



Le Sueur County, MN

Tuesday, January 15, 2019

Board Meeting

Item 7

10:15 a.m. Sharon Budin, County Recorder

Staff Contact:

LICENSE AGREEMENT

This **LICENSE AGREEMENT** (this “**Agreement**”) is made effective as of _____, 2019 (the “**Effective Date**”), by and between Le Sueur County, a political subdivision of the State of Minnesota (the “**County**”), having offices at 88 South Park Avenue, Le Center, MN 56057, and WEST CENTRAL INDEXING, L.L.C. a Minnesota limited liability company, (the “**Licensor**”), having offices at 405 22nd Avenue West, Alexandria, MN 56308 (each, a “**Party**” and collectively, the “**Parties**”).

RECITALS

WHEREAS, the County’s Department of County Recorder (the “**Department**”) has interest in a new Property Records Management System; and

WHEREAS, the County selected the Licensor’s RecordEASE suite of products for such system; and

WHEREAS, the Parties are concurrently entering into separate agreements for development and implementation services and maintenance and support services to be provided by the Licensor (together, the “**Services Agreements**”).

NOW THEREFORE, In consideration of the mutual promises herein, the Parties, intending to be legally bound, hereby agree as follows:

1. **Software License and Use.**

1.1 **Software.** The County hereby agrees to license the “**Software**” from the Licensor and the Licensor agrees to license the Software to the County in accordance with the terms and conditions contained in this Agreement. The following software modules shall collectively be referred to as the “**Software**”:

- (a) RecordEASE,
- (b) RecordEASE web,
- (c) ERER,
- (d) Optical Character Recognition (no rules)
- (e) Fraud, and
- (f) Vitals, Licenses, and Permitting

The County agrees that any modifications to the Software deliverables shall be made in accordance with the Services Agreements.

1.2 **Grant of License to Software.** Subject to the terms and conditions set forth in this Agreement, the Licensor hereby grants to the County, for the Term (as defined below), a non-exclusive, non-sublicensable, revocable, and non-transferable license (the “**License**”) to use the Software as delivered in a compiled, executable form (including any applicable upgrades, enhancements, revisions or customizations to the Software

made available through the modification, warranty or support provisions of the Services Agreements) together with any Software-related documentation (the “**Documentation**”) that may be provided by the Licensor to the County. The County agrees that it shall be permitted to use the Software and Documentation only for the internal purposes of the Department. The County agrees that any use outside of such purposes would require additional consideration. The Licensor reserves all rights not expressly granted to the County.

- 1.3 Limitation of License. Neither the Software, Documentation nor any materials provided by the Licensor may be used in any manner directly or indirectly related to the operation or management of any records management system or business (other than the property records management system of the Department), including without limitation any timeshare, facilities management, service bureau, practice management, billing or data processing service basis. No other data of any other person or entity shall be processed, except as otherwise provided in this Agreement. The County shall not have any right or license to prepare derivative works from the Software or Documentation or make modifications to the Software or Documentation.
- 1.4 Copies. The County shall not copy the Software or Documentation in whole or in part except as expressly provided in this Agreement. The County shall have the right to make one (1) archival copy of the Software (either complete or partial) and unlimited copies of the Software training manuals for use by the Department as its business needs shall reasonably require for back-up or training purposes, so long as the County shall reproduce the Licensor’s copyright and proprietary notices on each copy. All copies of the Software, Documentation and materials shall be subject to the terms and conditions of this Agreement. The County will keep a record of the number and location of all copies and provide a copy of this record to the Licensor upon request.
- 1.5 Permitted Use; Prohibited Actions. The County may use the Software and Documentation only in the manner stated in this Agreement and the Documentation, which permits the Department to run programs from the Software, make queries to the Software, access data files from the Software, and perform other functions in the course of the Department’s normal and internal records management operations. The County shall not, nor shall the County have any other entity, install or use any software or device that attempts to interface directly to the Software or that attempts to read the Software’s proprietary data files without the Licensor’s express authorization. The County acknowledges and agrees that the Licensor is licensing the Software and Documentation to the County under the express condition that no other vendor, consultant, or any other entity that develops or licenses products that compete with the Licensor’s products be permitted to access, use, interact with, test, repair, interface, reverse engineer, or decompile the Software or Documentation.

2. Additional License Terms.

- 2.1 Reverse Engineering. The County agrees that it will not cause or permit the reverse engineering, disassembly, or de-compilation of the Software or Documentation, and that it will not sell, lease, license, disclose, hypothecate, give a security interest in, transfer, or

rent the Software or Documentation to third parties or take any action that will adversely impact the Licensor's, or its licensors, rights, title and interest in the Software. The County shall ensure that its employees and outside vendors comply with the terms of this Agreement.

- 2.2 Revocation. Except as provided in Section 3.3, if at any time while the License is in effect, the County is in breach of this Agreement, and fails to cure such breach within a time period specified by the Licensor (but not less than twenty (20) days) in a written notice of such breach delivered to the County by the Licensor, then the Licensor, in addition to the Licensor's rights at law or in equity, may, in the Licensor's sole discretion, terminate this Agreement (or, if following the expiration of the Term, revoke the License) by furnishing written notice thereof to the County, effective as of the date specified in such notice of termination or revocation, whereupon the County shall immediately return the Software and all related materials and Documentation to the Licensor in the manner described in Section 2.3 below. The Licensor reserves all rights in law or in equity.
- 2.3 Return. Upon the expiration or termination of this Agreement, the County shall immediately return to the Licensor, or certify as destroyed, the Software, Documentation and any and all copies thereof and any other "**Confidential Information**" (as defined in Section 5 below) provided by the Licensor in connection with this Agreement. Upon the request of the Licensor, the County shall execute and deliver to the Licensor an affidavit confirming the completion of the foregoing steps.
- 2.4 Records and Examination.
- (a) The Licensor will maintain records which reflect all revenues, costs incurred and services provided by the Licensor in performance of this Agreement.
 - (b) The County, the State Auditor or legislative authority, or any of their duly authorized representatives, at any time during normal business hours and as often as they reasonably deem necessary, for a minimum of six years from the end of the Term, pursuant to Minnesota Statute 16C.05, shall have access to and the right to examine the books, records, documents, and accounting procedures and practices of the Licensor which are relevant to the Licensor's performance and determination of the agreed upon payments under this Agreement. Such examinations shall be conducted at the location where the Licensor normally maintains such records. The County shall provide the Licensor with reasonable prior written notice of each such examination. Any information revealed by an examination shall be treated as trade secret information of the Licensor under Minnesota Statutes Section 13.37 subd. 1(b).
 - (c) The County agrees to maintain records of the number and location of the original and all copies of the Software. At any time upon reasonable prior advance written notice, the County shall permit the Licensor the right to inspect the County's workstations and network servers to verify compliance with the terms of this Agreement. The County shall fully cooperate in the Licensor's inspection and

examination. All records will be maintained at the Department's principal offices, unless prior written notice has been sent to the County. Before disposing of any media containing the Software, the County agrees to take all necessary steps to destroy or erase all Software codes, programs and other Confidential Information of the Licensor and its licensors contained in such media.

2.5 Compliance with Laws. The Licensor shall comply with all applicable Federal and State Statutes and regulations as well as local ordinances now in effect or hereafter adopted.

2.6 Ownership of Software, Documentation and Related Materials. The Licensor shall own all Intellectual Property Rights (as defined below) and all other rights, title and interests in and to the Software, Documentation and related materials, the content thereof and in the ideas and concepts embodied therein, and in any and all copies, modifications, alterations and enhancements to the Software or Documentation including any derivative works resulting therefrom. As used herein, "**Intellectual Property Rights**" means any and all now known or hereafter devised rights under any intellectual property law or regulation in any jurisdiction throughout the world, whether tangible or intangible, including without limitation copyrights, mask-works, service marks, trade names, trade secrets, patents, designs, algorithms and other industrial property, whether arising by operation of law, contract, license, or otherwise, and all registrations, initial applications, renewals, extensions, continuations, issuances, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing), Confidential Information and trade secrets, and the waiver of any "moral rights" associated with such rights.

3. Term; Fees; Termination.

3.1 Term. The initial term of the License granted in this Agreement shall be for [60] months beginning upon the Effective Date (the "**Initial Term**"). This Agreement shall be automatically renewed concurrently with the term for which the County is receiving maintenance and support of the Software from the Licensor or one of its affiliates (with the Initial Term together with any successive renewal terms referred to herein as the "**Term**").

3.2 Fees. The County agrees to pay the Licensor all fees identified in Attachment A in accordance with the payment schedule specified in Attachment A. The County shall pay all amounts due upon receipt of invoice, via ACH or Check in accordance with instructions provided by the Licensor. The Licensor shall submit all invoices to the recipient designated by the Department. The County shall provide to the Licensor a copy of its tax exemption certificate or similar documentation substantiating its tax exemption prior to or immediately after the Effective Date. To the extent that a tax exemption cannot be properly claimed or does not extend to certain taxes or transactions, the County shall be responsible for any and all taxes and assessments that arise from this Agreement and related transactions (except for taxes based upon the Licensor's net income) and the County agrees to cooperate in amending Attachment A to include any such taxes. The Licensor shall have the right to assess a late charge equal to one and one-half percent (1½%) per month or the maximum rate permitted by law, whichever is less, on all amounts not paid within thirty (30) days from the payment due date.

3.3 Termination.

- (a) The termination by the County of the Software Maintenance and Support Agreement with Licensor shall also have the effect of simultaneously terminating the License Agreement. The County acknowledges that it shall not be entitled to retain a License in the Software unless an executed, current Software Maintenance and Support Agreement is in place with WCI or its successor, regardless of the grounds for termination. Likewise, termination of this Agreement shall have the effect of simultaneously terminating the Software Maintenance and Support Agreement.
- (b) In the event of a material breach, either Party may provide the other Party with written notice of the material breach with sufficient detail so the other Party can readily understand the claim for material breach. The other Party shall have a period of thirty (30) business days from the date of such notification ("Period of Cure") to cure such material breach. If the material breach is not cured within the Period of Cure, this Agreement shall terminate upon expiration of the Period of Cure.
- (c) Either Party may terminate this Agreement forthwith on written notice if the other Party shall become insolvent or bankrupt or make an arrangement with its creditors or go into liquidation. If Licensor becomes unable to provide services pursuant to the provisions of this Agreement as a result, the County shall be given the source code. If Licensor has entered into a source code escrow arrangement, Licensor shall make the County a beneficiary of such escrow arrangement, and in such event the source code shall be made available to the County in accordance with the terms of such escrow.
- (d) The County may terminate this Agreement without cause and for any reason whatsoever upon giving at least ninety (90) days written notice thereof to Licensor. In such event, Licensor shall be entitled to receive compensation for the services provided in a satisfactory manner up to and including the effective date of termination.
- (e) Termination of this Agreement shall not prejudice any rights of either Party which have arisen on or before the date of termination.

4. Warranties.

- 4.1 Performance. The Licensor represents and warrants that: (a) it has the right, power and authority to enter into this Agreement; and (b) it will perform its obligations identified in this Agreement in a professional and workman-like manner in accordance with generally recognized industry standards.
- 4.2 Modifications to Software. Any upgrades, updates, configuration changes, fixes, enhancements or modifications will be made to the Software only in accordance with the terms contained in the Services Agreements, regardless of whether such upgrade, configuration change, enhancement or modification is necessitated by changes in the County's procedures, applicable law or regulation or otherwise. If the County requests from the Licensor upgrades, updates, configuration changes, customizations, enhancements or modifications to the Software or additional services not included in the

scope of this Agreement, the County shall submit such request in accordance with the Services Agreements.

- 4.3 **Proprietary Rights.** The Licensor represents and warrants that to its knowledge it is the exclusive owner of the Software and Documentation, free and clear of any and all liens, encumbrances, and presently existing infringement claims, and has obtained all rights necessary to grant to the County the rights that it purports to grant in this Agreement. The County agrees that its sole remedies for infringement will be one of the following, at the Licensor's option: (i) the replacement by the Licensor of the infringing material with a non-infringing version without loss of material functionality, (ii) to the extent commercially feasible, procurement of a license for the County to use the infringing material, or (iii) termination this Agreement.
- 4.4 **County Policies.** The County acknowledges that the Licensor is not making any policy decisions as to property records or otherwise for the County, nor is the Licensor advising or counseling the County on any other federal, state or local rules, regulations, or laws, including without limitation any laws or regulations regarding data privacy. The County confirms that it has reviewed the Software's business process and functionality and is satisfied that it complies with federal, state and local laws, rules, and regulations. The County shall retain full responsibility for and hold harmless the Licensor from the results of the County's policy decisions. Additionally, the Licensor shall not be held liable for the use, results, performance, provision of, or failure of the County to provide, services to any party.
- 4.5 **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW, THE LICENSOR, ITS SUBSIDIARIES, AFFILIATES, OR SUPPLIERS (HEREINAFTER "**LICENSOR PARTIES**"), HEREBY DISCLAIM ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, ACCURACY OF INFORMATIONAL CONTENT, OR SYSTEM INTEGRATION. EACH PARTY FURTHER ACKNOWLEDGES THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THERE IS NO WARRANTY THAT SOFTWARE IS ERROR-FREE, WILL OPERATE IN AN UNINTERRUPTED MANNER OR IN COMBINATION WITH OTHER SOFTWARE PRODUCTS. THE COUNTY HEREBY AGREES THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY PRE-CONFIGURED SOFTWARE IS PROVIDED TO THE COUNTY "AS IS" EXCEPT AS EXPRESSLY WARRANTED OTHERWISE IN SECTIONS 4.1 AND 4.2.
5. **Confidentiality.**
- 5.1 Without regard to the expiration or termination of this Agreement or any expiration of any term for the protection of other "**Confidential Information,**" each of the Licensor and the County shall hold in strictest confidence any Confidential Information of the other Party disclosed or made available pursuant to this Agreement. "**Confidential**

Information” means any non-public information, technical data, trade secrets or know-how (including, but not limited to, information relating to property owners, taxpayers, data, assessments, research, products, Software, formula, process, techniques, services, development, inventions, processes, engineering, techniques, pricing, internal procedures, finances, employees and business opportunities) whether having existed, now existing, or to be developed or created in the future, whether tangible or intangible, and whether or how stored, compiled or memorialized physically, electronically, graphically, photographically or in writing.

5.2 Neither Party shall use any Confidential Information received from the other Party except as expressly permitted under this Agreement, or as necessary to perform its duties hereunder, and neither Party shall disclose any such Confidential Information of the other Party to any third party (except employees and only on a “need to know” basis and subject to their being bound to protect the confidentiality of the Confidential Information) without the other Party’s prior written consent, unless required to do so by court order or other operation of law, and then only subject to prompt notice to the other Party.

6. **Indemnity; Insurance; Limitation of Liabilities; Remedies**

6.1 Licensor does hereby agree that it will defend, indemnify, and hold harmless the County against any and all liability, loss, damages, costs and expenses which the County may hereafter sustain, incur or be required to pay by reason of any negligent act or omission or intentional act of Licensor, its agents officers or employees during the performance of this Agreement.

6.2 In addition to paragraph (a) above, and subject to Section 2.12.3, Licensor further agrees that it will defend, indemnify and hold harmless the County against any claim against the County alleging that the Licensed Software, any Further Enhancement, or related documentation (hereinafter the “**Materials**”) provided by Licensor, in the form in which it is furnished by Licensor, infringes any United States patent, copyright, or trademark of any third party. Licensor shall have no liability for any claim under this paragraph (b) resulting from (i) the County’s use of a superseded release of Materials if infringement would have been avoided by the use of a subsequent release of the Materials which was made available to the County during the term of this Agreement; (ii) use of Materials in conjunction with any software or materials not provided or specifically approved in writing by Licensor if such claim could have been avoided without such use; (c) use of any Materials in a manner for which it is not designed, contemplated or specifically recommended by Licensor; (d) alteration, adaptation or modification of the Materials; (e) any use of Materials after the County becomes aware of any such claim. The County agrees that, in addition to its rights stated in this Section 2.11.1, the County’s sole remedy for infringement shall be as stated in Section 2.6.2 of this Agreement.

6.3 Licensor’s obligations under this Section 2.11.1 are conditioned upon: (i) the County giving Licensor prompt written notice of all claims or threatened claims, (ii) Licensor being given full authority to assume the sole defense thereof through Licensor’s own counsel and to compromise or settle any suits and, (iii) the County cooperating fully with Licensor to facilitate defense or settlement of such claim. Notwithstanding the

immediately preceding sentence to the contrary, Licensor shall seek the County's prior consent to any compromise or settlement of any lawsuit (such consent not to be unreasonably delayed or withheld), unless (A) there is no finding or admission of any violation of applicable law or any violation of the rights of any person and (B) the sole relief provided is monetary damages that are paid in full by Licensor. Should the County desire to hire its own legal counsel, the County may do so at its own cost and expense.

Insurance.

- 6.4 Licensor further agrees that in order to protect itself, as well as the County under the indemnity provisions set forth above, it will at all times during the term of this Agreement have and keep in force the insurance defined by the county included in this agreement as Attachment E.
- 6.5 Evidence of insurance shall be provided before this Agreement is effective. The County shall be given thirty (30) days' advance written notice of any changes in coverage.
- 6.6 In the event that claims or lawsuits shall arise jointly against Licensor and the County, and the County elects to present its own defense, using its own counsel, in addition to or as opposed to legal representation available by the insurance carriers provided the coverage as stated above, then such legal expense shall be borne by the County.

Minimum Scope of Insurance:

- (a) Insurance Services Office (ISO) Commercial General Liability coverage (occurrence form CG 00 01 or a substitute form providing equivalent coverage), and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, advertising, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- (b) Business Automobile Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or substitute for providing equivalent liability coverage. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).
- (c) Workers' Compensation as required by the State of Minnesota, and Employer's Liability insurance.
- (d) Professional Liability or Errors and Omissions insurance appropriate for the profession. Coverage shall be maintained for at least two years following the completion of work.

Minimum Limits of Insurance:

- (e) Commercial General Liability (CGL) and if necessary, Commercial Umbrella Liability: \$1,500,000 each occurrence. If Commercial General Liability insurance contains a general aggregate limit, it shall apply separately to this project/location, or the general aggregate limit shall be twice the required occurrence limit.

- (f) Business Automobile Liability and if necessary, Commercial Umbrella Liability: \$1,500,000 each accident for bodily injury and property damage.
- (g) Employers Liability: as required by the State of Minnesota
- (h) Professional Liability or Errors and Omissions: \$1,500,000 per occurrence.

Deductibles and Self-Insured Retention

(i) **Any deductibles or self-insured retention must be declared to and approved by the County.** At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects Le Sueur County agents, officers, directors, and employees; or the bidder/contractor/consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses; or the bidder/contractor/consultant shall provide County-requested financial statements for the purpose of verifying financial solvency, and acceptance of deductibles or self-insured retention based on this verification.

Other Insurance Provisions

(j) The General Liability policy is to contain, or be endorsed to contain, the following provision: **Le Sueur County, its agents, officers, directors, and employees are to be covered as an additional insured for all liability coverages using ISO additional insured endorsement CG 20 10 or substitute providing equivalent coverage.** This insurance shall apply as primary insurance with respect to any other insurance or self-insurance program. The County's insurance shall be excess of the contractor/consultant's insurance and shall not contribute to it. The contractor/consultant's coverage shall contain no special limitations on the scope of protection afforded to the County, its agents, officers, directors, and employees.

(k) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.

(l) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, or non-renewed, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the County.

(m) The Contractor shall include all subcontractors as insured under its policies or furnish separate certificates and endorsements for each subcontractor where applicable. All coverage for subcontractors shall be subject to all of the requirements stated herein.

(n) Each insurance policy shall include an endorsement that waives any claim or right in the nature of subrogation to recover against the County, its agents, officers, directors, and employees.

Acceptability of Insurers

(o) Insurance is to be placed with insurers with a current A.M. Best rating of A:VII, unless otherwise acceptable to the County.

Verification of Coverage

(p) Contractor shall furnish the County with certificates of insurance and original endorsements effecting coverage required by this clause. *The certificate attached to this contract should be signed by a person authorized by that insurer to bind coverage on its behalf. A certificate other than the one attached may be used if coverages and endorsements match or exceed the coverages identified on the attached certificate.* All certificates and endorsements are to be received and approved by the County before work commences. The County reserves the right to require complete, certified copies of all required insurance policies and endorsements at any time.

Limitation of Liability; Remedies.

- 6.7 Limitation of Liability. IN NO EVENT SHALL THE LICENSOR PARTIES OR THE COUNTY HAVE ANY LIABILITY TO THE OTHER UNDER THIS AGREEMENT OR OTHERWISE FOR INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, ARISING OUT OF OR IN CONNECTION THIS AGREEMENT OR WITH ANY SERVICES OR DELIVERABLES PROVIDED UNDER THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LICENSOR PARTIES' SOLE AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, OR OTHERWISE, SHALL BE LIMITED TO THE COUNTY'S DIRECT DAMAGES, BUT SHALL IN NO CASE EXCEED AN AMOUNT EQUAL TO THE LICENSE FEES PAID BY THE COUNTY TO THE LICENSOR UNDER THIS AGREEMENT. THIS LIMITATION IS CUMULATIVE, WITH ALL PAYMENTS TO THE COUNTY BY LICENSOR PARTIES FOR CLAIMS OR DAMAGES HEREUNDER BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THIS LIMITATION ON AMOUNT. The County acknowledges that the limitation of liabilities and disclaimers of warranty contained herein constitute an agreed upon allocation of risk between the Parties, have been factored into the Licensor's pricing of the Software, and are an essential element of the bargain between the Parties.
- 6.8 Remedies; Injunctions; Damages. Each Party recognizes that irreparable injury would result to the other Party in the event of a Party's failure to comply with any of the terms of Sections 1, 2 or 5, and that the full amount of the damages which would be incurred by the other Party as a result of any such breach would be difficult to ascertain. Accordingly, each Party hereby agrees that, in the event of any such breach, threatened breach, or the occurrence of events which, in the opinion of the other Party, would be

likely to result in such breach, the other Party shall be entitled to injunctive relief or an order restraining such breach or threatened breach and/or compelling the performance of obligations which, if not performed, would constitute such a breach. If the other Party files suit to enforce its rights under this Agreement, then notwithstanding any other term of this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party all expenses incurred by it in preparing for and in trying the case, including, but not limited to, investigative costs, court costs and reasonable attorney's fees. The remedies afforded to each Party herein are in addition to, and in no way limit, any other rights, or remedies, which may be afforded to such Party at law or in equity.

7. **Order of Precedence.** In the construction and interpretation of this Agreement, if any conflict or ambiguity arises between the terms and conditions set forth in the body of the Agreement and any term or condition of any Attachment, Exhibit, or other Schedule to this Agreement, then, in every case, the terms and conditions of the Agreement shall govern, control and take precedence.
8. **Survival.** Those terms of this Agreement that by their very nature are intended to survive the expiration, termination or cancellation of the Term, including without limitation, Sections 2, 4, 5 and 6 of this Agreement, shall survive the expiration, termination or cancellation of the Term.
9. **General.**
- 9.1 **Independent Contractor.**
 - (a) It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the Parties hereto or as constituting either Party as the agent, representative, or employee of the other Party for any purpose of in any manner whatsoever. The Licensor is to be, and shall remain, an independent contractor with respect to all services performed under this Agreement.
 - (b) Neither Party nor its employees will at any time be construed to be employees of the other Party. Each Party is responsible for its employees' compensation, fringe benefits and all insurance coverage.
- 9.2 **Assignment.** Neither Party shall assign this Agreement without the prior written consent of the of the other Party, other than in connection with the sale or other transfer of the assets or operations of such Party to which this Agreement relates.
- 9.3 **Modifications.** Any material alteration, modification or variation of this Agreement shall be reduced to writing as an amendment and signed by both Parties.
- 9.4 **Entire Agreement.** It is understood and agreed that the entire contract of the Parties is contained herein and this Agreement supersedes all oral agreements and negotiations between the Parties relating to this subject matter. All items referred to in this Agreement are incorporated or attached and deemed to be a part of this Agreement.

- 9.5 Governing Law. The construction, interpretation, and performance of this Agreement shall be governed by the substantive laws of the State of Minnesota without giving effect to its choice of law rules.
- 9.6 Assertion of Liability. Each action or claim against any Party arising under or relating to this Agreement shall be made only against such Party as a legal entity and any liability relating thereto shall be enforceable only against the assets of such Party. No Party shall seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against any shareholder, employee, officer or director or manager of the other Party. Each of such persons is an intended beneficiary of the mutual promises set forth in this section and shall be entitled to enforce the provisions of this Section.
- 9.7 Severability. If any provision of this Agreement is held invalid or unenforceable by a court having jurisdiction over the Parties, the Parties agree that the invalid or unenforceable provision shall be replaced with a valid provision which most closely approximates the intent and economic effect of the original provision.
- 9.8 Waivers. Any failure by either Party to enforce or exercise any provision of the Agreement or related right shall not constitute a waiver of that right or provision.
- 9.9 Third-Party Beneficiaries. The Parties agree that, except as provided in Section 9.6, there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the Parties based upon this Agreement.
- 9.10 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed given when delivered by certified mail, return receipt requested, postage prepaid or when received if sent by overnight courier. All notices shall be directed to the Parties at the respective addresses set forth in the preamble above or to such other address as either Party may, from time to time, designate by notice to the other Party.
- 9.11 Publicity. The Licensor may issue a press release or public announcement concerning this Agreement and the transactions which are the subject hereof, with the County's prior written consent, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the County hereby acknowledges that after an initial press release the Licensor, and its affiliates, may reference its customer relationship with the County in any and all documents distributed in connection with any financing transactions and any marketing documents.
- 9.12 Force Majeure. Neither Party shall be held liable to the other party for failure of performance where such failure is caused by supervening conditions beyond that Party's control, including, without limitation acts of God, civil disturbance, terrorism, strikes, or labor disputes.
- 9.13 Counterparts. This Agreement may be executed by the Parties in multiples counterparts, each of which shall be an original but all of which taken together shall constitute one and the same instrument.

[The following page is the signature page.]

IN WITNESS WHEREOF, the Parties hereto have executed this License Agreement as of the Effective Date.

WEST CENTRAL INDEXING, L.L.C.

Le SUEUR COUNTY

By: _____

By: _____

Printed Name: Thomas Fischer

Printed Name: Sharon Budin

Title: Vice President

Title: County Recorder

Date: _____

Date: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

Attachments:

Attachment A–Fees and Payment Schedule

Attachment B- Insurance Certificate

Attachment A

**Le Sueur County
Software Fees and Payment Schedule**

Assumptions

- Price reflects deal completed by January 31, 2019 to receive \$20,000 discount

License Fees

RecordEASE Suite of products and Vitals License, and Permitting Application with unlimited seat license	\$100,000.00
Total License Fees	\$ 100,000.00

Payment Schedule

First Payment – Due at time of signing agreements	\$ 20,000.00
Second Payment – Due February 15, 2019	\$ 20,000.00
Third Payment – Due April 15, 2019	\$ 20,000.00
Fourth Payment – Due June 15, 2019	<u>\$ 40,000.00</u>
Total License Fees Payments	\$ 100,000.00

Prices do not include any applicable sales tax. Sales tax, if applicable, will be billed in addition to the amounts above.

Attachment B Le Sueur County Insurance Requirements



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/08/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Iverson Insurance Agency P O Box 95 Parkers Prairie, MN 56361	CONTACT NAME: Tim Iverson PHONE (A/C, No, Ext): 218-338-4755 FAX (A/C, No): 218-338-4757 E-MAIL ADDRESS: timi@iversoninsurance.com
INSURER(S) AFFORDING COVERAGE	
INSURED	NAIC #
XS Consulting Group LTD West Central Indexing LLC 405 22nd Ave W Alexandria MN 56308	INSURER A : Travelers Casualty Ins Co 19046 INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS									
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR			680-1696P448	12/01/18	12/01/19	EACH OCCURRENCE \$ 2,000,000									
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000									
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$									
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$									
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N	N/A	UB-7J228491	12/01/2018	12/01/2019	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">PER STATUTE</td> <td style="width: 50%;">OTHER</td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$ 500,000</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$ 500,000</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$ 500,000</td> </tr> </table>	PER STATUTE	OTHER	E.L. EACH ACCIDENT	\$ 500,000	E.L. DISEASE - EA EMPLOYEE	\$ 500,000	E.L. DISEASE - POLICY LIMIT	\$ 500,000
PER STATUTE	OTHER															
E.L. EACH ACCIDENT	\$ 500,000															
E.L. DISEASE - EA EMPLOYEE	\$ 500,000															
E.L. DISEASE - POLICY LIMIT	\$ 500,000															

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

IT Facility Management.
 Includes technology E & O Policy Dates: 12/01/2018-12/01/2019
 Limits of Insurance: Aggregate Limit \$2,000,000 Each Wrongful Act Limit \$2,000,000

CERTIFICATE HOLDER Le Sueur County 88 South Park Ave Le Center MN 56057	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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ACORD 25 (2016/03)

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SOFTWARE DEVELOPMENT AND IMPLEMENTATION SERVICES AGREEMENT

This **SOFTWARE DEVELOPMENT AND IMPLEMENTATION SERVICES AGREEMENT** (this “**Agreement**”) is made effective as of _____, 2019 (the “**Effective Date**”), by and between Le Sueur County, a political subdivision of the State of Minnesota (the “**County**”), having offices at 88 South Park Avenue, Le Center, Minnesota 56057, and WEST CENTRAL INDEXING, L.L.C. a Minnesota limited liability company, (“**West Central**”), having offices at 405 22nd Avenue West, Alexandria, MN 56308 (each, a “**Party**” and collectively, the “**Parties**”).

RECITALS

WHEREAS, the County’s Department of County Recorder (the “**Department**”) has interest in a new Property Records Management System; and

WHEREAS, the County selected West Central’s RecordEASE and VLP suite of (“**Licensed Software**”) products to use for the development of such system; and

WHEREAS, the Parties are concurrently entering into a license agreement (the “**License Agreement**”) with respect to the Licensed Software; and

WHEREAS, the Parties wish to enter into this Agreement in order to set forth the terms and conditions pursuant to which West Central shall develop and implement the Licensed Software.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

The recitals set forth in the whereas clauses above are incorporated by reference as if fully set forth herein.

1. **Initial Work.**

- 1.1. Purpose. The purpose of this Agreement is to provide services to implement and enhance West Central’s RecordEASE and Vitals, Licenses, and Permitting systems to provide the County with the Property Records Management System.
- 1.2. Statement of Work. West Central shall provide the County with; consulting, software development, and implementation services (the “**Services**”) pursuant to West Central’s Statement of Work (**Attachment A**). and may be amended from time to time by supplemental statements of work, unless indicated otherwise in the statement of work, all supplemental statements of work shall be subject to all

terms and conditions of this Software Development and Implementation Agreement.

- 1.3. Timeline. The work shall proceed according to the timeline set forth as **Attachment A**. West Central shall be responsible for installation of the Licensed Software at a site designated by the County (the “**County Site**”).
- 1.4. Payment. The County agrees to pay West Central for the services established in the statement of work in Section 1.2 according to the fees and payment scheduled attached hereto as **Attachment B** (the “**Scheduled Rates**”). Payment shall be made within 30 days of West Central’s invoices thereof. West Central shall provide the County with supporting documentation for such invoices as the County may reasonably request.
- 1.5. Third Party Hardware and Software. The County shall ensure that its hardware and software currently in use meets the technical requirements set forth in **Attachment C**, attached hereto and made a part hereof. The County understands that it is the obligation of the County to order, purchase, and install the equipment and software that is compatible with Licensed Software. The Licensed Software cannot be installed or tested until all required equipment is on hand and in complete working order. West Central shall have no liability for late or malfunctioning installations caused by late or nonworking equipment.
- 1.6. Performance. Acceptance testing shall be commenced within 10 days of delivery and installation of the Licensed Software by West Central. Acceptance shall occur upon the County's written notice to West Central that the Licensed Software has been accepted, and the Licensed Software shall be deemed accepted when it has operated for 30 consecutive days in conformity with the specifications set forth in the Request for Proposals. In the event that the Licensed Software does not so perform the period may be extended on a day-to-day basis until such performance is achieved for 30 consecutive days. In the event that the Licensed Software does not meet the specifications, the County shall detail in writing the deficiencies in the Licensed Software.

2. **Further Enhancements.**

- 2.1. In addition to the development established in the statement of work in Section 1.2 herein, the County may determine that one or more improvements, enhancements, upgrades, updates, modifications, corrections, revisions or other changes thereto (“**Further Enhancements**”) should be made to the Licensed Software. The County will request a Further Enhancement by delivering a draft set of user requirements to West Central detailing the general functionality required of such Further Enhancement and any other general requirements to be met.
- 2.2. West Central shall respond within a reasonable time to user requirements received by it under Section 2.1 above by providing the County with a written best estimate

of the personnel and time required to carry out such Further Enhancement, together with any general comments on the user requirements that may be appropriate. The estimate shall be inclusive of the personnel and time required to produce documentation as required under this Agreement, project management, consultancy work and all West Central internal testing.

- 2.3. Upon receipt of West Central's estimate under Section 2.2 above, the County will review the user requirements for the Further Enhancement and shall make any changes in the user requirements that it deems necessary. The County will then prepare a detailed functional specification and a proposed project timetable specifying dates for completion of the relevant phases of the Further Enhancement based on West Central's estimate. The County may request West Central to complete the project timetable on its behalf based on the County's delivery requirements.
- 2.4. Upon receipt of the functional specification for the Further Enhancement (as revised under Section 2.3 above) and the proposed project timetable, West Central shall review its estimate and shall advise the County of the extent to which it can comply with the functional specification and the proposed project timetable. The parties shall then agree upon any changes to the functional specification or to the project timetable which may be necessary to enable West Central to complete the Further Enhancement in accordance with both of those documents.
- 2.5. Upon completion and written agreement by West Central and the County of the documentation referred to in Section 2.4 above, West Central shall carry out and implement the Further Enhancement in accordance with the agreed functional specification and project timetable. This will be done at West Central's premises or at the County's premises as required.
- 2.6. Each Party shall appoint a primary contact, who shall be the contact point for every issue concerning the work on the Further Enhancement and who shall be informed of the progress of the project. The names of the contacts will be exchanged in writing by the parties. Using the contacts, the parties shall report to each other as mutually agreed upon as to the progress being made by each of them in relation to their various responsibilities set out in the project plan, any delays being encountered and the actions being taken to recover from such delays.
- 2.7. Each Further Enhancement must be authorized by the primary contacts at both the County and West Central. West Central shall not be required to proceed with the work on a Further Enhancement that has been authorized by the County orally unless and until such authorization is confirmed in writing.
- 2.8. West Central shall be responsible for the initial installation of each Further Enhancement at the County Site. Within 30 days after the delivery and installation of each Further Enhancement, the County will certify full acceptance of such Further Enhancement or will provide West Central with a detailed written

report of the reasons that the County does not believe that the Further Enhancement does not comply with the agreed functional specifications. Any Further Enhancement made under this Agreement shall be provided to the County on any machine-readable media reasonably required by the County.

3. **Implementation Services.**

- 3.1. During the Implementation Services Period as specified herein, West Central agrees to provide to the County such personnel and services as are reasonably required for the installation and implementation of the Licensed Software, including any enhancements made by West Central (the “**Implementation Services**”), using such computer hardware, telecommunications equipment and other resources located at the premises of West Central or at the County Site or both (collectively, the “**Facilities**”) as West Central and the County may mutually determine from time to time are required for such purpose.
- 3.2. The “**Implementation Services Period**” shall begin upon the written request of the County for West Central to begin providing the Implementation Services and shall continue for a period of 12 months.
- 3.3. Without limiting the generality of the foregoing, the County shall provide sufficient office space to house such employees, contractors, agents or representatives of West Central (“**West Central Representatives**”) as West Central may reasonably deem to be necessary to perform the Implementation Services at the County Site and shall provide West Central Representatives with such access to the County’s Facilities as may be reasonably necessary to enable such persons to perform the Implementation Services, including without limitation:
 - (a) the use of the County’s computer network and associated modems, printers and other peripheral equipment and devices, and associated support systems, including Internet access;
 - (b) the use of the County’s telephone system, including hardware, switches and lines;
 - (c) the use of suitable office space, furniture and supplies, including photocopiers and fax machines, and adequate parking space for West Central’s personnel; and
 - (d) the use of all integral building support systems and utilities, including lighting, heating, cooling and electricity at all times as West Central may reasonably determine to be required for it to provide the Management Services at the County Site.
- 3.4. West Central Representatives shall not unreasonably interfere with the normal work activity at the County Site. West Central Representatives shall at all times

comply with all security measures reasonably established by the County with respect to West Central Representatives' use of the Facilities at the County Site.

- 3.5. West Central Representatives shall at all times be the responsibility of West Central. West Central shall replace any West Central Representatives promptly upon the County's request based upon reasonable cause. West Central shall reimburse, indemnify and hold the County harmless for any and all costs, expenses, damages, losses, liabilities and obligations that may be incurred by the County as a result of any negligent acts or omissions and for any willful misconduct of West Central Representatives in their use of the Facilities at the County Site.
- 3.6. West Central Representatives shall be deemed not to be at any time employees or servants of the County and West Central is and shall remain an independent contractor for all purposes. Unless otherwise agreed to in a written agreement, West Central does not undertake to perform any obligation of the County, whether regulatory or contractual, or to assume any responsibility for the County's business or operations.
- 3.7. The County shall reimburse, indemnify and hold West Central harmless for any and all costs, expenses, damages, losses, liabilities and obligations that may be incurred by West Central as a result of any negligent acts or omissions and for any willful misconduct of the County's employees, contractors, agents or representatives in the provision of the Facilities at the County Site to West Central Representatives.
- 3.8. Any and all information not generally known to the public learned by West Central or the County as a result of West Central's use of the Facilities at the County Site, whether of a technical or business nature, shall be considered confidential. The Parties agree that such confidential information shall not be disclosed to any third party or parties without the written consent of the other party. Each Party shall take reasonable measures to protect against nondisclosure of such confidential information by its officers, employees, contractors, agents and representatives.
- 3.9. West Central shall be excused from performance of the Implementation Services at the County Site while, and to the extent that, its use of the Facilities at the County Site is prevented by any event or casualty beyond the reasonable control of West Central. In the event of such an event or casualty, the County shall be responsible for making alternate arrangements with respect to the interrupted use of the Facilities; however, West Central agrees to cooperate with the County to restore West Central's use of the Facilities at the County Site as soon as reasonably practicable.
- 3.10. In the event that the County directly or indirectly (other than through West Central) hires, whether as an employee, independent contractor, or in any other

capacity, any person who was, within one year prior to the hiring, an West Central Representative, the County agrees to pay West Central a finder's fee equal to two times that person's annualized salary at the time he or she left the employment or other engagement by West Central.

4. **Compensation for Further Enhancements and Management Services.**

- 4.1. Work to be performed by West Central on each Further Enhancement and the Implementation Services shall be charged to the County at the Scheduled Rates set forth on **Attachment B** hereto.
- 4.2. The County agrees to reimburse West Central for the reasonable cost of travel, accommodations and meals involved in visits for approved Services. Travel charges must be preapproved by the County and will be paid at West Central's then-current hourly rate for travel related to services. The County further agrees to reimburse West Central for the reasonable and documented costs of materials and other related expenses incurred by West Central in developing and implementing any Further Enhancement, such as third-party software or hardware specifically required for such Further Enhancement.
- 4.3. Any payments due to West Central from the County hereunder will be invoiced by West Central and will be payable 30 days after the County's receipt of such invoice. Past due payments bear interest from the due date at the rate of the lesser of 1-1/2% per month or the highest rate permitted by applicable law. Each such invoice delivered to the County will provide details of the charges to the County, applicable rates and hours of West Central personnel providing services to the County and will be supported by proper invoices and vouchers in respect of all expenses for which reimbursement is claimed.

5. **Ownership of Licensed Software and Further Enhancements.**

- 5.1 Each Further Enhancement shall be owned by West Central and shall become part of the Licensed Software and subject to the License Agreement as set forth in this Agreement including without limitation the confidentiality provisions thereof and the provisions thereof regarding ownership. West Central shall own all Intellectual Property Rights (as defined below) and all other rights, title and interests in and to the Licensed Software, each Further Enhancement, and the related documentation and materials, the content thereof and in the ideas and concepts embodied therein, and in any and all copies, modifications, alterations and enhancements to the Licensed Software or to any Further Enhancement, including any derivative works resulting therefrom. As used herein, "**Intellectual Property Rights**" means any and all now known or hereafter devised rights under any intellectual property law or regulation in any jurisdiction throughout the world, whether tangible or intangible, including without limitation copyrights, mask-works, service marks, trade names, trade secrets, patents, designs, algorithms and other industrial property, whether arising by operation of law,

contract, license, or otherwise, and all registrations, initial applications, renewals, extensions, continuations, issuances, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing), Confidential Information and trade secrets, and the waiver of any “moral rights” associated with such rights.

- 5.2. West Central shall have the right to use all or any part of each Further Enhancement for any work or services done for or provided to any other customer of West Central.

6. Warranties.

- 6.1. West Central warrants that, for 90 days following the County’s written acceptance of the Licensed Software or any Further Enhancement, as installed at the County Site or, if earlier, upon the County’s first use of the Licensed Software or any Further Enhancement for making property records available to the public (the “**Warranty Period**”), such Licensed Software or Further Enhancement will be free from material reproducible programming errors and defects in workmanship and materials, and will substantially conform to West Central’s user documentation, when maintained and operated in accordance with West Central’s instructions. If material reproducible programming errors are discovered during the Warranty Period, West Central shall promptly remedy them at no additional expense to the County. This warranty to the County shall be null and void if the County is in default under this Agreement or if the nonconformance is due to:

- (a) hardware failures due to defects, power problems, environmental problems or any cause other than the Licensed Software itself;
- (b) modification of the Licensed Software, operating systems or computer hardware by any party other than West Central; or
- (c) misuse, errors or negligence of the County, its employees or agents in operating the Licensed Software.

- 6.2. West Central represents and warrants that to its knowledge it is, and will be, the exclusive owner of the Licensed Software and each Further Enhancement, free and clear of any and all liens, encumbrances, and presently existing infringement claims, and has obtained all rights necessary to grant to the County the rights that it purports to grant in this Agreement. The County agrees that its sole remedies for infringement will be one of the following, at West Central’s option: (i) the replacement by West Central of the infringing material with a non-infringing version without loss of material functionality, (ii) to the extent commercially feasible, procurement of a license for the County to use the infringing material, or (iii) termination this Agreement.

7. Assistance by the County.

The County shall assist West Central in the performance of its services under this Agreement by making available all equipment, software, documentation, information and personnel required for the execution of this Agreement on a timely basis. The County shall also ensure that those of its personnel who are assigned to assist West Central are familiar with the County's requirements and have the expertise and capabilities necessary to permit West Central to undertake and complete the services under this Agreement.

8. Records and Examinations.

- (a) West Central will maintain records which reflect all revenues, costs incurred and services provided by West Central in performance of this Agreement.
- (b) The County, the State Auditor or legislative authority, or any of their duly authorized representatives, at any time during normal business hours and as often as they reasonably deem necessary, for a minimum of six years from the end of the Term, pursuant to Minnesota Statute 16C.05, shall have access to and the right to examine the books, records, documents, and accounting procedures and practices of West Central which are relevant to West Central's performance and determination of the agreed upon payments under this Agreement. Such examinations shall be conducted at the location where West Central normally maintains such records. The County shall provide West Central with reasonable prior written notice of each such examination. Any information revealed by an examination shall be treated as trade secret information of West Central under Minnesota Statutes Section 13.37 subd. 1(b).

9. Standards. West Central shall comply with all applicable Federal and State Statutes and regulations as well as local ordinances now in effect or hereafter adopted.

10. Data Privacy.

All data collected, created, received, maintained or disseminated, or used for any purposes in the course of West Central's performance of this Agreement, is governed by the Minnesota Government Data Practices Act, Minnesota Statutes 1984, Section 1301 et seq. (the "Act") or any other applicable state statutes and state rules adopted to implement the Act, as well as state statutes and federal regulations on data privacy. West Central agrees to abide by these statutes, rules and regulations as they may be amended.

11. Nondiscrimination.

West Central shall comply with and abide by the obligations and requirements set forth in Minnesota Statutes Section 181.59 and general County policy, that every contract contain provisions by which West Central agrees to freedom from discrimination in employment.

12. Limitation of Liability.

- 12.1. **THE WARRANTIES OF WEST CENTRAL CONTAINED IN THIS AGREEMENT ARE EXCLUSIVE. THEY ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR**

IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, OR ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE.

12.2. WEST CENTRAL'S LIABILITY AND THAT OF ITS AGENTS, REPRESENTATIVES, AND EMPLOYEES TO THE COUNTY FOR DAMAGES WITH RESPECT TO THIS AGREEMENT AND ANY SUPPLEMENTAL STATEMENTS OF WORK THERETO SHALL NOT EXCEED THE AGGREGATE AMOUNT OF FEES (EXCLUDING REIMBURSED EXPENSES) PAID TO WEST CENTRAL BY THE COUNTY. DAMAGES AS LIMITED BY THIS SECTION 12.2 SHALL BE THE COUNTY'S SOLE AND EXCLUSIVE ALTERNATIVE REMEDY IN THE EVENT THAT ANY OTHER REMEDY PROVIDED IN THIS AGREEMENT FAILS ITS ESSENTIAL PURPOSE.

12.3. IRRESPECTIVE OF ANY FAULT OR NEGLIGENCE, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SALES, LOST SAVINGS, LOST PROFITS (ANTICIPATED OR ACTUAL), LOSS OF USE, DOWNTIME, INJURY TO PERSONS OR DAMAGE TO PROPERTY AND CLAIMS OF THIRD PARTIES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY OR TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND, WHETHER ACTIVE OR PASSIVE), OR ANY OTHER LEGAL OR EQUITABLE THEORY, ALL WHETHER OR NOT SUCH PARTY HAS BEEN APPRISED OR NOTIFIED THAT ANY SUCH DAMAGES OR LOSSES ARE POSSIBLE OR LIKELY, AND WHETHER OR NOT ANY PERMITTED REMEDY HAS FAILED ITS ESSENTIAL PURPOSE.

13. Termination.

13.1. This Agreement may be terminated by either Party on written notice if the other Party breaches any of its material obligations hereunder and fails to remedy the breach within 30 days of receipt of notice in writing thereof. In the event that the terminating Party can demonstrate that such breach has involved it in additional costs, then it shall have the right to recover such costs from the breaching Party.

13.2. Either Party may terminate this Agreement forthwith on written notice if the other Party shall become insolvent or bankrupt or make an arrangement with its creditors or go into liquidation.

13.3. Termination of this Agreement shall not prejudice any rights of either Party which have arisen on or before the date of termination and shall not prejudice the License Agreement or any rights of either Party thereunder.

14. General.

14.1 Independent Contractor.

- (a) It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the Parties hereto or as constituting West Central as the agent, representative, or employee of the County for any purpose of in any manner whatsoever. West Central is to be, and shall remain, an independent contractor with respect to all services performed under this Agreement.
- (b) West Central represents that it has, or will secure at its own expense, all personnel required in performing services under this Agreement. Any and all personnel of West Central or other persons, while engaged in the performance of any work or services required by West Central under this Agreement, shall have no contractual relationship with the County and shall not be considered employees of the County.
- (c) Neither West Central nor its employees will at any time be construed to be employees of the County. West Central is responsible for its employees' compensation, fringe benefits and all insurance coverage.

- 14.2 Subcontracting and Assignment. If West Central subcontracts its obligations under this Agreement, West Central shall be responsible for the performance of all obligations by the subcontractors.
- 14.3 Modifications. Any material alteration, modification or variation of this Agreement shall be reduced to writing as an amendment and signed by Parties. Any alteration, modification, or variation deemed not to be material by agreement of the County and West Central shall not require written approval.
- 14.4 Merger. It is understood and agreed that the entire contract of the Parties is contained herein and this Agreement supersedes all oral agreements and negotiations between the Parties relating to this subject matter. All items referred to in this Agreement are incorporated or attached and deemed to be a part of this Agreement.
- 14.5 Governing Law. The construction, interpretation, and performance of this Agreement shall be governed by the substantive laws of the State of Minnesota without giving effect to its choice of law rules.
- 14.6 Assertion of Liability. Each action or claim against any Party arising under or relating to this Agreement shall be made only against such Party as a legal entity and any liability relating thereto shall be enforceable only against the assets of such Party. No Party shall seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against any shareholder, employee, officer or director or manager of the other Party. Each of such persons is an intended beneficiary of the mutual promises set forth in this Section and shall be entitled to enforce the provisions of this Section.

- 14.7 Severability. If any provision of this Agreement is held invalid or unenforceable by a court having jurisdiction over the Parties, the Parties agree that the invalid or unenforceable provision shall be replaced with a valid provision which most closely approximates the intent and economic effect of the original provision.
- 14.8 Waivers. Any failure by either Party to enforce or exercise any provision of the Agreement or related right shall not constitute a waiver of that right or provision.
- 14.9 Third-Party Beneficiaries. The Parties agree that, except as provided in Section 14.6, there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the Parties based upon this Agreement.
- 14.10 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed given when delivered by certified mail, return receipt requested, postage prepaid or when received if sent by overnight courier. All notices shall be directed to the Parties at the respective addresses set forth in the preamble above or to such other address as either Party may, from time to time, designate by notice to the other Party.
- 14.11 Publicity. West Central may issue a press release or public announcement concerning this Agreement and the transactions which are the subject hereof, with the County's prior written consent, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the County hereby acknowledges that after an initial press release West Central, and its affiliates, may reference its customer relationship with the County in any and all documents distributed in connection with any financing transactions and any marketing documents.
- 14.12 Force Majeure. Neither Party shall be held liable to the other party for failure of performance where such failure is caused by supervening conditions beyond that Party's control, including, without limitation natural disasters, acts of God, terrorism, vandalism, civil disturbance, any governmental action, strikes, or labor disputes, or any similar or dissimilar cause.
- 14.13 Counterparts. This Agreement may be executed by the Parties in multiples counterparts, each of which shall be an original but all of which taken together shall constitute one and the same instrument.

[The following page is the signature page.]

IN WITNESS WHEREOF, the Parties hereto have executed this Software Development and Implementation Services Agreement as of the Effective Date.

WEST CENTRAL INDEXING, L.L.C.

Le SUEUR COUNTY

By: _____

By: _____

Printed Name: Thomas Fischer

Printed Name: Sharon Budin

Title: Vice President

Title: County Recorder

Date: _____

Date: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

Attachments:

Attachment A-Statement of Work

Attachment B-Fees and Payment Schedule

Attachment C-Hardware Requirements

**SOFTWARE DEVELOPMENT AND IMPLEMENTATION SERVICES AGREEMENT
ATTACHMENT A**

Le Sueur Statement of work

- Phase 1 (Gap analysis)

Roles\Responsibilities:

West Central Indexing:

- Provide data migration personnel to determine any possible data migration gaps between Le Sueur County data sources and RecordEASE.
- Provide software developer to determine any possible software business logic gaps between Le Sueur County mandatory requirements stated in RFP and RecordEASE system.

Le Sueur County IT:

- Provide data storage personnel to assist in determining any and all locations data may need to be migrated from within Le Sueur County data sources.
- Provide infrastructure personnel to assist in determining any gaps between Le Sueur County and RecordEASE system capabilities.
- Provide in-house Application Extender expert with knowledge of the current and future implementation goals and strategies of the Imaging system to determine any gaps between current imaging implementation, future APPLICATION EXTENDER implementation and RecordEASE system.

Le Sueur County Subject Matter Expert:

- Provide business office process expert to assist in determining any gaps between current business process, desired business process, mandatory business process requirements stated and RecordEASE system.
- Provide interdepartmental process expert to assist in assist in determining any gaps between current business process, desired business process, mandatory business process requirements identified and RecordEASE system.

Tasks

- Identify those integration points between RecordEASE and other systems that need to be created or modified by West Central Indexing, Le Sueur County or other vendors to satisfy Le Sueur County's desired final system and stated mandatory requirements in RFP.
- Identify solutions to those GAPS found that cannot be addressed by business process modifications.

- Identify the resources (West Central Indexing, Le Sueur County and other vendors) needed to produce the desired outcome for those GAPs that cannot be addressed by business process modifications.

Deliverables

- Gap analysis demonstrating the discovered gaps between Le Sueur County desired outcome, Le Sueur County stated requirements and RecordEASE base implementation.
- Data migration analysis demonstrating all known data sources and locations in RecordEASE where data would be migrated and purpose of migration.
- Data cleansing analysis demonstrating all agreed upon data cleansing desired by Le Sueur County. I.E. condensing of document types from stated number of document types to desired number of document types.

- Phase 2 (Implementation Design)

Roles\Responsibilities:

West Central Indexing:

- Provide data migration personnel to determine accurate times needed to migrate all data found in phase 1.
- Provide software developer to determine accurate times needed to close any gaps found in phase 1.

Le Sueur County IT:

- Provide data storage personnel to assist in determining accurate times needed to access any data gaps found in phase 1.
- Provide infrastructure personnel to determine accurate times needed to close any gaps found in phase 1.
- Provide in-house Image Plus expert with knowledge of the current and future implementation goals and strategies of the Application Extender system to determine accurate times needed to close any gaps found in phase 1.

Le Sueur County Subject Matter Expert:

- Provide business office process expert to determine accurate times needed to close any gaps found in phase 1.
- Provide interdepartmental process expert to determine accurate times needed to close any gaps found in phase 1.

Tasks

- Create project timeline for implementation that includes accurate GAP analysis resources and accurate GAP analysis solutions.

Deliverables

- Project timeline

- Phase 3 (Base Implementation\Data Conversion)

Roles\Responsibilities:

West Central Indexing:

- Provide production installation personnel to work with Le Sueur County IT personnel creating databases, installation routine, web services, web site and application server installation.

Le Sueur County IT:

- Provide database personnel and infrastructure personnel to assist in installation of database, application server applications and web site and web services.
- Provide workstation personnel to assist in creating application roll-out plan that meets Le Sueur County requirements for installing application to workstations.

Le Sueur County Subject Matter Expert:

- Provide subject matter experts to aid in the data migration and data cleaning should there be a desire to shrink the number of document types, integration of legal descriptions with Tax system, etc.

Tasks

- Product installation
- Data Conversion

Deliverables

- Base product installed on web servers and application servers in all domains desired (production, Staging, Testing, Development, etc.)
- Base product installed on all desired workstations servers in all domains desired (production, Staging, Testing, Development, etc.)
- Base product database created on database server servers in all domains desired (production, Staging, Testing, Development, etc.)
- Base conversion routine to convert Torrens data and Tract data

- Phase 4 (GAP item implementation)

Roles\Responsibilities:

West Central Indexing:

- Provide software development personnel to create\modify user interface modifications as determined in GAP analysis.
- Provide software development personnel to create\modify business logic modifications as determined in GAP analysis.

Le Sueur County IT:

- Provide IT personnel with knowledge of the Application Extender and implementation at Le Sueur County to assist in integration items determined in GAP analysis.
- Provide IT personnel with knowledge of the current Tax system design and implementation at Le Sueur County to assist in integration items determined in GAP analysis.
- Provide IT personnel with knowledge of the current Le Sueur GIS design and implementation at Le Sueur County to assist in integration items determined in GAP analysis.

Le Sueur County Subject Matter Expert:

- Provide subject matter experts to assist in the modification

Tasks

- Create application modifications to satisfy all GAP items determined to fall into the domain of application modification.
- Create integration mechanisms to satisfy all GAP items determined to fall into the domain of West Central Indexing provided integration points.

Deliverables

- New or modified user interfaces to satisfy all GAP items determined to fall into the domain of application modification.
- New or modified business logic all GAP items determined to fall into the domain of application modification.
- New or modified integration software mechanisms to satisfy all GAP items determined to fall into the domain of West Central Indexing provided integration points.

- Phase 5 (Training)

Roles\Responsibilities:

West Central Indexing:

- Provide training personnel to train Le Sueur County business users
- Provide training personnel to train Le Sueur County IT personnel on basic systems logging, configuration, troubleshooting mechanisms and data structures.

Le Sueur County IT:

- Provide IT personnel tasked with maintaining the RecordEASE systems.

Le Sueur County Subject Matter Expert:

- Provide business users who want to learn a really cool system that will make their lives so much easier.

Tasks

- Train users on the day-to-day use of the system
- Train configuration users on the setup of the system and modification to the systems configuration data.
- Train IT personnel on the implementation of the system and its' logging capabilities, base system configuration data and other aspects of the system infrastructure.

Deliverables

- Training material
- Training sessions

- Phase 6 (Testing)

Roles\Responsibilities:

West Central Indexing:

- Provide personnel capable of making modification so software systems
- Provide personnel capable of making data migration modifications as the data is cyclically converted throughout the project.
- Personnel to work with both Le Sueur County IT and Le Sueur County Subject Matter Experts to design test plans.

Le Sueur County IT:

- Provide database personnel capable of making backups of database and restores of database.
- Provide personnel capable of making modification to web servers in DMZ to turn on testing and turn of testing or ERER and Web Front End as desired by Le Sueur County IT.
- Personnel to work with both West Central Indexing and Le Sueur County Subject Matter Experts to design test plans.

Le Sueur County Subject Matter Expert:

- Provide personnel capable of making decisions on application test acceptance or non-acceptance.
- Personnel to work with both West Central Indexing and Le Sueur County IT to design test plans.

Tasks

- Cyclically test the conversion of data throughout the project for modification to data cleansing, data migration and other data issues as they may arise until Go-Live.
- Test the application modification as determined by GAP analysis for acceptance based on Le Sueur County stated requirements and Le Sueur County desired outcome.
- Test the integration mechanisms as determined by GAP analysis for acceptance based on Le Sueur County stated requirements and Le Sueur County desired outcome.

Deliverables

- Test plans.
- The system to be tested.
- The database conversion routine to be tested.
- The GAP analysis application modifications to be tested.
- The GAP analysis integration mechanisms to be tested.

- Phase 7 (Go-Live)

Roles\Responsibilities:

West Central Indexing:

- Provide personnel onsite to assist in any last minute items that may arise during Go-Live.

Le Sueur County IT:

- Provide IT personnel with knowledge of the Application Extender design and implementation at Le Sueur County during Go-Live.
- Provide IT personnel with knowledge of the current Tax system design and implementation at Le Sueur County during Go-Live.
- Provide IT personnel with knowledge of the current Le Sueur County GIS design and implementation at Le Sueur County during Go-Live.

Le Sueur County Subject Matter Expert:

- Provide business users who will do their best to enjoy their new system.

Tasks

- Run final data migration routine
- Sign data conversion completion form
- Go-Live
 - ✓ Turn off old TriMin system and other systems
 - ✓ Turn on new RecordEASE system

Deliverables

- New system with converted and cleaned data.

Timeline:

Task/Milestone	StartDate (TBD)	EndDate (TBD)
Contract Signing	Unknown	Unknown
Phase 1 (GAP analysis)	1/31/19 Contract Signing	2 Weeks from StartDate
GAP Analysis Sign-off	EndDate Phase 1	EndDate Phase 1
Phase 2 (Implementation Design)	EndDate Phase 1	2 Months from StartDate
Phase 3 (Base Implementation\Data Conversion)	EndDate Contract Signing	Base Implementation finished 1 week from StartDate Conversion end date is Go-Live 1 st Cut of data 1 Month from StartDate
Base System Implemented with 1 st Cut of data	1 week from Start of Phase 3	1 week from Start of Phase 3
Phase 4 (GAP item implementation)	EndDate Phase 3	2 Months from StartDate
Phase 5 (Training)	BaseSystem Implementation with 1 st Cut of data	1 Month from StartDate
Phase 6 (Testing)	BaseSystem Implementation with 1 st Cut of data	1 Month from StartDate
Training Sign-off	EndDate of Phase 5 (Training)	EndDate of Phase 5 (Training)
Testing Sign-off	EndDate of Phase 6 (Testing)	EndDate of Phase 6 (Testing)
Phase 7 (Go-Live)	Training Sign-off and Testing Sign-off	One Week from StartDate

**SOFTWARE DEVELOPMENT AND IMPLEMENTATION SERVICES AGREEMENT
ATTACHMENT B
Development and Implementation Fees and payment Schedule**

Fees

Project Installation Fees

Data Conversion Fee	\$15,000.00
Implementation Fee	\$12,500.00
Training Fee	<u>\$12,500.00</u>
Total Project Installation Fees	\$40,000.00

Payment Schedule

First Payment – Due at time of signing agreements	\$ 10,000.00
Second Payment – Due February 15, 2019	\$ 10,000.00
Third Payment – Due April 15, 2019	\$ 10,000.00
Fourth Payment – Due June 15, 2019	<u>\$ 10,000.00</u>
Total Installation Fees Payments	\$ 40,000.00

Hourly Rates for Future Statements of Work

Software Development	\$115.00 per hour
Additional Training	\$115.00 per hour

Pricing includes all applicable sales tax.

**SOFTWARE DEVELOPMENT AND IMPLEMENTATION SERVICES AGREEMENT
ATTACHMENT C
Hardware Requirements**

**RecordEASE
Minimum & Recommended Hardware Requirements
Multi-Server Configuration**

OPERATING SYSTEM REQUIREMENTS - HARDWARE AND SOFTWARE SPECIFICATIONS FOR EACH DESIGNATED SITE AND DESIGNATED EQUIPMENT

Component	Minimum	Recommended
Workstation (Hardware)	Pentium® Dual Core 3GHz 1 GB RAM 2 GB Hard Drive 19" Monitor 1280 x1024 capable video card Network card	Intel® Core i series 3.2GHz 2 GB MB RAM 2 GB Hard Drive 20" or greater Monitor 1280 x1024 capable video card Network card
Workstation (Software)	Windows 7 32bit\64bit Windows 8.X 32bit\64bit Latest service packs	Windows 10 64bit Latest service packs
Application\Web Server (Hardware ⁱ)	Intel® Xeon® processor 5500 or 5600 series 4 GB RAM 5 GB hard drive free space for storage of images (If no other storage hardware is used) + Minimum required space for operating system. Network Card Dedicated Phone Line or Internet connection Remote control software Data Backup system Appropriate Firewall if Electronic Recording system is deployed	Dual Core Intel® Xeon® processor 6000 series 16 GB RAM 5 GB hard drive free space for storage of images (If no other storage hardware is used) + Minimum required space for operating system. Network Card Dedicated Phone Line or Internet connection Remote control software Data Backup system Appropriate Firewall if Electronic Recording system is deployed

Component	Minimum	Recommended
Database Server (Hardware ⁱⁱ)	Intel® Xeon® processor 5500 or 5600 series 24 GB RAM 50 GB hard drive free space for storage of database (If no other storage hardware is used) + Minimum required space for operating system. Network Card Dedicated Phone Line or Internet connection Remote control software Data Backup system Appropriate Firewall if Electronic Recording system is deployed	Multi-Core Intel® Xeon® processor 6000 series 64 GB RAM 50 GB hard drive free space for storage of database (If no other storage hardware is used) + Minimum required space for operating system. Network Card Dedicated Phone Line or Internet connection Remote control software Data Backup system Appropriate Firewall if Electronic Recording system is deployed
Web Server (Software)	Windows 2008R2\2012R2 with appropriate CAL's and latest service packs Configured as Web Server	Windows 2016 with appropriate CAL's and latest service packs Configured as Web Server
Application Server (Software)	Windows 2008R2\2012R2 with appropriate CAL's and latest service packs Configured as Application Server	Windows 2016 with appropriate CAL's and latest service packs Configured as Application Server
Database Server (Software)	Windows 2008R2\2012R2 with appropriate CAL's and latest service packs MS SQL2008\MSSQL2012 with appropriate CAL's Latest Service Packs	Windows 2016 with appropriate CAL's and latest service packs MS SQL2016 with appropriate CAL's Latest Service Packs MS SQL Reporting Services MS SQL Analysis Services MS SQL Integration Services

Hardware recommendations are based on the assumption that only RecordEASE will exist on recommended hardware, if other systems also reside on hardware, then appropriate measures will need to be made by client to determine necessary CPU, Memory and Disk needs.

No recommendation of disk space is estimated for images until assessment of current image storage is performed.

ⁱ An equivalently sized Virtual Server is acceptable.

ⁱⁱ An equivalently sized Virtual Server is acceptable if the disk response for the SQL database is 10ms for the t-log and 20ms for the data for the given work load

SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT

This **SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT** (this “**Agreement**”) is made effective as of _____, 2019 (the “**Effective Date**”), by and between Le Sueur County, a political subdivision of the State of Minnesota (the “**County**”), having offices at 88 South Park Avenue, Le Center, Minnesota 56057, and WEST CENTRAL INDEXING, L.L.C. a Minnesota limited liability company, (“**West Central**”), having offices at 405 22nd Avenue W, Alexandria, MN 56308 (each, a “**Party**” and collectively, the “**Parties**”).

RECITALS

WHEREAS, the County’s Department of County Recorder (the “**Department**”) has Interest in a new Property Records Management System.

WHEREAS, the County selected West Central’s RecordEASE Suite of products for such system (the “**Licensed Software**”); and

WHEREAS, the Parties are concurrently entering into a license agreement (the “**License Agreement**”) and a Software Development and Implementation Services Agreement (the “**Development and Implementation Agreement**”) with respect to the Licensed Software; and

WHEREAS, the Parties wish to enter into this Maintenance and Support Agreement in order to set forth the terms and conditions pursuant to which West Central shall provide software maintenance and support services to the County, with respect to the Licensed Software.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

The recitals set forth in the whereas clauses above are incorporated by reference as if set forth herein.

1. **Definitions.**

- 1.1. “**Correction**” means the repair or replacement of source or object or executable code versions of the Licensed Software to remedy an Error. A Correction may be in the form of a patch to the Licensed Software.
- 1.2. “**Enhancement**” means technical or functional additions to the Licensed Software to improve software functionality or operations.
- 1.3. “**Error**” means a malfunction in the Software which degrades the use of the Licensed Software.

- 1.4. **“Licensed Software”** means the West Central’s RecordEASE and Vitals, Licensing, and Permitting products licensed by West Central under the License Agreement, plus all customizations thereof provided by West Central under the **Software Development and Implementation Services Agreement** and this Agreement.
- 1.5. **“OTRS”** means the Open source Ticket Request System used by West Central to manage customer telephone calls and e-mails regarding the Licensed Software.
- 1.6. **“Severity Level 1”** means that the County’s Property Records Management System is down and unable to function.
- 1.7. **“Severity Level 2”** means that the County’s Property Records Management System is operational but with limitations, for which Corrections or Workarounds are required.
- 1.8. **“Severity Level 3”** means that the County’s Property Records Management System is operational and functional, but assistance is needed.
- 1.9. **“Severity Level 4”** means routine questions and consultation, while the County’s Property Records Management System remains operational and functional.
- 1.10. **“Update”** means all published revisions to the documentation and new releases of the Licensed Software which are not designated by West Central as new products for which West Central charges separately.
- 1.11. **“User Group”** means a group of West Central customers using all or some of the Licensed Software formed to share knowledge and experiences regarding the Licensed Software.
- 1.12. **“Workaround”** means a change in the procedures followed or data supplied to avoid an Error without significantly impairing performance of the Licensed Software.

2. **Software Maintenance.** The following technical and functional improvements will be provided by West Central to maintain and improve Licensed Software operations:

- (a) Updates; and
- (b) Error Corrections contained in Updates;
- (c) Enhancements contained in Updates.

All Updates, Corrections, Enhancements and Workarounds provided to the County shall be owned by West Central and shall become part of the Licensed Software and shall be subject to the terms and conditions of the License Agreement, including without limitation the provisions thereof regarding ownership and confidentiality. Subject to the terms of the License Agreement,

West Central shall have the right to use all or any part of each Update, Correction, Enhancement and Workaround for any work or services done for, or provided to, any other customer of West Central.

3. Software Support.

3.1. User Support. West Central will provide user support services for the Licensed Software as follows:

- (a) Telephone support available from 7:00 a.m. to 5:00 p.m. Central Time, Monday through Friday, on regular County business days (i.e., excluding weekends and County holidays); and
- (b) Email support for technical issues available from 7:00 a.m. to 5:00 p.m. Central Time, Monday through Friday, on regular County business days (i.e., excluding weekends and County holidays).

3.2. System Support. West Central will provide system support services for the Licensed Software as follows:

- (a) Corrections to Errors which would not otherwise be addressed by scheduled Updates; and
- (b) Enhancements to the Licensed Software requested by the County to the extent such Enhancements are (i) agreed upon by the West Central User Group and (ii) included within the scope of Updates as determined by West Central.

3.3. Customer Support for RecordEASE, EDR and RecordEase Submissions. West Central will provide telephone support to customers for RecordEASE EDR submissions, from 7:00 a.m. to 5:00 p.m. Central Time, Monday through Friday, on regular County business days (i.e., excluding weekends and County holidays).

4. Priority Levels. West Central shall respond in accordance with the following protocols in accordance with the Severity Levels, as follows:

4.1. Severity Level 1. West Central will return the call from the County in 30 minutes or less, with a Correction or Workaround provided as soon as possible and assigned first priority at West Central. In the OTRS system, the trouble ticket will be assigned OTRS Priority 5 (Very High).

4.2. Severity Level 2. West Central will return the call from the County in 30 minutes or less, and will provide a Correction or Workaround as soon as possible. In the OTRS system, the trouble ticket will be assigned OTRS Priority 4 (High).

4.3. Severity Level 3. West Central will return the call from the County in four hours or less, and will provide a Correction or Workaround, or other appropriate

response and resolution, within eight hours. In the OTRS system, the trouble ticket will be assigned OTRS Priority 3 (Normal).

- 4.4. Severity Level 4. West Central will return the call from the County in four hours or less and will provide a Correction or Workaround, or other appropriate response and resolution, in a timely manner. In the OTRS system, the trouble ticket will be assigned OTRS Priority 2 (Low).

5. Maintenance and Support Fee.

- 5.1. Fee for Maintenance and Support Services. The fee for maintenance and support services for the term of this agreement, as defined in Section 6.1, shall be \$15,000.00 per year for the first three years. The following two years will be \$15,540.00; thereafter, in the event the County elects to continue to receive maintenance and support services, the County shall pay West Central the annual maintenance and support fee then being charged by West Central to its customers generally for the Licensed Software. Pricing includes all applicable sales tax.
- 5.2. Payment Terms. Any payments due to West Central from the County hereunder will be invoiced by West Central and will be payable 30 days after the County's receipt of such invoice. Past due payments bear interest from the due date at the rate of the lesser of 1-1/2% per month or the highest rate permitted by applicable law. Each such invoice delivered to the County will provide details of the charges to the County, applicable rates and hours of West Central personnel providing services to the County and will be supported by proper invoices and vouchers in respect of all expenses for which reimbursement is claimed.

6. Term and Termination.

- 6.1. Term. Maintenance and support services shall be provided for an initial period of 60 months beginning upon the expiration of the Warranty Period, but not before July 15, 2019, under the Development and Implementation Agreement, and shall thereafter be extended for consecutive periods of 12 months each, unless terminated by either Party as provided in Section 6.2 of this Agreement.
- 6.2. Termination by County. The County may terminate the maintenance and support services under this Agreement at the end of the original term or at the end of any renewal term by giving West Central written notice of such termination at least 90 days prior to the scheduled expiration of such original term or renewal term. In addition to terminating or suspending this agreement, such termination shall also have the effect of terminating the License Agreement.
- 6.3. Suspension or Termination by West Central. In the event that the County fails to make payment pursuant to Section 5 (Maintenance and Support Fees) and such failure has not been cured within 30 days of the County's receipt of written notice of such failure, West Central may suspend or terminate the maintenance and

support services under this Agreement. In addition to terminating or suspending this agreement, such suspension or termination shall also have the effect of suspending or terminating the License Agreement.

- 6.4. Preservation of Rights. Termination of this Agreement shall not prejudice any rights of either Party which have arisen on or before the date of termination.

7. Assistance by the County.

The County shall assist West Central in the performance of its services under this Agreement by making available all equipment, software, documentation, information and personnel required for the execution of this Agreement on a timely basis. The County shall also ensure that those of its personnel who are assigned to assist West Central are familiar with the County's requirements and have the expertise and capabilities necessary to permit West Central to undertake and complete the services under this Agreement.

8. Records and Examinations.

- (a) West Central will maintain records which reflect all revenues, costs incurred and services provided by West Central in performance of this Agreement.
- (b) The County, the State Auditor or legislative authority, or any of their duly authorized representatives, at any time during normal business hours and as often as they reasonably deem necessary, for a minimum of six years from the end of the Term, pursuant to Minnesota Statute 16C.05, shall have access to and the right to examine the books, records, documents, and accounting procedures and practices of West Central which are relevant to West Central's performance and determination of the agreed upon payments under this Agreement. Such examinations shall be conducted at the location where West Central normally maintains such records. The County shall provide West Central with reasonable prior written notice of each such examination. Any information revealed by an examination shall be treated as trade secret information of West Central under Minnesota Statutes Section 13.37 subd. 1(b).

9. Standards.

West Central shall comply with all applicable Federal and State Statutes and regulations as well as local ordinances now in effect or hereafter adopted.

10. Data Privacy.

All data collected, created, received, maintained or disseminated, or used for any purposes in the course of West Central's performance of this Agreement, is governed by the Minnesota Government Data Practices Act, Minnesota Statutes 1984, Section 1301 et seq. (the "Act") or any other applicable state statutes and state rules adopted to implement the Act, as well as state statutes and federal regulations on data privacy. West Central agrees to abide by these statutes, rules and regulations as they may be amended.

11. Nondiscrimination.

West Central shall comply with and abide by the obligations and requirements set forth in Minnesota Statutes Section 181.59 and general County policy, that every contract contain provisions by which West Central agrees to freedom from discrimination in employment.

12. Limitation of Liability.

12.1. **WEST CENTRAL'S LIABILITY AND THAT OF ITS AGENTS, REPRESENTATIVES, AND EMPLOYEES TO THE COUNTY FOR DAMAGES WITH RESPECT TO THIS AGREEMENT, OR ANY MAINTENANCE AND SUPPORT SERVICES PROVIDED BY WEST CENTRAL HEREUNDER (INCLUDING WITHOUT LIMITATION ANY CORRECTION, ENHANCEMENT, WORKAROUND OR UPDATE), SHALL NOT EXCEED THE AGGREGATE AMOUNT OF FEES PAID TO WEST CENTRAL BY THE COUNTY FOR SUCH MAINTENANCE OR SUPPORT SERVICES, AS THE CASE MAY BE. DAMAGES AS LIMITED BY THIS SECTION 12.1 SHALL BE THE COUNTY'S SOLE AND EXCLUSIVE ALTERNATIVE REMEDY IN THE EVENT THAT ANY OTHER REMEDY PROVIDED IN THIS AGREEMENT FAILS ITS ESSENTIAL PURPOSE.**

12.2. **IRRESPECTIVE OF ANY FAULT OR NEGLIGENCE, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SALES, LOST SAVINGS, LOST PROFITS (ANTICIPATED OR ACTUAL), LOSS OF USE, DOWNTIME, INJURY TO PERSONS OR DAMAGE TO PROPERTY AND CLAIMS OF THIRD PARTIES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY OR TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND, WHETHER ACTIVE OR PASSIVE), OR ANY OTHER LEGAL OR EQUITABLE THEORY, ALL WHETHER OR NOT SUCH PARTY HAS BEEN APPRISED OR NOTIFIED THAT ANY SUCH DAMAGES OR LOSSES ARE POSSIBLE OR LIKELY, AND WHETHER OR NOT ANY PERMITTED REMEDY HAS FAILED ITS ESSENTIAL PURPOSE.**

13. General.

13.1 Independent Contractor.

- (a) It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the Parties hereto or as constituting West Central as the agent, representative, or employee of the County for any purpose of in any manner whatsoever. West Central is to be, and shall remain, an independent contractor with respect to all services performed under this Agreement.
- (b) West Central represents that it has, or will secure at its own expense, all personnel required in performing services under this Agreement. Any and

all personnel of West Central or other persons, while engaged in the performance of any work or services required by West Central under this Agreement, shall have no contractual relationship with the County and shall not be considered employees of the County.

- (c) Neither West Central nor its employees will at any time be construed to be employees of the County. West Central is responsible for its employees' compensation, fringe benefits and all insurance coverage.

13.2 Subcontracting and Assignment.

If West Central subcontracts its obligations under this Agreement, West Central shall be responsible for the performance of all obligations by the subcontractors.

- 13.3 Modifications. Any material alteration, modification or variation of this Agreement shall be reduced to writing as an amendment and signed by Parties. Any alteration, modification, or variation deemed not to be material by agreement of the County and West Central shall not require written approval.

- 13.4 Merger. It is understood and agreed that the entire contract of the Parties is contained herein and this Agreement supersedes all oral agreements and negotiations between the Parties relating to this subject matter. All items referred to in this Agreement are incorporated or attached and deemed to be a part of this Agreement.

- 13.5 Governing Law. The construction, interpretation, and performance of this Agreement shall be governed by the substantive laws of the State of Minnesota without giving effect to its choice of law rules.

- 13.6 Assertion of Liability. Each action or claim against any Party arising under or relating to this Agreement shall be made only against such Party as a legal entity and any liability relating thereto shall be enforceable only against the assets of such Party. No Party shall seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against any shareholder, employee, officer or director or manager of the other Party. Each of such persons is an intended beneficiary of the mutual promises set forth in this Section and shall be entitled to enforce the provisions of this Section.

- 13.7 Severability. If any provision of this Agreement is held invalid or unenforceable by a court having jurisdiction over the Parties, the Parties agree that the invalid or unenforceable provision shall be replaced with a valid provision which most closely approximates the intent and economic effect of the original provision.

- 13.8 Waivers. Any failure by either Party to enforce or exercise any provision of the Agreement or related right shall not constitute a waiver of that right or provision.

- 13.9 Third-Party Beneficiaries. The Parties agree that, except as provided in Section 13.6, there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the Parties based upon this Agreement.
- 13.10 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed given when delivered by certified mail, return receipt requested, postage prepaid or when received if sent by overnight courier. All notices shall be directed to the Parties at the respective addresses set forth in the preamble above or to such other address as either Party may, from time to time, designate by notice to the other Party.
- 13.11 Publicity. West Central may issue a press release or public announcement concerning this Agreement and the transactions which are the subject hereof, with the County's prior written consent, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the County hereby acknowledges that after an initial press release West Central, and its affiliates, may reference its customer relationship with the County in any and all documents distributed in connection with any financing transactions and any marketing documents.
- 13.12 Force Majeure. Neither Party shall be held liable to the other party for failure of performance where such failure is caused by supervening conditions beyond that Party's control, including, without limitation natural disasters, acts of God, terrorism, vandalism, civil disturbance, any governmental action, strikes, or labor disputes, or any similar or dissimilar cause.
- 13.13 Counterparts. This Agreement may be executed by the Parties in multiples counterparts, each of which shall be an original but all of which taken together shall constitute one and the same instrument.

[The following page is the signature page.]

IN WITNESS WHEREOF, the Parties hereto have executed this Software Maintenance and Support Agreement as of the Effective Date.

WEST CENTRAL INDEXING, L.L.C.

Le SUEUR COUNTY

By: _____

By: _____

Printed Name: Tom Fischer

Printed Name: Sharon Budin

Title: Vice President

Title: County Recorder

Date: _____

Date: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

By: _____

Printed Name: _____

Title: _____

Date: _____