

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



ITEM: 3.3
(ID # 10155)

MEETING DATE:

Tuesday, June 09, 2020

FROM: ANIMAL SERVICES:

SUBJECT: ANIMAL SERVICES: Ratify and Approve the Professional Service Agreement with HLP Inc. for Software Support & Maintenance of the Chameleon Case Management System (CMS) without seeking competitive bids for ten (10) years; [All Districts]; [Total Cost \$1,250,000; up to \$125,000 additional compensation per fiscal year]; 49% Contract Revenue; 51% General Fund - Department Budget.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Ratify and approve the Professional Service Agreement with HLP Inc. for Software Support & Maintenance of the Chameleon Case Management System (CMS) without seeking competitive bids for a total contract amount of \$1,250,000 over a ten (10) year term, from July 1, 2019 through June 30, 2029, and authorize the Chairman of the Board to the sign the Agreement on behalf of the County; and
2. Authorize the Purchasing Agent, in accordance with Ordinance 459, based on the availability of fiscal funding and as approved by County Counsel to: (a) sign amendments that exercise the options of the Agreement including modifications of the Scope of Service and the license agreements that stay within the intent of the Agreement; and (b) sign amendments to the compensation provisions that do not exceed the ten percent (10%) of the total annual contract amount of \$125,000.

ACTION: Policy

Julie Bank
Julie Bank, Director of Animal Services

5/12/2020

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: June 9, 2020
xc: Animal Services, Purchasing

Kecia R. Harper
Clerk of the Board

By: *Russella Ross*
Deputy

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

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 61,250	\$ 61,250	\$ 612,500	\$ 0
NET COUNTY COST	\$ 63,750	\$ 63,750	\$ 637,500	\$ 0
SOURCE OF FUNDS: 49% Contract Revenue; 51% General Fund			Budget Adjustment:	No
			For Fiscal Year: 19/20-29/30	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The request before the Board is for proprietary Chameleon Case Management System (CMS) software support and maintenance services through HLP, Inc. The Department implemented the database system in 2002. It is a client-based database system developed to record and track animals coming in and out of the shelters. The database system assists staff with their daily rabies control and animal shelter operational activities including: shelter management, licensing, field operations, cashiering, and veterinary record-keeping, impounds, adoptions, etc. The Web Chameleon is the mobile companion to the Chameleon software that allows Field Officers and Licensing Officers (canvassers) online access anytime, anywhere from any smart device. Field Officers can respond to public service requests based on proximity with real time updates on a mobile platform. Licensing officers can inquire on license and address information which enables them to perform their tasks more efficiently. Chameleon is the standard by which most animal control, humane society, and the Society for the Prevention of Cruelty to Animals (SPCA) utilize throughout the United States and Canada.

Impact on Residents and Businesses

There is no negative impact on resident or business. It is vital for the Department to continue the use of the Chameleon software to maintain good record-keeping of the animals. It would be more costly to the County to find another vendor that may or may not meet the specifications of the existing software as well as integrate the application of state mandates and local ordinances with DAS business flows, and then transition the existing records to a new database system which would also require re-training of staff members. It also plays a vital role for private citizens because it allows them to upload vaccination documents, search for information on lost pets or adoptions, make online credit card payments, etc...

Additional Fiscal Information

There is no new financial impact to the County's general fund. The funding has been established in the Department's annual budget.

HLP Chameleon – Case Management System (CMS) Support & Maintenance Costs

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

FY19/20	\$125,000	FY24/25	\$125,000
FY20/21	\$125,000	FY25/26	\$125,000
FY21/22	\$125,000	FY26/27	\$125,000
FY22/23	\$125,000	FY27/28	\$125,000
FY23/24	\$125,000	FY28/29	\$125,000
		TOTAL COST	\$1,250,000

Contract History and Price Reasonableness

There is no future contractual obligation. This request is to approve the continued use of the proprietary Chameleon Software. The Sole Source was approved under BOS agenda 3.8, 10/28/14, Sole Source Justification No. 15-248. The purchase of Web Chameleon, a mobile companion to the Chameleon software was approved under BOS agenda 3.5, 10/20/15. HLP Inc. has been consistent with their annual renewal fees with no additional cost increases. The added funding of \$15,000 annually is for the increase in online transactions fees because of the growth in communities has resulted in more private citizens accessing online information and making online payments. RCIT has approved the continued use of the Chameleon software under H-11 Approval No. PR2019-08764 for the period of ten (10) years through 06/30/2029.

ATTACHMENT:

1. Agreement with HLP, Inc.
2. Sole Source Justification Form



Gregory V. Priarios, Director County Counsel 5/26/2020

PROFESSIONAL SERVICE AGREEMENT

for

**CHAMELEON CASE MANAGEMENT SYSTEM (CMS)
SOFTWARE SUPPORT & MAINTENANCE**

between

COUNTY OF RIVERSIDE

and

HLP, Inc.



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This Agreement, made and entered into this 1st day of July 2019, by and between HLP Inc., an Arizona corporation (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, (herein referred to as "COUNTY"). The parties agree as follows:

1. Description of Services

1.1 CONTRACTOR shall provide all services as outlined and specified in Exhibit A, Scope of Services, at the prices stated in Exhibit B, Payment Provisions, as well as all licenses set forth in the license agreements that are attached hereto and incorporated herein by this reference.

1.2 CONTRACTOR represents that it has the skills, experience, and knowledge necessary to perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of the COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California.

1.3 CONTRACTOR affirms this it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit B. CONTRACTOR is not to perform services or provide products outside of the Agreement.

1.4 Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

2. Period of Performance

2.1 This Agreement shall be effective from July 1, 2019 through June 30, 2029, unless terminated earlier. The Riverside County Board of Supervisors is the only authority that may obligate the County for a non-cancelable multi-year agreement.

3. Compensation

3.1 The COUNTY shall pay the CONTRACTOR for services performed, products provided and expenses incurred in accordance with the terms of Exhibit B, Payment Provisions. Maximum payments by COUNTY to CONTRACTOR shall not exceed \$125,000 annually including all expenses. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products. Unless otherwise specifically stated in Exhibit B, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.

3.2 No price increases will be permitted during the first year of this Agreement (If applicable). All price decreases (for example, if CONTRACTOR offers lower prices to another governmental entity) will automatically be extended to the COUNTY. The COUNTY requires written proof satisfactory to COUNTY of cost increases prior to any approved price adjustment. After the first year of the award, a minimum of 30-days advance notice in writing is required to be considered and approved by COUNTY. No retroactive price adjustments will be considered. Any price increases must be stated in a written amendment to this Agreement. The net dollar amount of profit will remain firm during the period of the Agreement. Annual increases shall not exceed the Consumer Price Index- All Consumers, All Items - Greater Los Angeles, Riverside and Orange County areas and be subject to satisfactory performance review by the COUNTY and approved (if needed) for budget funding by the Board of Supervisors.

3.3 CONTRACTOR shall be paid only in accordance with an invoice submitted to COUNTY by CONTRACTOR within fifteen (15) days from the last day of each calendar month, and COUNTY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made to CONTRACTOR only after services have been rendered or delivery of materials or products, and acceptance has been made by COUNTY. Prepare invoices in duplicate. For this Agreement, send the original and duplicate copies of invoices to:

Riverside County Department of Animal Services

Western Riverside Shelter, Fiscal Division

6851 Van Buren Blvd.

Jurupa Valley, CA 92509

- a) Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to and ship-to addresses of ordering department/division; Agreement number (PSA-0001746); quantities; item descriptions, unit prices, extensions, sales/use tax if applicable, and an invoice total.
- b) Invoices shall be rendered annually for software licenses and monthly in arrears for Entry transactions.

3.4 The COUNTY obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding from which payment can be made, and invoices shall be rendered "annually" for software licenses and "monthly" in arrears for entry transactions. In the State of California, Government agencies are not allowed to pay excess interest and late charges, per Government Codes, Section 926.10. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the

event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing; and this Agreement shall be deemed terminated, have no further force, and effect.

4. Alteration or Changes to the Agreement

4.1 The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee is the only authorized COUNTY representatives who may at any time, by written order, alter this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

4.2 Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work, which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

5. Termination

5.1. COUNTY may terminate this Agreement without cause upon 30 days written notice served upon the CONTRACTOR stating the extent and effective date of termination.

5.2 COUNTY may, upon five (5) days written notice terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement or fails to make progress that may endanger performance and does not immediately cure such failure. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

5.3 After receipt of the notice of termination, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination; and
- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products, which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

5.4 After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement.

5.5 CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement. In such event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

5.6 The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

6. **Ownership/Use of Contract Materials and Products**

6.1 The CONTRACTOR agrees that all materials, reports or products in any form, including electronic, created by CONTRACTOR for which CONTRACTOR has been compensated by COUNTY pursuant to this Agreement shall be the sole property of the COUNTY. The material, reports or products may be used by the COUNTY for any purpose that the COUNTY deems to be appropriate, including, but not limit to, duplication and/or distribution within the COUNTY or to third parties. CONTRACTOR agrees not to release or circulate in whole or part such materials, reports, or products without prior written authorization of the COUNTY.

6.2 The COUNTY shall not have ownership or control of the CONTRACTOR'S intellectual property rights.

7. **Conduct of Contractor**

7.1 The CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

7.2 The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

7.3 The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

8. **Inspection of Service; Quality Control/Assurance**

8.1 All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times. The CONTRACTOR shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine the CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, the COUNTY shall have the right to require the CONTRACTOR to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the COUNTY. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected; the COUNTY shall have the right to: (1) require the CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement price to reflect the reduced value of the services performed or products provided. The COUNTY may also terminate this Agreement for default and charge to CONTRACTOR any costs incurred by the COUNTY because of the CONTRACTOR's failure to perform.

8.2 CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess, or evaluate CONTRACTOR's performance under this Agreement at any time, upon reasonable notice to the CONTRACTOR.

9. **Independent Contractor/Employment Eligibility**

9.1 The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

9.2 CONTRACTOR warrants that it shall make its best effort to fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees

performing work under this Agreement meet the citizenship or alien status requirement set forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by federal or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all covered employees, for the period prescribed by the law.

9.3 Ineligible Person shall be any individual or entity who; Is currently excluded, suspended, debarred or otherwise ineligible to participate in the federal health care programs; or has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the federal health care programs after a period of exclusion, suspension, debarment, or ineligibility.

9.4 CONTRACTOR shall screen prospective Covered Individuals prior to hire or engagement. CONTRACTOR shall not hire or engage any Ineligible Person to provide services directly relative to this Agreement. CONTRACTOR shall screen all current Covered Individuals within sixty (60) days of execution of this Agreement to ensure that they have not become Ineligible Persons unless CONTRACTOR has performed such screening on same Covered Individuals under a separate agreement with COUNTY within the past six (6) months. Covered Individuals shall be required to disclose to CONTRACTOR immediately any debarment, exclusion or other event that makes the Covered Individual an Ineligible Person. CONTRACTOR shall notify COUNTY within five (5) business days after it becomes aware if a Covered Individual providing services directly relative to this Agreement becomes debarred, excluded or otherwise becomes an Ineligible Person.

9.5 CONTRACTOR acknowledges that Ineligible Persons are precluded from providing federal and state funded health care services by contract with COUNTY in the event that they are currently sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency. If CONTRACTOR becomes aware that a Covered Individual has become an Ineligible Person, CONTRACTOR shall remove such individual from responsibility for, or involvement with, COUNTY business operations related to this Agreement.

9.6 CONTRACTOR shall notify COUNTY within five (5) business days if a Covered Individual or entity is currently excluded, suspended or debarred, or is identified as such after being sanction screened. Such individual or entity shall be promptly removed from participating in any activity associated with this Agreement.

10. Subcontract for Work or Services

No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

11. Disputes

11.1 The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Any dispute relating to this Agreement, which is not resolved by the parties, shall be decided by the COUNTY's Purchasing Department's Compliance Contract Officer who shall furnish the decision in writing. The decision of the COUNTY's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous to imply bad faith. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.

11.2 Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

12. Licensing and Permits

CONTRACTOR shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to the COUNTY. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

13. Use By Other Political Entities

The CONTRACTOR agrees to extend the same pricing, terms, and conditions as stated in this Agreement to each and every political entity, special district, and related non-profit. It is understood that other entities shall make purchases in their own name, make direct payment, and be liable directly to the CONTRACTOR; and COUNTY shall in no way be responsible to CONTRACTOR for other entities' purchases.

14. Non-Discrimination

CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. §1210 et seq.) and all other applicable laws or regulations.

15. Records and Documents

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State, or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY reports and information related to this Agreement as requested by COUNTY.

16. Confidentiality

16.1 The CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to public disclosure; COUNTY operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

16.2 The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particulars assigned to the individual, such as finger or voice print or a photograph.

17. Administration/Contract Liaison

The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONTRACTOR in connection with this Agreement.

18. Notices

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

COUNTY OF RIVERSIDE

Department of Animal Services
Western Riverside Shelter, Fiscal Division
6851 Van Buren Blvd.
Jurupa Valley, CA 92509

CONTRACTOR

HLP, Inc.
Chameleon Software Products
9888 West Belleview Ave. #110
Littleton, CO 80123

19. Force Majeure

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

20. EDD Reporting Requirements

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent Contractor(s) form **DE 542** to the Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the COUNTY within 10 days of notification of award of Agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONTRACTOR to timely submit the data and/or certificates required may result in the contract being awarded to another contractor. In the event a contract has been issued, failure of the CONTRACTOR to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at www.edd.ca.gov.

21. Hold Harmless/Indemnification

21.1 CONTRACTOR shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability, action, claim or damage whatsoever, based or asserted upon any services of CONTRACTOR, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature. CONTRACTOR shall defend the Indemnitees at its sole expense including all costs and fees (including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards) in any claim or action based upon such acts, omissions or services.

21.2 With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR indemnification to Indemnitees as set forth herein.

21.3 CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

21.4 The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

22. Insurance

22.1 Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

A. Workers' Compensation:

If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with

limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

If vehicles or mobile equipment is used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.

D. General Insurance Provisions - All lines:

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) The CONTRACTOR must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the County's Risk Manager, CONTRACTOR'S carriers shall either: 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all

attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier shall sign the original endorsements for each policy and the Certificate of Insurance.

4) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

6) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

8) CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

23. General

23.1 CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

23.2 Any waiver by COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of COUNTY to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Agreement.

23.3 In the event the CONTRACTOR receives payment under this Agreement, which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, the CONTRACTOR shall promptly refund the disallowed amount to the COUNTY on request; or at its option the COUNTY may offset the amount disallowed from any payment due to the CONTRACTOR.

23.4 CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

23.5 CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials or products used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims, or encumbrances.

23.6 Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

23.7 The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

23.8 CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

23.9 CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Agreement.

23.10 CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

23.11 This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

23.12 This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. In the event of any inconsistency among this Agreement and the attachments or exhibits, the language in this Agreement shall control. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement.

COUNTY OF RIVERSIDE, a political
subdivision of the State of California

By: 

V. Manuel Perez, Chairman
Board of Supervisors

HLP INC., an Arizona corporation

By: 

Sean Smith
Chief Executive Officer

Dated: JUN 09 2020

Dated: March 24, 2020

ATTEST:

Kecia R. Harper
Clerk of the Board

By: 

Deputy

APPROVED AS TO FORM:

Gregory P. Priamos
County Counsel

By: 

Susanna N. Oh
Deputy County Counsel

EXHIBIT "A"

SCOPE OF SERVICES

CONTRACTOR shall provide the following deliverables to the COUNTY. Specific functions to be performed by CONTRACTOR shall include, but are not limited to the following:

1. DELIVERABLES.

1.1 Chameleon/CMS Software (the "Software") Support. CONTRACTOR shall provide the COUNTY Software Support as set forth below:

- 1.1.1** System On-Line Help – Internet access to Software support help files.
- 1.1.2** Internet Web Site System Technical Support – Registered user access to receive mail, post messages, and upload/download data, and access training videos.
- 1.1.3** Technical Support Hotline – Telephone Support Monday through Friday, except federal holidays, between the hours of 7:00am PST and 5:00pm PST. Other hours available by pre-arrangement.
- 1.1.4** "System to System" Technical Support – Direct, real-time support via internet during Technical Support Hotline hours.
- 1.1.5** In-Person Support – In the event that off-site or remote support fails to resolve the problem within Chameleon Software, CONTRACTOR may provide in-person support at the discretion of CONTRACTOR.

1.2 Maintenance. CONTRACTOR shall provide Chameleon/CMS Software Maintenance as set forth below:

- 1.2.1** Diagnosis – Upon receipt of notification from the COUNTY regarding an apparent error or problem with Chameleon Software, CONTRACTOR will use commercially reasonable efforts to promptly investigate the issue. CONTRACTOR staff will advise the COUNTY that either the error does not exist in Chameleon Software, or confirm that one does exist and provide a solution or correction.
- 1.2.2** Upgrades and New versions – CONTRACTOR shall provide the COUNTY all new upgrades and versions of the Software and shall warrant them the same as all initial purchases.

1.2.3 Corrections – CONTRACTOR shall make corrections in software code available to the COUNTY as they become necessary and available. CONTRACTOR shall make corrections as soon as possible upon the COUNTY's as well as other Chameleon site's reporting of the need.

1.3 **WebLicensing Processing Services.** CONTRACTOR will accommodate online animal license purchases and renewals through CONTRACTOR's LicensePet.com. Upon completion of the licensing or donation transaction, customers will be redirected to the COUNTY's online credit card vendor payment portal.

1.3.1 Animal license renewal information is transmitted (encrypted) via CONTRACTOR's provided transmittal application (currently CONTRACTOR's KnowledgeRocket application) from the COUNTY's SQL database server.

1.3.2 CONTRACTOR will transmit (encrypted) animal licensing data back to the COUNTY's Chameleon database on a daily basis; ensuring COUNTY staff always has access to current animal licensing information. Animal licensing data will be updated via CONTRACTOR's LockBox Plus program. Old animal licenses will be renewed; new animal licenses and receipts will be created; microchip records will be created; images or proof of vaccinations/spay or neuter certificates are attached to the license record. New animal licenses will be processed via CONTRACTOR's LockBox Plus program using Scrubber Technology and license tag numbers will be issued in sequence based on jurisdiction and according to licensing parameters provided to CONTRACTOR by COUNTY.

1.3.3 CONTRACTOR shall provide daily transaction summaries to the COUNTY detailing the work completed.

1.3.4 CONTRACTOR shall respond in a timely manner for WebLicensing issues such as not able to download licenses or issues related to Lockbox programming issues.

1.3.5 COUNTY will ensure that the license number (LicenseNo), person identifier (PersonID), and animal identification (AnimalID) are on the license notices.

1.3.6 COUNTY is responsible for handling inquiries from the public.

- 1.3.7 COUNTY agrees to provide a link on their website to the WebLicensing service.
- 1.3.8 COUNTY will be responsible for reconciling their bank statement with WebLicensing transactions. CONTRACTOR will update Chameleon with the transaction identification number and authorization code received from ELAVON. The Crystal Lockbox Daily Deposit report and other provided Crystal reports can be used to facilitate this task.
- 1.4 Services will terminate if annual fee or transaction fees are not paid and COUNTY will be required to cease use of all CONTRACTOR products associated with WebLicensing services.
- 1.5 **WebDonation Services (included with WebLicensing upon County request).** CONTRACTOR will accommodate online donations allowing the public to include a donation with the WebLicensing transaction or submit a new or additional donation at any time.
 - 1.5.1 Person records will be processed via CONTRACTOR's Lockbox Plus program using Scrubber Technology, which matches the Donation records with existing person records in the database.
 - 1.5.2 Receipt will be created.
- 1.6 **WebChameleon Software Annual Support and Maintenance.**
 - 1.6.1 Requirements for WebChameleon:
 - 1.6.1.1 Chameleon v44 or higher.
 - 1.6.1.2 A Web server that supports SSL encryption and has access to the Chameleon database.
 - 1.6.1.3 A website and unique domain name for the application with a valid SSL certificate (NOTE: this is necessary before CONTRACTOR begins installation).
 - 1.6.1.4 .NET Framework 4.5
 - 1.6.1.5 Web Server will need SAP Crystal Reports runtime to be installed in order to run reports.
 - 1.6.1.6 SQL Server 2008 or newer.

- 1.6.1.7 For all platforms, CONTRACTOR recommends upgrading to the latest Windows Service Pack and critical updates available from the Window Update website to ensure the best compatibility and security. Installation of the latest Windows Service Pack may be required on some operating systems.

1.7 IMAGE ENTRY/VETIMPORT.

- 1.7.1 Setup IMAGE ENTRY application that allows COUNTY to batch scan rabies certificates received from local veterinary clinics and send to CONTRACTOR for data entry professionals to do the keypunching for COUNTY.
- 1.7.2 Upload electronic file received via email from local veterinary clinics in a Text (Tab delimited) (*.txt) format to CONTRACTOR website.
- 1.7.3 Services will terminate if annual fee or transaction fees are not paid and COUNTY will be required to cease use of all CONTRACTOR products associated with IMAGE ENTRY and VETIMPORT services.

1.8 VIOLATION INSERT.

- 1.8.1 CONTRACTOR shall setup application that will insert records into the Violation and Violation Offense Tables according to client specifications based on data in the Animal database.
- 1.8.2 Services will terminate if annual fee is not paid and COUNTY will be required to cease use of all CONTRACTOR products associated with VIOLATION INSERT services

1.9 CHAMMAPPING (GPS Insight API Interface). Develop ability to integrate automatic vehicle location data into Chameleon/CMS database.

- 1.9.1 CONTRACTOR shall develop an interface to retrieve vehicle location data via GPS Insight's GPSI API V2.
- 1.9.2 CONTRACTOR shall update the appropriate tables in Chameleon/CMS. Integration will use data returned for all vehicles using provided login credentials within a given time period.

- 1.9.3 CONTRACTOR shall also modify Chameleon MapExplorer to retain appropriate mapping functionality within Chameleon/CMS.
- 1.9.4 CONTRACTOR does not warrant the success of the application against failure of the network.
- 1.9.5 This interface is external to the Chameleon/CMS software product. No changes will be made to Chameleon/CMS itself.
- 1.9.6 The interface will require the COUNTY purchase and maintain an annual Certified Data Connection License at a rate of \$1,920.00. This will be invoiced separately when interface is put into production and annually thereafter.
- 1.9.7 The COUNTY will install Chameleon MapExplorer (ME) on one workstation with a network path to a shared directory. The thought being that this workstation will run the map creating the file in a directory that all users can have access to.
- 1.9.8 The COUNTY will install GOOGLE EARTH on workstations of choice to view the map, creating a link to the file generated by the workstation running ME.

2. Additional Provisions.

- 2.1 **Professional Services Warranty.** The Services provided by CONTRACTOR shall be performed in a professional manner and shall be in accordance with generally accepted industry standards for the software services and consulting industry. CONTRACTOR represents and warrants that the Services shall be provided by persons with knowledge and skills and shall be performed in a professional manner and shall be in accordance with generally accepted industry standards for the software services and consulting industry.
- 2.2 **System Performance Warranty.** CONTRACTOR represents and warrants that following Software integration and implementation, the Software and all other deliverables furnished hereunder by CONTRACTOR will: (i) meet the functionality requirements as stated herein and (ii) be free from all material defects. CONTRACTOR further represents and warrants that all CONTRACTOR provided software configurations, modifications, customizations, data conversions, calculations and interfaces will function properly, separately and as a fully integrated system, and when operated together will not cause any material delays, defects, or problems with the Software. Nothing in this section is a

warranty by CONTRACTOR of the accuracy of COUNTY's data and to the extent an error in COUNTY's data, hardware or other software causes a system performance problem, that problem is not a breach of this warranty.

2.3 Warranty Remedy. With respect to a violation of the system performance warranty described in Section 3, above, the COUNTY's remedy shall be as follows:

2.3.1 COUNTY shall provide CONTRACTOR with written notification of the error and a detailed explanation of why the error constitutes a warranty violation as measured against the warranties herein. An "error" or "warranty violation" does not include network, hardware or other software issues on the COUNTY's systems that cause disruptions, errors, or slow-downs. CONTRACTOR shall provide COUNTY with a problem identification and resolution plan for the warranty violation within five (5) calendar days of receiving notification. CONTRACTOR shall work with the COUNTY to promptly resolve the warranty issue within the agreed resolution plan timeframe after submitting the problem identification and resolution plan. CONTRACTOR shall use commercially reasonable efforts to satisfactorily resolve the warranty issue within thirty (30) calendar days, or as otherwise agreed to by the parties after being notified of a warranty violation.

2.3.2 If said warranty violation is preventing the COUNTY from using the Software and Services for Productive Use (a "Critical Violation"), CONTRACTOR shall respond to the notification within twenty-four (24) hours with a proposed resolution plan. CONTRACTOR will dedicate sufficient resources to satisfactorily resolve the Critical Violation as soon as practicable according to the resolution plan. CONTRACTOR will use commercially reasonable efforts to satisfactory resolve the resolution within (7) calendar days after being notified of a Critical Violation.

2.3.3 For purposes of this Section, "Resolution of an error" shall include but not be limited to the following:

- 2.3.3.1 Provide a workaround for the error that allows the Software and/or System to support the COUNTY's business operations; or
 - 2.3.3.2 Provide manual processing; or
 - 2.3.3.3 Provide a system fix or update; or
 - 2.3.3.4 Provide a correction to the Software and/or System setup.
- 2.3.4 If after thirty (30) calendar days from notification CONTRACTOR is unable to correct the warranty violation, then CONTRACTOR shall refund amounts paid for the initial Chameleon/CMS license for day 31 and following until such time as problem is resolved or all amounts paid for the initial Chameleon/CMS license are refunded. The remedies specified in this section are not exclusive of any others COUNTY may have.
- 2.4 **Software License Agreements.** COUNTY's use of the software provided by HLP, Inc. is subject to the terms of the Chameleon/CMS Software License Agreement, Chameleon/Public Access Software License, or the Certified Data Connection License Agreement as applicable.
 - 2.4.1 Querying, inserting or updating any tables or objects in the Chameleon/CMS database is a violation of the Chameleon/CMS Software License Agreement.
 - 2.4.2 All HLP products listed are copyrighted under the Chameleon/CMS Software License, Certified Data Connection Software License and/or the Public Access Software License and the Client use of all HLP products is subject to all terms and conditions of those licenses.

EXHIBIT "B"

PAYMENT PROVISIONS

The CONTRACTOR shall provide Chameleon Management System (CMS) Software Support and Maintenance. The COUNTY shall not be entitled to any tangible personal property as part of the annual support and maintenance.

QTY	Description	Unit of Service Description	Total
1	Chameleon/CMS Unlimited Support & Maintenance licensed for 1 single Server, Unlimited Workstations & Unlimited Field Service Units	Per Server	\$24,000.00
1	Annual Certified Data Connection support & maintenance - Violation Table	Annual	\$ 960.00
1	Annual WebLicensing/WebDonation Service Fee	Annual	\$3,840.00
	Annual Service Fee Chameleon Image Entry Data entry transaction fees will be invoiced separately as accrued	Annual	\$1,920.00
1	WebChameleon Software Annual Support & Maintenance - Server	Annual	\$2,880.00
1	Annual Certified Data Connection Support & Maintenance - GPS Insight API Interface	Annual	\$1,920.00
37	WebChameleon Software Annual Support & Maintenance - Concurrent User (10 LI + 2 Chief/IT) <i>increase of users under Field Services - (42 field officers + 6 RVTs + Mobile SN Bus)</i>	Annual	\$35,520.00
	Not inclusive of applicable sales tax	SUBTOTAL	\$71,040.00
Entry Transaction Fees:			
Total cost of fees fluctuates based on the no. of actual entries			
	Image Transactions Fee	Per Entry	\$0.79
	Vet Import Transaction Fee	Per Entry	\$0.79
	WebLicesing Transaction Fee	Per Entry	\$0.35

ATTACHMENTS

1. Attachment 1 – Chameleon / CMS Software License Agreement (Two Pages)
2. Attachment 2 – Certified Data Collection License Agreement (Two Pages)
3. Attachment 3 – Chameleon / Public Access Software License Agreement (Two Pages)
4. Attachment 4 – Escrow Agreement (Fifteen Pages)

ATTACHMENT 1

CHAMELEON / CMS SOFTWARE LICENSE AGREEMENT

This is a legal and binding agreement between the County of Riverside ("Purchaser") and HLP, INC. ("HLP"). The request of the Purchaser for the Chameleon / CMS Software Package ("CMS") and License, and the acceptance of payment for such by HLP, is an acceptance of the terms and conditions set forth under the agreement between the County and HLP Inc., Professional Services Agreement No. PSA-0001746.

I. GRANT OF LICENSE and USE :

HLP shall grant Purchaser this License for use of CMS at the time of payment. HLP grants no software licenses whatsoever, either explicitly or implicitly, except by full payment for the CMS Software. This license entitles the Purchaser the right to install CMS on a single Server unit to be used by any number of Client Workstations. Additional Servers require additional Licenses, except as stated under Terms and Restrictions. This License Agreement is with the designated Purchaser only. This Purchaser may not rent, lease, give, sell or in any way transmit any part of the CMS Software Package to an unauthorized, unlicensed entity. This is a non-exclusive, non-transferable license to the use of CMS.

II. PAYMENT :

- * Payment for CMS is defined as two parts: 1) Cost of initial License and 2) Support and Maintenance.
- * The "Cost of initial License" is currently fixed at a published price and is a one time fee.
- * The "Support and Maintenance" cost is figured by the size of the Purchaser's network, and this fee is billed monthly, quarterly, or annually. The formula is a fixed amount for the Server plus a fixed amount for each client workstation that uses CMS for daily operations. The amount changes as the numbers of workstations change unless the Purchaser is paying for "unlimited" users. Annual increases shall not exceed the Consumer Price Index as set forth under the agreement between the County and HLP, Inc., Professional Services Agreement, Page 3.2, "Compensation."
- * All of the above payment conditions must be met in accordance with terms and conditions set forth under the agreement between the County and HLP Inc. Page 3, Section 3, "Compensation." in order for the Purchaser to hold a current, valid CMS License.

III. OWNERSHIP :

- * Title to CMS shall remain with HLP. The CMS product name, software, documentation, and other material parts of the CMS package are owned by HLP and may not be reproduced in any form, except as stated under Terms and Restrictions. CMS Software contains the proprietary technology of HLP, INC.
- * All modifications, additions, upgrades, and new versions provided for under Support and Maintenance are considered part of this title and subject to the conditions of this License.
- * Purchaser hereby acknowledges HLP's copyright of CMS regardless of whether the copyright notice appears on CMS or whether it has been filed with the United States Copyright Office.

IV. TERMS and RESTRICTIONS :

- * The Purchaser shall receive an executable copy of CMS Software. The Purchaser may load, copy, or transmit CMS, in whole or in part, only as is necessary for execution, backup, and hot standby.
- * Purchaser may modify or merge CMS solely for execution by itself. Any part of this Software included in such adaptations will continue to be subject to this License.
- * HLP shall bill the Purchaser a Support & Maintenance FEE periodically using the formula under "Payment". This bill is due and payable within thirty days of receipt.
- * HLP reserves the right to revoke this License if the Support & Maintenance FEE becomes delinquent and is not remedied in accordance with terms and conditions set forth under the agreement between the County and HLP Inc. Page 3, Section 3, "Compensation." The Purchaser shall then cease use of CMS.
- * Purchaser agrees not to reverse engineer, decompile, or disassemble CMS.

V. MAINTENANCE :

- HLP agrees to provide the following maintenance services:
- * **NEW VERSIONS:** New Versions are major changes to the look or feel of CMS. All new versions are included and guaranteed to all Purchasers.
- * **UPGRADES:** As requests for improvements are accumulated from more than one Purchaser, they will be incorporated into periodic upgrades. These upgrades are included and guaranteed to all Purchasers.

- * **DIAGNOSIS:** Technical personnel will diagnose the cause of system problems and refer the Purchaser to the appropriate avenue of correction. HLP shall correct the problem only if the cause is a bug in CMS.
- * **CORRECTIONS:** Corrections in CMS code will be available to all Purchasers through the technical support office. Corrections will be made as soon as possible after reported and prioritized as to urgency to CMS operations.

VI. SUPPORT:

HLP agrees to provide the following support services:

- * **TECHNICAL SUPPORT LINE:** This shall entitle the Purchaser faster access to a technical support person for questions of high priority. Calls are answered during business days and hours and referred to the appropriate staff person. Requests may be faxed or left on the message service when lines are busy or after hours. Evenings, weekends, and holidays are available by pre-arrangement.
- * **SYSTEM TO SYSTEM:** When requested, HLP can provide the Purchaser direct support via modem and communication software in real time.
- * **SYSTEM ON-LINE HELP:** CMS contains comprehensive, context-sensitive, and hyper-texted HELP files that are installed with the software and upgraded as needed.
- * **INTERNET WEB SITE:** An internet site is available 24 hours and 7 days to registered Users. Questions, suggestions, and comments may be posted to other Users or the HLP staff. Data can be uploaded and down loaded, all through a local access call.
- * **PERSONNEL ON-SITE:** If, for any reason, HLP cannot resolve the Purchaser's request by the means of support listed above, and HLP deems the request critical, then HLP staff may visit the Purchaser's site to resolve the problem.

VII. SOURCE CODE ESCROW:

- * This License does not include or cover access in any way to the CMS Source Code.
- * HLP has placed in escrow all current Source Code for CMS with an authorized escrow Agent.
- * The Purchaser shall be entitled to claim a copy of the CMS Source Code under the terms and conditions set forth in the Chameleon/CMS Source Code Escrow Agreement.

VIII. LIMITED WARRANTY:

- * HLP is the owner of CMS and has the right to grant the Purchaser this license to use the same without violating any rights of any third party, and there is currently no actual or threatened suit by any such third party based on the alleged violation of such right by HLP.
- * HLP warrants that CMS will perform substantially in accordance with its intended use.
- * If CMS does not perform as represented and can not be remedied within a reasonable time, HLP will refund the initial cost of this License only.
- * HLP does not warrant performance of CMS if it is modified by persons other than the staff of HLP.
- * HLP does not warrant that the execution of CMS will be uninterrupted or error-free.
- * HLP does not warrant that other software programs or computer hardware will not interfere with its execution.
- * HLP disclaims all other warranties, either expressed or implied.

IX. LIABILITY:

Under this agreement, HLP's liability for damages to the Purchaser resulting from the use of CMS shall not exceed the amount of the Purchaser's initial License. Under this agreement, HLP shall not be liable for any damages resulting from loss of data or use, lost profits or revenue, or any incidental or consequential damages.

X. TERMINATION:

HLP may terminate any License granted if Purchaser fails to observe this agreement, and such condition is not remedied within thirty days after written notice has been given Purchaser. Purchaser will then destroy all copies and adaptations of all versions of CMS and certify in writing that such has been done.

COPYRIGHTED AND NON NEGOTIABLE

ATTACHMENT 2

CERTIFIED DATA CONNECTION LICENSE AGREEMENT

This is a legal and binding agreement between the County of Riverside ("Purchaser") and HLP, INC. ("HLP"). The request of the Purchaser for the custom interface to Chameleon/cms Software and the Certified Data Connection (CDC) License, and the acceptance of payment for such by HLP, is an acceptance of the terms and conditions set forth under the agreement between the County and HLP Inc., Professional Services Agreement No. PSA-0001746.

I. GRANT OF LICENSE and USE :

HLP shall grant Purchaser this License for the use of the CDC interface at the time of payment. HLP grants no licenses whatsoever, either explicitly or implicitly, except by full payment. This License entitles the Purchaser the right to install the custom interface and qualify for a certified data connection. This License Agreement is with the designated Purchaser only. This Purchaser may not rent, lease, give, sell or in any way transmit any part of the CDC License to an unauthorized, unlicensed entity. This is a non-exclusive, non-transferable license to the use of the CDC.

II. PAYMENT :

All payment conditions must be met in order for the Purchaser to hold a valid CDC License. Payment for CDC License is defined as two parts:

- * The one-time fee for the custom interface with Chameleon/cms Software.
- * The annual fee for Support and Maintenance.

III. OWNERSHIP :

- * Title to the custom interface and the CDC License shall remain with HLP. The CDC product name, software, documentation, and other material parts of the CDC package are owned by HLP and may not be reproduced in any form, except as stated under Terms and Restrictions. CDC Software contains the proprietary technology of HLP, INC.
- * All modifications, additions, upgrades, and new versions provided for under Maintenance and Support are considered part of this title and subject to the conditions of this License.
- * Purchaser hereby acknowledges HLP's copyright of the CDC regardless of whether the copyright notice appears on the CDC or whether it has been filed with the United States Copyright Office.

IV. TERMS and RESTRICTIONS :

- * The Purchaser must hold and maintain a valid Chameleon/cms License for the term of this Agreement.
- * The Purchaser shall received and install the tables, triggers, and SQL of the CDC interface. The Purchaser may load, copy, or transmit CDC, in whole or in part, only as is necessary for execution, backup, and hot standby.
- * HLP shall bill the Purchaser a Maintenance and Support fee annually. This bill is due and payable within thirty days of the annual due date.
- * HLP reserves the right to revoke this License if the Maintenance and Support fee becomes delinquent and is not remedied in accordance with terms and conditions set forth under the agreement between the County and HLP Inc. Page 3, Section 3, "Compensation." The Purchaser shall then cease use of the CDC interface.
- * Purchaser agrees not to reverse engineer, decompile, disassemble or modify in any manner any part of the CDC interface.
- * Purchaser agrees to take all necessary steps to protect knowledge of the CDC program processes, schema, and technology that are proprietary and confidential to HLP from any and all non-licensed entities.

V. MAINTENANCE and SUPPORT

HLP agrees to provide the following services under this License:

- * **UPGRADES:** improvements in the CDC software code are included and subject to this License.
- * **DIAGNOSIS:** Technical personnel will diagnose the cause of system problems and refer the Purchaser to the appropriate avenue of correction. HLP shall correct the problem only if the cause is a bug in CDC.
- * **CORRECTIONS:** Corrections in CDC code will be available to all Purchasers through the technical support office. Corrections will be made as soon as possible after reported and prioritized as to urgency.
- * **TECHNICAL SUPPORT LINE:** This entitles the Purchaser access to a technical support person for questions of high priority. Calls are answered during business days and hours and referred to the appropriate staff person. Requests may be faxed or left on the message service when lines are busy or after hours. Evenings, weekends, and holidays are available by pre-arrangement.
- * **SYSTEM to SYSTEM:** When requested, HLP can provide the Purchaser direct support via communication software in real time.
- * **INTERNET WEB SITE:** An internet site is available 24 hours and 7 days to registered Users. Questions, suggestions, and comments may be posted to other Users or the HLP staff. Data can be uploaded and down loaded, all through a local access call.

VI. SOURCE CODE ESCROW:

- * This License does not include or cover access in any way to the CDC Source Code.
- * HLP has placed in escrow all current Source Code for CDC with an authorized escrow Agent.
- * The Purchaser shall be entitled to claim a copy of the CDC Source Code under the terms and conditions set forth in the Chameleon/CDC Source Code Escrow Agreement.

VII. LIMITED WARRANTY:

- * HLP is the sole owner of CDC and has the right to grant the Purchaser this license to use the same without violating any rights of any third party, and there is currently no actual or threatened suit by any such third party based on the alleged violation of such right by HLP.
- * HLP warrants that CDC will perform substantially in accordance with its intended use.
- * HLP does not warrant performance of CDC if it is modified by persons other than the staff of HLP.
- * HLP does not warrant that the execution of CDC will be uninterrupted or error free.
- * HLP does not warrant that other software programs or computer hardware will not interfere with its execution.
- * HLP disclaims all other warranties, either expressed or implied.

VIII. LIABILITY:

Under this agreement, HLP's liability for damages to the Purchaser resulting from the use of CDC shall not exceed the amount of the Purchaser's initial License. Under this agreement, HLP shall not be liable for any damages resulting from loss of data or use, lost profits or revenue, or any incidental or consequential damages.

IX. TERMINATION:

HLP may terminate any License granted if Purchaser fails to observe this agreement, and such condition is not remedied within thirty days after written notice has been given Purchaser. Purchaser will then destroy all copies and adaptations of all versions of CDC and the custom interface and certify in writing that such has been done.

ATTACHMENT 3

Chameleon / Public Access Software License Agreement

This is a legal and binding agreement between the Purchaser and HLP, INC. ("HLP"). The request of the Purchaser for the Chameleon / PUBLIC ACCESS Software Package ("PUBLIC ACCESS") and License, and the acceptance of payment for such by HLP, is an acceptance of the terms and conditions set forth under the agreement between the County and HLP Inc., Professional Services Agreement No. PSA-0001746. The PUBLIC ACCESS package is composed of ChamCam, Knowledge Rocket, Image Engine, WebChameleon, PaWWW, PetLink, the integrated hardware, and their media products.

I. GRANT OF LICENSE and USE :

HLP shall grant Purchaser this License for use of PUBLIC ACCESS at the time of payment. HLP grants no software licenses whatsoever, either explicitly or implicitly, except by full payment for the PUBLIC ACCESS Software. This license entitles the Purchaser the right to install PUBLIC ACCESS on a single Server unit to be used by any number of Client Workstations. Additional Clients require additional Licenses, except as stated under Terms and Restrictions. This License Agreement is with the designated Purchaser only. This Purchaser may not rent, lease, give, sell or in any way transmit any part of the PUBLIC ACCESS Software Package, or media products of this software, to an unauthorized, unlicensed entity. This is a limited, non-exclusive, non-transferable license to the use of PUBLIC ACCESS.

II. PAYMENT :

* Payment for PUBLIC ACCESS is defined as two parts:

1) Cost of initial License and 2) Support and Maintenance.

* The "Cost of initial License" is currently fixed at a published price and is a one time fee.

* The "Support and Maintenance" cost is figured by the size of the Purchaser's network, and this fee is billed monthly, quarterly, or annually. Each client workstation that uses PUBLIC ACCESS for daily operations pays the fixed fee. The total amount changes as the numbers of workstations change unless the Purchaser is paying for "unlimited" users. Annual increases shall not exceed the Consumer Price Index as set forth under the agreement between the County and HLP, Inc., Professional Services Agreement, Page 3.2, "Compensation."

* All of the above payment conditions must be met within 30 days of Invoice date in order for the Purchaser to hold a current, valid PUBLIC ACCESS License.

III. OWNERSHIP :

* Title to PUBLIC ACCESS, and the media products from it, shall remain with HLP. The PUBLIC ACCESS product name, software, documentation, media products, and other material parts of the PUBLIC ACCESS package are owned by HLP and may not be reproduced in any form, except as stated under Terms and Restrictions. PUBLIC ACCESS Software, and its media products, contains the proprietary technology of HLP, INC.

* All modifications, additions, upgrades, and new versions provided for under Support and Maintenance are considered part of this title and subject to the conditions of this License.

* Purchaser hereby acknowledges HLP's copyright of PUBLIC ACCESS regardless of whether the copyright notice appears on PUBLIC ACCESS or whether it has been filed with the United States Copyright Office.

IV. TERMS and RESTRICTIONS :

* The Purchaser shall receive a executable copy of PUBLIC ACCESS Software and integrated hardware. The Purchaser may load, copy, or transmit PUBLIC ACCESS, or its media products, in whole or in part, only as is necessary for execution, backup, and hot standby.

* Purchaser may modify or merge PUBLIC ACCESS solely for execution by itself. Any part of this Software included in such adaptations will continue to be subject to this License.

* Purchaser agrees to maintain necessary internet links to allow for a consolidated search of shelter data.

* HLP agrees to maintain a neutral, commercial free internet site for the sole purpose of achieving a consolidated search. All 'hits' are immediately linked to the local Shelter home page.

* Images and data extracts created by PUBLIC ACCESS are intended for use by the Purchaser only. Transfer or sale of PUBLIC ACCESS images by the PURCHASER to other non-licenses entities for commercial purposes is forbidden.

* HLP shall bill the Purchaser a Support & Maintenance FEE periodically using the formula under "Payment". This bill is due and payable within thirty days of receipt.

* HLP reserves the right to revoke this License if the Support & Maintenance FEE becomes delinquent and is not remedied in accordance with terms and conditions set forth under the agreement between the County and HLP Inc. Page 3, Section 3, "Compensation." The Purchaser shall then cease use of PUBLIC ACCESS.

* Purchaser agrees not to reverse engineer, decompile, or disassemble PUBLIC ACCESS.

* Purchaser agrees to protect HLP proprietary information. Information, including, but not limited to, all database schema, procedures, techniques, sounds, and images, may only be used by authorized, licensed entity.

V. MAINTENANCE :

HLP agrees to provide the following maintenance services:

* **NEW VERSIONS:** New Versions are major changes to the look or feel of PUBLIC ACCESS. All new versions are included and guaranteed to all Purchasers.

* **UPGRADES:** As requests for improvements are accumulated from more than one Purchaser, they will be incorporated into periodic upgrades. These upgrades are included and guaranteed to all Purchasers.

* **DIAGNOSIS:** Technical personnel will diagnose the cause of system problems and refer the Purchaser to the appropriate avenue of correction. HLP shall correct the problem only if the cause is a bug in PUBLIC ACCESS.

* **CORRECTIONS:** Corrections in PUBLIC ACCESS code will be available to all Purchasers through the technical support office. Corrections will be made as soon as possible after reported and prioritized as to urgency to PUBLIC ACCESS operations.

VI. SUPPORT :

HLP agrees to provide the following support services:

* **TECHNICAL SUPPORT LINE:** This shall entitle the Purchaser faster access to a technical support person for questions of high priority. Calls are answered during business days and hours and referred to the appropriate staff person. Requests may be faxed or left on the message service when lines are busy or after hours. Evenings, weekends, and holidays are available by pre-arrangement.

* **SYSTEM to SYSTEM:** When requested, HLP can provide the Purchaser direct support via modem and communication software in real time.

* **INTERNET WEB SITE:** An internet site is available 24 hours and 7 days per week to registered Users. Questions, suggestions, and comments may be posted to other Users or the HLP staff. Data can be uploaded and down loaded, all through a local access call.

* **PERSONNEL ON-SITE:** If, for any reason, HLP cannot resolve the Purchaser's request by the means of support listed above, and HLP deems the request critical, then HLP staff may visit the Purchaser's site to resolve the problem.

VII. LIMITED WARRANTY:

* HLP is the owner of PUBLIC ACCESS and has the right to grant the Purchaser this license to use the same without violating any rights of any third party, and there is currently no actual or threatened suit by any such third party based on the alleged violation of such right by HLP.

* HLP warrants that PUBLIC ACCESS will perform substantially in accordance with it's intended use.

* If PUBLIC ACCESS does not perform as represented and can not be remedied within a reasonable time, HLP will refund the initial cost of this License only.

* HLP does not warrant performance of PUBLIC ACCESS if it is modified by persons other than the staff of HLP.

* HLP does not warrant that the execution of PUBLIC ACCESS will be uninterrupted or error free.

* HLP does not warrant that other software programs or computer hardware will not interfere with it's execution.

* HLP disclaims all other warranties, either expressed or implied.

VIII. LIABILITY:

Under this agreement, HLP's liability for damages to the Purchaser resulting from the use of PUBLIC ACCESS shall not exceed the amount of the Purchaser's initial License. Under this agreement, HLP shall not be liable for any damages resulting from loss of data or use, lost profits or revenue, or any incidental or consequential damages.

IX. TERMINATION:

HLP may terminate any License granted if Purchaser fails to observe this agreement, and such condition is not remedied within thirty days after written notice has been given Purchaser. Purchaser will then destroy all copies and adaptations of all versions of PUBLIC ACCESS and certify in writing that such has been done.

ATTACHMENT 4

ESCROW AGREEMENT

This ESCROW AGREEMENT ("Agreement") is made as of this 16th day of May, 2018 by and between HLP, Inc., having its principal place of business at 9888 W. Belleview Ave. #110 Littleton, CO 80123 ("Licensor"); and Accruit, LLC ("Escrow Agent").

RECITALS

WHEREAS, Licensor from time to time grants licenses to Licensee(s) (defined below) for the use of Licensor software packages comprising of computer programs (including but not limited to Software (defined below)) and other Intellectual Property Rights (defined below);

WHEREAS, certain information and/or documentation relating to such Software or other Intellectual Property Rights are the Confidential Information (defined below) and Intellectual property of Licensor or a third party;

WHEREAS, Licensor acknowledges that, in certain circumstances, such information and/or documentation would be required by a Licensee to permit such Licensee to continue to exercise its rights under its License Agreement (defined below) with Licensor; and

WHEREAS, the parties hereto therefore agree that such Information and/or documentation should be placed with a trusted third party, Escrow Agent, so that such information and/or documentation can be released to the applicable Licensee should certain circumstances arise as further set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and agreements hereinafter set forth, the sufficiency of all such consideration being acknowledged, the parties hereto do hereby mutually agree as follows:

Recitals. The foregoing Recitals are hereby incorporated and made a part of this Agreement as if fully set forth herein.

1. Definitions and Interpretation.

1.1 In addition to terms defined elsewhere in this Agreement, the following terms used in this Agreement shall have the following meanings:

"**Agreement**" means the terms and conditions of this Escrow Agreement, including the Schedule(s) and Appendix(ces) attached hereto and incorporated herein by this reference.

"**Confidential Information**" means any information which is designated in writing as confidential by the disclosing party. Confidential Information does not include information that demonstrably (a) was in the public domain, or that subsequently becomes part of the public domain, except by the wrongful disclosure hereunder, (b) was in the receiving party's possession prior to receipt of the same hereunder and was not acquired from a third party under any obligation of confidentiality known to the receiving party with respect to such information, (c) was received from a third party who had a right to make such disclosure, or (d) is independently developed by the receiving party.

"**Deposit Account**" means an account set up by Escrow Agent upon the execution of a Registration Agreement (defined below), under which specific Escrow Material (defined below) is deposited by Licensor with Escrow Agent for the benefit of an applicable Licensee.

"**Deposit Form**" means the form within the System (defined below) of the same name, containing the detailed description of the Escrow Materials (defined below).

"**Effective Date**" means the date the Escrow Agreement was electronically executed by the Licensor.

"Escrow Material" means the Source Code (defined below) of the Software and/or other information or documentation relating to the applicable Intellectual Property Rights licensed under a License Agreement (defined below), if any, including but not limited to updates and upgrades thereto and new versions thereof, as are necessary to be delivered or deposited in order to comply with Section 3 of this Agreement.

"Electronic Execution" means to electronically execute this Agreement, the Registration Agreement, and other agreements or instructions as may be reasonably necessary for purposes of effectuating this Agreement. Electronic Execution may be inserted directly in to the System or may be accessible to Licensors via an electronic link provided by Escrow Agent. Licensors hereby grants to any person using the System on its behalf the authority to execute escrow-related documents via electronic means. Licensors is solely responsible for granting the legal authority to execute agreements on its behalf to such persons. Electronic execution of this Agreement shall only be effective, enforceable, and binding upon Escrow Agent and Licensors upon the date that Licensors applies its electronic signature to this Agreement constituting the Effective Date. To apply its electronic signature to this Agreement, Licensors or an authorized representative of Licensors must type his or her name in the box following this Agreement and submit the signature through the established online process. This Agreement shall be deemed accepted by Escrow Agent upon Licensors applying the electronic signature and submitting the Agreement as provided herein.

"Intellectual Property Rights" mean any copyright, patents, design patents, registered designs, design rights, utility models, trademarks, service marks, trade secrets, know how, database rights, moral rights, confidential information, trade or business names, domain names, and any other rights of a similar nature including industrial and proprietary rights and other similar protected rights in any country or jurisdiction together with all registrations and applications to register as well as all rights to apply for registration of any of the aforementioned rights and any licenses of or in respect of such rights.

"License Agreement" means the agreement under which an applicable Licensee is granted a license to use the Software (or other applicable Intellectual Property Rights, if any).

"Licensee" means any person, firm, company or other entity that: (i) licenses Software (or other applicable Intellectual Property Rights, if any) from Licensors; and (ii) has agreed to be bound by the terms and conditions of this Agreement and a Registration Agreement by executing a completed Registration Agreement (defined below), submitted electronically via the System. References in this Agreement to Licensee shall be to the relevant Licensee or Licensees given the context in which such reference is made.

"Licensor" means the above-referenced person, firm, company or other entity that has granted to Licensee(s) a license to use the Software (or other applicable Intellectual Property Rights, if any).

"Registration Agreement" means an agreement in the form attached and incorporated hereto as Appendix 1 to be signed via the System by Licensors, Escrow Agent and the person, firm, company or other entity wishing to be a party to this Agreement as a Licensee and, accordingly, to take the benefit of and be bound by the terms and conditions of this Agreement, including but not limited to the payment obligations set forth in the Registration Agreement.

"Release Purposes" means the purposes of using, understanding, maintaining, modifying or correcting the Software (or other applicable Intellectual Property Rights, if any) as applicable, exclusively for and on behalf of Licensee and solely as permitted under the License Agreement.

"Software" means the software, together with any updates and upgrades thereto and new versions thereof, licensed to Licensee under the License Agreement, the details of which are set out in the Registration Agreement.

"Source Code" means the computer programming code of the Software in human readable form.

"System" means the online Accruit Digital Vault, associated applications, servers and related hosting platforms.

"Verification" means the System shall acknowledge updates and changes when Escrow Material has been deposited in the Deposit Account.

- 1.2 This Agreement shall be interpreted in accordance with the following:
 - 1.2.1 headings are for ease of reference only and shall not be taken into consideration in the interpretation of this Agreement;
 - 1.2.2 all references to Sections and Schedules are references to Sections and Schedules of this Agreement; and
 - 1.2.3 all references to a party or parties are references to a party or parties to this Agreement.

2 Deposit Accounts.

- 2.1 Each time Licensor adds or updates Escrow Material deposited under the terms of this Agreement, Licensor, the applicable Licensee and Escrow Agent shall receive electronic notification from the System containing the details of the Escrow Material deposited in accordance with the obligations contained in Section 3.
- 2.2 Each signed Registration Agreement shall be supplemental to, and be governed by, the terms of this Agreement.
- 2.3 For the avoidance of doubt, if the Escrow Material to be deposited is an update to, or development of, Escrow Material already deposited under an existing Deposit Account, the deposit of such Escrow Material shall not require a new Deposit Account and shall be deposited under the relevant existing Deposit Account.

3 Licensor's Duties and Warranties.

- 3.1 Licensor shall:
 - 3.1.1 Log in to the System within fourteen (14) days following the date Escrow Agent setup the Deposit Account and electronically sign the Escrow Agreement;
 - 3.1.2 Deposit Escrow Material following a material update, error correction, enhancement, maintenance release or functional modification to the Software (or other applicable Intellectual Property Rights, if any) which results in an updated delivery of the object code version of the Software (or other applicable Intellectual Property Rights, if any) to Licensee;
 - 3.1.3 Ensure that each copy of the Escrow Material deposited with Escrow Agent comprises the Source Code of the latest version of the Software, or comprises the latest version of the relevant information/documentation relating to any other applicable Intellectual Property Rights, if any, used by the applicable Licensee under the License Agreement;
 - 3.1.4 Deliver with each deposit of Escrow Material a Deposit Form which includes the following information (where applicable):
 - 3.1.4.1 details of such deposit including the full name of the Software, version details, backup commands/Software used, compression used, archive hardware and operating system details; and
 - 3.1.4.2 password/encryption details required to access the Escrow Material.

- 3.1.5 Deliver with each deposit of Escrow Material the following technical information (where applicable):
 - 3.1.5.1 documentation describing the procedures for building, compiling and installing the Software, including names and versions of the development tools;
 - 3.1.5.2 software (or other applicable Intellectual Property Rights, if any) design information (e.g. module names and functionality); and
 - 3.1.5.3 name and contact information of employees with knowledge of how to maintain and support the Escrow Material.
- 3.1.6 Deposit a detailed list of the suppliers of any third-party software or tools required to access, install, build or compile or otherwise use the Escrow Material, where applicable.
- 3.2 Licensor represents and warrants to both Escrow Agent and Licensee at the time of each deposit of the Escrow Material with Escrow Agent that:
 - 3.2.1 Licensor has the full right, ability and authority to deposit the Escrow Material;
 - 3.2.2 In entering into this Agreement and any Registration Agreement and performing Licensor's obligations thereunder, Licensor is not in breach of any of its ongoing express or implied obligations to any third party(ies);
 - 3.2.3 The Escrow Material deposited under Section 3.1 contains all information in human-readable form, and is on suitable media, to enable a reasonably skilled programmer or analyst to (as applicable) use, understand, maintain, modify and correct the Software (or other applicable Intellectual Property Rights, if any); and
 - 3.2.4 The Escrow Material shall consist of lawful content only as defined under all applicable federal, state and local laws. Escrow Agent shall be under no duty to verify the foregoing.
- 3.3 Escrow Agent via System will acknowledge receipt of all Escrow Material deposits by sending electronic acknowledgment thereof to Licensor and Licensee.

4 Licensee's Responsibilities and Undertakings:

- 4.1 In the event that Escrow Material is released under Section 7, Licensee shall:
 - 4.1.1 Keep the Escrow Material confidential at all times in accordance with Section 9 hereof and the applicable terms of the License Agreement;
 - 4.1.2 Use the Escrow Material only for the Release Purposes;
 - 4.1.3 Not disclose the Escrow Material to any person other than such of Licensee's employees or contractors who need to know the same for the Release Purposes. In the event that Escrow Material is disclosed to Licensee's employees or contractors, Licensee shall ensure that they are bound by the same confidentiality obligations as are contained in this Section 4.1;
 - 4.1.4 Hold the Escrow Material in a safe and secure environment when not in use; and
 - 4.1.5 Forthwith destroy the Escrow Material should Licensee cease to be entitled to use the Software (or other applicable Intellectual Property Rights, if any) under the terms of the applicable License Agreement.

5 Escrow Agent's Duties:

- 5.1 Escrow Agent Shall:
 - 5.1.1 At all times during the term of this Agreement, use commercially reasonable efforts (consistent with reasonable industry standards) to maintain the Escrow Material in a safe and secure environment;
 - 5.1.2 Notify the relevant Licensee and Licensor of the acceptance of any Registration Agreement; and
 - 5.1.3 Inform Licensor and the relevant Licensee of Escrow Agent's receipt of any deposit of Escrow Material by sending electronic notice via the System to each of Licensor and Licensee to access and view the Escrow Material.

- 5.2 In the event of failure by Licensor to deposit any applicable Escrow Material with Escrow Agent, Escrow Agent shall not be responsible for procuring such deposit and may, at its sole discretion, notify Licensor and Licensee of Licensor's failure to deposit any Escrow Material.
- 5.3 Escrow Agent shall not have any obligation to determine whether the materials made with each deposit of the Escrow Material by Licensor are in compliance with Licensor's obligations hereunder or pursuant to the applicable License Agreement. Escrow Agent may appoint agents, contractors or sub-contractors as it deems fit to store and secure the applicable Escrow Material deposit. Escrow Agent shall ensure that any such agents, contractors and sub-contractors are bound by the same confidentiality obligations as are contained in Section 9.
- 5.4 Escrow Agent has the right to make such copies of the Escrow Material as may be necessary solely for the purposes of this Agreement.
- 5.5 ESCROW AGENT SHALL PROVIDE THE ESCROW MATERIAL IN ACCORDANCE WITH THE TERMS AND CONDITIONS HEREUNDER WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY (INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE), AS TO ITS ACCURACY OR COMPLETENESS. THE PARTIES AGREE THAT NEITHER ESCROW AGENT, NOR ITS RESPECTIVE REPRESENTATIVES, SHALL HAVE ANY LIABILITY WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF ANY ESCROW MATERIAL PRODUCED HEREUNDER.

6 Payment.

- 6.1 Licensor shall promptly pay Escrow Agent's fees and charges, unless otherwise provided for hereunder, that are in effect from time to time and/or as otherwise agreed.
- 6.2 If Escrow Agent is required to perform any additional services as a result of being an Escrow Agent hereunder for purposes of effectuating the intent of the parties under this Agreement, including, without limitation, intervention in any litigation or proceeding, Escrow Agent shall be entitled to receive reasonable compensation for such services, and be reimbursed for all costs incurred in connection therewith, including but not limited to reasonable attorneys' fees.
- 6.3 Escrow Agent shall be entitled to review and adjust its standard fees and charges for its services under this Agreement from time to time, but only upon thirty (30) days prior written notice by Escrow Agent to Licensor.
- 6.4 All Escrow Agent invoices issued hereunder are payable by the applicable party within thirty (30) days from the date of invoice. If invoices are not paid within thirty (30) days from the date of invoice, then interest shall accrue at the lesser of 1.5% per month or the maximum amount permitted by applicable law for any fees that are outstanding and remain unpaid for more than thirty (30) days past the due date of the applicable invoice. The paying party agrees to reimburse Escrow Agent for all fees and costs incurred in connection with any collection efforts, including but not limited to reasonable attorneys' fees. Access to upload or modify the deposit in the System will be locked until payment in addition to any applicable interest thereon is received.
- 6.5 In the event of a dispute made in good faith as to the amount of fees or other charges due and owing, the party responsible for payment agrees to remit payment on any undisputed amount(s) in accordance with the terms of this Section 6.
- 6.6 Escrow Agent shall have no obligations under this Agreement unless and until the applicable initial invoice has been paid in full.

7 Release Events and Procedures.

- 7.1 Subject to: (i) the remaining provisions of this Section 7; and (ii) the receipt by Escrow Agent of the fees chargeable upon a release of Escrow Material and any other fees and interest (if any) outstanding under this Agreement, Escrow Agent shall release the relevant Escrow Material to a duly authorized representative of the applicable Licensee upon written notice as set forth in Section 7.2 if any of the events listed in Section 5 of the relevant Registration Agreement ("Release Event(s)") occur.

- 7.2 Licensee must notify Escrow Agent in writing of the occurrence of the relevant Release Event(s) specified in the applicable Registration Agreement by delivering to Escrow Agent a notice in writing or via the System ("Notice") declaring that such Release Event(s) has occurred, specifying the Deposit Account(s) so affected, setting out the facts and circumstances of the Release Event, indicating that the relevant License Agreement and any maintenance agreement, if applicable, for the Software (or other applicable Intellectual Property Rights, if any) was still valid and effective up to the occurrence of such Release Event, and otherwise providing such information or other documentary evidence in support of the Notice as Escrow Agent may reasonably require.
- 7.3 Upon receipt of a Notice from an applicable Licensee claiming that a Release Event has occurred:
- 7.3.1 Escrow Agent shall submit a copy of the Notice to Licenser (with a copy to such Licensee in order to acknowledge receipt of the Notice) by courier, electronic means, or the System, and the deposit account will be locked and not available to upload or modify the Escrow Material deposited in the Deposit Account.
- 7.3.2 Unless, within fourteen (14) days after the date of submission of the Notice from Escrow Agent, Escrow Agent receives a counter-notice in writing or via System from Licenser stating that no such Release Event has occurred or, if appropriate, that the event(s) or circumstance(s) giving rise to such Release Event has been rectified as shown by documentation in support thereof, Escrow Agent may release the Escrow Material to such Licensee for its use for the Release Purposes.
- 7.4 Upon receipt of a counter-notice from Licenser as contemplated by Section 7.3.2, Escrow Agent shall send a copy of such counter-notice and any supporting evidence to the applicable Licensee (with a copy to Licenser in order to acknowledge receipt of the counter-notice) by courier, electronic means, or the System.
- 7.5 Within ninety (90) days of submission of any such counter-notice by Escrow Agent, the applicable Licensee may give notice to Escrow Agent that such Licensee elects to invoke the dispute resolution procedure under Section 8.
- 7.6 If, within ninety (90) days of submission of any such counter-notice by Escrow Agent to the applicable Licensee, Escrow Agent has not been informed by such Licensee that it elects to invoke the dispute resolution procedure under Section 8, the original Notice submitted by such Licensee shall be deemed to be no longer valid and such Licensee shall be deemed to have waived its right to release of the Escrow Material for the particular Release Event(s) specified in such Notice. In such circumstances, this Agreement shall continue in full force and effect.

8 Disputes:

- 8.1 Upon receipt of an applicable Licensee's Notice requesting dispute resolution pursuant to Section 7.5 above, Escrow Agent shall notify Licenser of such Licensee's request for dispute resolution. Licenser and such Licensee shall submit their dispute to expedited binding arbitration in Denver County, Colorado under Commercial Arbitration Rules of the American Arbitration Association ("AAA") by one arbitrator appointed by such rules. The decision of the arbitrator shall be final and binding upon the parties and enforceable in any court of competent jurisdiction, and a copy of such decision shall be delivered immediately to Licenser, such Licensee and Escrow Agent. The parties shall use their commercially reasonable best efforts to commence the arbitration proceedings within fourteen (14) days following delivery of the counter-notice. The parties hereby agree that the sole issue to be determined by the arbitrator shall be whether a Release Event existed at the time such Licensee delivered the applicable Notice to Escrow Agent.

- 8.2 If the arbitrator finds that a Release Event existed at the time of delivery of such Notice to Escrow Agent, Escrow Agent is hereby authorized to release and deliver the Escrow Material to such Licensee within five (5) business days of delivery of the ruling by the arbitrator or the AAA case manager to the parties. If the arbitrator finds to the contrary, then Escrow Agent shall not release the Escrow Material and shall continue to hold the same in accordance with the terms of this Agreement.
- 8.3 The parties hereby agree that all costs and expenses of the arbitrator, the reasonable attorneys' fees and costs incurred by the prevailing party in the arbitration, and any fees and costs incurred by Escrow Agent in the arbitration, shall be paid by either Licensor or Licensee, whichever is the non-prevailing party.

9 Confidentiality.

- 9.1 The receiving party shall (a) keep the Confidential Information of the disclosing party in confidence exercising the degree of care used to protect its own confidential information, but in any event using reasonable efforts, including by only disclosing Confidential Information of the disclosing party to employees and consultants who have a "need to know" and who are bound by contractual, legal or fiduciary confidentiality obligations at least as stringent as those set forth herein, (b) other than in accordance with the terms of this Agreement (or as reasonably required to enforce its rights under this Agreement), not use (except for the purpose of performance under this Agreement or as requested or directed by the disclosing party), publish or disclose to third parties the disclosing party's Confidential Information without the disclosing party's prior written consent, and (c) subject to Escrow Agent's obligation to maintain the deposited Escrow Materials in accordance with the terms hereof, upon the request of the disclosing party, promptly return to the disclosing party or destroy all written copies of the disclosing party's Confidential Information.
- 9.2 Except as otherwise set forth herein, if a receiving party is compelled to produce Confidential Information of the disclosing party under applicable law, the receiving party shall give the disclosing party prompt notice of such legal process and shall reasonably cooperate with the disclosing party in seeking a protective order or other appropriate protection. If a protective order or other appropriate protection is not obtained, or if the disclosing party waives its right to seek a protective order or other appropriate protection, the receiving party shall (a) furnish only that portion of the Confidential Information that, upon the advice of legal counsel, it is legally required to disclose, and (b) exercise reasonable efforts to obtain assurance that confidential treatment shall be afforded such Confidential Information.
- 9.3 Notwithstanding anything herein to the contrary, (a) Escrow Agent may, without liability hereunder or under other applicable law, release the Escrow Material (and/or any Confidential Information related thereto) to the extent is required by applicable federal, state or local law, regulation, court order, judgment, decree or other legal process, provided that Escrow Agent has notified Licensor and the relevant Licensee prior to such required release, has given Licensor and/or such Licensee an opportunity to contest (at its own expense) such required release, within the time parameters mandated by such applicable regulation, court order, judgment, decree or other legal process; (b) Escrow Agent is hereby expressly authorized in its sole discretion to obey and comply with all orders, judgments, decrees so entered or issued by any court or tribunal, without the necessity of inquiring as to the validity of such order, judgment or decree, or the court's underlying jurisdiction; and (c) where Escrow Agent obeys or complies with any such order, judgment or decree, Escrow Agent shall not be liable to such Licensee, Licensor or any third party by reason of such compliance, notwithstanding that such order, judgment or decree may subsequently be reversed, modified or vacated.

10 Verification.

- 10.1 It shall be solely Licensor's obligation and responsibility to ensure the existence, relevance, completeness, accuracy, operation, effectiveness, functionality or any other aspect of Escrow Material received by Escrow Agent under this Agreement.

- 10.2 At such time as Escrow Material has been deposited, the System will provide notification and access to the files and instructions to Licensor and the applicable Licensee.
- 10.3 Any party to this Agreement shall be entitled to access the System and review a list of the relevant Escrow Material deposited subject to the terms and conditions set forth herein.

11 Limitation of Liability.

- 11.1 NOTHING IN THIS SECTION 11 EXCLUDES OR LIMITS THE LIABILITY OF ESCROW AGENT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
- 11.2 ESCROW AGENT SHALL NOT BE LIABLE FOR
 - 11.2.1 ANY LOSS OR DAMAGE CAUSED TO EITHER LICENSOR OR A LICENSEE EXCEPT TO THE EXTENT THAT SUCH LOSS OR DAMAGE IS PROXIMATELY CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF, OR A BREACH OF ANY MATERIAL TERM OR OBLIGATION UNDER THIS AGREEMENT BY, ESCROW AGENT IN CONNECTION WITH THIS AGREEMENT, AND IN SUCH EVENT ESCROW AGENT'S TOTAL LIABILITY WITH REGARD TO ALL CLAIMS ARISING UNDER OR BY VIRTUE OF THIS AGREEMENT OR IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THIS AGREEMENT, SHALL NOT EXCEED THE AMOUNT OF FEES PAID TO ESCROW AGENT FOR THE PRECEDING 12 MONTHS; OR
 - 11.2.2 ANY PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOST PROFITS).
- 11.3 ESCROW AGENT SHALL NOT BE RESPONSIBLE IN ANY MANNER WHATSOEVER FOR ANY FAILURE OR INABILITY OF LICENSOR OR A LICENSEE TO PERFORM OR COMPLY WITH ANY PROVISION OF THIS AGREEMENT.
- 11.4 ESCROW AGENT SHALL NOT BE LIABLE IN ANY WAY TO LICENSOR OR ANY LICENSEE FOR ACTING IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT AND SPECIFICALLY (WITHOUT LIMITATION) FOR ACTING IN GOOD FAITH UPON ANY NOTICE, WRITTEN REQUEST, WAIVER, CONSENT, RECEIPT, STATUTORY DECLARATION OR ANY OTHER DOCUMENT FURNISHED TO IT PURSUANT TO AND IN ACCORDANCE WITH THIS AGREEMENT.
- 11.5 ESCROW AGENT SHALL NOT BE REQUIRED TO MAKE ANY INVESTIGATION INTO, AND SHALL BE ENTITLED IN GOOD FAITH WITHOUT INCURRING ANY LIABILITY TO LICENSOR OR LICENSEE TO ASSUME (WITHOUT REQUESTING EVIDENCE THEREOF), THE VALIDITY, AUTHENTICITY, VERACITY AND DUE AND AUTHORIZED EXECUTION OF ANY DOCUMENTS, WRITTEN REQUESTS, WAIVERS, CONSENTS, RECEIPTS, STATUTORY DECLARATIONS OR NOTICES RECEIVED BY ESCROW AGENT WITH RESPECT TO THIS AGREEMENT.

12 Indemnity.

- 12.1 Licensor agrees to defend, indemnify and hold harmless Escrow Agent, its affiliates, members, managers, employees, representatives, contractors, agents, attorneys, accountants, successors and assigns, from and against any claims, demands, suits or other proceedings, actions, losses, costs, liabilities or expenses (including but not limited to reasonable attorneys' fees) which may be imposed on, or incurred by or asserted against the same, in any way arising out of or relating to this Agreement, including, without limitation:
 - 12.1.1 Any written or electronic direction, including but not limited to submissions through the System, from Licensor to Escrow Agent which Escrow Agent subsequently acts upon in connection with this Agreement;
 - 12.1.2 Any negligence or willful misconduct of Licensor, or its employees, agents, contractors or subcontractors in connection with this Agreement;
 - 12.1.3 Any breach, violation or non-performance by Licensor, or its employees, agents, contractors or subcontractors, of any term, covenant or provision of this Agreement, or any laws, rules and regulations of any kind governing Licensor with respect to its performance under this Agreement; or

- 12.1.4 Any claim for alleged or actual infringement of Intellectual Property Rights arising out of or in connection with the Escrow Material, provided that Licensor shall not be liable for that portion of any such indemnification amount to the extent resulting from Escrow Agent's gross negligence or wilful misconduct in connection with this Agreement.
- 12.2 Licensee agrees to defend, indemnify and hold harmless Escrow Agent, its affiliates, members, managers, employees, representatives, contractors, agents, attorneys, accountants, successors and assigns, from and against any claims, demands, suits or other proceedings, actions, losses, costs, liabilities or expenses (including but not limited to reasonable attorneys' fees) which may be imposed on, or incurred by or asserted against the same, in any way arising out of or relating to this Agreement, including, without limitation:
- 12.2.1 Any written or electronic direction, including submissions through the System, from such Licensee to Escrow Agent which Escrow Agent subsequently acts upon in connection with this Agreement;
- 12.2.2 Any negligence or willful misconduct of such Licensee, or its employees, agents, contractors or subcontractors in connection with this Agreement;
- 12.2.3 Any breach, violation or non-performance by such Licensee, or its employees, agents, contractors or subcontractors, of any term, covenant or provision of this Agreement, or any laws, rules and regulations of any kind governing such Licensee with respect to its performance under this Agreement, provided that such Licensee shall not be liable for that portion of any such indemnification amount to the extent resulting from Escrow Agent's gross negligence or intentional misconduct in connection with this Agreement; or
- 12.2.4 Any claim for alleged or actual infringement of Intellectual Property Rights arising out of or in connection with the such Licensee's use of the Escrow Material, provided that Licensee shall not be liable for that portion of any such indemnification amount to the extent resulting from Escrow Agent's gross negligence or intentional misconduct in connection with this Agreement.

13 Term and Termination.

- 13.1 This Agreement shall continue in full force and effect until terminated in accordance with this Section 13 or failure to pay in accordance with Section 6.
- 13.2 If Licensor fails to pay an invoice addressed to it for Escrow Agent's services under this Agreement within thirty (30) days of its issue, Escrow Agent shall provide Licensor, with a copy to Licensee, written notice/demand to pay the outstanding invoice within thirty (30) days and prevent the Licensor from updating the deposit account until such payment is received. If Licensor has not paid its invoice by the expiration of the thirty (30) day notice period, Escrow Agent shall have the right to terminate this Agreement or the registration of Licensee (as appropriate) without further notice. In any such event, Licensee shall have the right to pay a Release Fee pursuant to Section 6 of the Registration Agreement in order to receive immediate distribution of the Escrow Material.

- 13.3 Notwithstanding any other provision of this Section 13, Escrow Agent may resign as Escrow Agent hereunder and terminate this Agreement by giving sixty (60) day prior written notice to Licenser and the applicable Licensee(s). In the event that this Agreement is terminated in its entirety, Licenser and such Licensee(s) shall appoint a mutually acceptable successor escrow agent on similar terms and conditions to those contained herein. If a successor escrow agent is not appointed within fourteen (14) days of delivery of such notice, Licenser or such Licensee(s) shall be entitled to request that the AAA appoint a suitable successor escrow agent upon terms and conditions consistent with those set forth in this Agreement. Such appointment shall be final and binding on Licenser and such Licensee(s). If Escrow Agent is notified of the successor escrow agent within such notice period, Escrow Agent agrees to provide access to the System solely for purposes of retrieving the Escrow Material. If Escrow Agent is not notified of the successor escrow agent within such notice period and this Agreement has been terminated in its entirety, Escrow Agent, may delete the electronically deposited Escrow Material.
- 13.4 Licensee may terminate their Registration Agreement after thirty (30) days prior written notice to the Licenser and Escrow Agent via the System. After thirty (30) days has elapsed as set forth in this Section 13.4, the Licensee access to the System and deposit will be removed by the Licenser.
- 13.5 Subject to the terms of this Agreement, Licenser may terminate its interests under this Agreement only upon thirty (30) day prior written notice via System notification to Licensee. Upon expiration of aforesaid thirty (30) day period set forth in this Section 13.5, Escrow Agent shall have no further duties or responsibilities to Licenser or Licensee. Nothing hereunder shall be deemed to affect other termination provisions between Licenser and Licensee, if any, pursuant to other agreements between the Licenser and Licensee.
- 13.6 If the License Agreement with an applicable Licensee has expired or has been lawfully terminated, then Licenser shall provide notice to Escrow Agent thereof to terminate such Licensee's interest under this Agreement, failing which, such Licensee shall be entitled to give written notice to Escrow Agent to terminate such Licensee's interests under this Agreement. Upon receipt of such written notice from either Licenser or Licensee, Escrow Agent shall provide System notification to notify the other party of the notice to terminate. Unless within thirty (30) days of Escrow Agent giving such notice to Licenser and such Licensee, Escrow Agent receives a counter-notice from either party disputing the termination of the License Agreement, then both parties shall be deemed to have consented to such termination and such Licensee's rights under this Agreement shall immediately automatically terminate. Any disputes arising under this Section adjudicated with in accordance with the dispute resolution procedures set forth in Section 8. Upon termination of the applicable License Agreement under this Section, Escrow Agent shall destroy any and all Escrow Material.
- 13.7 This Agreement shall immediately terminate in respect of an applicable Licensee upon release of the relevant Escrow Material to such Licensee in accordance with Section 7.
- 13.8 The termination of this Agreement in respect of a Licensee shall be without prejudice to the continuation of this Agreement in respect of any other Licensees.
- 13.9 If any termination of a Licensee's interests under this Agreement result in there being no Licensees registered under this Agreement, unless otherwise instructed by Licenser, this Agreement will continue and the Escrow Material shall be retained by Escrow Agent pending registration of other Licensees.
- 13.10 The following Sections shall survive the expiration or termination of this Agreement, including without limitation, Sections 6 (Payment), 9 (Confidentiality), 11 (Limitation of Liability) and 12 (Indemnity).
- 13.11 On and after termination of this Agreement, Licenser and/or the applicable Licensee(s) (as appropriate) shall remain liable to Escrow Agent for payment in full of any fees, costs, and interest which are due and owing under this Agreement but which have not been paid as of the date of termination.

- 13.12 The termination of this Agreement, however arising, shall be without prejudice to the rights accrued to the parties prior to termination.

14 General

- 14.1 Each of Licensor and Licensee represent, warrant, and covenant to Escrow Agent that: (a) it is an entity duly incorporated or organized, validly existing, and in good standing in the jurisdiction of its organization/incorporation; (b) it has all requisite power and authority to execute, deliver, and perform its obligations under this Agreement; (c) the execution and performance of this Agreement will not violate or constitute a breach of any agreement binding upon such party; (d) it shall comply with all applicable federal, state and local laws in connection with this Agreement; and (e) it has not made, and shall not make, any assignments, grants, licenses, encumbrances, obligations, or agreements, whether written, oral, or implied, inconsistent with its obligations under this Agreement.
- 14.2 Licensor and the applicable Licensee(s) are responsible for notifying Escrow Agent and each other in writing, within thirty (30) days of its occurrence, of any of the following:
- 14.2.1 a change of its name, principal office, contact address or other contact details; and
- 14.2.2 any material change in its circumstances that may affect the validity, operation or performance under this Agreement.
- 14.3 This Agreement shall be governed by and construed according to the internal laws of the State of Colorado, other than such laws, rules, regulations, and case law that would result in the application of the laws of a jurisdiction other than the State of Colorado. Subject to Section 8 (Disputes), any dispute arising under this Agreement will be resolved in the state or federal courts in Denver County, Colorado as the sole and exclusive forum and venue for any and all actions relating to the enforcement of either party's rights under this Agreement. The parties hereby expressly consent to the personal jurisdiction thereof and waive any objections which they may have to the conduct of any proceedings in any such court whether based upon improper venue, forum non conveniens or otherwise. THE PARTIES HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT.
- 14.4 This Agreement together with, in respect of each Licensee, the applicable Registration Agreement(s), represents the whole agreement relating to its subject matter and shall supersede all prior agreements, discussions, arrangements, representations, negotiations and undertakings.
- 14.5 All notices, consents and other communications that are required or permitted to be given to the parties under this Agreement shall be sufficient in all respects if given by System or in writing, delivered in person, by overnight courier, or by certified mail, postage prepaid, return receipt requested, facsimile transmission, or electronic mail to the receiving party at the addresses set forth herein (or the applicable Registration Agreement), or to such other address as such party may have given to the other by notice pursuant to this Section. Notice shall be deemed given on the date of delivery, in the case of personal delivery, or on the delivery or refusal date, as specified on the return receipt in the case of certified mail or on the tracking report in the case of overnight courier, or when sent, with proof of transmission in the case of facsimile transmission, or on the date notification is sent via the System. If either party changes its address, it must provide notice to the other party within ten (10) days of such move. If a party fails to give the other party such notice, notice provided to the address above shall be deemed proper.

- 14.6 Neither Licensor nor Licensee may assign this Agreement or delegate its performance under this Agreement to any third party without obtaining the Escrow Agent's prior consent (such consent not to be unreasonably withheld). Subject to the prior written consent of Escrow Agent which may not be unreasonably withheld, either Licensor or Licensee may assign this Agreement in its entirety to any successor entity in the event of such party's transfer of all or substantially all of its assets or stock, merger, spin-off, consolidation, reorganization or other business combination or change of control provided that the assigning party provides written notice thereof to Escrow Agent and the assignee shall agree to assume all terms, conditions and obligations of this Agreement in writing in form and substance reasonably satisfactory to Escrow Agent. Any purported assignment of rights in violation of this Section shall be void. Escrow Agent shall be entitled to freely transfer or assign this Agreement. This Agreement shall be binding upon and survive for the benefit of the successors in title and permitted assigns of the parties.
- 14.7 If any provision of this Agreement is declared too broad in any respect to permit enforcement to its full extent, the parties agree that such provision shall be enforced to the maximum extent permitted by law and that such provision shall be deemed to be varied accordingly. If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, or unenforceable, it shall, to the extent of such illegality, invalidity or unenforceability, be deemed severable and the remaining part of the provision and the rest of the provisions of this Agreement shall continue in full force and effect. This Agreement shall not be deemed to have been drafted by either party and shall not be construed, interpreted or enforced more strictly against any one party and in favor of another party.
- 14.8 No amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorized representative of each of the parties to it. This Agreement shall be considered an agreement supplementary (together with any modification, supplement, or replacement thereof agreed to by Escrow Agent, the applicable Licensee and Licensor) to the License Agreement pursuant to Title 11 United States Bankruptcy Code Section 365(n).
- 14.9 The parties shall not be liable to each other or be deemed to be in breach of this Agreement by reason of any delay in performing, or failure to perform, any of their obligations under this Agreement if the delay or failure was for a reason beyond that party's reasonable control (including, without limitation, fire, flood, explosion, epidemic, riot, civil commotion, any strike, lockout or other industrial action, act of God, war or warlike hostilities or threat of war, terrorist activities, accidental or malicious damage, or any prohibition or restriction by any governments or other legal authority which affects this Agreement and which is not in force on the date of this Agreement). A party claiming to be unable to perform its obligations under this Agreement (either on time or at all) in any of the circumstances set out above must notify the other parties of the nature and extent of the circumstances in question as soon as practicable. If such circumstances continue for more than six (6) months, any of the other parties shall be entitled to terminate this Agreement by giving thirty (30) day prior written notice of same.
- 14.10 All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by a party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or later be available at law, in equity, by statute, in any other agreement between the parties or otherwise. No waiver by any party of any breach of any provisions of this Agreement shall be deemed to be a waiver of any subsequent or other breach and no failure to exercise or delay in exercising any right or remedy under this Agreement shall constitute a waiver thereof.
- 14.11 Nothing expressed or referred to in this Agreement will be construed to give any person or entity other than the parties to this Agreement any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision hereof, except such rights as shall inure to an indemnified party hereunder or to a successor in interest or permitted assignee pursuant to the terms hereof.

- 14.12 If Escrow Agent shall commence any action or proceeding against another party in order to enforce the provisions of this Agreement or to recover damages as a result of the alleged breach of any of the provisions of this Agreement, Escrow Agent shall be entitled to recover all reasonable costs in connection therewith, including but not limited to reasonable attorneys' fees.
- 14.13 This Agreement may be executed via electronic means in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.
- 14.14 The parties are independent contractors and nothing contained in this Agreement shall be construed to create or constitute a partnership, joint venture, or employment relationship between the parties.
- 14.15 Unless a clear contrary intention appears, as used herein (a) the singular includes the plural and vice versa, (b) reference to any document or laws means such document and laws as amended from time to time, (c) "include" or "including" means including without limiting the generality of any description preceding such term, (d) the word "or" is not exclusive, unless otherwise expressly stated, (e) the terms "hereof," "herein," "hereby," and derivative or similar words refer to this entire Agreement including the Exhibits attached hereto and incorporated herein by this reference, as the same may be amended from time to time, (f) headings are for convenience only and do not constitute a part of this Agreement, and (g) all references to money shall be in United States dollars.

IN WITNESS WHEREOF, the undersigned Licensor and Escrow Agent named below have caused this Agreement to be effectuated as of the day and year first above written.

LICENSOR:

Name: Keith Brakey, electronically signed on Wednesday, May 16, 2018 12:08:35 PM
Title: Director of Finance
Company: HLP, Inc.

9888 W. Bellevue Ave. #110
Littleton, CO 80123
Phone: (800) 459-8376
Email: accounting@chameleonbeach.com

ESCROW AGENT:

Without actual written signature, this Agreement shall be deemed signed by the Escrow Agent upon Licensor's signature hereon

Accruit, LLC
1331 17th Street, Suite 1250
Denver, CO 80202
Phone: (866) 397-1031
Email: DigitalVault@accruit.com

APPENDIX 1
REGISTRATION AGREEMENT

THIS REGISTRATION AGREEMENT MUST BE DULY SIGNED BY AUTHORIZED SIGNATORIES ON BEHALF OF EACH PARTY BEFORE DEPOSIT ACCOUNT SHALL BE IN FORCE AND EFFECT.

Registration Agreement between:

- (1) HLP, Inc. whose principal office is at 9888 W. Belleview Ave. #110 Littleton, CO 80123 ("Licensor");
- (2) Accruit, LLC ("Escrow Agent"); and
- (3) Parties to be assigned by Licensor ("Licensee")

The aforementioned parties hereby agree:

1. This Registration Agreement ("Registration Agreement") is supplemental to the terms and conditions of the Escrow Agreement number 000001015 dated May 16th, 2018 ("Escrow Agreement") between Licensor and Escrow Agent, as may be amended from time to time.
2. This Registration Agreement, the Escrow Agreement and any custom terms provided for in Appendix 2 to the Escrow Agreement together shall form a binding agreement between Licensee, Escrow Agent and Licensor in accordance with the terms of the Escrow Agreement.
3. Licensee hereby agrees to take the benefit of, agrees and undertakes to perform its obligations under and be bound by the terms and conditions of the Escrow Agreement as though they were a party to the Escrow Agreement and named therein as a Licensee. The Escrow Agreement is hereby incorporated herein by reference.
4. Licensor agrees to deposit Escrow Material relating to the Software or other applicable Intellectual Property Rights (if any) per the terms of the Escrow Agreement and any applicable License Agreement between the parties.
5. Escrow Agent will set up a Deposit Account for the Software (or other applicable Intellectual Property Rights, if any) and any Escrow Material deposited. Updates to the Escrow Material already deposited under an existing Deposit Account shall not require a new Deposit Account and shall be deposited under the relevant existing Deposit Account.
6. The Release Events for the subject agreement between Licensor and Licensee are as follows:
 - 6.1 A receiver, trustee, or similar officer is appointed for the business or property of Licensor;
 - 6.2 Licensor files a petition in bankruptcy, files a petition seeking any reorganization (without confirming immediately in writing to Licensee that it will continue to maintain the Software (or other applicable Intellectual Property Rights, if any) in accordance with the terms of the License Agreement or any applicable maintenance agreement), makes an arrangement, composition, or similar relief under any law regarding insolvency or relief for debtors, or makes an assignment for the benefit of creditors;
 - 6.3 Any involuntary petition or proceeding under bankruptcy or insolvency laws is instituted against Licensor and not stayed, enjoined, or discharged within 60 days;
 - 6.4 Licensor takes any corporate action authorizing any of the foregoing;
 - 6.5 Any similar or analogous proceedings or event to those in Sections 5.1 through 5.3 above occurs in respect of Licensor within any jurisdiction outside the USA;
 - 6.6 Licensor ceases to carry on its business or the part of its business which relates to the Software (or other applicable Intellectual Property Rights, if any);
 - 6.7 Licensor or, where relevant, its agent, parent, subsidiary or associated company is in material breach of its obligations as to maintenance or modification of the Software (or other applicable Intellectual Property Rights, if any) under the License Agreement or any maintenance agreement entered into in connection with the Software (or other applicable Intellectual Property Rights, if any) and has failed to remedy such default notified by Licensee to Licensor within a reasonable period; or
 - 6.8 Any other matter that may constitute a Release Event as may be agreed to in writing by the Licensor and Licensee.

7. Licensor shall be solely responsible for all Escrow related fees, per Escrow Agent's fee schedule, which fees are subject to change with thirty (30) day prior written notice in accordance with Section 6.3 of the Escrow Agreement; provided however, that should any Licensee declare a Release Event pursuant to Section 13.2 of the Exchange Agreement and Section 6 of the Registration Agreement, Licensee shall be required to pay to Escrow Agent a one-time release fee of \$150.00 to receive distribution of Escrow Material.

IN WITNESS WHEREOF, the undersigned Licensor and Licensee, and Escrow Agent named below have caused this Registration Agreement to be effectuated as of the day and year first above written.

LICENSOR:

Name: Keith Brakey, electronically signed on Wednesday, May 16, 2018 12:08:35 PM

Title: Director of Finance

Company: HLP, Inc.

9888 W. Belleview Ave. #110

Littleton, CO 80123

Phone: (800) 459-8376

Email: accounting@chameleonbeach.com

ESCROW AGENT:

Without actual written signature, this Agreement shall be deemed signed by the Escrow Agent upon Licensor's signature hereon.

Accruit, LLC

1331 17th Street, Suite 1250

Denver, CO 80202

Phone: (866) 397-1031

Email: DigitalVault@accruit.com

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

421



FROM: Department of Animal Services

SUBMITTAL DATE:
October 6 2015

SUBJECT: Approve the increase to the dollar amount for Chameleon support & maintenance, components, licenses and Web Chameleon Services from HLP, Inc., for four years. District All; [\$260,000- Department budget].

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the increase to the annual dollar amount for HLP, Inc. for Chameleon support & maintenance, components, licenses and new Web Chameleon Services from \$45,000 to \$110,000, for a total cost increase of \$65,000/annually;
2. Authorize the Purchasing Agent to complete the annual renewal of the following components: Chameleon/CMS Unlimited, Certified Data Connection Violation Table, Web Licensing/Web Donation Service Fee, Chameleon Image Entry, Web Chameleon Software, data entry transaction under chameleon image entry; and
3. Approve and authorize the Purchasing Agent to increase, as needed, the amount up to 20% for future upgrades, replacements and complete the above mentioned support & maintenances through June 30, 2019.

BACKGROUND:

Summary

(Continued on Page 2)

Robert P. Miller, Director
Department of Animal Services

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 65,000	\$ 65,000	\$ 260,000	\$ 65,000	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 65,000	\$ 65,000	\$ 260,000	\$	

SOURCE OF FUNDS: Department budget

Budget Adjustment: No

For Fiscal Year: 15/16-18/19

C.E.O. RECOMMENDATION:

APPROVE

BY:

County Executive Office Signature

Jennifer L. Sargent

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Tavaglione and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington and Benoit
Nays: None
Absent: Ashley
Date: October 20, 2015
xc: Animal Services, Purchasing

Kecia Harper-Ihem
Clerk of the Board
By:
Deputy

Prev. Agn. Ref.: 10/28/14 3-8

District: All

Agenda Number:

3-5

FISCAL PROCEDURES APPROVED FOR BY: COUNTY COUNSEL
PAUL LANGULO, CPA, AUDITOR-CONTROLLER
DATE: 10/25/15
GREGORY P. PRIAMOS
Departmental Concurrence
PURCHASING & FLEET SERVICES
Lisa Brandl, Director

A-30 ☐ Positions Added ☐ Change Order ☐
4/5 Vote ☐

BACKGROUND:

SUMMARY

HLP, Inc. was approved as the sole source by the Board of Supervisors on October 28, 2014, Agenda 3-8 as the proprietary company selling Chameleon software; which is an integrated shelter software case management system for the entire animal care facility needs. It was developed to help manage and track all data on animals coming into the shelters. The initial database was purchased on April 16, 2002 for the Department of Animal Services (DAS). Chameleon software allows DAS to control, document and audit animal impounds and field activities. Chameleon is the standard by which DAS has been using the basic software and its components to store all of the departmental animal records as well as the pet licenses; both new and renewals, that the public can access on-line and process credit card payments. The cost increases are due to monthly photo uploads and the licensing of Web Chameleon required for the mobile devices, and Automotive Vehicle Locators (AVL) that DAS is equipping in the County Animal Control trucks.

Impact on Citizens and Businesses

This new technology provides staff the ability to enter and retrieve data on a mobile device making the process more efficient than relying on the traditional stationary computer that is not always readily available to staff working in the field or at offsite events.

SUPPLEMENTAL:

Additional Fiscal Information

On October 28, 2014 item 3-8 the amount for this agreement was approved for \$45,000/annually and a total cost of \$225,000 for the period of July 1, 2014 through June 30, 2019. This approval will increase the amount by \$65,000/annually for a total of \$110,000/annually or \$440,000 through June 30, 2019. No budget adjustment is needed at this time.

The following chart summarizes the total amounts before and after approval:

	FY14/15	FY 15/16	FY 16/17	FY 17/18	FY 18/19	TOTAL
10/28/14 3-8 approval	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$225,000
Current approval	-----	\$110,000	\$110,000	\$110,000	\$110,000	\$440,000



RIVERSIDE COUNTY INFORMATION TECHNOLOGY PROCUREMENT FORM

H11 Number:	PR2019-08764						
Requested Purchase:	Chameleon Support & Maintenance Software annual renewal						
Department/Agency:	Animal Control						
Primary Contact/Phone:	ELLIE UBINA			Alternate Contact/Phone:			
Purchase Request Type:							
Describe Requested Purchase:	Renewal of Chameleon Case Management System Support & Maintenance.						
Terms:	<p>Is this a Multi Year Contract?: False</p> <p>Length of Contract: 10</p> <p>Start Date: 7/1/2019</p> <p>End Date: 6/30/2029 12:00:00 AM</p> <p>Special Terms and Conditions: HLP Inc. is the proprietary vendor for Chameleon Software. Previously approved as a Sole Source under BOS Agenda 3.6 10/28/14 for a period of five years. A new Form 11 is in process to renew the Sole Source and extend the period for ten (10) years. \$125,000 annual expense</p>						
Business Needs Addressed:							
Are there other county systems that provide the same functionality?	No						
Business Criticality:	Run the Business, Grow the Business						
Business Impact:	Support Current Operations, Improve Customer Service, Improve Operational Efficiencies						
Current Cost Itemization (Include all the year 1 cost)							
Item Description	Purchase Type	Vendor	Quantity	Unit Cost	Sub_Total	Item Tax	Total Cost
Software License: Chameleon Case Management Software (CMS) annual renewal	Software - Renewal	HLP Inc.	1	\$125,000.00	\$125,000.00	0.0000	\$125,000.00
Annual Costs							
Item Description	Payment Type	Terms (in Years)	Payment amount	Total Annual Payments			
Software Renewal Chameleon Case Management System (CMS)	778340000	10.00	\$125,000.00	\$1,250,000.00			
Subtotal Annual Costs:				\$1,250,000.00			
Accounting String To be completed for pass-thru purchases that will be processed by RCIT Only							
%Billed	Accounts (6 digits)	Dept.ID (6 - 10 digits)	Program (5 digits)	Class (5 digits)	Grant (9 digits)	Customer Project Code (10 digits)	
Department Head or Authorized Designee Signature: Dr. Alan Drusys					Date: 5/29/2019 9:30 AM		
RCIT Review (Standard purchases and renewals < \$25000) - Administrative Review Status							
Recommended:	By:			Date:			
Denial Explanation:							



RIVERSIDE COUNTY INFORMATION TECHNOLOGY PROCUREMENT FORM

ACIO Review - ACIO Review Status

Recommended: Yes

By: [Signature] For EAB

Date: 5/29/19

Denial Explanation:

CIO Review (Purchases and renewals >\$100K) CIO Review Status

Recommended: Yes

By: [Signature]

Date: 5/29/19

Denial Explanation:

TSOC Review (Purchases and renewals >\$100K) TSOC Review Status

Recommended: Yes

By: [Signature]

Date: 6/6/19

Denial Explanation: