, liabilities, losses, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability, or death to persons or damage to property or business, arising in connection with the work performed under this Agreement, or caused or occasioned in whole or in part by reason of the presence of the Company or its subcontractor or their property upon or in the proximity of the property of the Customer. Provided, that the Company's obligation hereunder shall not extend to injury, sickness, death, or damage caused by or arising out of the sole negligence of the Customer or its officers, officials, employees, or agents.

b. In any and all claims against the Customer and its officers, officials, employees, and agents by any employee of the Company, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Company or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the Company expressly waives any immunity the Company might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Agreement, the Company acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this section shall be incorporated, as relevant, into any contract the Company makes with any Company's or agent performing work hereunder. Company's obligations under this Section 9 shall survive termination and expiration of this Agreement.**

c. The Company's obligations hereunder shall include, but are not limited to, investigating, adjusting, and defending all claims alleging loss from action, error, or omission, or breach of any common law, statutory, or other delegated duty by the Company, or the Company's employees, agents, or subcontractors.

10. INSURANCE

a. **Workers Compensation:** Company shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this Agreement, workers compensation coverage shall be provided for all employees of Company and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Agreement. Company shall submit a copy of its certificate of coverage from the Washington State Department of Labor and Industries prior to commencement of work. Except as prohibited by law, Company waives all rights of subrogation against the Customer for recovery of damages to the extent they are covered by workers compensation and employer's liability.

If Company, subcontractor, or sub-subcontractor fails to comply with all State of Washington workers compensation statutes and regulations and Customer incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Company shall indemnify the Customer. Indemnity shall include all fines, payment of benefits to Company or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount

owed to Customer by Company pursuant to the indemnity agreement may be deducted from any payments owed by Customer to Company for performance of this Agreement.

b. **Commercial General Liability and Employers Liability Insurance:** Prior to the start of work under this Agreement, Company shall maintain commercial general liability coverage (policy form CG0001 or equivalent) to protect the Company from claims for wrongful death, bodily injury, personal injury, and property damage that may arise from any actions or inactions under this Agreement by Company or by anyone directly employed by or Agreement with Company. The minimum commercial general liability insurance limits shall be as follows:

\$2,000,000 General Aggregate

\$2,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal Injury and Advertising Injury

\$1,000,000 Each Occurrence

The commercial general liability policy must contain an endorsement naming the Customer and its elected and appointed officials, employees, and agents as an Additional Insured and an endorsement that specifically states that Company's commercial general liability policy shall be primary, and not contributory, with any other insurance maintained by the Customer.

The Company must provide commercial general liability coverage that does not exclude activities to be performed in fulfillment of this Agreement and does not exclude liability pursuant to the indemnification requirement under Section 9. Company's commercial general liability policy shall provide cross liability coverage, indicating essentially that except with respect to the limits of insurance and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claims are made or suit is brought.

Company shall also provide Stop Gap Employer's Liability Insurance coverage with minimum limits as follows:

\$1,000,000 Each Accident

\$1,000,000 Policy Limit for Disease

\$1,000,000 Each Employee for Disease

c. **Automobile Liability:** The Company shall maintain, during the life of this Agreement, Automobile Liability Insurance (ISO Form Number CA0001 or equivalent) covering any autos

owned by the Company (Symbol 1), or if the Company has no owned autos, any hired (Symbol 8) and non-owned autos (Symbol 9), in the amount of not less than one million dollars (\$1,000,000) per accident for Bodily Injury and Property Damage to protect Company from claims which may arise from the performance of this Agreement, whether such operations are by the Company or by anyone directly or indirectly employed by the Company.

d. Cyber Liability: The Company shall maintain cyber liability insurance for not less than one million dollars (\$1,000,000) per occurrence and an annual aggregate of two million dollars (\$2,000,000) covering claims involving privacy violations, information theft, damage to or destruction of electronic information, extortion, and network security. Such coverage is required only if any products and/or services related to information technology (including hardware and/or software) are provided to Customer and for claims involving any services for which the Company is engaged with Customer for such length of time as necessary to cover any and all claims.

11. 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 sublicensable except with the other party's prior written consent. 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 Washington without regard to its conflict of laws provisions. Customer agrees to reasonably cooperate with Company to serve as a reference account upon request. Company shall have the right to display Customer's name and logo on Company's website(s). In the event of a conflict between this Agreement and any Order Form or SOW, the Order Form or SOW will supersede. There shall be no force or effect to any different terms of any related purchase order or similar form even if signed by the parties after the date hereof.

IN WITNESS WHEREOF, authorized representatives of the undersigned have executed this Agreement effective as of the Effective Date.

FOR: BENTON COUNTY

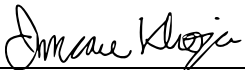
Chairman, Board of County Commissioners

Date

Approved as to form:

Civil Deputy Prosecuting Attorney

FOR: JUST APPRAISED INC.


Signature

Imran Khoja
Print Name

CEO
Title

January 19, 2022
Date

JUST APPRAISED
SAAS SERVICES ORDER FORM: BPP

This Order Form is effective as of February 1, 2022 (the "Order Form Effective Date") and is governed by the terms and conditions of the SaaS Services Agreement entered into by Just Appraised Inc. and the undersigned customer on _____ (the "Agreement"). By signing this Order Form, Customer expressly agree to be bound by the terms of conditions of this Agreement, which are incorporated herein by reference. Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Agreement. If there is an inconsistency or conflict between the terms of the Agreement and the terms of this Order Form, the terms of this Order Form shall govern.

Customer: Benton County Assessor	Contact: Bill Spencer (Assessor)
Address: 620 Market St., Prosser, WA 99350	Phone: 509-786-2046
	E-Mail: bill.spencer@co.benton.wa.us
License Fees: \$24,000 for the Initial Term to be paid after Phase 4 completion of SOW. After the Initial Term, Company may increase the License Fee in accordance with Section 4.1 of the Agreement, provided, however, that such price increases are limited to no more than 5% year over year. Implementation Fees: \$2000 Training Fees: \$0 Integration Fees: \$2000 Professional Services, Implementation and Integration Fees shall be paid upon signature of the SAAS Services Order Form.	Term: Upon the completion of of Phase 4 in the Statement of Work (SOW), this Order Form will automatically renew for an additional 12 months (the " <u>Initial Term</u> ") for 36 months. Unless Customer gives Company written notice that it wishes to terminate at least sixty (60) days' prior to the end of a 12 month term (Annual Term), in which case this agreement will terminate. The Annual Term will automatically renew every twelve months (each a " <u>Renewal Term</u> ") unless either party elects not to renew by giving the other party written notice at least sixty (60) days prior to the end of the Annual Term or then-current Renewal Term, as applicable.]

The undersigned parties hereby execute this Order Form effective as of the date of last signature below.

FOR: BENTON COUNTY

Chairman

Date

Approved as to form:

Civil Deputy Prosecuting Attorney

FOR: JUST APPRAISED INC.



Signature

Imran Khoja

Print Name

CEO

Title

Date January 19, 2022

Statement of Work

This Statement of Work (“Statement of Work” or “SOW”) is made as of February 1, 2022 (the “SOW Effective Date”), by and between Benton County Assessor (“Customer”) and Just Appraised Inc. (“Company”) pursuant to the terms and conditions of the SaaS Services Agreement dated _____ as amended from time to time (the “Agreement”). This SOW shall be subject to the terms and conditions of the Agreement and is hereby incorporated by reference into the Agreement. Capitalized terms used but not defined in this SOW have the same meanings as provided in the Agreement. Customer and Company are sometimes referred to herein each individually as a “Party” and collectively as the “Parties.”

Pursuant to the terms and conditions of the Agreement, and for good and valuable consideration, the adequacy and receipt of which are acknowledged by the Parties, the Parties agree as follows:

1. GENERAL TERMS AND DEFINITIONS

1.1 Contact Information.

Company: Just Appraised Inc. 2261 Market Street #4074, San Francisco CA, 94114

Customer: Benton County Assessor. 620 Market St., Prosser, WA 99350

1.2 Service Location Information. Company will perform the Professional Services at the following location(s):

Virtually and Benton County Assessor at 620 Market St., Prosser, WA 99350

2. SCOPE OF SERVICES

2.1 Timeline and Phases; Scope; Professional Services Description.

Company is working with Customer to deploy Company’s Business Personal Property & Exemptions application to the Customer’s Property Tax Department. The Company’s Platform allows taxpayers to sign up, open, and submit BPP renditions and Exemptions 2) creates a workflow that is designed to allow staff to process applications more quickly.

Within this Statement of Work, Company will work with Customer to:

- review the current Platform as it exists now and agree upon changes that support the Customer’s needs (Phase 1);
- roll out the product to a limited group of users for usability and technical testing (Phase 2);
- and finally, fully deploy the product to all users in Customer’s Property Appraisal Office (Phase 3)

2.2 Timeline and Phases.

Phase 1 – Initial BPP Application Internal Testing

Timeline:

- Phase 1 will begin on the Effective Date
- Phase 1 will end when both parties agree the feature set has been implemented and is stable, no later than , February 8, 2022, 2022

Feature Set:

- Company delivers Taxpayer BPP website and form for internal testing
- Company delivers sample of Taxpayer paper BPP form review workflow for internal design review

Activities:

- Data transfer discussions
 - Just Appraised to provide access to FTP folder for ongoing data transfers
 - Just Appraised to provide specific data fields required for product configuration
 - Benton County Assessor to provide access to CAMA files for configuration
- Planning conversations (including Kickoff call) to agree upon product configuration required to go live and agree upon features that will be implemented after the Platform is live
- Ongoing development work by the Company to implement features (up to 20 hours) and bug fixes
- Usability tests with Customer staff members

Phase 2 – Initial BPP Application Roll Out

Timeline:

- Phase 2 will begin after the feature set mutually agreed upon in Phase 1 has been developed and tested
- Phase 2 will end when both parties agree the feature set has been implemented and is stable

Feature Set:

- Company delivers Taxpayer BPP website to Sandbox or Production environment to collect submissions from Taxpayers
- Company delivers BPP applications in Dashboard for Customer review and processing
 - Workflow management
 - UI to confirm/edit applications data
 - Application Flagging
- Company to work with Customer to define schedule for data retention

Activities:

- 1 representative from Company available via Zoom for 3-4 business days for training and support
- Ongoing development work by the Company to implement features and bug fixes
- Usability tests with Customer staff members

Phase 3 Initial BPP Internal Workflow Launch - Limited Data Integration Roll Out

Timeline:

- Phase 3 will begin after the feature set mutually agreed upon in Phase 2 has been developed and tested

Feature Set

- Data Export via API
 - Just Appraised to configure Web Service pointed against Customer Test database
 - Just Appraised to update Data Export workflow to include “Process (API)” button that triggers JSON payload to Customer API endpoint
 - Customer CAMA Administrator in collaboration with Company to configure queries to update database with BPP information from payload

Activities

- Ongoing development work by the Company to implement features and bug fixes
- Usability tests with Customer staff members
- Technical tests with Customer system administrators

Phase 4 - Full Data Integration Roll Out

Timeline:

- Phase 4 will begin after the feature set mutually agreed upon in Phase 2 has been developed and tested, no later than February 28, 2022
- Phase 4 will continue until the contract ends as specified elsewhere in the Terms

Feature Set

- Data Export via API
 - Just Appraised to configure Web Service pointed against Customer Production database
 - Just Appraised to update Data Export workflow to include “Process (API)” button that triggers JSON payload to Customer API endpoint
 - Customer CAMA Administrator in collaboration with Company to configure queries to update database with BPP information from payload

Activities

- Ongoing development work by the Company to implement features and bug fixes
- Usability tests with Customer staff members
- Technical tests with Customer system administrators

4. ROLES AND RESPONSIBILITIES

4.1 Company Roles and Responsibilities.

<u>Individual</u>	<u>Responsibility</u>
Company Project Manager	• Oversee project progress through all stages • Analyze Platform launch requirements (functionality, security, privacy, etc.) • Conduct user research for new feature sets • Work with Customer regarding Platform maintenance and changes • Assess and prioritize features, bug fixes, and technical changes for product throughout all stages • Identify new potential feature sets and areas of collaboration between Customer and Company • Act as primary points of contact for Company
Company Inc. Technical Lead / Developer Ihsan Ecemis, Ph. D.	• Lead development effort • Manage development of technical documentation • Coordinate Company environments and development code movement through environments • Work to execute and lead each production deployment

4.2 Customer Roles and Responsibilities.

<u>Individual</u>	<u>Responsibility</u>
Customer Project Sponsors	• Secure project funding • Monitor project progress • Provide guidance and strategic direction • Ensure business and IT resources are available • Resolve escalated issues • Approve on-going operational support

	• Approve project expenditures • Approve all business deliverables
Customer System Administrators / Technical Team	• Regularly send property data (CAMA exports) to Company on an agreed upon schedule • Advise on changes to data schema • Build web service for mass update capability and facilitate Just Appraised integration
Customer Staff	• Participate in user research for product improvements • Report bugs and assist Company team to resolve bugs • Provide feedback on product and submit feature requests

5. TECHNICAL & DATA SPECIFICATIONS

5.1 Data Exchange

Access to specific pieces of data from Customer is essential to the Platform's functionality. However, the Platform will not directly connect to Customer's databases. This access to data by Company includes: exports of all data fields and information from Customer's CAMA database that include, but are not limited to, the following information: ownership, full cash value, and various property characteristics for all parcels, exports of deed images for new property sales.

Company and Customer will agree in writing upon a regular schedule throughout the Term on which the above data will be transferred from Customer to Company to be imported into the Platform. The above data is referred to in the Agreement as the "Customer Data."

Given that the Platform will not directly connect to Customer's databases, consistency of data format and data structure is essential to continued operations of the Platform. Should the format or data structure of any of the Customer Data change, Customer will notify Company as soon as they become aware of the change, and will work with Company to resolve any technical difficulties that may arise.

Likewise, results from the Platform will be transferred from the Platform into Customer's database. Should the format or data structure required to import the data into Customer's database change, Customer will notify Company and work with them to resolve any technical difficulties that arise.

Remote access to Customer's environment must follow strict Benton County Information Technology internal policies and procedures.

5.2 Tools

Required connections for the Platform also include tools to: provide client-side analytics (i.e. user bounce rate, etc.), monitor Platform performance (i.e. slow page loads, etc.), monitor errors (i.e. identifying specific information about bugs automatically, etc.), and manage logs (i.e. compliance with log requirements, etc.). These tools may include externally hosted industry standard services.

6. FEES AND PAYMENT.

As consideration for the Professional Services provided by Company under this SOW, Customer shall pay Company the Professional Services Fees specified in the Order Form. Such fees shall be invoiced and paid in accordance with Section 4 of the Agreement. This price reflects an early-adopter price for Customer in exchange for being a reference to any new potential clients. Customer will share their experience working with Company via written emails, phone calls. Customer will allow Company to use Customer name in Case Study highlighting impact of the Platform on Customer.

7. SOW TERM

The term of this SOW begins on the SOW Effective Date and shall continue through the Term.

By signing below, the Parties acknowledge and agree to all of the terms and conditions of this SOW, including the scope and timeframe of the work identified herein.

IN WITNESS WHEREOF, authorized persons representing each Party have executed this Statement of Work as of the SOW Effective Date.

FOR: BENTON COUNTY

Chairman

Date

Approved as to form:

Civil Deputy Prosecuting Attorney

FOR: JUST APPRAISED INC.

Signature

Imran Khoja

Print Name

CEO

Title

January 19, 2022

Date

Danielle Hayes

From: Reid Hay
Sent: Wednesday, January 19, 2022 4:42 PM
To: Danielle Hayes
Cc: Bill Spencer
Subject: Approval as to form

Danielle,

I have reviewed the proposed agreement with Just Appraised, and it is approved as to form.

-- Reid

Reid Hay
Deputy Prosecuting Attorney
Benton County Prosecuting Attorney's Office
Phone: (509) 735-3591
Fax: (509) 222-3705

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COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	01 February 2022
Subject:	Tri-City Racing Association Lease Agreement
Presenters:	
Prepared By:	BRR
Reviewed By:	AJF
PA Review, Approval to Form:	☒ Yes ☐ No ☐ N/A <i>(If no, include reasoning for no approval)</i>
Type of Agenda Item:	Type of Action Needed: <i>(Multiple boxes can be checked, if necessary)</i>
☒ Consent Agenda ☐ Public Hearing ☐ Scheduled Business	☐ Discussion Only ☐ Decision / Direction ☐ Sign Letter / Document ☐ Pass Motion ☒ Pass Resolutions ☐ Pass Ordinance ☒ Execute Contracts

Summary

For Board consideration is a new lease agreement for use of the Benton County Fairgrounds south of the rail location for staging the annual Tri-Cities Horse Racing Event by the Tri-City Racing Association (TCRA) for a term of three years (2022-2024).

Background

The current lease between the County and TCRA is a three year agreement and the same is being proposed for the new agreement.

The new agreement has these noted changes:

- Increase of yearly fee by \$1,500.00 per year for each year of the agreement.
- Provided a percentage payment method to lessen financial impact on TCRA.
- TCRA agreed to pay the utilities as noted in the agreement.
- Indicated how facilities will determine whether or not the water servicing the South RV area will be activated.

The agreement has been approved to form by the Prosecuting Attorney and has been signed by TCRA.

Fiscal Impact

The direct fiscal impact is the rental fee paid each year of the contract term.

Recommendation

Staff recommends signing the new lease agreement.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF APPROVING THE LEASE AGREEMENT BETWEEN BENTON COUNTY AND THE TRI-CITY RACING ASSOCIATION FOR THE BENTON COUNTY FAIRGROUNDS “SOUTH OF THE RAIL”

WHEREAS, Tri-City Racing Association wishes to enter into a multi-year agreement to lease the “South of the Rail” area and Sun Downs building of the Benton County Fairgrounds for horse training and pari-mutuel horse racing activities; and,

WHEREAS, the Benton County and Tri-City Racing Association lease agreement shall be in effect from such time as executed by both parties until December 31, 2024; with Tri-City Racing Association having access to the lease areas during the occupancy times stipulated within the lease agreement; **NOW THEREFORE**,

BE IT RESOLVED that the Board of Benton County Commissioners approves and agrees to sign the attached Lease agreement between Benton County and the Tri-City Racing Association relating to the private operation of a horse training and pari-mutuel Horse Racing facility for the Benton County Fairgrounds starting February 01, 2022 and ending December 31, 2024.

Dated this 1st day of February, 2022.

Chairman of the Board

Member

Member

Constituting the Board of
County, Washington

Attest:
Commissioners of Benton County,
Clerk of the Board

LEASE AGREEMENT BENTON COUNTY FAIRGROUNDS

This Lease Agreement between Benton County, a political subdivision of the State of Washington (Lessor), and the Tri-City Racing Association, a Washington non-profit corporation (Lessee), is effective February 1, 2022.

1) PURPOSE. The primary consideration regarding the term and rental rate provided in this Lease Agreement is the private operation and production by Lessee of a horse training and Parimutuel Horse Racing facility.

Therefore, it is understood and expressly agreed that if Lessee shall be dissolved or cease to function as a non-profit entity; discontinue operation of the Leased Facilities (as defined below Section 2) for a horse training and Parimutuel Horse Racing facility for reasons other than an act of God or war; in case its leasehold interest and estate in the Leased Facilities shall be taken or levied upon by any process of law or proceedings in bankruptcy or insolvency; if a receiver or trustee shall be appointed for Lessee's assets; or if this Lease Agreement shall by operation of law devolve upon or pass to any person, firm or corporation other than Lessee, this Lease Agreement and all rights of Lessee under it shall, at the election of Lessor, cease and immediately terminate; and it shall be lawful for Lessor to enter into and upon all Leased Facilities at any time and remove all persons from the same; and reclaim full and complete control thereof.

2) LEASED FACILITIES. This Lease Agreement is for the following real property and buildings (Leased Facilities) for the specified periods during the term of this Lease Agreement:

- a) **South of the Rail.** From the 1st day in February through the 1st day in June of each year during the term of this Lease Agreement, Lessee agrees to lease from Lessor that portion of real property that has commonly been referred to as the "South of the Rail" portion of the Benton County Fairgrounds and is legally described on Exhibit A attached hereto.
- b) **Storage.** Lessor agrees to lease to Lessee the Tote Room (405 sf) located on the first floor and the storage closets in the Finish Line room (345 sf) located on the second floor of the Sundowns building to provide storage for Lessee's equipment and supplies on an annual basis during the term of this Lease Agreement. No other storage areas are included in this agreement. If additional storage is needed, Lessor and Lessee may amend this agreement to include another area with an adjusted rental rate.
- c) **Horse Training Preparation and Extended Cleanup.** Lessee may conduct preparation prior to the date of February 1 or extend cleanup after the date of June 1 only if the Lessee makes such a request in writing, outlining in detail the specifics, to the Benton County Administrator or designee and then receives written permission from the Benton County Administrator or designee to do so.

3) TERM OF LEASE. The term of this Lease Agreement shall be from February 1, 2022 through December 31, 2024, unless terminated earlier as provided herein. "Occupancy" refers to the annually recurring period between February 1st and June 1st each year when Lessee actively occupies the Leased Facilities.

4) **RENTAL FEE AND OTHER CONSIDERATIONS.** Lessee agrees to pay to Lessor the following sums for the use of the Leased Facilities for the term of this Lease Agreement:

\$19,800 for the rental year 2022

\$21,300 for the rental year 2023

\$22,800 for the rental year 2024

If this Lease Agreement is legally terminated for any reason by Lessor or Lessee between June 1st and February 1st of any year, Lessee's rent for that year shall be reduced to \$2,400.00, unless Lessee removes all stored property from facility prior to February 1. If this Lease Agreement is legally terminated for any reason by Lessor or Lessee after February 1st of any year, Lessee is obligated to pay the full amount of rent due for that year.

If a natural disaster or pandemic gives cause for cancellation or postponement of an event, no penalty shall be assessed. Refund of fees paid will be at the discretion of Lessor.

5) **DATE FOR PAYMENT.** Lessee agree to make its annual rental fee payment to Lessor for use of the Leased Facilities based on the following schedule: 50% of yearly rate no later than February 1 of each year of this Lease Agreement and remaining 50% no later than June 30 of each year.. If the fee is not paid by the dates agreed too, this Lease Agreement will be null and void unless otherwise agreed to in writing by Lessor.

6) **LESSOR & LESSEE RESPONSIBILITIES.** Prior to January 15 of each year, Lessor and Lessee agree to perform a joint safety and utilities inspection (e.g. damages or nonoperational), of the Leased Facilities referenced in Section 2(a) above, and jointly prepare one written document reflecting any such safety and utility concerns identified in the Leased Facilities. Such document shall be signed by Lessee's President and delivered by Lessee to the Benton County Administrator or designee for approval. Lessor agrees to make every reasonable effort to correct defects identified in the aforementioned approved inspection document in a timely fashion before Occupancy or the start of the horse racing event. Lessee hereby agrees to maintain the Leased Facilities and all improvements thereto, during the permissible times of occupancy of such facilities by Lessee under this Lease Agreement, in as good as condition as exists as of February 1 of each year or at the time of other occupancy by Lessee, reasonable wear and tear, loss by fire or Act of God, expressly excepted. Lessor agrees to provide routine maintenance of the Leased Facilities during the term of this Lease Agreement, except that during the February 1st through June 1 period of each year Lessee shall perform all maintenance on leased facilities.

Lessee also agrees to quietly and peaceably deliver up the possession of the Leased Facilities in good state and condition at the end of each period of permitted occupancy during the term of the Lease Agreement and upon the termination or expiration of the term of this Lease Agreement. Good state and condition includes the removal of, solid waste, garbage, animal waste and manure, straw and hay, and any vehicles on property of the Lessor. Lessor and Lessee agree to perform a joint inspection of the Leased Facilities on or before May 25 of each year to assess post-horse racing condition and jointly prepare one document reflecting any defects. If Lessor is forced to return buildings or grounds to good state and condition, Lessor shall bill Lessee the costs to restore the property to said condition. Lessor shall also bill Lessee for any outstanding utility bill's or garbage removal as reference in **Section 9** of this agreement. Any nonpayment of a bill or fee shall result in a breach of contract.

7) **USE OF LEASED FACILITIES - SUBLETTING.** Lessee may sublet parts of the Leased Facilities to other persons, firms or corporations during the operation of the horse training and

Parimutuel Horse Racing. Lessee agrees that all such subleases that involve occupancy by the subtenant for more than seven (7) days in any year must be approved in writing by Lessor prior to such sublease becoming effective. Lessor's approval shall not be unreasonably withheld. With respect to any sublease agreement that extends for more than one period of occupancy of seven (7) days or less, Lessee agrees to include a provision allowing it to terminate such sublease if this Lease Agreement is terminated.

8) DAMAGE OR DESTRUCTION. In the event any of the Leased Facilities are damaged to such an extent as to render the same untenable in whole or in a substantial part for the purposes described herein, or are destroyed, it shall be optional with the Lessor to repair or rebuild the same. Lessor shall have sixty (60) days after receiving written notice of such damage or destruction from Lessee to notify Lessee in writing of Lessor's intentions to repair or rebuild said damaged facilities, and if Lessor elects to repair or rebuild said facilities, Lessor shall execute the work to repair or rebuild without unnecessary delay. In the event any portion of the Leased Facilities shall be damaged or destroyed to such an extent that in the opinion of Lessor it shall not be practicable, financially or otherwise, to repair or rebuild, then it shall be optional with Lessor to decide not to rebuild such facility(ies). Upon receipt of written notice of such election by Lessor, Lessee may within thirty (30) days thereafter provide written notice to Lessor of Lessee's election to immediately terminate this Lease Agreement if such damaged facilities constitute a substantial portion of the facilities described in Section 2(a) and are used for actual horse training and Parimutuel Horse Racing activities other than administration or storage.

9) UTILITIES/GARBAGE. Utility services for the Leased Facilities will be billed directly to Lessor. Lessee agrees to reimburse Lessor for water utility services related to account number 49007713-00 that services the horse barn area and South RV Parking and electrical utility account numbers 2292026, 27992002, and 27992007 servicing the South RV Parking and Camping during occupancy.

Between the dates February 1 through March 1 Lessor will evaluate weather pattern conditions to determine the feasibility of activating the system in order to lessen the probability of system failure due to freezing conditions. Should freezing weather conditions continue past March 1, Lessor reserves the right to extend the dates for system activation. Lessee will need to find an alternate water source and delivery methods, not provided by lessor, during water shutdown dates.

Lessee will arrange waste cans for use during occupancy from Waste Management and agrees to directly pay Waste Management the cost for garbage charges incurred during occupancy with respect to the real property described on Exhibit A or any improvements thereto.

Lessee agrees to have all garbage and waste cans removed from the property described in Exhibit A and any personal property of Lessee or of any third parties removed, at Lessee's expense, from such property, except for Lessee's property within Sundowns Building referenced in Sections 2(b), by June 1st of each year during the term of this Lease Agreement. A walk through of the facilities shall be conducted with the Lessor and Lessee upon term expiration to ensure the premises are returned to good state and condition.

10) INDEMNIFICATION/WAIVER OF SUBROGATION. To the fullest extent permitted by law, Lessee shall indemnify, defend and hold harmless Lessor and all officials, agents and employees of Lessor, from and against all claims arising out of or resulting from the use of the Leased Facilities by Lessee, Lessee's employees or agents, or by Lessee's contractors or subcontractors, except for those claims arising from the sole negligence of Lessor. "Claim" as used in this section means any financial

loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable to bodily injury, sickness, disease or death to Lessor, Lessor's agents and employees, Lessee, Lessee's agents and employees, and third parties, or injury to or destruction of tangible property owned by Lessee or third parties, including loss of use resulting therefrom. Lessee's obligation to indemnify, defend, and hold harmless includes any claim by Lessee's agents, employees, representatives, or any contractor or subcontractor or their employees.

In any and all claims against the Lessor, its officers, officials, employees and agents by any employee or volunteer of the Lessee, its subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Lessee or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the Lessee expressly waives any immunity the Lessee might have had under such laws. By executing this Lease Agreement, Lessee acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this section shall be incorporated, as relevant, into any contract the Lessee makes with any subcontractor or agent performing work hereunder.

Lessor and Lessee each agree to waive all causes of action which arise or may arise in either of their favor against the other or anyone claiming through or under them, by way of subrogation or otherwise, during the term of this Lease Agreement with respect to loss of or damage to either party's tangible property (whether or not such loss or damage is caused by the fault or negligence of the other) that is covered by valid and collectible fire and extended coverage insurance policies, to the extent that such loss or damage is recovered under said insurance policies.

11) LIABILITY INSURANCE.

- a) **General Liability Insurance.** Lessee agrees to procure, at its expense, commercial general liability insurance with a limit in the sum of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury or death of any one person and property damage, and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury to or death of any number of persons and property damage, which shall name Lessee and Lessor as insured and additional insured against any and all liability with respect to the Leased Facilities or arising out of the maintenance, use or occupancy of the same and shall remain in effect during the term of this Lease Agreement. Said policy shall insure against injuries caused by animals other than those involved in horse training and Parimutuel Horse Racing events. Lessee shall also maintain during the term of this Lease Agreement non-profit director and officer/errors and omission insurance with a limit in the sum of not less than One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) in the aggregate.
- b) **Vendor/Exhibitor Liability Insurance.** Lessee agrees to not allow any food vendors or any other vendors or exhibitors that will provide any food to the public on the Leased Facilities that do not have commercial general liability insurance covering bodily injury or death (wherever occurring) due to their actions and products and that names Lessee and Lessor as additional insureds. The minimum limits of such insurance shall be: Products-Completed Operations Aggregate Limit of Five Million Dollars (\$5,000,000); General Aggregate Limit of Two Million Dollars (\$2,000,000); Personal and Advertising Injury Limit of One Million Dollars (\$1,000,000); and Each Occurrence Limit of One Million Dollars (\$1,000,000). Said vendors and exhibitors shall also be required to maintain general liability insurance in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for property damages.

Lessee further agrees not to allow any non-food vendors or exhibitors on the Leased Facilities that do not have commercial general liability insurance covering bodily injury or death (wherever occurring) due to their actions and products and that names Lessee and Lessor as additional insureds. The minimum limits of such insurance shall be: Products -Completed Operations Aggregate Limit of One Million Dollars (\$1,000,000); General Aggregate Limit of One Million Dollars (\$1,000,000); Each Occurrence Limit of One Million Dollars (\$1,000,000) for bodily injury or death coverage; and Three Hundred Thousand (\$300,000) for property damages.

- c) **Other Liability Insurance.** Lessee shall, at its expense or the expense of third parties, ensure that during the term of this Lease Agreement a policy or policies of commercial general insurance are in effect with individual limits of not less than Three Million Dollars (\$3,000,000) for injury or death to any one person and Three Million Dollars (\$3,000,000) for injury to or death of any number of persons in one occurrence, with such amounts available to insure against any and all liability of Lessor and Lessee with respect to any of the following activities occurring on the Leased Facilities during February 1 through June 1 each year: liability related to the consumption of alcohol at the Leased Facilities; liability due to injury or death occurring during or as a result of horse training and Parimutuel Horse Racing events; and police/professional liability for security and any other such professional services. Lessee shall also ensure such coverage is in place with similar limits, naming Lessor and Lessee as additional insureds, for any additional activities on the Leased Facilities during February 1 through June 1 occupancy that are excluded from Lessor's general liability insurance policy then in effect. In order to assess compliance with this subsection, Lessee shall provide to the Benton County Risk Manager January 15 of each year a list of all persons or entities with which Lessee has or will contract with for that year's horse training and Parimutuel Horse Racing that will organize, operate, supervise or provide any of the activities identified in this subsection, and, if requested, copies of such contracts.

If the Lessee maintains higher limits than the minimums shown above, the Lessor requires and shall be entitled to coverage for the higher limits maintained.

Lessee shall, at Lessor's request, provide Lessor copies of or access to all contracts entered into with respect to the horse training and Paramutuel Horse Racing by February 1st of each year to allow Lessor to assess compliance with this section and any other section of this Lease Agreement.

- d) **Other Insurance Provisions.** Insurance policies are to contain, or be endorsed to contain, the following provisions:
- i. For general liability insurance, the Lessor, its elected and appointed officials, employees and agents are to be **covered as additional insureds** with respect to liability arising out of ownership, maintenance, or use of the Leased Facilities. The general liability policy shall contain an endorsement naming the Lessor, its elected and appointed officials, employees and agents.
 - ii. The Lessee's insurance coverage shall be **primary insurance** as respects the Lessor, its elected and appointed officials, employees and agents. Any insurance or self-insurance maintained by the Lessor, its elected and appointed officials, employees and agents shall be excess of the Lessee's insurance and shall not contribute with it. The general liability policy shall contain an endorsement specifically stating that the Lessee's general liability policy shall be primary, and not contributory, with any other insurance maintained by the Lessor.
 - iii. Each insurance policy required above shall contain, or be endorsed to contain, a waiver of all **rights of subrogation** against the Lessor.

- iv. All insurance required in this Lease Agreement and all renewals thereof must be issued by companies authorized to transact business in the State of Washington. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the Lessor.
 - v. All insurance policies shall be subject to approval by Lessor as to form and substance; shall expressly provide that such policies shall not be canceled or altered without thirty (30) days written notice to Lessor; and shall, to the extent obtainable, provide that no act or omission of Lessee which would otherwise result in the forfeiture or reduction of the insurance will affect or hurt the obligation of the insurance company to pay the amount of loss sustained.
- e) **Verification of Coverage.** For all insurance required herein, Lessee shall furnish certificates of insurance with attached endorsements, or upon request of the Benton County Risk Manager, copies of the applicable policy language providing the insurance coverage required above. All certificates and endorsements are to be received by the Benton County Risk Manager by January 15th of each year during the term of this Lease Agreement. Failure by the Lessee to provide such certificates of insurance and endorsements demonstrating Lessee's compliance with this Section 11 shall constitute a breach of this Lease Agreement, and Lessor shall be entitled to immediately terminate this Lease Agreement.
- f) **Waiver of Subrogation.** Lessee hereby grants to Lessor a waiver of any right to subrogation which any insurer of said Lessee may acquire against the Lessor by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the Lessor has received a waiver of subrogation endorsement from the insurer.
- 12) **ACCESS TO FACILITIES AND KEYS.** Keys pertaining to the Leased Facilities referenced in Sections 2(a) will be given to Lessee on the dates listed in those sections of each year. At the expiration or termination of this Lease Agreement, all keys to such Leased Facilities shall be returned by Lessee to Lessor. Lessee shall not enter buildings outside of the dates listed in Section 2(a). If Lessee requires access to facilities not provided for in this agreement lessee may request admittance from Lessor on a case by case basis. Lessee will be billed for any locks changed during Lease Agreement and not properly restored to Lessor's lock and key. Lessor understands that in preparation for horse training and parimutuel racing each year, Lessee staff, board members, or contractors may need access to the Leased Facilities prior to the start of the annual Occupancy for planning and project purposes, and Lessor will make every effort to accommodate such requests so long as the requested access does not interfere with other Fairgrounds lessees.
- 13) **SECURITY.** Lessee agrees to provide all necessary security for any event held by Lessee at the Leased Facilities and to assume all responsibility regarding crowd control, security, fire services and medical services related to all such events.
- 14) **FINANCIAL REPORTING.** Lessee agrees that it shall provide Lessor with a copy of all income tax returns and supporting schedules that Lessee files with the Internal Revenue Service. Said copies shall be provided to Lessor annually by April 30th of each year or within fourteen (14) days of the date Lessee files the originals with the Internal Revenue Service. Should Lessee fail to file a tax return with the Internal Revenue Service a copy of Statement of Financial Activities (ie, budget report, profit & loss, income and expenses, etc.) with supporting documents shall be provided to Lessor. All documents must be provided no later than November 15.

15) CAPITAL IMPROVEMENTS/ALTERATIONS/REPAIRS. It is agreed that there will be a continuing need for the maintenance of, additions and extensions to, and replacement of the buildings, improvements, and grounds at the Leased Facilities. The timing and nature of any improvements and repairs shall be at the discretion of Lessor, except that Lessee shall make repairs at its own expense as necessary to deliver up possession of the Leased Facilities in good state and condition as required by Sections 6 and 21 herein. No capital improvements, alterations, or additions, shall be made to any grounds, facility, or structure, without prior written approval from the County Administrator or designee. A written proposal must be submitted for any proposed capital improvement, alteration, or addition to the grounds, facility, or structure. All proposals must include any necessary engineering or technical specifications, cost analysis, development plan, required permitting, drawings and/or other information required to properly evaluate whether the County will accept the capital improvement, alteration, or addition and to evaluate whether the proposal meets the capital improvement, alteration, requirements of the Benton County Code, RCW, and WAC. The county shall provide a decision on the proposal for a capital improvement, alteration, or addition, to a ground, facility, or structure within 30 days of the written proposal

Lessee is under no obligation to make any cash, materials, or labor donations for capital improvements. Lessee may in its sole discretion choose to make a donation, but such donation shall not affect in any way Lessee's obligations under this Lease Agreement. Lessee agrees that any cash, materials, or labor donated by Lessee which is permanently affixed to a ground, facility, or structure, shall immediately become property of the Lessor. Any improvement, alteration, addition or repair to County property using cash, materials, or labor donations by or through a qualified non-profit organization must meet the requirements of any applicable Benton County Code, RCW, and/or WAC.

Any improvement, alteration, addition or repair to County property in which the County financially contributes to, whether during lease term or not, shall follow the County Procurement Policy and any applicable State requirements to include State Prevailing Wage. All work must be done using proper permits, inspections, and quality control. Furthermore, all work must be done by an individual who is licensed, bonded, and insured. All work is subject to quality control inspections by the Lessor.

The parties agree that all capital improvements to the Leased Facilities during the term of this Lease Agreement, either in assembled or raw material form, shall immediately become the property of Lessor.

16) CONTROL OF LEASED FACILITIES. This Lease Agreement does not entitle Lessee to use or control the property described in Exhibit A other than for the Leased Facilities described in Section 2 for the time periods set forth therein. At all other times, Lessor shall have sole authority to manage the facilities, including the ability to lease the facilities to third parties.

Except as otherwise provided for within this Lease Agreement, no employee or volunteer of Lessee shall be permitted on the premises, drive vehicles on the grounds, enter or access buildings, or conduct maintenance on or within any part of the grounds without prior written approval from the County Administrator or designee.

17) ACCESS. Lessee will allow Lessor and Lessor's agents free access at all reasonable times to said Leased Facilities for the purpose of inspection of or making repairs, additions, or alterations to the Leased Facilities or any property owned by or under the control of Lessor.

18) OBSERVANCE OF LAWS. Lessee agrees to comply with all laws of the State of Washington and the United States, and all applicable local laws, in connection with its activities at the Leased Facilities and ensure that all subtenants comply with such laws as well.

19) NO ASSIGNMENT OR TRANSFER. No transfer or assignment of this Lease Agreement shall be valid unless and until first approved in writing by Lessor, nor shall this Lease Agreement be assignable by operation of law.

20) WASTE. Lessee agrees it will not commit or permit any waste to the Leased Facilities.

21) SURRENDER. Lessee covenants and agrees that it will surrender and deliver all of the Leased Facilities and premises to Lessor peaceably and quietly at the end of the term, or the termination of this Lease Agreement if earlier terminated, in as good order and condition as the same exists at this date, or in the improved condition existing at the end of the term or termination of this Lease Agreement, reasonable use, occupation and wear thereof, or damage by fire, the elements, act of God expressly excepted.

22) LIENS AND INSOLVENCY. Lessee shall keep the Leased Facilities free from any liens arising out of any work performed, materials furnished, or obligations incurred by Lessee. In the event Lessee becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, assignee or other liquidating officer is appointed for the business of the Lessee, then the Lessor may immediately cancel and terminate this Lease Agreement at Lessor's option.

23) NON-WAIVER OF BREACH. The failure of Lessor to insist upon strict performance of any of the covenants and agreements of this Lease Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect. All waivers of any provisions(s) of this Lease Agreement shall be in writing and in the absence of such, no action or inaction shall be construed to be such a waiver.

24) NOTICES. Each provision of this Lease Agreement and any applicable governmental laws, ordinances, regulations and other requirements with reference to the sending, mailing or delivery of any notice by Lessor to Lessee or with reference to the sending, mailing or delivery of any notice or the making of any payment by Lessee to Lessor shall be deemed to be complied with when and if the following steps are taken:

- a) All rent and other payments required to be made by Lessee to Lessor hereunder shall be payable to Lessor at the address set forth below or at such other address as Lessor may specify from time to time by written notice delivered in accordance herewith. Lessee's obligation to pay rent and any other amounts to Lessor under the terms of this Lease Agreement shall not be deemed satisfied until such rent and other amounts have been actually received by Lessor.
- b) Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not when deposited in the United States Mail, postage prepaid, Certified or Registered mail, addressed to the parties hereto at the respective addresses set out below, or at such other address as they have theretofore specified by written notice delivered in accordance herewith:

26) **DEFAULT OR BREACH.** In the event of a breach of any terms of this Lease Agreement by Lessee or by Lessor, the non-breaching party may elect to terminate this Lease Agreement. Provided, however, except for terminations based on any of the conditions and provisions set forth in Sections 1, 8, 11, and 22 above, the defaulting or breaching party shall first receive written notice of such default or breach and have the thirty (30) days within which to cure the default or breach, and if such cure is made within such thirty (30) days the termination shall not take effect. If such cure is not made within the thirty (30) days, the Lease Agreement shall be canceled and fully terminated at the end of such thirty (30) day period. Lessee shall be responsible for any costs and expenses of Lessor incurred in connection with any notice of default and termination.

27) **AUTHORITY/CONSENT.** The undersigned on behalf of Lessee hereby personally represent and warrant that they are members of the Board of Directors of Lessee and that their collective signatures hereon constitutes a valid action by and authorization of such board to bind Lessee to the terms of this Lease Agreement.

LESSOR: BENTON COUNTY

LESSEE: TRI-CITY RACING
ASSOCIATION

Chairman of the Board

Date:

Attest - Clerk of the Board

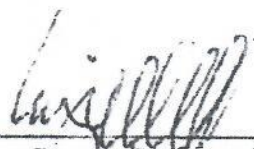
Approved as to Form - Prosecuting Attorney



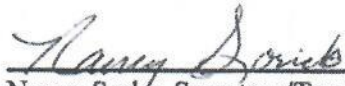
Francis Martin, President

1-14-2022

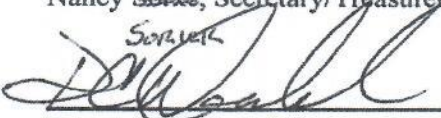
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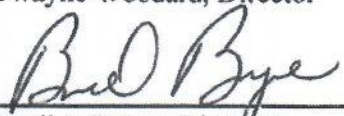
Malon Cowgill, Vice President



Nancy Sorick, Secretary/Treasurer



Dwayne Woodard, Director



Bradley Boyce, Director

LESSOR:

Benton County Board of Commissioners
620 Market Street
Prosser, Washington 99350

LESSEE:

Tri-City Racing Association
c/o President
PO Box 6662
Kennewick, Washington 99336

25) HAZARDOUS MATERIALS. Lessee agrees that Lessee shall not use, generate, treat, store or dispose of Hazardous Material on the Leased Facilities except in accordance with any law, ordinance, rule or regulation of any governmental authority having jurisdiction of the Leased Facilities. If Lessee breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material on the Leased Facilities caused or permitted by Lessee results in contamination of the Leased Facilities, then Lessee shall indemnify, defend and hold Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including without limitation diminution in value of the Leased Facilities, damages for the loss or restriction on the use of rentable or usable space or of any adverse impact on marketing of space on the Leased Facilities, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the termination or expiration of this Lease Agreement as a result of such contamination. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal or restoration work required by any federal, state or local governmental agency, political subdivision lender or buyer because of Hazardous Material present in the soil or groundwater on or under the Leased Facilities diminution in value of the Leased Facilities, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Leased Facilities, damages arising from any adverse impact on marketing of space in the building, and sums paid in settlement of claims attorney's fees, consultant fees, laboratory fees and expert fees. Without limiting the foregoing, if the presence of any Hazardous Material on the Leased Facilities caused or permitted by Lessee results in any contamination of the Leased Facilities, Lessee shall promptly take all actions at its sole expense as are necessary to return the Leased Facilities to the condition existing prior to the contamination of the Leased Facilities by any such Hazardous Material; provided, however, the Lessor's approval of such action shall first be obtained, which approval shall not be unreasonably withheld.

Lessee will deliver to Lessor copies of any documents received from, or sent by Lessee to, the United States Environmental Protection Agency and/or any state, county or municipal environmental or health agency concerning the Lessee's operations on the Leased Facilities.

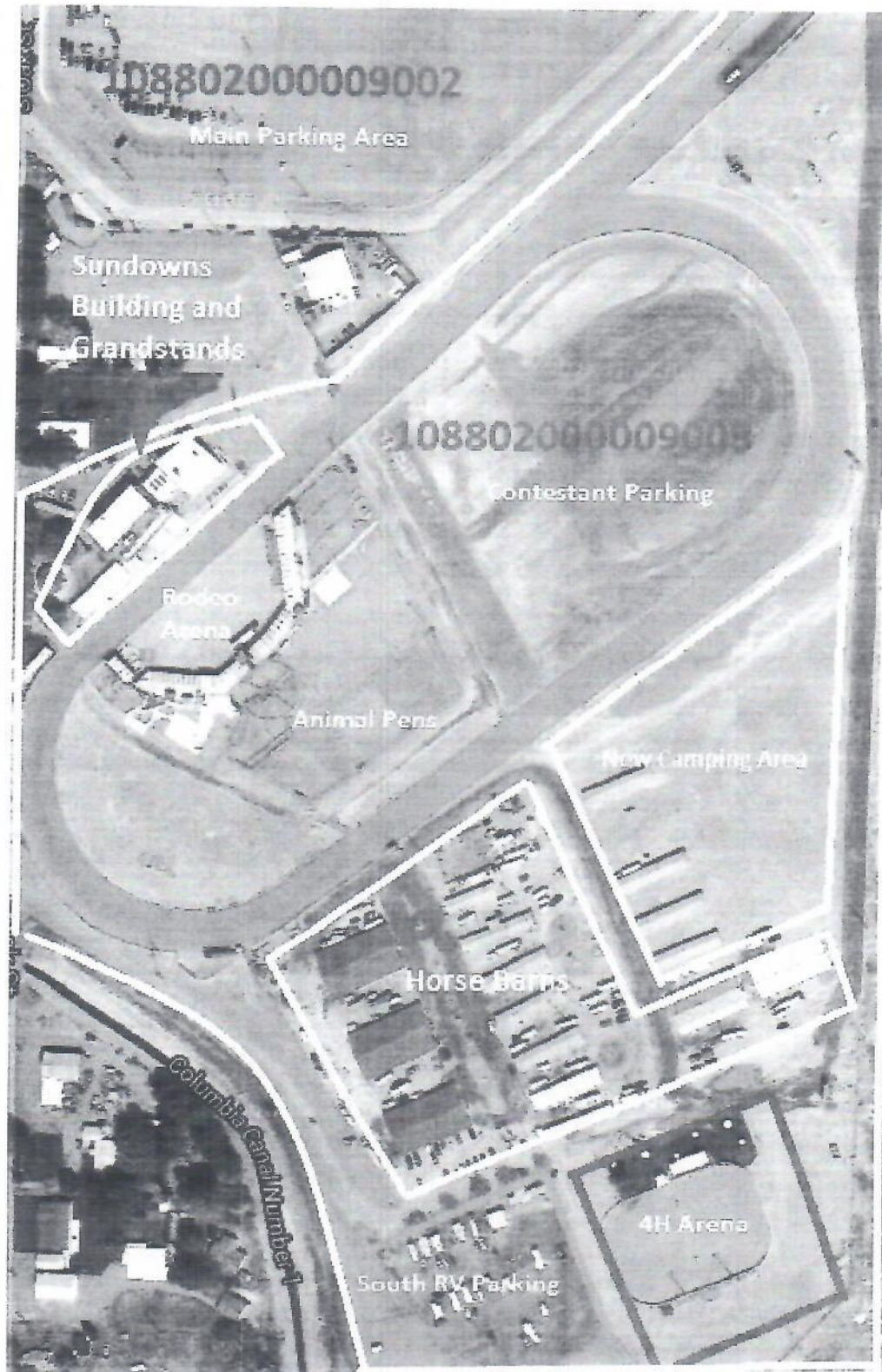
As used herein, the term "Hazardous Material" means any substance which is: (i) designated, defined, classified or regulated as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law, as currently in effect or as hereafter amended or enacted; (ii) a petroleum hydrocarbon including crude oil or any fraction thereof and all petroleum products; (iii) PCBs; (iv) lead; (v) asbestos; (vi) flammable explosives; (vii) infectious materials; or (viii) radioactive materials. "Environmental Law(s)" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 1251 *et seq.*, and the Washington Model Toxics Control Act Chapter 70.105D, Revised Code of Washington, as said laws have been supplemented or amended to date, the regulations promulgated pursuant to said laws and any other federal, state or local law, statute, rule, regulation or ordinance which regulates or proscribes the use, storage, disposal, presence, cleanup transportation or release or threatened release into the environment or Hazardous Material.

EXHIBIT A

LEGAL DESCRIPTION FOR 1-0880-200-0009-003:

THAT PORTION OF THE WEST HALF OF THE NORTHWEST QUARTER SECTION 08, TOWNSHIP 08 NORTH, RANGE 30 EAST, OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 08; THENCE ALONG THE WEST LINE OF SAID SECTION SOUTH 00°54'19" WEST 40 FEET TO THE SOUTHERLY RIGHT OF WAY MARGIN OF EAST 10TH AVENUE; THENCE SOUTH 00°54'19" WEST 1400.65 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 62°29'12" EAST 393.17 FEET; THENCE NORTH 72°58'07" EAST 164.72 FEET; THENCE NORTH 47°27'47" EAST 1110.46 FEET TO A POINT WHICH IS 60 FEET FROM AND PERPENDICULAR TO THE SOUTHWESTERLY RIGHT OF WAY MARGIN OF COLUMBIA IRRIGATION DISTRICT LATERAL NO. 2; THENCE ALONG SAID SOUTHERLY RIGHT OF WAY MARGIN SOUTH 45°33'48" EAST 48.93 FEET TO THE EAST LINE OF SAID WEST HALF; THENCE ALONG THE SAID EAST LINE SOUTH 00°48'45" WEST 2181.54 FEET TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 08; THENCE ALONG SAID SOUTH LINE NORTH 89°37'49" WEST 841.74 FEET TO THE NORTHEASTERLY RIGHT OF WAY MARGIN OF COLUMBIA IRRIGATION DISTRICT'S LATERAL NO. 1 WHICH IS ON A CURVE WITH A RADIUS POINT WHICH BEARS SOUTH 86°45'05" WEST 467.72 FEET; THENCE ALONG SAID RIGHT OF WAY MARGIN AND SAID CURVE TO THE LEFT FOR AN ARC DISTANCE OF 122.87 FEET; THENCE NORTH 16°22'35" WEST 115.02 FEET TO A NON-TANGENT CURVE WITH A RADIUS POINT WHICH BEARS SOUTH 75°31'37" WEST 289.66 FEET; THENCE ALONG SAID CURVE TO THE LEFT, FOR AN ARC DISTANCE OF 233.25 FEET; THENCE NORTH 56°43'41" WEST 242.46 FEET; THENCE NORTH 61°00'23" WEST 55.77 FEET; THENCE NORTH 64°17'42" WEST 39.14 FEET TO THE CALCULATED POSITION OF THE NORTHEASTERLY RIGHT-OF-WAY MARGIN OF FAIRWAY DRIVE; THENCE ALONG SAID NORTHEASTERLY RIGHT-OF-WAY MARGIN OF FAIRWAY DRIVE NORTH 04°22'25" WEST 56.96 FEET TO A 113.19 FOOT RADIUS NON-TANGENT CURVE WITH A RADIUS POINT WHICH BEARS SOUTH 81°46'33" WEST; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE AND SAID NORTHEASTERLY RIGHT-OF-WAY MARGIN, TO THE LEFT FOR AN ARC DISTANCE OF 35.98 FEET TOT THE WEST LINE OF SAID NORTHWEST QUARTER; THENCE ALONG SAID WEST LINE NORTH 00°54'19" EAST 550.89 FEET TO THE TRUE POINT OF BEGINNING. CONTAINING 46.64 ACRES, TOGETHER WITH AND SUBJECT TO EASEMENTS, RESERVATIONS, COVENANTS AND RESTRICTIONS OF RECORD AND IN VIEW. (AF#2013-025493, 07/24/2013, SURVEY #4423) AND (QCD 2013-026572, 07/31/2013).

EXHIBIT B



COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	February 1, 2022
Subject:	Approving the Chairman of the Board to sign an Amendment to Underlying License Agreement (Subscription License for Add-On Software) from i3 ImageSoft, LLC
Presenter:	
Prepared By:	Robert Heard
Reviewed By:	
PA Review, Approval to Form:	☒ Yes ☐ No ☐ N/A <i>(If no, include reasoning for no approval)</i>
Type of Agenda Item:	Type of Action Needed: <i>(Multiple boxes can be checked, if necessary)</i>
☒ Consent Agenda ☐ Public Hearing ☐ Scheduled Business	☐ Discussion Only ☐ Decision / Direction ☐ Sign Letter / Document ☐ Pass Motion ☒ Pass Resolution ☐ Pass Ordinance ☐ Execute Contract

Summary / Background Information

On December 3, 2019, per Resolution 2019-875 the Board authorized the Chairman to sign a Master Agreement and System Maintenance Agreement between ImageSoft and County Clerk for Benton County's case management system OnBase. OnBase is used by both District Court and Superior Court Clerk with plans to extend OnBase usage to Superior Court Judges, Office of Public Defense, and Prosecuting Attorney's office. ImageSoft is moving their customers to subscription-based licensing which requires the County to sign an amendment.

Fiscal Impact

Amount: N/A

Fund: N/A

This amendment will have no budgetary impacts.

Recommendation

Information Technology recommends that the Board approve the Chairman of the Board to sign the Amendment to Underlying License Agreement (Subscription Licenses for Add-On Software) from i3 ImageSoft, LLC.

Suggested Motion

Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE CHAIRMAN OF THE BOARD TO SIGN AN AMENDMENT TO UNDERLYING LICENSE AGREEMENT (SUBSCRIPTION LICENSES FOR ADD-ON SOFTWARE) FROM I3 IMAGESOFT, LLC

WHEREAS, on December 3, 2019, the Board signed Resolution 2019-875 authorizing the Chairman of the Board to sign a Master Agreement and System Maintenance Agreement between i3 ImageSoft, LLC and Benton County to support and maintain Superior Court Clerk and District Court case management system OnBase; and

WHEREAS, i3 ImageSoft LLC is moving its OnBase customers from traditional perpetual licensing to a subscription-based licensing model; and

WHEREAS, Information Technology recommends signing the amendment which will have no budgetary impact to Superior Court Clerk or District Court; and

WHEREAS, the Prosecuting Attorney's Office, Civil Division has reviewed the amendment and has approved to form; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby concurs with Information Technology's recommendation and authorizes the Chairman of the Board to sign the Amendment to Underlying License Agreement (Subscription Licenses for Add-On Software) from i3 ImageSoft, LLC.

Dated this 1 day of February , 2022

Chairman of the Board

Member

Member

Attest: _____
 Clerk of the Board

Constituting the Board of County Commissioners
of Benton County, Washington

AMENDMENT TO UNDERLYING LICENSE AGREEMENT
(SUBSCRIPTION LICENSES FOR ADD-ON SOFTWARE)

This AMENDMENT TO UNDERLYING LICENSE AGREEMENT (“Amendment”) is made and entered into effective as of the date that the last party to sign this Amendment has executed the same (as indicated by the date entered by such party with its signature below) (“Amendment Effective Date”), by and between i3-ImageSoft, LLC (“Solution Provider”) and Benton County, WA (“Customer”) and amends that certain separate contract that governs the licenses to the Software previously procured by Customer from Solution Provider (such as an End User License Agreement (click through or written), Master Software License, Services and Support Agreement, Software License and Services Agreement or other similar agreement addressing Software license terms) (the “Underlying License Agreement”).

1. DEFINED TERMS:

(a) Capitalized terms used in this Amendment and not defined herein are used herein with the same meanings given such terms under the Underlying License Agreement.

(b) The following additional defined terms are added to the Underlying License Agreement:

(1) “Existing Software” means all Software licensed by Customer prior to the Amendment Effective Date.

(2) “Subscription Fees” means periodic fees for the licensing of Software licensed under this Amendment and maintenance and support for such Software, and payable by Customer to Solution Provider.

(3) “Subscription Software” means the Software licensed under this Amendment and at any time under the Underlying License Agreement after the Amendment Effective Date.

2. SUBSCRIPTION SOFTWARE: The parties agree that all Subscription Software will be licensed to Customer on a subscription basis in accordance with the Underlying License Agreement as amended by this Amendment, and that the terms of this Amendment shall not apply to Existing Software, which shall continue to be licensed on a perpetual basis. Accordingly, Solution Provider and Customer agree that, with respect to Subscription Software, as of the Amendment Effective Date, the Underlying License Agreement shall be amended as follows:

(a) License; Term: Payment of Subscription Fees entitles Customer to: (i) use of the Subscription Software according to the Underlying License Agreement; and (ii) maintenance services as described in a separate System Maintenance Agreement (SMA), and, unless terminated earlier in accordance with the terms of the Underlying License Agreement, the term of such Subscription Software license shall be an initial term of 3 (three) years (the “Initial Term”) from the date of acceptance of the initial purchase order for Subscription Software from Customer, and such term will automatically renew thereafter for successive terms of one (1) year each, unless and until either party provides at least thirty (30) days advance written notice of non-renewal, in which case the license and associated Maintenance and Support for such Subscription Software shall terminate at the end of the then current term. Customer’s right to terminate the Underlying License Agreement for convenience shall not apply to the Customer’s subscription to the Subscription Software; Customer may elect not to renew its subscription to the Subscription Software after the Initial Term as described in this provision. Customer’s right to terminate this Agreement, or any portion thereof, for convenience shall not apply to the Customer’s subscription.

(b) Subscription Fees: Customer will be invoiced upon acceptance of the purchase order for Subscription Fees for the first year of the Initial Term. Such invoice shall be due and payable in accordance with the Underlying License Agreement, and if no payment terms are set forth in the Underlying License Agreement, such invoice shall be due and payable by Customer net thirty (30) days from the date of the applicable invoice. For any subsequent years, Customer will be invoiced for Subscription Fees at least sixty (60) days prior to the beginning of such year, and such invoices shall be due and payable by Customer on or before the beginning of such year. In the event Customer licenses additional Subscription Software modules under the Agreement, Customer will be invoiced for Subscription Fees for such additional Subscription Software modules on a pro rata basis upon acceptance of the purchase order for such additional Subscription Software modules. Such invoice shall be due and payable by Customer in accordance with the Underlying License Agreement, and if no payment terms are set forth in the Underlying License Agreement, such invoice shall be due and payable by Customer net thirty (30) days from the date of the applicable invoice. Thereafter, Subscription Fees relating to such additional Subscription Software shall be included in the subsequent invoices issued with respect to the existing licensed Subscription Software. Except as otherwise provided in this Amendment, in relation to Subscription Software, any reference in the Underlying License Agreement to Software license fees and maintenance and support fees (or maintenance fees) shall mean Subscription Fees.

Contract #:

3. **NO OTHER CHANGES:** In all other respects the Underlying License Agreement remains in full force and effect. Except as otherwise expressly stated in this Amendment, Subscription Software is subject to all the same terms and conditions applicable to Software under the Underlying License Agreement.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year set forth after their respective names below:

Benton County, WA

i3-ImageSoft, LLC

By:

By: 

Print Name:

Print Name: Scott Bade

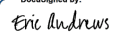
Title:

Title: CEO

Date:

Date: 01/19/2022

Approved as to Form:

DocuSigned by:


Eric Andrews

Deputy Prosecuting Attorney II

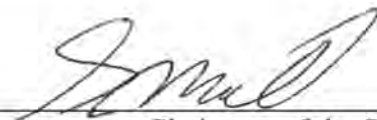
RESOLUTION 2019 875

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

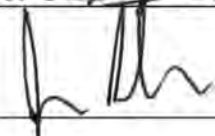
IN THE MATTER OF AUTHORIZING THE CHAIRMAN OF THE BOARD TO SIGN
THE MASTER AGREEMENT AND SYSTEM MAINTENANCE AGREEMENT
BETWEEN IMAGESOFT AND COUNTY CLERK FOR BENTON COUNTY

BE IT RESOLVED, that the Chairman of the Board of Benton County Commissioners, is hereby authorized to sign the Master Agreement and System Maintenance Agreement providing annual support for use by the Benton County Superior Court Clerks office and Benton County District Court, as attached.

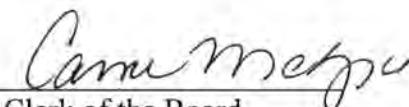
Dated this 3 day of Dec, 2019


Chairman of the Board


Member


Member

Constituting the Board of County
Commissioners of Benton County,
Washington.

Attest: 
Clerk of the Board

cc: Auditor, IT
Originals: Clerk

Master Agreement

This agreement ("Master") is made and entered into by and between Benton County, WA having a place of business at 7122 West Okanogan Place, Bldg A, Kennewick, WA 99336 (hereinafter "Customer"), and ImageSoft, Inc., having a place of business at 25900 West 11 Mile Road, Suite 100, Southfield, Michigan 48034 (hereinafter "ImageSoft"). Customer and ImageSoft are each referred to as a Party or, collectively, as the "Parties."

1. Statements of Work, Order of Precedence; Construction.

1.1. ImageSoft and Customer may, from time to time, execute one or more Statements of Work ("SOW") Agreements. Each SOW: (1) shall define the Services to be performed and additional obligations of the Parties; (2) be executed by both Parties; (3) shall constitute a separate Agreement; and (4) shall be deemed to incorporate therein all of the terms and conditions of this Master. The provisions of a SOW shall control over inconsistent provisions in the Master, except that any provision herein relating to Intellectual Property, limitations of liability, warranties or indemnification may not be modified except through a properly executed amendment to this Master executed by a representative of ImageSoft having a rank of no less than Senior Vice President. The SOW's and incorporated Master shall constitute the entire agreement between the parties ("Agreement").

1.2. Capitalized terms are defined in Section 9

1.3. For purposes of the Agreement, the contacts are listed below. Contacts may be changed upon written notice to the following:

ImageSoft	Customer:
Contact Name: Scott D. Bade	Contact Name: Josie Delvin
Title: President	Title: County Clerk
Address: 25900 W. 11 Mile Road Suite 100, Southfield, MI 48034	Address: 7122 W. Okanogan Pl., Bldg A Kennewick, WA 99336
Email: sbade@imagesoftinc.com	Email: josie.delvin@co.benton.wa.us
Telephone: 248-948-8100 x200	Telephone: 509-735-8388 X3217
Fax: 248-948-8146	Fax:

2. Term and Termination.

2.1. Unless terminated in accordance with "Termination" section below, the term of this Master shall begin on the date hereof and shall continue until one (1) year after the expiration or termination of the last SOW to be executed while the Master was in effect. In the absence of a term being provided in a SOW, the term of the SOW shall be for the longer of (1) year commencing on its Effective Date or the date on which all Services are completed and paid for. The following Sections will survive termination of this Master: Sections 3, 6, 7, 8, 9 and all Sections which by their nature are intended to survive.

2.2. Other than by expiration, the Agreement may be terminated only (a) by mutual agreement of both parties; (b) in the event that either Party materially breaches the Agreement and fails to cure the

breach within thirty (30) days after receiving written notice from the non-breaching Party; or (c) in the event either Party is declared insolvent or bankrupt, or if any assignment of its property shall be made for the benefit of creditors or otherwise, or if a petition is filed in any court to declare bankruptcy, or for reorganization under any bankruptcy or insolvency law or similar statute and is not dismissed in ten (10) days, or if a trustee in bankruptcy or similar offices or receiver is appointed to either Party.

2.3. Upon termination or completion of the Agreement, both parties shall return all confidential information and intellectual property to the other Party. Termination does not eliminate the responsibility of Customer to pay for products and Services rendered. Upon written notification by Customer of a desire to return unused and unopened hardware or software components purchased from ImageSoft ("New Third Party Products") ImageSoft will make a reasonable effort to return for credit New Third Party Products, pursuant to vendor requirements. Reasonable restocking and handling charges may apply. For New Third Party Products that were purchased by ImageSoft for Customer that cannot be returned for credit, Customer agrees to take ownership of and to pay ImageSoft for these components using established payment terms.

3. **Payment.** Customer shall pay for the Services in accordance with the SOW and subject to the following:

3.1. ImageSoft is not obligated to begin providing Services until it has received the Initial Payment.

3.2. Each invoice that Customer receives from ImageSoft is due and payable per the Payment Terms described in the Statement of Work.

3.3. All past due amounts shall bear interest at the rate of one and one-half percent (1.5%) per month (or, if lower, the maximum rate lawfully chargeable) from the date due through the date that such past due amounts are paid in full.

3.4. In the event that Customer in good faith believes that a portion of an invoice is incorrect and in excess of what is invoiced, the Customer may withhold payment of such portion, and such withholding shall not constitute a default, if and only if, and subject to the following:

3.4.1. Customer notifies ImageSoft in writing of its intent to withhold payment and provides in such writing a specific and complete explanation and justification for such withholding;

3.4.2. Such notification is provided within ten (10) days of the receipt of the applicable invoice;

3.4.3. Customer immediately pays the portion not claimed to be incorrect;

3.4.4. The withholding is in good faith and Customer cooperates with ImageSoft to resolve such withholding as soon as possible;

- 3.4.5. Customer, at ImageSoft's request, and in lieu of withholding the funds in its own account, deposits such disputed amount in a reputable bank escrow (determined by ImageSoft in its reasonable discretion) until such dispute is resolved by the Parties or by litigation.
- 3.5. In the event of any default by Customer in the payment of any amounts due hereunder, which default continues unremedied for at least ten (10) calendar days after the due date of such payment and written notice of the default, ImageSoft shall have the right to suspend the provision of Services unless and until such default, and any and all other defaults by Customer under the Agreement, shall have been cured.
- 3.6. Unless otherwise specified in this Agreement or in a SOW, actual travel expenses incurred by ImageSoft while performing services under this Agreement shall be rebilled to Customer at cost with supporting documentation and receipts. ImageSoft shall use low cost providers wherever possible, while respecting deadlines and schedules and reasonable standards of comfort, and will in general act with regard to travel expenses as if the cost were being borne by ImageSoft. Travel time shall be billed at 50% of the established standard billing rate, or if a standard is not established, \$82.50 per hour.
- 3.7. The parties agree that payment schedules shall be established as part of a Statement of Work and are intended to reflect an equitable cash flow distribution commensurate with the amount of work being performed or product being delivered. The parties further agree to work in good faith to adjust payment schedules when project changes or scheduling delays cause the payments to be inequitably distributed.
- 3.8. All payments are to be made in US dollars.

4. Acceptance; Disclaimers

- 4.1. Upon reasonable belief that it has substantially discharged its performance obligations in this Agreement, ImageSoft will deliver to Customer a Certification of Testing Readiness. Such Certification means Deliverables and Services are completed materially in accordance with Specifications and that they are ready for User Acceptance Testing by Customer in a non-productive test mode ("Test System").
- 4.2. User Acceptance Testing ("UAT") shall begin within twenty-one (21) days of delivery of the Certification of Testing Readiness. During that period, if not done already, Customer shall work to establish test cases and protocols ("Test Plan") for testing the Test System. The Test Plan shall be subject to approval by ImageSoft, which shall not be unreasonably withheld or delayed. ImageSoft shall provide reasonable assistance in establishing and implementing the Test Plan. If the Parties are unable to agree upon a Test Plan within such twenty-one (21) day period, either Party may terminate the Agreement owing payment to ImageSoft only for work performed up to termination, or continue to work on establishing the Test Plan. Upon completion of the Test Plan, Customer shall test the Test System in accordance with Section 4.3.
- 4.3. During a period of thirty (30) days (the "Test Period"), Customer shall test whether the Test System meets the Specifications.

4.3.1. The Test System shall be deemed accepted if:

4.3.1.1. the Test System performs materially in accordance with Specifications; or

4.3.1.2. Customer has not given ImageSoft a written deficiency statement specifying in detail how the Initial Test System fails to meet the Specifications ("Deficiency Statement") within the Test Period; or

4.3.2. Upon Acceptance, Customer shall complete the Certificate of Acceptance. Failure by Customer to complete the Certificate of Acceptance after Customer begins to use the Deliverables in a Production Environment shall not mean that Acceptance has not occurred.

4.3.3. If Customer provides a Deficiency Statement within the Test Period and ImageSoft is able to verify that the System exhibits the identified material deficiency, ImageSoft shall have twenty-one (21) days to correct the deficiency, and Customer shall have thirty (30) days after receiving written notice that the deficiency has been corrected to evaluate the Test System. If the Test System still exhibits the identified material deficiency or any other material deficiency demonstrably caused by corrective action at the end of this thirty (30) day period, ImageSoft shall have twenty-one (21) days to correct the deficiency or deficiencies, and Customer shall have thirty (30) days after receiving written notice that the deficiency has been corrected to evaluate the Test System. If the Test System continues to exhibit the identified deficiency or deficiencies demonstrably caused by corrective action at the end of this thirty (30) day period, either Party may, at such Party's option, terminate this Agreement, effective upon written notice to the other Party or by mutual agreement continue the Agreement for additional correction and review periods. Upon any such termination, Customer shall return the Test System to ImageSoft, and ImageSoft shall refund any monies paid by Customer to ImageSoft. Neither Party shall then have any further liability to the other for the products that were the subject of the acceptance test.

4.4. PLEASE NOTE THAT ANY POST-ACCEPTANCE WARRANTY IS SET FORTH AND SUBJECT TO A FULLY EXECUTED "IMAGESOFT SYSTEM MAINTENANCE AGREEMENT," A SEPARATE AGREEMENT THAT IS NOT INCORPORATED HEREIN. WITHOUT DEROGATING THE IMAGESOFT SYSTEM MAINTENANCE AGREEMENT (TO THE EXTENT THAT THE PARTIES ENTER INTO SUCH AGREEMENT), IMAGESOFT EXPRESSLY DISCLAIMS ALL WARRANTIES EXCEPT AS EXPRESSLY RECITED IN THIS AGREEMENT INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES FOR NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER FURTHER ACKNOWLEDGES THAT PERFORMANCE MAY BE PREVENTED OR DELAYED BY FAILURE OF CUSTOMER TO PERFORM ITS OBLIGATIONS, INCLUDING BUT NOT LIMITED TO PROVIDING TIMELY FEEDBACK TO QUESTIONS AND TIMELY ACCESS TO REQUIRED RESOURCES.

4.4.1. Without limiting the generality of the foregoing disclaimer, it should be noted that during the implementation of any computer system there is the possibility of inadvertent or accidental loss of data. Also, computer hardware and software systems will occasionally stop working or fail to operate as designed, which may cause loss of data. Customer at

all times is responsible for maintaining accurate and timely data backups to protect against loss of data.

4.4.2. Additionally, computer systems are vulnerable to intrusion and/or theft of information from outside parties. Customer is responsible for data security and computer infrastructure at Customer facilities to prevent unauthorized access to the system and data.

4.4.3. THEREFORE CUSTOMER IS RESPONSIBLE FOR DATA PROTECTION AT CUSTOMER FACILITIES, AND ImageSoft CANNOT BE HELD LIABLE FOR ANY LOSS OR THEFT OF DATA, OR SYSTEM INTRUSION AT CUSTOMER FACILITIES. UNLESS IT IS DETERMINED THAT THE SYSTEM INTRUSION IS THE DIRECT RESULT OF AN ERROR OR EXPLOITATION OF THE IMAGESOFT SOFTWARE.

5. Third-Party Software

5.1. All of the commercial third-party software that ImageSoft provides to Customer has an associated license agreement. Certain software products implement their license agreements as "click-through" agreements, meaning the license is displayed on a computer screen to either a user or installer of the system and the user or installer acknowledges the agreement on screen. Customer agrees that for software products provided and installed by ImageSoft, where ImageSoft may have installed the software and ImageSoft clicks-through a license agreement, ImageSoft is in this instance only acting as an agent of the Customer for purposes of acknowledging the agreement on screen and therefore the click-through agreements remain in full effect for the Customer.

6. Limitations of Liability/Damages; Indemnification

6.1. IMAGESOFT SHALL NOT BE LIABLE FOR ANY: (A) SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, ARISING FROM OR RELATED TO: (1) A BREACH OF THIS AGREEMENT OR STATEMENT OF WORK OR OTHER ORDER/ADDENDUM OR (2) THE OPERATION OR USE OF ANY DELIVERABLE OR (3) ANY SERVICES; (B) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY IMAGESOFT TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO FORCE MAJEURE CIRCUMSTANCES; OR (C) CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST ImageSoft MORE THAN TWO (2) YEARS AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE. PROVIDED, that any obligation hereunder shall not extend to injury, sickness, death, or damage caused by or arising out of the sole negligence of ImageSoft or its officers, officials, employees, or agents.

6.2. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT IMAGESOFT'S LIABILITY UNDER THIS AGREEMENT, WHETHER UNDER CONTRACT, TORT LAW, WARRANTY OR OTHERWISE SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO CLIENT UNDER THE APPLICABLE STATEMENT OF WORK OVER THE TWELVE MONTHS PRECEDING THE ACTION GIVING RISE TO THE CLAIM.

- 6.3. SOME JURISDICTIONS MAY HAVE RESTRICTIONS ON CONTRACTUAL LIMITATIONS OF LIABILITY AND DAMAGES AND, IF THAT IS THE CASE, THE ABOVE LIMITATIONS ON DAMAGES AND LIABILITY SHALL BE EFFECTIVE TO THE GREATEST EXTENT ALLOWED BY APPLICABLE LAW.
- 6.4. ImageSoft agrees to defend, indemnify and hold harmless Customer from and against any Claims that the Deliverables or Services infringe the Intellectual Property Rights of any third party, provided that Customer promptly notifies ImageSoft as soon as practicable, but in any event within thirty (30) days of the Claim's assertion and provided that ImageSoft retains full control over defense and settlement, Customer provides to ImageSoft all reasonable assistance, and Customer has not made any admissions which adversely affect ImageSoft's defense of the claim and has not settled the claim against ImageSoft's consent. ImageSoft may modify or replace any allegedly infringing Deliverable or terminate Customer's rights to such Deliverable and, as to such Deliverable, offer a pro-rated refund depreciated on a straight line basis over a four (4) year period.

7. Proprietary Rights

- 7.1. Subject to payment of all amounts owed and otherwise complying with the terms of the Agreement, Deliverables, exclusive of ImageSoft IP and Third Party IP, shall be the property of Customer.
- 7.2. Customer IP, if any, shall be owned exclusively by Customer and ImageSoft releases and assigns all rights to Customer IP to Customer.
- 7.3. ImageSoft IP, if any, shall be owned exclusively by ImageSoft and Customer releases and assigns all rights to ImageSoft IP to ImageSoft.
- 7.4. The Parties agree to execute any and all documents necessary to effect the purposes of this Section so as to effect the applicable assignments and otherwise perfect the applicable IP interests of the appropriate Party.
- 7.5. ImageSoft hereby acknowledges that in performing the Services, it may be furnished or otherwise be provided access to Customer's confidential information, including trade secrets and other proprietary information, all of which is clearly marked as confidential by Customer. ImageSoft hereby agrees and covenants to hold in trust and confidence all such information during and following the term of the Agreement; provided, however, that ImageSoft may disclose such confidential information if required by any judicial or government request, requirement or order. ImageSoft shall be liable to Customer only in the event of a willful and material disclosure of Customer's confidential information or data, provided, that ImageSoft's liability shall be limited to an amount not exceeding the purchase price of the Services provided hereunder.

8. General/Miscellaneous

- 8.1. Waiver. No assent or waiver, expressed or implied, or any breach of any one or more of the terms of this Agreement shall be deemed to be taken to be a waiver of any other term or condition or assent to continuation of such breach.
- 8.2. Marketing. Either Party may communicate to the public, through a website, press release or other marketing vehicle, the fact that a business relationship exists and in general that work is being performed, so long as no specific information is disclosed which could reasonably be considered confidential.
- 8.3. Disputes.
- 8.3.1. Any dispute, controversy or claim arising out of or relating to the Agreement shall be settled by arbitration in Oakland County, Michigan, or in the jurisdiction in which the controversy arises, in accordance with the rules of the American Arbitration Association ("AAA") Commercial Arbitration Rules in effect as of the date of the events giving rise to the dispute. The arbitrator(s) (and any court pursuant to Section 8.4 shall apply the substantive laws of the United States of America and the State of Michigan to decide the dispute. The Parties shall choose, by mutual agreement, one (1) neutral arbitrator to hear the dispute. If the Parties cannot agree on the selection of the arbitrator within thirty (30) days after a demand for arbitration has been served, the arbitrator(s) shall be selected by the American Arbitration Association. The arbitrator shall be authorized to award only those damages which are permitted in this Agreement, subject to any disclaimers of damages and liability limits set forth in this Agreement, but the arbitrator shall not have the authority to reform, modify or materially change this Agreement. The award rendered by the arbitrator shall include costs of the arbitration, reasonable attorneys' fees and reasonable costs for experts and other witnesses. Judgment on the award may be entered in any court having jurisdiction. The award of the arbitrator(s) shall be final and binding upon the Parties without appeal or review except as permitted by Michigan law. In connection with any application to confirm, correct or vacate the arbitration award, any appeal of any order rendered pursuant to any such application, or any other action required to enforce the arbitration award, the prevailing Party shall be entitled to recover its reasonable attorneys' fees, disbursements and cost incurred in any post-arbitration award activities.
- 8.4. Injunctive Relief. The Parties agree that notwithstanding the provision for arbitration, each Party will have the right to seek interim orders for equitable relief in a federal or state court having jurisdiction in Oakland County Michigan, or in the jurisdiction in which the controversy arises, as necessary to protect such Party's Intellectual Property Rights or Confidential Information.
- 8.5. Force Majeure. Other than with respect to failure to make payments due hereunder, neither Party shall be liable under the Agreement for delays, failure to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused or occasioned by, or due to fire, earthquake, flood, water, the elements, utility curtailments, power failures, explosions, civil disturbances, governmental actions, or any other cause beyond their reasonable control, provided that the Party affected by such event shall immediately begin or resume performance as soon as practicable after the event has been abated.

- 8.6. **Notice.** Unless otherwise agreed to by the Parties in a writing signed by both Parties, all notices, requests, demands and other communications under the Agreement shall be in writing and shall be effective and deemed to have been received: (a) when delivered in person, (b) five (5) business days after having been mailed by certified or registered United States mail, postage prepaid, return receipt requested, or (c) the next business day after having been sent by a nationally recognized overnight mail or courier service, return receipt requested. Unless otherwise provided, notices shall be sent to the parties appearing on the signature page, at the address listed in Section 1.3 of the Master.
- 8.7. **Assignment.** Neither Party may assign this Agreement or the rights and obligations therein without the consent of the other Party. Notwithstanding the foregoing, ImageSoft may assign this Agreement and the rights and obligations therein to any entity that purchase all or substantially all of its assets or stock or to any entity that succeeds to it in a consolidation, merger or other reorganization. The Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties to the Agreement and their respective successors and permitted assigns.
- 8.8. **Entire Agreement.** This is the entire Agreement of the Parties on the subject matter contained herein. It supersedes all prior and contemporaneous Oral and Written Agreements with respect hereto. The terms and conditions contained herein shall control over conflicting terms and conditions found in Customer shipping documents, purchase order documents, or other transactional documents. No waiver or modification of any of the terms, provisions or conditions hereof shall be effective unless said waiver or modification is in writing and signed by a duly authorized representative of both Parties. No acceptance or acknowledgment by either Party of any acknowledgment, receipt, order, invoice, or delivery document shall be effective to waive, modify or delete any term, provision, or condition hereof, or to add any different or conflicting terms, provision, or condition hereto.
- 8.9. **No Hire Clause.** Each Party agrees that, without the prior consent of the other Party, it will not offer employment to or discuss employment with any employees of the other Party until one (1) year after termination of the Agreement.
9. **Definitions.** As used in the Agreement, the following definitions shall apply:
- 9.1. "Agreement" means the SOW and incorporated Master.
- 9.2. "Certification of Testing Readiness" means the certification provided by ImageSoft pursuant to Section 4 of the Master.
- 9.3. "Claim" and "Losses." "Claim" means any third party claim contained in any demand or any civil, criminal, administrative, or investigative action, suit or proceeding (including arbitration) asserted, commenced or threatened. "Losses" means all losses, liabilities, damages, liens, and claims, and all related costs, expenses, and other charges suffered or incurred as a result of or in connection with a Claim, including reasonable attorneys' fees and disbursements, costs of investigation, litigation, settlement, and judgment, and any taxes, interest, penalties, and fines with respect to any of the foregoing.
- 9.4. "Customer IP" means only that IP which meets all of the following conditions relative to a particular Statement of Work: it is (i) previously owned by Customer, (ii) existing in materials

provided by Customer to ImageSoft for purposes of the Statement of Work, (iii) included within a Deliverable provided pursuant to the Statement of Work, and (iv) identified with specificity in the Statement of Work, with such identifying provision expressly referencing this Master and such identifying provision being initialed by the CEO of ImageSoft. For the avoidance of doubt, Customer will have no rights to claim such content as Customer IP unless such IP satisfies each of the conditions of this Section.

- 9.5. "Effective Date" means, for the Master or any Statement of Work, the date of the signature of the last Party to execute such document.
- 9.6. "Deliverable" means, as specified in the SOW, materials to be delivered physically and/or transmitted electronically by ImageSoft to Customer, including without limitation documents, images or data files, software, software configuration, drawings, data compilations and reports.
- 9.7. "Functional Specification Document" means an ImageSoft created document intended to describe the functioning characteristics of a computer system for the purpose of clarifying the scope and capabilities of the system.
- 9.8. "Initial Payment" means the first payment as set forth in the SOW.
- 9.9. "ImageSoft IP" means all Intellectual Property in and to Deliverables and Services, including without limitation, all software licensed to Customer by ImageSoft, whether developed by ImageSoft or by or with another party, except for Customer IP and Third Party IP.
- 9.10. "Intellectual Property" or "IP" means copyrights, trademarks, patents, moral rights, know-how, trade secrets, computer software and other intangible proprietary rights.
- 9.11. "Master" means this Master Professional Services Agreement.
- 9.12. "Party" means ImageSoft and/or the Customer as set forth in Section 1.3 of the Master
- 9.13. "Productive Environment" means an environment in which Deliverables and Services are used for Customer's business purposes and not for test purposes.
- 9.14. "Services" means the services to be performed by ImageSoft as described in a subsequent Statement of Work, which may include development, customization, integration, installation or other professional services and/or the provision of hardware and/or software and/or other technology.
- 9.15. "Specifications" means any written specifications contained in the Functional Specification Document for Services or Deliverables created pursuant to a Statement of Work.

9.16. "Statement of Work" or "SOW" shall mean the document that describes the Services, fees for the Services and other relevant terms and conditions.

9.17. "Test Plan" means the testing roadmap as described in Section 4.2.

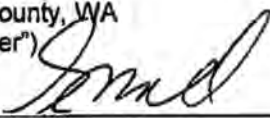
9.18. "Test System" means the Services and Deliverables to be tested in a non-productive environment as described in Section 4.

9.19. Third Party IP means Intellectual Property owned by entities other than the Parties, such as Intellectual Property in and to software provided by such other entities.

9.20. "User Acceptance Testing" or "UAT" means the testing process described in Section 4.

IN WITNESS WHEREOF, the Parties have caused the Master to be executed and do each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date of the Master duly authorized by all necessary and appropriate corporate action to execute the Master.

Benton County, WA
("Customer")

Signed: 

Name: SHARON SKATELL

Title: COMMISSIONER

Date: 12-3-2019

ImageSoft, Inc.
("ImageSoft")

Signed: 

Name: Scott D. Bade

Title: President

Date: 12/12/19

Digitally signed by Scott D. Bade
DN: cn=Scott D. Bade, o=ImageSoft, Inc., ou=ImageSoft, email=scott.bade@imagesoft.com, c=US
Date: 2019.12.12 09:13:14 -0500

Signed as to form 

Name: Eric Andrews

Title: Civil DPA

Date: _____

SYSTEM MAINTENANCE AGREEMENT

This System Maintenance Agreement ("SMA") is made and entered into by and between ImageSoft, Inc., a Michigan Corporation with its principal offices at 25900 W. 11 Mile Road, Suite 100, Southfield, MI 48034 ("ImageSoft"), and Benton County, WA with its principal offices at 25900 West 11 Mile Road, Suite 100, Southfield, Michigan 48034 ("Customer"), ImageSoft and Customer each individually referred to as a "Party" or collectively as the "Parties";

RECITALS:

WHEREAS, ImageSoft is in the business of providing system maintenance and related support services ("Maintenance"); and

WHEREAS, Customer desires to purchase from ImageSoft such Maintenance as described herein; and

WHEREAS, ImageSoft desires to provide Customer with such Maintenance as described herein.

NOW, THEREFORE, the parties mutually agree as follows:

DEFINED TERMS: The following terms shall have the meanings set forth below for all purposes of this SMA:

"SMA" shall mean this System Maintenance Agreement.

"Customer Care" shall mean an enhanced package of support services provided by ImageSoft and defined within this SMA. Customer Care services are to be provided only if they are specifically identified in this SMA.

"Statement of Work" or "SOW" shall mean an agreement between Customer and ImageSoft that describes specific products and services to be provided by ImageSoft to another party. A SOW may be related by reference to this SMA.

"Supported Software" or "Supported Software Products" shall mean the computer software licensed from either a third-party vendor or ImageSoft to be supported by ImageSoft under this SMA, all of which is either; a) listed in a related SOW and completely paid for; or b) preexisting and identified in Appendix A; or c) purchased at a future date and specifically identified as being supported under this SMA.

"Supported Hardware" shall mean the computer hardware manufactured by a third-party vendor to be supported by ImageSoft under this SMA, all of which is either; a) listed in a related SOW and completely paid for; or b) preexisting and identified in Appendix A; or c) purchased at a future date and specifically identified as being supported under this SMA.

"Supported Services" shall mean the system configuration and custom software development provided by ImageSoft and to be supported by ImageSoft under this SMA, all of which is either; a) listed in a related SOW and completely paid for; or b) preexisting and identified in Appendix A; or c) purchased at a future date and specifically identified as being supported under this SMA.

"Supported Products" shall mean the Supported Hardware and Supported Software components to be supported by ImageSoft under this SMA.

"Supported System" shall mean the aggregate of the Supported Products and Supported Services.

"Product Vendor" shall mean a third-party vendor or ImageSoft whose products ImageSoft is authorized to resell and whose products are identified as Supported Products.

"Maintenance and Support Services" shall mean the maintenance and support services to be performed by ImageSoft under this SMA.

"Documentation" shall mean the officially released material, either in electronic or paper form, including user manuals, provided by Product Vendors related to the functional, operational or performance characteristics of Supported Products.

"Error Tracking Number" or "ETN" means a unique number assigned by ImageSoft to an Error.

"Error" shall mean any defect or condition inherent and discovered in the Supported Product that causes the Supported Product to fail to perform in accordance with the current Documentation published by Product Vendor. A defect or condition is not an Error until ImageSoft assigns an Error Tracking Number (ETN).

"Upgrades and Enhancements" means any and all new versions, improvements, modifications, upgrades, updates, fixes and additions to Supported Software that a Product Vendor or ImageSoft has commercially released to its end users generally during the term of this SMA to correct deficiencies or enhance the capabilities of the Supported Software, together with updates of the Documentation to reflect such new versions, improvements, modifications, upgrades, fixes or additions; provided, however, that the foregoing shall not include new, separate software product offerings, new software modules, or a re-platformed software product.

1. IDENTIFICATION OF SUPPORTED PRODUCTS AND SERVICES

ImageSoft provides professional services and sells and supports several different Software and Hardware products, each of which may have both common and distinct support terms. The following products and services are supported under this agreement:

- a) New Purchases. This SMA covers all products and services that are purchased through a fully executed ImageSoft Statement of Work (SOW) which specifically references this agreement and where the products and services are explicitly identified as covered under this agreement.
- b) Existing Supported Components. Appendix A provides a list of known existing system products and services that are to be covered by this agreement. Any existing component that is not explicitly identified shall not be covered by this agreement.

2. SUPPORTED SOFTWARE MAINTENANCE

This section describes the terms and conditions related to all the Supported Software. Additional terms and conditions that are specific to a Product Vendor may be included in Section 17.

- a) Upgrades and Enhancements. ImageSoft shall provide, upon Customer request, all Upgrades and Enhancements to the Supported Software commercially released by the Product Vendor during the term of this SMA. Customer acknowledges and agrees that Product Vendors have the right, at any time, to change the specifications and operating characteristics of the Supported Software. Any Upgrades and Enhancements to the Supported Software and Documentation shall remain proprietary to and the sole and exclusive property of the Product Vendor and shall be subject to all the restrictions, limitations and protections of the Product Vendor's license agreement. All applicable rights to patents, copyrights, trademarks, other intellectual property rights, applications for any of the foregoing and trade secrets in the Supported Software and Documentation and any Upgrades and Enhancements are and shall remain the exclusive property of the Product Vendor.

- b) Errors in Supported Software. All Error(s) discovered by Customer within Supported Software must be properly reported to ImageSoft in accordance with Section 6 b) of this SMA. ImageSoft shall use its commercially reasonable efforts to correct any properly reported Error(s) in the Supported Software that are mutually confirmed by ImageSoft and Product Vendor, in the exercise of their commercially reasonable judgment.
- c) General Assistance and Advice. ImageSoft shall upon the request of Customer, provide technical support, including remote assistance and advice, related to the operation, best practices, and use of the Supported Software by Customer. Remote assistance and advice is provided over the telephone or through e-mail correspondence. Remote assistance and advice is intended to provide general assistance and guidance related to the everyday usage and maintenance of the system. Remote assistance and advice is not intended to be a replacement for a properly trained system administrator, or a properly trained software developer. ImageSoft will notify Customer if this service is being used in a manner that is outside of its intended purpose and reserves the right to charge a fee in such an instance.
- d) Reporting Errors to Product Vendors. For Errors that require Product Vendor assistance to correct, ImageSoft shall work directly with the Product Vendor and use its commercially reasonable efforts to correct the Error.
- e) Remote Access to Customer system. Customer acknowledges and agrees that ImageSoft and Product Vendor may require on-line access to the Customer's system for ImageSoft to provide Maintenance and Support Services hereunder. Accordingly, Customer shall provide a connection to the Internet to facilitate ImageSoft's remote access to Customer's system. ImageSoft shall provide remote connection software, which may require installation of a software component on a workstation or server computer. NO REMOTE ACCESS WILL BE INITIATED BY IMAGESOFT OR PRODUCT VENDOR WITHOUT A CUSTOMER SUPPORT REPRESENTATIVE PRESENT.
- f) Exclusions. ImageSoft is not responsible for providing, or obligated to provide, maintenance and support services or upgrades and enhancements under this SMA: (a) in connection with any Error if ImageSoft (directly or through Product Vendor) has previously provided corrections for such Error, which correction Customer chose not to implement after being advised to implement the same; (b) in connection with any Errors or problems that have been caused by errors, defects, problems, alterations, revisions, changes, enhancements or modifications in the database, operating system, third party software (other than Supported Software or third party software bundled with the Supported Software.), hardware (other than Supported Hardware) or any system or networking utilized by Customer; (c) if the Supported System or related software or systems have been subjected to abuse, misuse, improper handling, accident or neglect; (d) if any party other than ImageSoft or a Product Vendor working with ImageSoft has provided any services in the nature of Maintenance and Support Services to Customer with respect to the Supported System; or (e) in connection with custom developed software not developed or provided by ImageSoft

3. SUPPORTED SERVICES MAINTENANCE

This section describes the terms and conditions related to all the Supported Services. All services provided by ImageSoft to Customer are provided with a 30-day limited warranty, which is further defined in section 12 (see section 4 for Customer Care extended warranty on Supported Services). During this limited warranty period Service Provider will use its commercially reasonable efforts to correct any properly reported defect(s) (non-conformity to design or functional specifications mutually confirmed and agreed upon by Service Provider and Customer) in any configurations or custom software development provided by Service Provider.

4. CUSTOMER CARE SUPPORT

This section is only applicable if Customer Care is identified as being provided herein or in an accepted SOW. Customer Care Support is an optional support package that is offered to select Customers. If

applicable, Customer Care provides more extensive protection to the Customer in several key areas, as follows:

- a) Extended Services Support. ImageSoft will use its commercially reasonable efforts to correct any properly reported defect(s) (non-conformity to design or functional specifications mutually confirmed and agreed upon by ImageSoft and Customer) in any configurations or custom software development provided by ImageSoft, and fully paid for by Customer.
- b) Development Team Access. ImageSoft will use its commercially reasonable efforts to maintain an enhanced level of knowledge regarding the Customer's System and provide Customer access to ImageSoft's implementation staff that maintains this knowledge. All support calls will first go through the standard help-desk process; however, Customer Care Customers will have enhanced access to implementation staff personnel.
- c) System Upgrade Assistance to on-premise Software. ImageSoft will annually assist Customer in the installation of up to two (2) new versions for any of the Supported Software Products provided by ImageSoft that are installed at Customer premises. Assistance shall include: 1) Providing remote technical advice for planning or execution; and 2) Providing remote technical services to run the upgrade procedure. ON-SITE ASSISTANCE IS NOT INCLUDED AND IS BILLABLE AS PER SECTION 7. TESTING AND BACKUP ARE THE RESPONSIBILITY OF THE CUSTOMER. IMAGESOFT RESERVES THE RIGHT TO REFUSE TO PERFORM AN UPGRADE IF IN IMAGESOFT'S REASONABLE COMMERCIAL JUDGMENT PROPER TESTING OR BACKUP HAVE NOT BEEN PERFORMED.
- d) Upgrade Assurance. ImageSoft will use its commercially reasonable efforts to ensure that any configurations or custom software development provided by ImageSoft, and fully paid for by Customer will continue to operate and provide same or similar functionality in subsequent new versions of Supported Products. UPGRADE ASSURANCE DOES NOT INCLUDE MIGRATING TO A DIFFERENT OPERATING ENVIRONMENT.
- e) Web Support Portal. A feature of the Customer Care Support program includes ImageSoft providing Customer with access to support through the Web. The Web Support Portal provides Customer with access to support history, and the ability to submit a notification through the Web.
- f) Customer Care Pricing. The price for Customer Care is based on the size and complexity of the system being supported and an estimate of the amount of effort required to perform the support for the period being covered. In subsequent years ImageSoft reserves the right to adjust the price for Customer Care to better reflect the actual cost of the service being provided.

5. SUPPORTED HARDWARE MAINTENANCE

This section describes the terms and conditions related to all the Supported Hardware. Additional terms and conditions that are specific to a Product Vendor may be included in Section 17.

- a) Errors in Supported Hardware. All Error(s) discovered by Customer within Supported Hardware must be properly reported to ImageSoft in accordance with Section 6 of this SMA. ImageSoft shall use its commercially reasonable efforts to correct any properly reported Error(s) in the Supported Hardware that are mutually confirmed by ImageSoft and Product Vendor, in the exercise of their commercially reasonable judgment.
- b) Third-party On-site Maintenance. For most Supported Hardware ImageSoft will propose to Customer and purchase on behalf of Customer a third-party on-site maintenance contract. If an on-site maintenance contract is in effect, it will be identified in a related SOW, or through a renewal invoice for subsequent terms. If an on-site maintenance contract is in effect and an Error

is confirmed by ImageSoft to be covered by the on-site maintenance contract, then, ImageSoft will either contact the third-party on behalf of the Customer, or direct Customer to do so.

6. SUPPORT PROCEDURES

- a) Support Hours. Unless extended support coverage is defined within and purchased through a related SOW, Maintenance and Support Services shall be available during the hours of 9 a.m. to 5 p.m., Eastern Standard Time, Monday through Friday, excluding the following US holidays, as defined by the US Federal Government (www.opm.gov/fedhol), including: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving, Christmas Eve and Christmas day.
- b) Error Reporting. Proper notice shall include prompt telephonic and written (either via e-mail or postal mail) notice to ImageSoft of any alleged Error. If requested by ImageSoft, Customer agrees to provide written documentation of Errors to substantiate the Errors and to otherwise assist ImageSoft in the detection, verification and correction of said Errors. ImageSoft will use its commercial reasonable judgment to determine if an Error exists. If ImageSoft determines that a new Error exists, ImageSoft will assign an Error Tracking Number ("ETN") to the Error and provide this to the Customer. A NOTIFICATION OF ANY KIND DOES NOT BECOME AN "ERROR", AS DEFINED WITHIN THIS AGREEMENT, UNTIL AN ERROR TRACKING NUMBER IS ASSIGNED BY IMAGESOFT.
- c) Call Tracking and Response. ImageSoft's help desk shall track all Customer notifications and categorize them as follows:

Type	Description	Response Time
Critical	An issue has been identified and is either causing a significant portion of the system to be unusable, or is significantly affecting Customer productivity and no workaround is available. These calls are addressed before all others.	1 business hour
High	An issue has been identified and is either causing a significant portion of the system to be unusable, or is significantly affecting Customer productivity, however, a workaround is available.	4 business hours
Medium	An issue has been identified but is not significantly affecting Customer productivity.	8 business hours
Low	System is operating as documented; however, Customer has requested a change to the system or Customer has requested General Assistance or Advice.	24 business hours

ImageSoft will record information in a concise manner in an internal issue tracking database. A summary report will be provided to Customer upon request of the notifications that have been received.

Once an ETN is assigned then ImageSoft will respond to Customer notifications within the timeframes shown above. Response will include attempting to make direct contact with the Party that submitted the notification. Direct contact will first be attempted via telephone or pager. Secondly, an e-mail may be sent or another Customer party may be contacted. The course of action will vary depending upon the nature and severity of the notification.

7. TIME AND MATERIALS SERVICES

- a) On-Site Services. This agreement provides for Errors to be resolved remotely, however the parties may determine that on-site services are required. Upon the reasonable request of Customer, and agreeing to pay for such services on a time and materials basis, ImageSoft may provide on-site Services at Customer's facilities in connection with the correction of Error(s). All on-site service requests must be made in writing. ImageSoft may require that Customer provide either a signed Purchase Order, or a signed Statement of Work agreement prior to providing on-site services.
- b) Incidental Expenses. Customer agrees to pay ImageSoft for all reasonable travel and living expenses related to the performance of Time and Materials Services, which are properly supported by a receipt.

8. CUSTOMER RESPONSIBILITIES

- a) Operation of the System at Customer Premises. Customer acknowledges and agrees that it is solely responsible for the operation, supervision, management and control of the components of the System which are installed at Customer premises, including but not limited to providing training for its personnel, instituting appropriate security procedures and implementing reasonable procedures to examine and verify all output before use. In addition, Customer is solely responsible for its data, its database and for maintaining suitable backups of the data and database to prevent data loss regardless of the cause of said loss. ImageSoft and Product Vendors shall have no responsibility or liability for data loss regardless of the reasons for said loss. ImageSoft and Product Vendors shall have no responsibility or liability for Customer's selection or use of any software (including Supported Software), hardware (including Supported Hardware), or systems.
- b) Customer's Implementation of Error Corrections and Upgrades and Enhancements at Customer Premises. To maintain the integrity and proper operation of the System, Customer agrees to implement, in the manner instructed by ImageSoft, all reasonable Error corrections and Upgrades and Enhancements for components installed at Customer premises. Customer's failure to implement any Error corrections or Upgrades and Enhancements may limit or restrict the ability of ImageSoft to implement future Error corrections or Upgrades and Enhancements to the system.
- c) Notice of Errors; Documentation of Errors. Customer shall provide prompt notice of any Errors in the System discovered by Customer, or otherwise brought to the attention of Customer. Procedures for proper ImageSoft notification are defined in section 6.
- d) Assistance in Error Correction. ImageSoft may request, and Customer is responsible for providing reasonable assistance during Error isolation and correction. Assistance may include, but is not limited to, collecting error logs, sending data and screen images to ImageSoft, running all or part of the system in a test mode, or otherwise assisting in the creation of an environment similar to that in which the Error was detected. If an Error cannot be successfully reproduced, it may be impossible to determine a root cause and provide a correction.
- e) Level-1 Support. Customer is responsible for providing first-level support to the end users of the System and other related systems. First-level support is to be performed by a trained Customer system administrator and is to cover the overall computing and business environment.

9. DISPUTE RESOLUTION

- a. Arbitration. The parties hereto shall endeavor to settle all disputes, controversies and claims arising in connection with this SMA in an amicable way. If the parties are unsuccessful in this regard, any such dispute, controversy or claim arising out of or relating to this SMA shall be settled by arbitration in Oakland County, Michigan, in accordance with the rules of the

American Arbitration Association ("AAA") Commercial Arbitration Rules in effect as of the date of the events giving rise to the dispute. The arbitrator(s) (and any court pursuant to Section 9(b) shall apply the substantive laws of the United States of America and the State of Michigan to decide the dispute). The Parties shall choose, by mutual agreement, one (1) neutral arbitrator to hear the dispute. If the Parties cannot agree on the selection of the arbitrator within thirty (30) days after a demand for arbitration has been served, the arbitrator(s) shall be selected by the American Arbitration Association. The arbitrator shall be authorized to award only those damages which are permitted in this Agreement, subject to any disclaimers of damages and liability limits set forth in this Agreement, but the arbitrator shall not have the authority to reform, modify or materially change this Agreement. The award rendered by the arbitrator shall include costs of the arbitration, reasonable attorneys' fees and reasonable costs for experts and other witnesses. Judgment on the award may be entered in any court having jurisdiction. The award of the arbitrator(s) shall be final and binding upon the Parties without appeal or review except as permitted by Michigan law. In connection with any application to confirm, correct or vacate the arbitration award, any appeal of any order rendered pursuant to any such application, or any other action required to enforce the arbitration award, the prevailing Party shall be entitled to recover its reasonable attorneys' fees, disbursements and cost incurred in any post-arbitration award activities.

- b) Injunctive Relief. The Parties agree that notwithstanding the provision for arbitration, each Party will have the right to seek interim orders for equitable relief in a federal or state court having jurisdiction in Oakland County Michigan, as necessary to protect such Party's Intellectual Property Rights or Confidential Information.

10. PAYMENTS AND REMEDIES

- a) Payment Effect on Coverage. UNLESS OTHERWISE AGREED TO IN WRITING; 1) ALL PAYMENTS FOR SUPPORT SERVICES ARE DUE PRIOR TO SERVICES BEING PROVIDED; AND 2) IMAGESOFT IS NOT OBLIGATED TO PERFORM ANY SERVICES DEFINED WITHIN THIS AGREEMENT UNTIL PAYMENT FOR BOTH THE SUPPORT SERVICES AND PAYMENT FOR THE SUPPORTED PRODUCT OR SUPPORTED SERVICES IS MADE IN FULL AND IS RECEIVED BY IMAGESOFT.
- b) Payment Terms. Customer shall pay all other invoices hereunder in full net thirty (30) days from the date of invoice.
- c) Past Due Amounts. All past due amounts shall bear interest at the rate of one and one-half percent (1.5%) per month (or, if lower, the maximum rate lawfully chargeable) from the date due through the date that such past due amounts and such accrued interest are paid in full. In the event of any default by Customer in the payment of any amounts due hereunder, which default continues unremedied for at least ten (10) calendar days after the due date of such payment, ImageSoft shall have the right to cease to provide any Maintenance and Support Services and Upgrades and Enhancements to Customer unless and until such default, and any and all other defaults by Customer under this SMA, shall have been cured.
- d) Taxes and Governmental Charges. In addition to all other payments required to be made by Customer hereunder, Customer shall pay all taxes and governmental charges, foreign, federal, state, local or otherwise (other than income or franchise taxes of ImageSoft), however designated, which are levied or imposed by reason of the transactions contemplated by this SMA, including but not limited to sales and use taxes, excise taxes and customs duties or charges.
- e) U.S. Dollars. All payments by Customer to ImageSoft shall be made in U.S. dollars.

11. TERM

- a) Initial Term. Subject to the early termination provisions of Section 11c), the initial term of this SMA (the "Initial Term") shall commence when one of the following conditions are met: 1) on the day that ImageSoft issues to Customer license codes for Supported Software; or 2) when any

part of Supported System is first used by Customer in a production mode; or 3) when Supported Services (configuration or custom software development) are accepted by Customer through a defined acceptance procedure; or 4) if Supported Software or a Supported Service are being used in a production mode prior to the signing of this agreement, then the date this agreement is signed.

The Initial Term of this SMA shall expire on the first annual anniversary of the commencement of the Initial Term unless an alternate term is specified in writing and agreed to by the parties.

- b) Renewal Periods. Except as otherwise provided below, the term of this SMA shall be renewed: (1) at the end of the Initial Term, for a period from the first day after the end of the Initial Term through December 31 of the calendar year in which the Initial Term ends; and (2) thereafter, annually on a calendar year by calendar year basis, unless either Party elects not to renew by written notice to the other Party with sixty (60) days written notice prior to the end of such Initial Term or renewal term, as the case may be. ImageSoft shall not exercise its right of non-renewal unless Customer is then in default, ImageSoft reasonably anticipates a Customer default, or ImageSoft is generally no longer in the business of providing such support or otherwise winding down its business. ImageSoft shall invoice Customer for annual maintenance fees for renewal terms at least forty-five (45) days prior to the end of the then-current term of this SMA. If any term of this SMA for which annual maintenance fees are payable is a period of less than twelve (12) calendar months, the annual maintenance fees for such term will be prorated based upon the number of calendar months in such period (including the calendar month in which such term of this SMA commences).
- c) Early Termination.
 - i) Automatic. Should any license agreement related to a Supported Products be terminated, then support for that Supported Product under this SMA shall be automatically terminated.
 - ii) By ImageSoft For Cause. ImageSoft shall be entitled to give written notice to Customer of any material breach by Customer of a Supported Product license agreement or this SMA, specifying the nature of such breach and requiring Customer to cure the breach. If Customer has not cured the breach within twenty (20) business days after receipt of such written notice, ImageSoft shall be entitled, in addition to any other rights it may have under this SMA, or otherwise at law or in equity, either (a) to immediately terminate this SMA, or (b) suspend the performance of services until the breach is cured. For the avoidance of doubt, failure to pay any sum due and owing is a material breach.
 - iii) By Customer.
 - (1) For Convenience. Customer may terminate this SMA at any time, for any reason or for no reason, upon not less than sixty (60) days advance written notice to ImageSoft.
 - (2) For Cause. Customer shall be entitled to give written notice to ImageSoft of any material breach by ImageSoft of this SMA, specifying the nature of such material breach or non-compliance and requiring ImageSoft to cure the breach. If ImageSoft has not cured the breach within twenty (20) business days after receipt of written notice, Customer shall be entitled, in addition to any other rights it may have under this SMA, or otherwise at law or in equity, to immediately terminate this SMA; and thereafter, so long as Customer has complied in all material respects with its obligations under this SMA and is current on all payment obligations to ImageSoft, Customer shall be entitled to a refund from ImageSoft of the "unused portion of the annual maintenance fees" for the then-current term of this SMA. For these purposes, the "unused portion of the annual maintenance fees" shall mean that portion of the annual maintenance remaining from the end of the month when the termination is effective to the end of the remaining term.
- d) Effect of Termination.

- i) Payments. Notwithstanding any termination of this SMA, subject to 11(b)(2), Customer shall be obligated to pay ImageSoft for (A) all Maintenance and Support Services provided on a time and materials basis in accordance with this SMA at any time on or prior to the effective date of termination; (B) all annual maintenance fees due with respect to any period commencing prior to the effective date of termination; and (C) all travel and incidental costs and expenses incurred by ImageSoft at any time on or prior to the effective date of termination.
- ii) Survival of Obligations. Provisions of this SMA which by their nature extend beyond termination of this SMA shall survive termination of this SMA. Additionally, the termination of this SMA will not discharge or otherwise affect any pre-termination obligations of either Party existing under this SMA at the time of termination. No action arising out of this SMA, regardless of the form of action, may be brought by Customer more than one (1) year after the date the action occurred.
- iii) Reinstatement of SMA. In the event of non-renewal of this SMA by Customer, Customer may at any time elect to reinstate this SMA. To obtain reinstatement, Customer shall deliver written notice to such effect to ImageSoft. ImageSoft shall calculate and provide a proposal for reinstatement where the total cost will not be greater than 110% of the aggregate total cost of the entire period of lapsed coverage and the renewal term. Reinstatement will not be complete until payment in full is received. EXCEPT AS EXPRESSLY PROVIDED BY THIS SECTION, CUSTOMER SHALL HAVE NO RIGHT TO REINSTATE THIS AGREEMENT FOLLOWING THE TERMINATION THEREOF FOR ANY REASON.

12. LIMITED WARRANTY

- a) Limited Warranty of Services. ImageSoft warrants that the Maintenance and Support Services required under this SMA shall be performed in a good and workmanlike manner and substantially according to industry standards. In order to assert any claim that any Maintenance and Support Services fail to conform to this limited warranty, Customer must notify ImageSoft in writing of such claim within thirty (30) days after the date the alleged non-conforming Services are completed. Upon receiving such timely written notice, ImageSoft's sole obligation for any actual breach of this Limited Warranty, and Customer's sole remedy, shall be for ImageSoft to use commercially reasonable efforts to re-perform the nonconforming Services as required by this SMA and the Limited Warranty. If ImageSoft thereafter fails to perform the Maintenance and Support Services in accordance with this Limited Warranty after a reasonable period of time (and at least thirty (30) days), Customer's sole and exclusive remedy shall be termination of this SMA in accordance with Section 11 of this SMA. For the avoidance of doubt and without limiting any other obligations excluded by operation of this SMA or by law. This warranty specifically excludes non-performance issues caused as a result of incorrect procedures used or provided by Customer or a third party or failure of Customer to perform and fulfill its obligations under this SMA or a related Supported Product license agreement.
- b) No Warranty of Product Upgrades and Enhancements. The Limited Warranty of Services above is not intended to modify any product warranty or disclaimer of product warranty that may be contained in the license Agreements for Supported Products relating to Upgrades and Enhancements of the Supported Products which may be provided to Customer under this SMA; for the avoidance of doubt, no product warranty is given under this SMA with respect to Upgrades and Enhancements.
- c) DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN A SOW, OR ANOTHER WRITTEN AGREEMENT THAT EXPRESSLY SUPERSEDES THIS AGREEMENT, IMAGESOFT MAKES NO WARRANTIES OR REPRESENTATIONS REGARDING ANY MAINTENANCE AND SUPPORT SERVICES, ANY SOFTWARE OR ANY UPGRADES AND ENHANCEMENTS PROVIDED UNDER THIS AGREEMENT. IMAGESOFT DISCLAIMS AND EXCLUDES ANY AND ALL OTHER EXPRESS, IMPLIED AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF GOOD TITLE, WARRANTIES AGAINST INFRINGEMENT, THE IMPLIED

WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES THAT MAY ARISE OR BE DEEMED TO ARISE FROM ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. IMAGESOFT DOES NOT WARRANT THAT ANY MAINTENANCE AND SUPPORT SERVICES, SOFTWARE OR UPGRADES AND ENHANCEMENTS PROVIDED WILL SATISFY CUSTOMER'S REQUIREMENTS OR ARE WITHOUT DEFECT OR ERROR, OR THAT THE OPERATION OF ANY SOFTWARE OR UPGRADES AND ENHANCEMENTS WILL BE UNINTERRUPTED. IMAGESOFT DOES NOT ASSUME ANY LIABILITY WHATSOEVER WITH RESPECT TO ANY THIRD-PARTY HARDWARE, FIRMWARE, SOFTWARE OR SERVICES.

13. LIMITATIONS OF LIABILITY

IN NO EVENT SHALL IMAGESOFT'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AGGREGATE AMOUNTS PAID BY CUSTOMER TO IMAGESOFT UNDER THIS AGREEMENT DURING THE CURRENT TERM OF THIS AGREEMENT. IN NO EVENT SHALL IMAGESOFT OR PRODUCT VENDORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS, BUSINESS INTERRUPTION DAMAGES OR EXPENSES, THE COSTS OF SUBSTITUTE SOFTWARE OR SERVICES, LOSSES RESULTING FROM ERASURE, DAMAGE, DESTRUCTION OR OTHER LOSS OF FILES, DATA OR PROGRAMS OR THE COST OF RECOVERING SUCH INFORMATION, OR OTHER PECUNIARY LOSS, EVEN IF IMAGESOFT OR PRODUCT VENDOR HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR LOSSES.

14. FORCE MAJEURE

No failure, delay or default in performance of any obligation of a Party to this SMA (except the payment of money) shall constitute a default or breach to the extent that such failure to perform, delay or default arises out of a cause, existing or future, beyond the control (including, but not limited to: action or inaction of governmental, civil or military authority; fire; strike, lockout or other labor dispute; flood; war; riot; theft; earthquake; natural disaster or acts of God; national emergencies; unavailability of materials or utilities; sabotage; viruses; or the act, negligence or default of the other Party) and without negligence or willful misconduct of the Party otherwise chargeable with failure, delay or default. Either Party desiring to rely upon any of the foregoing as an excuse for failure, default or delay in performance shall, when the cause arises, give to the other Party prompt notice in writing of the facts which constitute such cause; and, when the cause ceases to exist, give prompt notice of that fact to the other Party. This Section shall in no way limit the right of either Party to make any claim against third parties for any damages suffered due to said causes.

15. NOTICES

Unless otherwise agreed to by the parties in a writing signed by both parties, all notices, requests, demands and other communications under this SMA shall be in writing and shall be effective and deemed to have been received (a) when delivered in person, (b) Five (5) business days after having been mailed by certified or registered United States mail, postage prepaid, return receipt requested, or (c) the next business day after having been sent by a nationally recognized overnight mail or courier service, return receipt requested. Unless otherwise provided, notices shall be sent to the parties appearing on the signature page, at the address listed on the opening page of this SMA.

16. GENERAL PROVISIONS

- a) Jurisdiction. This SMA and any claim, action, suit, proceeding or dispute arising out of this SMA shall in all respects be governed by, and interpreted in accordance with, the substantive laws of the State of Michigan, without regard to the conflicts of law's provisions thereof. Venue and jurisdiction for any action, suit or proceeding arising out of this SMA shall vest exclusively in the federal or state courts of general jurisdiction located in Oakland County, Michigan, or in the jurisdiction in which the controversy arises.
- b) Interpretation. The headings used in this SMA are for reference and convenience purposes only and shall not in any way limit or affect the meaning or interpretation of any of the terms hereof.

All defined terms in this SMA shall be deemed to refer to the masculine, feminine, neuter, singular or plural, in each instance as the context or particular facts may require. Use of the terms "hereunder," "herein," "hereby" and similar terms refer to this SMA.

- c) Waiver. No waiver of any right or remedy on one occasion by either Party shall be deemed a waiver of such right or remedy on any other occasion.
- d) Integration. This SMA, including any and all exhibits and schedules referred to herein or therein set forth the entire agreement and understanding between the parties pertaining to the subject matter and merges all prior discussions between them on the same subject matter. Neither of the parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to the subject matter other than as expressly provided in this SMA. This SMA may only be modified by a written document signed by duly authorized representatives of the parties. This SMA shall not be supplemented or modified by any course of performance, course of dealing or trade usage. Variance from or addition to the terms and conditions of this SMA in any purchase order or other written notification or documentation, from Customer or otherwise, will be of no effect unless expressly agreed to in writing by both parties. This SMA will prevail over any conflicting stipulations contained or referenced in any other document.
- e) Binding Agreement and Assignment. This SMA shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. Neither Party may assign this SMA or its rights or obligations under this SMA, in whole or in part, to any other person or entity without the prior written consent of the other Party. Any change in control of Customer resulting from an acquisition, merger or otherwise shall constitute an assignment under the terms of this provision. Any assignment made without compliance with the provisions of this section shall be null and void and of no force or effect.
- f) Severability. In the event that any term or provision of this SMA is deemed by a court of competent jurisdiction to be overly broad in scope, duration or area of applicability, the court considering the same will have the power and is hereby authorized and directed to limit such scope, duration or area of applicability, or all of them, so that such term or provision is no longer overly broad and to enforce the same as so limited. Subject to the foregoing sentence, in the event any provision of this SMA is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will attach only to such provision and will not affect or render invalid or unenforceable any other provision of this SMA.
- g) Independent Contractor. The parties acknowledge that ImageSoft is an independent contractor and that it will be responsible for its obligations as employer for those individuals providing the Maintenance and Support Services.
- h) Export Regulation. The Software, Upgrades and Enhancements are subject to export control laws applicable to ImageSoft's and Customer's respective jurisdictions, including without limitation, the United States. Customer acknowledges that the Software, Upgrades and Enhancements are subject to all United States laws and regulations as shall from time to time govern the license and delivery of technology and products abroad by persons subject to the jurisdiction of the United States and which prohibit export or diversion of certain products and technology to certain countries or individuals, including the Export Administration Act of 1979, as amended and/or any successor legislation, and the Export Administration Regulations ("EAR") issued by the Department of Commerce, Bureau of Industry and Security. Customer further acknowledges that the release of the Software, Upgrades and Enhancements to foreign nationals in the United States is a "deemed export" as that term is defined in the EAR and that such release may be a violation of the EAR. Customer represents and warrants that Customer will comply in all respects with the export and re-export restrictions applicable to the Software and will otherwise comply with the EAR or other United States laws and regulations in effect from time to time. Furthermore, Customer represents and warrants that Customer will not export (directly or indirectly), re-export, divert or transfer any Software, or Documentation, materials, items,

technology, or technical data related to the Software to any destination, company, or person restricted or prohibited by foregoing export laws and regulations. Customer undertakes, among other obligations, to determine any export licensing requirements, to obtain any export license or other official authorization, and to carry out any Customs or other governmental formalities for the export of the Software

- i) *Government Restricted Rights.* The Software, Upgrades and Enhancements are deemed to be commercial computer software as defined in FAR 12.212 and subject to restricted rights as defined in FAR Section 52.227-19 "Commercial Computer Software-Restricted Rights" and DFARS 227.7202, "Rights in Commercial Computer Software or Commercial Computer Software Documentation", as applicable, and any successor regulations. Any use, modification, reproduction release, performance, display or disclosure of the Software, Upgrades and Enhancements by the U.S. Government shall be solely in accordance with the terms of this Agreement.

17. PRODUCT VENDOR PROVISIONS

This section contains terms and conditions that are specific to particular Product Vendors. These terms are only applicable if the particular product vendor's products are supported.

- a) Product Vendor: Hyland Software (OnBase Software) – Definition of "Software". With respect to the OnBase product of Hyland Software, Inc. "Software" shall mean: (1) the current released version of the computer software licensed under the Hyland Software, Inc. EULA and, (2) at any time after ImageSoft has delivered to Licensee a new version of such computer software as an Upgrade and Enhancement under this SMA, the released version of such computer software last released prior to the current released version; provided, that the Software will not include any prior released version of such computer software that has been superseded for more than two (2) years (as determined from the date that Hyland Software, Inc. first announced publicly, through its web site or otherwise, the general release of the next later version of such computer software) by any later released version of such computer software.
- b) Product Vendor: Hyland Software (OnBase Software) – System Administrator Requirement for Support. If the OnBase Software product is being supported under this SMA, then Customer is required to have an OnBase Certified System Administrator on staff to support the OnBase system within ninety (90) days of the start of production usage of the OnBase software. If the Customer does not have an OnBase Certified System Administrator on staff, then ImageSoft may submit a Statement of Work (SOW) to provide this service remotely. The requirements for OnBase Certified System Administrator are defined by Hyland Software and can be found on the Web at <http://training.onbase.com>
- c) Product Vendor: Hyland Software (OnBase Software) – Start of OnBase Maintenance. If the OnBase Software product is being supported under this SMA and unless otherwise agreed to in writing, 1st year maintenance will begin ninety (90) days after the software is ordered from Hyland Software by ImageSoft.

IN WITNESS WHEREOF, the parties have executed this System Maintenance Agreement by their duly authorized representatives:

Benton County, WA

Customer

By: 

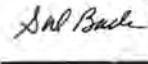
Print Name: STALL

Title: Commissioner

Date: 12-3-19

ImageSoft, Inc.

ImageSoft

By: 

Print Name: Scott D. Bade

Title: President

Date: 12/12/19

Digitally signed by Scott Bade
DN: cn=Scott Bade, o=ImageSoft,
ou=, email=scott.bade@imagesoft.com,
c=US
Date: 2019.12.12 16:01:11 -0800

Approved as to form

By: 

Print Name: Eric Andrews

Date: _____

Appendix A – Existing System Configuration

Product Vendor / Component	Part # / Serial #	Qty	Notes / Limitations
Local Government Licensing Bundle	GOVT-B-LOCAL-M	1	
Local Government Concurrent Client	GV-B-MU2-CTMPC1	40	
Local Government Named User Client	GV-B-MU2-CTMPN1	117	
Local Government Production Document Imaging (Kofax or TWAIN)	GV-B-MU2-DIMPW1	1	
Local Government Production Document Imaging (Kofax or TWAIN)	GV-B-MU2-DIMPW2	21	
Local Government Virtual Print Driver	GV-B-MU2-PTMPC1	1	
Local Government Workflow Concurrent Client SL	GV-B-MU2-WLMPC1	5	
Local Government Workflow Named User Client SL	GV-B-MU2-WLMPN1	35	
Local Government Web Server	GV-B-MU2-WTMPW1	1	
Unity Integration Toolkit	UIMPI1	1	

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	February 1, 2022
Subject:	Executing an Interlocal Cooperative Agreement with the City of Richland for General Equipment and/or Services
Presenter:	N/A
Prepared By:	S. Christen
Reviewed By:	D. D'Hondt
PA Review, Approval to Form:	☒ Yes ☐ No ☐ N/A <i>(If no, include reasoning for no approval)</i>
Type of Agenda Item:	Type of Action Needed:
☒ Consent Agenda	☐ Discussion Only (1 st) ☐ Pass Motion
☐ Public Hearing	☐ Discussion Only (2 nd) ☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction ☐ Pass Ordinance
	☐ Sign Letter/Document ☒ Execute Contract

Summary / Background Information

There is a desire to be able to share equipment and services with other public agencies when the need arises. Chapter 39.34 RCW allows public agencies in Washington State to enter into interlocal cooperative agreements for the joint use of services, personnel, materials, and equipment. Such an Interlocal has been prepared with the City of Richland, has been reviewed and approved as to form by our Departmental Deputy Prosecuting Attorney, and signed by the Interim City Manager of Richland.

Fiscal Impact

Amount: N/A

Fund: N/A

Recommendation

The County Engineer recommends the Board approve the proposed Interlocal Agreement for General Equipment and/or Services with the City of Richland.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY WASHINGTON:

IN THE MATTER OF APPROVING AN INTERLOCAL COOPERATIVE AGREEMENT BETWEEN THE CITY OF RICHLAND AND BENTON COUNTY FOR GENERAL EQUIPMENT AND/OR SERVICES

WHEREAS, Chapters 36.01 and 36.32 RCW allows the Board to enter into agreements on behalf of Benton County; and

WHEREAS, Chapter 39.34 RCW allows public agencies in Washington State to enter into interlocal cooperative agreements for the joint use of services, personnel, materials, and equipment; and

WHEREAS, the City of Richland and Benton County desire to enter into an agreement for the sharing of services and equipment; and

WHEREAS, a proposed Interlocal, reviewed and approved as to form by the Benton County Prosecuting Attorney's Office, was signed by the Interim City Manager of Richland on January 20, 2022; and

WHEREAS, the County Engineer recommends that the Board approve of and sign the proposed Agreement with the City of Richland, finding such to be beneficial to Benton County; **NOW THEREFORE**,

BE IT RESOLVED that the Board of County Commissioners concurs with the recommendation of the County Engineer and hereby approves of the proposed Interlocal Cooperative Agreement Between City of Richland and Benton County for General Equipment and/or Services; and

BE IT FURTHER RESOLVED that the Board of County Commissioners hereby authorizes the Chairman to sign said Agreement with the City of Richland on behalf of Benton County; and

BE IT FURTHER RESOLVED the Interlocal shall be effective on January 1, 2022 and shall continue through December 31, 2026.

Dated this 1st day of February 2022.

Chairman of the Board

Chairman ProTem

Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest. _____
Clerk of the Board

**INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN CITY OF RICHLAND AND BENTON COUNTY
FOR GENERAL EQUIPMENT AND/OR SERVICES
THROUGH THE PUBLIC WORKS DEPARTMENT**

This agreement is made and entered into by and between City of Richland and Benton County, pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

**ARTICLE I
PURPOSE**

- 1.01 **PURPOSE.** The purpose of this Agreement is to set forth the terms and conditions under which Benton County, through its Public Works Department, and City of Richland, through its Public Works Department, will temporarily provide equipment and/or services to the other party. Neither Benton County nor City of Richland are required under this Agreement to provide equipment or services to the other party in the event that the party from whom the equipment or services are sought does not have the equipment or services available, or determines, in its sole discretion, that providing the requested equipment or services would not be in its best interest. No new or separate legal or administrative entity is created by this Agreement.

**ARTICLE II
ADMINISTRATION**

- 2.01 **ADMINISTRATOR.** The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.
- 2.02 City of Richland's representative shall be the Public Works Director, or designee.
- 2.03 Benton County's representative shall be the County Engineer, or designee.
- 2.04 Requests for rental of equipment or performance of work shall be submitted by the requesting agency to the agency providing the equipment or work in writing in the form of a Task Letter. Written requests shall be submitted prior to rental of equipment or performance of work. In the event that circumstances do not permit a written request to be submitted, the representative for the agency providing equipment or work may waive this requirement, providing that a written request, along with an explanation of the circumstances for the waiver, be provided as soon as is practical.

**ARTICLE III
DURATION AND RENEWAL OF AGREEMENT**

- 3.01 **DURATION AND RENEWAL.** This Agreement shall be effective January 1, 2022 and shall continue through December 31, 2026. The obligation to provide compensation for the use of equipment or

service provided during the term of this Agreement shall survive this Agreement's termination or expiration.

ARTICLE IV COMPENSATION

- 4.01 **COMPENSATION.** Both parties hereby agree to reimburse the other for the costs of the work performed or equipment rented, as requested by one agency herein to the other agency herein and shall be based on the actual cost of labor, equipment, plus all costs for fringe benefits to labor, including but not limited to, Social Security, retirement, industrial and medical aid costs, prorated sick leave, holidays and vacation time, and group medical insurance. Also, an additional five percent (5%) of the total costs shall be added for overhead expenses for accounting, billing, and administrative services, after a certified statement of the costs is provided within thirty (30) days of the service or equipment rental. The amount shall be paid within thirty (30) days after billing.

ARTICLE V PERFORMANCE OF AGREEMENT

- 5.01 **COMPLIANCE WITH ALL LAWS.** Each party shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the performance of this Agreement, including without limitation, all those pertaining to wages and hours, confidentiality, disabilities, and discrimination.
- 5.02 **MAINTENANCE AND AUDIT OF RECORDS.** Each party shall maintain books, records, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review, and audit by either party or its designee, and the Washington State Auditor's Office. Each party shall retain all such books, records documents, and other material for the applicable retention period under federal and Washington law.
- 5.03 **ON-SITE INSPECTIONS.** Either party or its designee may evaluate the performance of this Agreement through on-site inspection to determine whether performance is in compliance with the standards set forth in this Agreement and in compliance with federal, state, and local laws, rules, regulations, and ordinances.
- 5.04 **TREATMENT OF ASSETS AND PROPERTY.** No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement.
- 5.05 **IMPROPER INFLUENCE.** Each party agrees, warrants, and represents that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.
- 5.06 **CONFLICT OF INTEREST.** The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

5.07 ASSIGNMENT AND SUBCONTRACTING. No portion of this Agreement may be assigned or subcontracted to any other individual, firm, or entity without the express and prior written approval of both parties authorized representatives.

5.08 NOTICE. Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice to Benton County shall be to the County Engineer, P.O. Box 1001, Prosser, Washington 99350; and to the Benton County Commissioners, P.O. Box 190, Prosser, Washington 99350. Notice to City of Richland for all purposes under this Agreement shall be to City of Richland, Public Works Director, 625 Swift Blvd., MS-26, Richland Washington, 99352.

ARTICLE VI INDEMNIFICATION

6.01 MUTUAL INDEMNITY. To the extent of its comparative liability, each party agrees to indemnify, defend and hold the other party, its elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, agents or volunteers.

A party shall not be required to indemnify, defend, or hold the other party harmless if the claim, damage, loss or expense for personal injury, for any bodily injury, sickness, disease or death or for any damage to or destruction of any property (including the loss of use resulting therefrom) is caused by the sole act or omission of the other party.

In the event of any concurrent act or omission of the parties, negligent or otherwise, each party shall pay its proportionate share of any damages awarded based upon comparative liability. The parties agree to maintain a consolidated defense to claims made against them and to reserve all indemnity claims against each other until after liability to the claimant and damages, if any, are adjudicated. If any claim is resolved by voluntary settlement and the parties cannot agree upon apportionment of damages and defense costs, they shall submit apportionment to binding arbitration.

In any and all claims against City of Richland or its officers, officials, employees, or agents by any employee of Benton County, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Section 6.01 of this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Benton County or subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that Benton County expressly waives any immunity Benton County might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington.

In any and all claims against Benton County or its officers, officials, employees, or agents by any employee of City of Richland, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Section 6.01 of this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for City of Richland or subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that City of Richland expressly waives any immunity City of Richland might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington.

- 6.02 SURVIVAL OF INDEMNITY OBLIGATIONS.** The parties agree all indemnity obligations shall survive the completion, expiration or termination of this Agreement.

ARTICLE VII DISPUTES

- 7.01 DISPUTE RESOLUTION; GOVERNING LAW; VENUE.** In the event of a dispute regarding the enforcement, breach, or interpretation of this Agreement, the parties shall first meet in a good faith effort to resolve such dispute. Any judicial proceeding arising out of this contract shall be governed by the laws of the State of Washington, and suit may be instituted and maintained only in the courts of competent jurisdiction in Benton County, Washington.

ARTICLE VIII TERMINATION

- 8.01 TERMINATION.** Any party hereto may terminate this Agreement upon thirty (30) days' notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

ARTICLE IX GENERAL PROVISIONS

- 9.01 CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS.** The Agreement may be changed, modified, amended or waived only by written agreement signed by the parties' authorized representatives and adopted by resolution of each party's legislative authority. Any waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence or omission. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.
- 9.02 ASSIGNMENT.** Neither party may assign its rights or delegate its duties under this Agreement, whether by assignment, further subcontract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.

9.03 SEVERABILITY. In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or application of this Agreement which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

9.04 ENTIRE AGREEMENT. This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

9.05 INTERLOCAL COOPERATION ACT PROVISIONS. All vehicles, equipment, inventory and any improvement thereon or fixtures purchased by City of Richland shall remain the sole property of City of Richland. All vehicles, equipment, inventory and any improvements thereon or fixtures purchased by Benton County shall remain the sole property of Benton County.

No independent special budget or funds are anticipated, nor shall be created without the prior written agreement of the parties. It is not intended that a separate legal entity be established to conduct this cooperative undertaking, nor is the acquiring, holding, or disposing of real or personal property other than as specifically provided within the terms of this Agreement.

A copy of this Agreement shall be filed with the Benton County Auditor's office or posted on City of Richland's or Benton County's website as required by RCW 39.34.040.

9.06 EVIDENCE OF AUTHORITY. Upon execution of this Agreement, City of Richland shall provide Benton County and Benton County shall provide City of Richland with a copy of the resolution, ordinance, or other authority to execute this Agreement pursuant to RCW 39.34.030(2), and said documents shall be attached hereto and incorporated herein as Exhibit A (City of Richland) and Exhibit B (Benton County).

This section intentionally left blank.

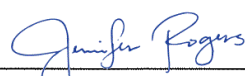
IN WITNESS WHEREOF, said parties have caused this Agreement to be signed by the duly authorized officials on the day and year first written above.

CITY OF RICHLAND

BENTON COUNTY, WASHINGTON

By: 
Jon Amundson, ICMA-CM
Interim City Manager

By: _____
Jerome Delvin, Chairman
Board of County Commissioners

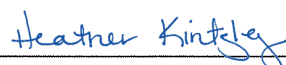
Attest:

Jennifer Rogers, Richland City Clerk

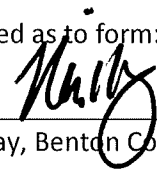
Attest:

Clerk of the Board

Date: January 20, 2022

Date: _____

Approved as to form:

Heather Kintzley, Richland City Attorney

Approved as to form:

Reid Hay, Benton County Prosecuting Attorney

Date: January 20, 2022

Date: 12/2/21

RESOLUTION NO. 155-21

A RESOLUTION of the City of Richland authorizing an interlocal cooperation agreement with Benton County for general use of equipment and/or services.

WHEREAS, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage in provision of public services; and

WHEREAS, pursuant to RCW 39.34.080, public agencies are authorized to contract with any one or more other public agencies to perform any governmental service, activity or undertaking which each public agency entering into the contract is authorized by law to perform; and

WHEREAS, the City of Richland and Benton County have successfully entered into other interlocal agreements to share resources and efficiently complete necessary work; and

WHEREAS, the proposed interlocal agreement, which replaces a current agreement for the same purpose that expires on December 31, 2021, will maintain the efficient process established for activating cooperation between the agencies; and

WHEREAS, the agreement includes a clear and concise methodology for calculating costs and reimbursing actual costs associated with the temporary use of equipment and/or services.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the City Manager is authorized to sign and execute an interlocal agreement with Benton County to provide temporary use of equipment and/or services as needed.

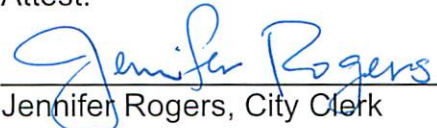
BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 21st day of December, 2021.



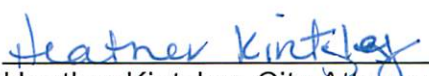
Ryan Lukson, Mayor

Attest:



Jennifer Rogers, City Clerk

Approved as to Form:



Heather Kintzley, City Attorney

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	February 1, 2022
Subject:	Executing First Contract Amendment with Schindler Elevator Corporation for Elevator Maintenance & Repair
Presenter:	N/A
Prepared By:	P. Schut
Reviewed By:	R. Blain
PA Review, Approval to Form:	☒ Yes ☐ No ☐ N/A <i>(If no, include reasoning for no approval)</i>
Type of Agenda Item:	Type of Action Needed:
☒ Consent Agenda	☐ Discussion Only (1 st) ☐ Pass Motion
☐ Public Hearing	☐ Discussion Only (2 nd) ☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction ☐ Pass Ordinance
	☐ Sign Letter/Document ☒ Execute Contract

Summary / Background Information

Due to an unforeseen increase in as-needed repair and required L&I repairs costs, the Contract did not have sufficient funds to pay the remainder of the Contract. An additional \$125,000 is being added to the Contract to cover the remaining quarterly maintenance, plus additional funds to cover repairs as needed.

Fiscal Impact

Amount: \$125,000.00 excluding W.S.S.T.

Fund: Current Expense Fund; Facilities Department (Fund # 0000-101; Dept 110)

Recommendation

Approve first contract amendment with Schindler Elevator Corporation.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

**IN THE MATTER OF ENTERING INTO THE FIRST AMENDMENT TO THE PUBLIC WORKS AGREEMENT
BETWEEN BENTON COUNTY AND SCHINDLER ELEVATOR CORPORATION**

WHEREAS, on October 1, 2019, via Resolution 2019-712, Benton County entered into an agreement with Schindler Elevator Corporation to provide elevator maintenance and as-needed repairs;

WHEREAS, due to an unforeseen increase in as-needed repair and required L&I repairs costs, the Contract did not have sufficient funds to pay the Contractor; and

WHEREAS, the proposed First Amendment to the Public Works Agreement increases the dollar amount of the total Contract from \$261,242.30 to \$386,242.30; **NOW, THEREFORE**,

BE IT RESOLVED that the attached First Amendment to the Public Works Agreement between Benton County and Schindler Elevator Corporation is hereby approved; and

BE IT FURTHER RESOLVED, the total amount of the Contract is increased to \$386,242.30;

BE IT FURTHER RESOLVED, all other terms of the Contract remain the same.

Dated this _____ day of _____ 2022.

Chairman

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

FIRST CONTRACT AMENDMENT

BENTON COUNTY PUBLIC WORKS CONTRACT

THIS FIRST CONTRACT AMENDMENT (hereinafter "First Amendment") is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **SCHINDLER ELEVATOR CORPORATION.**, a corporation organized under the laws of the State of Washington, with its principal offices at 409 N Thierman Rd., Spokane Valley, WA 99212 (hereinafter "CONSULTANT").

WHEREAS, per Benton County Resolution No. 2019-712, the parties entered into an Public Works Contract, beginning October 1, 2019 and ending September 30, 2022 (hereinafter the "CONTRACT"), whereby CONTRACTOR agree to provide elevator maintenance and repair services; and

WHEREAS, this First Amendment is necessary to increase the not to exceed amount from \$261,242.30 to \$386,242.30; and

NOW THEREFORE, the parties agree that all provisions of the CONTRACT remain in full force and effect, except for the following amendments:

2. **COMPENSATION** Section 5. of the CONTRACT, "COMPENSATION" is amended by replacing Sections a. and b. with the following:
 - a. For the services performed under this Contract, the CONTRACTOR shall be paid at the rates set forth in in Exhibit B, Compensation, which is attached hereto and incorporated herein by reference.
 - b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed Three Hundred Eighty-Six Thousand Two Hundred Forty-Two Dollars and Thirty Cents (\$386,242.30), excluding W.S.S.T. The CONTRACTOR shall monitor its cumulative total accounts receivables to ensure that it will not do work in excess of the maximum total amount payable set forth in this section and that its total billings will not exceed the maximum total amount payable. The CONTRACTOR shall inform the COUNTY promptly in writing if the CONTRACTOR' s cumulative accounts receivable attributable to the COUNTY, pursuant to this Contract, reaches eighty percent (80%) of the maximum total amount payable so that budgeting and approval of additional amounts may be obtained (if appropriate) . Any dollar amount above the maximum total amount payable will only be approved with an amendment to this Contract

IN WITNESS WHEREOF, the parties have caused this Second Amendment to the CONTRACT to be signed by their duly constituted legal representatives and it is effective on the last date signed.

Dated: _____

Dated: 1/18/2022

FOR: BENTON COUNTY

FOR: SCHINDLER ELEVATOR CORPORATION

DocuSigned by:

Jacent Ley

C781B341AAE4468...
Signature

Chairman

General Manager

Member

Title:

Member

Jacent Ley

Print Name

Constituting the Board of County
Commissioners of Benton County,
Washington.

Attest: _____
Clerk of the Board

Approved as to Form



Eric Andrews, Civil Deputy Prosecuting
Attorney