

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

209



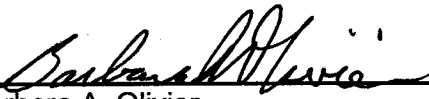
**FROM:** Human Resources Department

**SUBMITTAL DATE:**  
June 15, 2011

**SUBJECT:** Approval of the purchase from PureSafety for the Occupational Health Management/Web Clinical Suite Safety Module as an add-on to the current Occupational Health Management/Web Clinical Suite.

**RECOMMENDED MOTION:** That the Board of Supervisors 1) Approve the purchase of an add-on Safety module to the existing Occupational Health Management (OHM)/Web Clinical Suite for \$3,295 (one-time cost); (2) approve pro-rated supplemental annual support and maintenance through the end of the current OHM agreement for \$395 in the current fiscal year and \$593 for each following fiscal year (Attachment A); (3) approve ten hours of service and support for implementation from PureSafety for \$1,500 and; (4) authorize inclusion of the Safety module as part of the existing Sole Source Procurement to renew support and maintenance for OHM annually for five (5) years in one year increments from PureSafety. This adds approximately \$593 annually to the current approved Sole Source Procurement (Attachment B).


Departmental Concurrence

  
Barbara A. Olivier  
Asst. County Executive Officer/Human Resources Dir.

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 5,190	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$	Budget Adjustment:	No
	Annual Net County Cost:	\$	For Fiscal Year:	2010/11

<b>SOURCE OF FUNDS:</b> Occupational Health and Wellness Fund	<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
	<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:** **APPROVE**


BY:   
Elizabeth J. Olson  
**County Executive Office Signature**

- Consent
- Policy
- Consent
- Policy

**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Buster, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley  
Nays: None  
Absent: None  
Date: June 28, 2011  
xc: HR

Kecia Harper-Ihem  
Clerk of the Board  
By:   
Deputy

Dep't Recomm.:  
Per Exec. Ofc.:

**Prev. Agn. Ref.:** **District: ALL** **Agenda Number:**

3.72

**BACKGROUND:**

The Human Resources Safety Division is requesting approval to purchase the OHM/Web Clinical Suite Safety Module from PureSafety as an add-on to support the County's Safety Program. Currently, Human Resources Occupational Health Division uses PureSafety software to manage the County's Occupational Health Program. The addition of the PureSafety OHM/Web Clinical Suite Safety Module software will enhance the effectiveness of the County's Safety Program.

As a result of the Occupational Health Division using Pure Safety Software, Human Resources Information Services has the technical knowledge and expertise to maintain and support the addition of the OHM/Web Clinical Suite Safety Module.

This software package will:

- Allow the Safety Division to transition to electronic inspection audits.
- Increase efficiency in managing incident reports and safety issues.
- Assist in tracking accidents and timely corrective actions.
- Assist in tracking and managing CalOSHA alleged conditions complaints.
- Provide the ability to create comprehensive safety reports and graphs.
- Provide the ability to establish an automated email notification process ensuring efficient communications and timely responses to safety issues.
- Act as a tool to create Job Safety Analysis (JSA) for specific jobs and their related hazards.
- Automatically link JSA with incident reports.
- Provide the ability to configure an executive dashboard for each County Department.

**PRICE REASONABLENESS:**

The following is the breakdown of costs for the software package:

OHM/Web Clinical Suite Add-on Module for 90 users:	\$ 3,295 <i>one-time cost</i>
10 hours of service support for implementation:	\$ 1,500 <i>one-time cost</i>
Annual Support & Maintenance Fee \$600 annually:	\$ 395 <u><i>pro-rated thru 12/31/2011</i></u>
<b>Total:</b>	<b>\$5,190</b>

<b>PureSafety</b>	PureSafety 730 Cool Springs Blvd., Suite 400 Franklin, TN 37067
<b>OHM/Web™ Software and Services License Agreement</b>	
<b>ACCOUNT EXECUTIVE:</b>	<b>Tom Gaudreau</b>

Purchase Order Number: \_\_\_\_\_

Statement of Services No. 1103-24839: OHM/Web – Clinical Suite, Between PureWorks, Inc. d/b/a PureSafety and County of Riverside.

The following is a Statement of Services No. 1103-24839 (the "Statement"), made as of 4/11/2011, between PureWorks, Inc., d/b/a PureSafety ("PureSafety"), located at 730 Cool Springs Blvd., Suite 400, Franklin, TN., 37067 and County of Riverside ("Customer"), located at Career Development Training Center 1115 Spruce Street, Riverside, CA 95207.

## OHM/Web™ Software and Services Pricing

### 1. Summary of Services and Fees:

In addition to the work and Services to be performed by PureSafety, PureSafety agrees to provide Services as specified below. Such Services shall be rendered in accordance with and shall be deemed rendered pursuant to this Agreement.

#### OHM/Web Software License Fees and Training and Implementation Services<sup>1</sup>

Item	Value	Fees Due
<b>OHM/Web™ Clinical Suite Add-on Module:</b>		
• Safety Manager - Based on 90 Named Users	\$3,295	\$3,295
<b>Training and Implementation:</b>		
• 10 hours of client service support for Safety Manager implementation	\$1,500	\$1,500
<b>Annual Support and Maintenance Fee (amount prorated for remainder of 2011)</b>	\$395	\$395
<b>Total Software License Fees, Initial Setup Fee, and Training and Implementation Service Fees</b>		<b>\$5,190<sup>2</sup></b>

OHM/Web Software License Agreement includes the following:

- Industrial Suite
  Hospital Suite
  Clinical Suite

<sup>1</sup> Training and Implementation Services must be scheduled and delivered within 180 days from the contract signature date. Customer is responsible for payment and will be invoiced for undelivered services.

<sup>2</sup> The contract value above does not include sales tax. Sales tax will be added to invoicing, where applicable. If you are an exempt customer, please forward, along with a copy of this contract, your Tax Exemption Certificate, Direct Pay Permit or Multiple Points of Use Exemption Certificate to [sales.tax@puresafety.com](mailto:sales.tax@puresafety.com).

## OHM/Web™ Software and Services License Agreement

ACCOUNT EXECUTIVE:

Tom Gaudreau

Add-On Modules selected by the Customer:

- |   |   |
|---|---|
| <input type="checkbox"/> Billing Manager                              | <input type="checkbox"/> MSDS Manager                     |
| <input type="checkbox"/> Death Certificate Tracking                   | <input checked="" type="checkbox"/> Multi-Client Manager  |
| <input checked="" type="checkbox"/> Employee Assistance Program (EAP) | <input type="checkbox"/> Physical Therapy                 |
| <input type="checkbox"/> Ergonomic Evaluation                         | <input type="checkbox"/> Rabies                           |
| <input type="checkbox"/> Industrial Hygiene                           | <input checked="" type="checkbox"/> Safety Manager        |
| <input type="checkbox"/> Liability                                    | <input checked="" type="checkbox"/> Training Manager      |
| <input type="checkbox"/> Medical Review Officer (MRO)                 | <input type="checkbox"/> Vision Testing – Titmus 2A, i500 |

Report Writer usage:  Yes  No

**If Yes, please read and initial the following:**

Reports created with the OHM/Web Report Writer tool must be written using SQL. PureSafety does not offer training in the usage of SQL. By licensing this module you acknowledge the need to have resources familiar with report writing tools and experience with SQL scripting.

### 2. Fees and Payment Schedule:

#### Payment Terms

- Net 30 days. Fees for services will be billed upon completion based on time and materials used.
- Customer will reimburse reasonable expenses incurred in the performance of Services and will be invoiced when incurred. Reasonable expenses shall include airfare, lodging, meals, and ground transportation.
- Customer shall be liable for any sales, use, value-added tax (VAT), personal property or other tax levied or assessed on any services purchase hereunder.

#### Term

The annual support and maintenance fee is 18% of the retail price of the software licensed (minimum \$500.00) and must be prepaid annually on the anniversary date of this Agreement. Any maintenance agreements that have expired for more than one (1) year will require a new site license purchase at the then current list price. This is a perpetual software license. This Agreement will remain in effect and automatically renew unless the Customer provides written notice of desire to cancel support and maintenance no less than thirty (30) days prior to the new period's anniversary date.

#### Cancellation and Rescheduling Policy

If a reservation for on-site or WebEx training is cancelled or rescheduled to a different date, refunds of the total services costs will be subject to a cancellation fee according to the following schedule:

<u>Prior to Engagement</u>	<u>Cancellation Fee</u>
4 Weeks or more	20% of Training and Implementation Cost
3 Weeks	25% of Training and Implementation Cost
2 Weeks	30% of Training and Implementation Cost
1 Week	35% of Training and Implementation Cost

#### Customer Billing Information

County of Riverside  
Attn: Sue Martin  
Address: 4080 Lemon Street, Riverside, CA 92502  
Phone: (951) 955-5212 Fax: (951) 955-5211  
Email: hsmartin@rc-hr.com

### 3. Minimum System Requirements:

- OHM/Web requires Microsoft SQL Server 2005 or higher database software and Internet Explorer 7.0 or higher. All costs associated with licensing and maintaining any and all hardware and software outside the



PureSafety  
730 Cool Springs Blvd., Suite 400  
Franklin, TN 37067

**OHM/Web™ Software and Services License Agreement**

**ACCOUNT EXECUTIVE:**

**Tom Gaudreau**

OHM application are Customer's responsibility. Refer to the OHM Technical Requirements for additional requirements.

**4. Continuing Services:**

Listed below are additional Services provided by PureSafety to Customer under this Statement:

- Live Customer Support from 6:00 am – 5:30 pm Mountain Time Zone, phone number (800-332-8089) or email at [techsupport@ohmsoftware.com](mailto:techsupport@ohmsoftware.com). Live Customer Support is not available on all major holidays including, but not limited to, New Years Day, Memorial Day, Independence Day, Thanksgiving Day, Christmas Eve, and Christmas Day. PureSafety will notify Customer at least seven (7) business days in advance for additional holidays not included in the list.
- Support Services are available to assist Customer with technical issues and general System knowledge. Support Services is not responsible for the routine administration of the System.

**5. PureSafety and Customer Contacts**

PureSafety Project Manager(s)	Customer Project Manager(s)
Denise Maddox Manager of Client Services 730 Cool Springs Blvd., Suite 400 Franklin, TN 37067 Direct Number: 615-312-1222 Fax Number: 888-827-6751 densie.maddox@puresafety.com	Name: Sue Martin Title: Manager, Apps Dev Address 1: 4080 Lemon Street Address 2: Riverside, CA 92502 Phone: (951) 955-5212 Fax: (951) 955-5211 Email: hsmartin@rc-hr.com

Customer agrees that the individuals listed above have full authority to direct and provide feedback relating to the Services described in this Statement, including but not limited to the ability to execute a change order.

The undersigned hereby agree to the above terms and the terms and conditions with respect to the software license and services to be provided as appear on the following pages.

COUNTY OF RIVERSIDE

PUREWORKS, INC. D/B/A PURESAFETY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



PureSafety  
730 Cool Springs Blvd., Suite 400  
Franklin, TN 37067

**OHM/Web™ Software and Services License Agreement**

**ACCOUNT EXECUTIVE:**

**Tom Gaudreau**

**Software License and Service Agreement**

This SOFTWARE LICENSE AND SERVICE AGREEMENT ("Agreement") is made and entered into by and between the customer identified in the OHM/Web Software and Services Pricing statement to which this Agreement is attached ("Customer") and PureWorks, Inc. ("PureWorks"). This Agreement is effective and is binding upon Customer and PureWorks upon installation of the OHM/Web Software ("Software").

1. **LICENSE.** In consideration of the payment of the license fee, PureWorks grants Customer a non-exclusive, non-transferable license for the Term as identified in the OHM/Web Software and Services Pricing statement ("Pricing Statement") to use the Software, in machine-readable form and related documentation which together constitute the "Software," subject to the terms and conditions of this Agreement.

2. **SCOPE OF RIGHTS.** Customer may: (a) Use the Software with multiple users on a network server or on a single workstation. The license is for one server and a total number of workstation users/concurrent users as identified in the Pricing Statement and (b) Make one copy of the program in machine-readable form, for nonproductive backup purposes only. Except as stated above, Customer may not use, copy or modify the Software, or any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by PureWorks. Notwithstanding any other terms contained in this Agreement, if Customer uses, copies, or modifies the Software or if Customer transfers possession of any copy, adaptation, transcription, or merged portion of the Software to any other party in any way not expressly authorized by this Agreement or in writing by PureWorks, Customer's license shall automatically terminate. No timesharing arrangement is permitted, except as expressly authorized in writing by PureWorks.

3. **SOFTWARE SUPPORT.** PureWorks shall assume responsibility for resolving, and promptly correcting all Software problems as reported by Customer, or as otherwise identified by PureWorks. PureWorks shall provide live Software support for the licensed Software during the hours of 6:00 am – 5:30 pm Mountain Standard Time and during normal business days. Contact information: Phone (800-332-8089) or email at [techsupport@ohmsoftware.com](mailto:techsupport@ohmsoftware.com).

PureWorks will respond to any request for service within (8) business hours after receipt of call. This response may be in person, by telephone conversation or email with the Customer, or by fax. All non-local travel and per diem expenses resulting from services requested or supplied under this Agreement shall be borne by Customer.

As part of this Agreement, PureWorks shall provide to Customer without additional charge, all system updates and related documentation to the Software purchased under this Agreement which occur during the term of this contract and its renewals and which are made available to all other customers. The term updates shall be defined as patches, minor releases, and error corrections to the Software.

PureWorks reserves the right to support and maintain only the most current version or product release of the Software. This Agreement is solely for the support and maintenance of PureWorks' Software. PureWorks reserves the right to refuse assistance or to charge additional fees if Customer seeks assistance concerning the operating system or any other matters not directly related to the operation of the Software.

4. **FEES, CHARGES AND TAXES.** The license fee for Customer's use of the Software and support and maintenance fees are to be paid according to the Pricing Statement to which this Agreement is attached. Except as otherwise provided in this Agreement or the Pricing Statement, all invoices are due and payable by customer within thirty (30) days of the invoice date. Customer agrees to pay a late payment charge of one and one-half percent (1½%) per month, or the maximum rate permitted by applicable law, whichever is less, on any unpaid amount for each calendar month or fraction thereof that any payment to PureWorks is in arrears. Customer is solely responsible for payment of any and all sales, use, value-added tax (VAT), personal property or other tax levied or assessed on any service, equipment, hardware or software purchased hereunder and any and all taxes resulting from Customer's acceptance of this license (except taxes on income of PureWorks).

5. **DELIVERY AND INSTALLATION; SYSTEM REQUIREMENTS.** Customer is responsible for ensuring a proper environment and proper utilities for the computer system on which the Software operates including providing a sufficient number of licenses for Microsoft SQL Server or similar supported database, but Customer's failure to do so shall not be a breach by Customer of this Agreement. Customer is responsible for converting Customer's own data files for use with the Software, unless Customer has contracted with PureSafety under a separate agreement to provide such data conversion services. The Software is delivered in machine-readable form for IBM compatible microcomputer hardware operating under Microsoft Windows NT, 2000, or XP with at least 128 megabytes of hard disk storage and 64 megabytes of RAM available. Windows Vista or Windows 7 with at least 200 megabytes of hard disk storage and 512 megabytes of RAM available for program operation. Additionally, a SVGA monitor and mouse are required for operation.

6. **PROPRIETARY PROTECTION OF SOFTWARE.** PureWorks shall have sole and exclusive ownership of all right, title, and interest in and to the Software and all modifications and enhancements thereof (including ownership of all trade secrets and copyrights pertaining thereto); provided, however, any Customer data is and shall remain the sole and exclusive property of Customer and PureWorks shall obtain no right, title or interest therein by reason of Customer's incorporation of such Customer data into the Software. This Agreement does not provide Customer with title or ownership of the Software, but only a right of limited use. Customer acknowledges and agrees that, at all times, PureWorks shall be the exclusive owner of the source code of the Software. Customer must keep the Software free and clear of all claims, liens, and encumbrances created solely by Customer.

The Software is a commercially valuable, proprietary product of PureWorks, the design and development of which reflect the effort of skilled development experts and the investment of considerable time and money. The Software is treated by PureWorks as confidential and contains substantial trade secrets of PureWorks, which PureWorks has entrusted to Customer in confidence to use only as expressly authorized. PureWorks claims and reserves all rights and benefits afforded under federal copyright law in all software programs and user materials that constitute the Software and in all system documentation related thereto as unpublished works.

Customer may not, at any time, disclose or disseminate the Software to any person who does not need to obtain access thereto consistent with Customer's rights under this Agreement. Under no circumstances may Customer, without prior direction or permission from PureWorks, disassemble, decompile, reverse engineer or "unlock" the code of the Software, as the term is generally used in the trade. Under no circumstances and notwithstanding any other provision or term of this Agreement may Customer disclose or disseminate the Software to any competitor of PureWorks. Customer will devote its best efforts to ensure that all Customer personnel and all other persons afforded access to the Software shall protect it against improper use, dissemination, or disclosure. Customer shall not disclose any information, including without limitation PureWorks' pricing information, without the express written consent of PureWorks.

Customer acknowledges that, in the event of a breach of any of the foregoing provisions, PureWorks will not have an adequate remedy in money or damages. PureWorks shall therefore be entitled to obtain an injunction against such breach from any court of competent jurisdiction. PureWorks' right to obtain injunctive relief shall not limit its right to seek further remedies. Customer's obligations hereunder shall remain in effect for as long as Customer continues to possess or use the Software or any trade secrets derived therefrom.

7. **LIMITED WARRANTY.** PureWorks warrants, for Customer's benefit alone, that the Software shall substantially conform in all material respects to the published specifications for the current version of the Software. This warranty is expressly conditioned on Customer's observance of the operating and security procedures set forth in any user's manual or other written instructions included with the Software. PureWorks is not responsible for obsolescence of the Software that may result from changes in Customer's requirements. The foregoing warranty shall apply only to the most current version of the Software issued by PureWorks from time to time. PureWorks assumes no responsibility for the use of superseded, outdated, or uncorrected versions of the Software resulting from Customer's failure to apply any and all updates.

As Customer's exclusive remedy for any material nonconformity or defect in the Software for which PureWorks is responsible, PureWorks shall attempt to correct or cure such nonconformity or defect, and in the event PureWorks is unable to correct or cure such nonconformity or defect, then Customer shall be entitled to terminate under Section 8 of this Agreement. However, PureWorks shall not be obligated to correct, cure, or otherwise remedy any nonconformity or defect in the Software if Customer has made any changes whatsoever to the Software, except as directed by PureWorks, if the Software has been misused or damaged in any respect by Customer following installation, or if Customer has not reported to PureWorks the existence and nature of such nonconformity or defect promptly upon discovery thereof.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PUREWORKS DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES WITH RESPECT TO THE SOFTWARE, INCLUDING ITS CONDITION, ITS CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, AND ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE. THE CUMULATIVE LIABILITY OF PUREWORKS TO CUSTOMER FOR ALL CLAIMS RELATED TO THE SOFTWARE AND THIS AGREEMENT, INCLUDING ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, SHALL NOT EXCEED THE TOTAL AMOUNT OF THE LICENSE FEE PAID TO PUREWORKS HEREUNDER. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO

## OHM/Web™ Software and Services License Agreement

ACCOUNT EXECUTIVE:

Tom Gaudreau

WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

IN NO EVENT SHALL PUREWORKS BE LIABLE FOR ANY LOSS OF PROFITS, SALES, BUSINESS OR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR ANY CLAIMS OR DEMANDS BROUGHT AGAINST CUSTOMER, EVEN IF PUREWORKS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DEMANDS. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHICH OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

**8. TERM AND TERMINATION.** Customer's license of the Software shall become effective upon delivery of the Software and shall continue, unless terminated as provided herein. The term of this Agreement shall be set forth in the Pricing Statement to which this Agreement is attached.

Upon default by Customer, PureWorks shall be entitled to terminate this Agreement and to pursue any remedy available to it at law or equity or otherwise in addition to any specific rights or remedies set forth herein. Customer shall not be entitled to a rebate of the license fee or any part thereof upon termination of this Agreement pursuant to this Section 8. A default by Customer shall, for the purposes of this Agreement, be defined to include: (a) Customer's failure to pay any undisputed amount due to PureWorks under this Agreement or any other agreement between PureWorks and Customer within ten (10) days after notice to Customer that the same is delinquent; (b) any assignment, sublicense, sale, encumbrance, disposition or other exploitation of the Software or any part thereof not specifically permitted; (c) the insolvency of Customer; (d) the initiation of bankruptcy or receivership proceedings by or against Customer; (e) the assignment of Customer's assets for the benefit of creditors; or (f) a material breach of any other term or condition of this Agreement, including a breach related to the protection of PureWorks' continuing proprietary interest in the Software and every part thereof, provided that with respect to this Subsection 8(f), Customer has failed to cure said material breach within thirty (30) days after Customer's receipt of notice from PureWorks, forwarded by registered or certified mail, of the specific instances of material breach.

Upon default by Customer, Customer agrees to pay the costs of any action or proceeding instituted as a result thereof, including collection costs, costs of any such action or proceeding and reasonable attorneys' fees and expenses.

Upon default by PureWorks, Customer shall have the right to terminate this Agreement without further liability or obligation to PureWorks. A default by PureWorks shall, for the purposes of this Agreement, be defined as a material breach of any term or condition of this Agreement, provided that PureWorks has failed to cure said material breach within thirty (30) days after PureWorks' receipt of notice from Customer, forwarded by registered or certified mail, of the specific instances of material breach. Upon termination of this Agreement, all rights granted to Customer will terminate and revert to PureWorks. Promptly upon termination of this Agreement, Customer must return all copies of the Software in Customer's possession, and all other materials pertaining to the Software (including all copies thereof).

**9. INDEMNITY.** PureWorks shall indemnify, defend and hold Customer, its subsidiaries and affiliates, and their respective directors, officers, employees and agents harmless against any and all claims, damages or liability, whatsoever, including payment of reasonable attorneys' fees and costs, suffered or incurred by Customer in connection with any U.S. patent, copyright or other intellectual property infringement claim by any third party against Customer with respect to the Software. This indemnity obligation shall apply only to the extent that Customer promptly notifies PureWorks after Customer becomes aware of such claim, grants to PureWorks the authority to defend, compromise or settle the claim of infringement, and provides PureWorks any Customer information relevant to such claim. PureWorks shall have no liability for any claims of infringement that are based on (i) Customer's modification of the Software without PureWorks' express written consent or (ii) upon a use of the Software in a manner not contemplated by this Agreement. This Section 9 shall constitute PureWorks' entire obligation to Customer with respect to any claim of infringement.

**10. NON-AGENCY.** The parties acknowledge that PureWorks is an independent contractor, and that PureWorks is not an employee, partner, joint author or joint venturer of Customer. PureWorks does not undertake to perform any obligation of Customer, whether regulatory or contractual, or to assume any responsibility for Customer's business or operations.

**11. EFFECT OF AGREEMENT.** THIS AGREEMENT EMBODIES THE ENTIRE UNDERSTANDING BETWEEN PUREWORKS AND CUSTOMER WITH RESPECT TO THE SUBJECT MATTER HEREOF AND SUPERSEDES ANY AND ALL PRIOR UNDERSTANDINGS AND AGREEMENTS, ORAL OR WRITTEN, RELATING THERETO. ANY FORMS OR OTHER DOCUMENTS USED BY THE PARTIES, INCLUDING, WITHOUT LIMITATION, PURCHASE ORDERS AND INVOICES, SHALL BE FOR CONVENIENCE ONLY, SHALL HAVE NOT EFFECT ON THIS AGREEMENT, AND SHALL NOT BE DEEMED TO ADD OR DELETE ANY TERMS OR CONDITIONS OF THIS AGREEMENT.

**12. NOTICES.** All notices hereunder shall be deemed to have been given when delivered to the addresses that follow by personal delivery, facsimile (confirmed by copy sent by certified

mail), overnight carrier, or by Certified Mail, Return Receipt Requested, postage prepaid. If to PureWorks, at the following address: 730 Cool Springs Blvd., Ste 400, Franklin, Tennessee 37067, Attention: Chief Executive Officer. If to Customer, at the address provided on Page 1 of this Agreement.

**13. DISPUTE RESOLUTION, PARTY ARBITRATION AND GOVERNING LAW.** In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of 60 days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules, provided, however, that any such arbitration shall be held in Nashville, Tennessee and the arbitrator shall apply Tennessee law.

**14. SURVIVING PROVISIONS.** In the event of termination of this Agreement by either party, the following provisions shall remain in full force and effect: Section 4 above (Fees, Charges, and Taxes), Section 6 above (Proprietary Protection of Software), Section 7 above (Limited Warranty), Section 9 (Indemnity), Section 10 above (Non-Agency), and Section 13 above (Dispute Resolution, Party Arbitration, and Governing Law), all of which shall survive termination of this Agreement.

**15. ASSIGNMENT.** This Agreement may not be assigned or transferred by either party (by operation of law or otherwise) without the prior written consent of the other party; provided, however, that either party may, without the prior consent of the other, assign all of its rights under this Agreement to (i) its subsidiary, (ii) a purchaser of all or substantially all of its stock or assets, or (iii) a third party participating in a merger or other corporate reorganization in which the assigning party is a constituent corporation. This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Any purported attempt to assign or transfer this Agreement in violation of this provision will be deemed void.

**16. MISCELLANEOUS.** This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. No delay or omission by either party in exercising any right, power or remedy hereunder or otherwise afforded by contract, at law, in equity or by statute, shall constitute an acquiescence therein, impair any other right, power or remedy hereunder, or otherwise afforded by contract, at law, in equity or by statute, or operate as a waiver of such right, power or remedy. In the event either party hereto shall deem it necessary or advisable to engage the services of an attorney to assist it in successfully enforcing any provision of this Agreement through litigation or otherwise, then the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs so incurred. This Agreement may not be modified except by a writing signed by authorized representatives of both parties. It is agreed that no use of trade or other regular practice or method of dealing between the parties hereto shall be used to modify, interpret, supplement, or alter in any manner the terms of this Agreement. If any provision of this Agreement, or the application thereof to any person or circumstance, shall be held invalid or unenforceable under any applicable law, such invalidity or unenforceability shall not affect any other provision of this Agreement that can be given effect without the invalid or unenforceable provision, or the application of such provision to the other persons or circumstances, and, to this end, the provisions hereof are severable. This Agreement shall not be construed or interpreted in favor of or against PureWorks or Customer on the basis of draftsmanship or preparation of the Agreement. Neither party shall be liable to the other for any delay or failure to perform due to acts of god or causes beyond its reasonable control. Performance times shall be considered extended for a period of time equivalent to the time lost because of any such delay. Otherwise, the parties agree that time is of the essence with respect to any date by which services are agreed to be performed. Except as provided herein, no press release, announcement, publication, or other use of the other party's insignia, logos, trademarks, trade name or service marks (collectively, the "Marks") shall be made by either party without the other party's prior approval. All use by either party of the other party's marks will inure to the benefit of the party owning the marks. Consistent with the terms of this Agreement, PureWorks may list Customer as a client of PureWorks using Customer's name and logo on PureWorks' web site ([www.puresafety.com](http://www.puresafety.com)) and in all PureWorks marketing materials, including but not limited to: representative client lists, screen shots, case studies and printed and digital sales material. PureWorks may identify Customer as a client of PureWorks if required by law, in which case no Customer approval is required.

Date: January 25, 2011

From: Barbara Olivier Department/Agency: Human Resources

To: Board of Supervisors/Purchasing Agent

Via: Purchasing Agent

Subject: Sole Source Procurement; Request for *Authorization to renew annually for 5 years*

The below information is provided in support of my Department requesting approval for a sole source. Outside of a duly declared emergency, the time to develop a statement of work or specifications is not in itself justification for sole source.

**Supply/Service being requested:** Licensing and Annual Service & Maintenance

**Supplier being requested:** PureSafety

**Alternative suppliers that can or might be able to provide supply/service:** None

**Extent of market search conducted:** This software was purchased in 2004; renewal of licensing costs has remained consistent and not increased since its purchase. Renewal of licenses is cost efficient while purchasing new software would create soft costs in research and selection and hard costs in software, implementation, licensing, maintenance, etc.

**Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:** OHM application is used extensively by all departments for scheduling and medical tracking.

**Reasons why my department requires these unique features and what benefit will accrue to the county:** This is an online web application used by all departments for appointment scheduling; and our medical divisions also use OHM for medical information tracking. Departments are able to schedule appointments, and track results eliminating calls to the Occupational Health division. OHM is being used in various divisions for the same features that are unique to those divisions.

**Price Reasonableness:** Total annual amount not to exceed \$21,000. Software was purchased in 2004; to purchase a new system with licensing and implementation of that would be considerably more than continuing annual maintenance. We get a government discount based on our history with this vendor. This vendor is currently acquiring a major competitors' software, Occupational Health Research (OHR).

**Does moving forward on this product or service further obligate the county to future similar contractual arrangements?** No

**Period of Performance:** Request up to 5 year extension to be approved in one-year increments upon receipt of renewal.



(Provide a defined period of performance. Please note multi-year terms require Board approval, unless renewable in one year increments and the Purchasing Agent approves the terms.)

*[Signature]* 1/25/11  
Department Head Signature Date

Purchasing Department Comments:

Approve       Approve with Condition/s       Disapprove  
*Bill B. Covert* 2/2/11  
Purchasing Agent Date