

ITEM A-15

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
MAY 17, 2016 AGENDA**

Subject:	Type:	Submitted By:
APPROVE AGREEMENT — FINANCIAL INFORMATION SOFTWARE SYSTEM AND IMPLEMENTATION	◆ RESOLUTION ORDINANCE RECEIVE/FILE	PAM BUETHE CITY CLERK

SYNOPSIS

A resolution has been prepared authorizing the execution of an agreement with BS&A Software, Bath, MI for the implementation of a new Financial Information Software System in an amount not to exceed \$275,000.

FISCAL IMPACT

The FY 16 Capital Improvement Program contains funding for the proposed project.

RECOMMENDATION

Approval.

BACKGROUND

At their March 1, 2016, the City Council approved the selection of a vendor and the negotiation of an agreement for the implementation of a new Financial Information Software System for the City up to \$275,000.

The attached draft agreement has been negotiated and reviewed by City Staff and the City Attorney and the recommendation is to authorize the execution of the agreement. It is marked as a draft as staff is waiting for some exhibits.

Upon authorization and execution of the agreement the process to implement the new Financial Software will begin around the middle of June 2016 with completion of all modules by July of 2017.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH BS&A SOFTWARE, BATH, MI FOR THE IMPLEMENTATION OF A NEW FINANCIAL INFORMATION SOFTWARE SYSTEM FOR THE CITY OF LA VISTA IN AN AMOUNT NOT TO EXCEED \$275,000.

WHEREAS, the City Council of the City of La Vista has determined that the selection of a vendor for a new financial information software system is necessary; and

WHEREAS, the FY 16 Capital Improvement Program contains funding for this project; and

WHEREAS, ON March 1, 2016 the City Council approved the selection of a vendor and the negotiation of an agreement for the implementation of a new financial information software system; and

WHEREAS Subsection (C) (9) of Section 31.23 of the La Vista Municipal Code requires that the City Administrator secures Council approval prior to authorizing any purchase over \$5,000.00.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska authorize the execution of an agreement with BS&A Software Bath, MI for implementation of a new financial information software system for the City of La Vista, subject to any modifications the City Administrator or her designee determines necessary in an amount not to exceed \$275,000.

PASSED AND APPROVED THIS 17TH DAY OF MAY, 2016.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

SOFTWARE LICENSE AND SERVICES AGREEMENT

This Software License and Services Agreement that includes attached Exhibits ("Agreement") is between Bellefeuil, Szur & Associates, Inc. ("BSA"), a Michigan corporation and the City of La Vista, Sarpy County NE ("Customer"), effective the date of the signature of the last Party to sign the Agreement ("Effective Date"). Each party to the Agreement is referred to as a "Party" and the parties, collectively, are referred to as "Parties."

This Agreement sets the terms and conditions under which BSA will furnish certain licensed software and certain services described herein to Customer.

SECTION A – SOFTWARE LICENSE

1. License Grant.

1.1. Upon the Effective Date, subject to the terms of this Agreement and Customer's ongoing compliance therewith, BSA hereby grants to Customer a perpetual, non-exclusive, non-transferable, and non-assignable license to install and use the BSA Software Products for Customer's internal business purposes only (and not, for example, as a data center, reseller, or service bureau for third parties) only on servers owned by Customer and located at Customer's facilities, and otherwise in accordance with this Agreement. In the event that the Customer uses offsite servers, the Customer shall take all necessary precautions to ensure that use and access is restricted to fulfilling the Customer's use only. "BSA Software Product(s)" means, the: (i) BSA software products set forth in **Schedule 1 to Exhibit A**; (ii) related interfaces and customizations; (iii) BSA manuals, BSA official specifications, and BSA user guides provided in or with BSA software products set forth in **Schedule 1 to Exhibit A** ("Documentation"); and (iv) all modifications to the BSA software products set forth in **Schedule 1 to Exhibit A**, including, but not limited to, fixes, new versions, new releases, updates, upgrades, corrections, patches, work-arounds (collectively, "Modifications"). For the avoidance of doubt, Documentation does not include advertising, other general statements about products, or statements by sales or other staff members. Customer may make and keep (securely) one archival copy of each BSA Software Product solely for use as backup.

1.2. Customer will not sublicense, modify, adapt, translate, or otherwise transfer, reverse compile, disassemble or otherwise reverse engineer BSA Software Products or any portion thereof without prior written consent of the BSA. Without limiting the foregoing, the source code of the BSA Software Products may not be modified by anyone other than BSA. If Customer modifies the BSA Software Products without BSA's prior written consent, any BSA obligation to provide support services on, and the warranty for, the BSA Software Products will be void. All rights not expressly granted are reserved.

2. License Fees. Customer agrees to pay BSA, and BSA agrees to accept from Customer as payment in full for the license granted herein, the software fees set forth in **Schedule 1 to Exhibit A**.

3. Limited Software Warranty.

3.1. BSA warrants and represents for a period of one (1) year from the go-live date for each BSA Software Product that: (i) such BSA Software Product will perform substantially in the same manner as official demonstration versions, as actually demonstrated to Customer, and in accordance with BSA's authorized online tutorials and videos that may have been made available as part of the sales and negotiation process leading up to this Agreement; and (ii) the BSA Software Product shall conform to the Documentation and be free of material defects in workmanship and materials. Any claim under this Limited Software Warranty must be made within ninety (90) days after the one (1) year warranty period ends. Customer's exclusive remedy in the event of a breach of this warranty shall be to have BSA use reasonable efforts to repair or replace the non-conforming BSA Software Product so as to render it conforming to the warranty, or in the event that is not possible to render it conforming with reasonable efforts, to receive a refund of the amount paid for the BSA Software Product.

3.2. THE FOREGOING LIMITED SOFTWARE WARRANTY IS IN LIEU OF ALL OTHER REPRESENTATIONS OR WARRANTIES RELATING IN ANY WAY TO THE BSA SOFTWARE PRODUCTS, INCLUDING, *BUT NOT LIMITED TO*, THEIR FEATURES, ATTRIBUTES, FUNCTIONALITY, AND PERFORMANCE. THE FOREGOING LIMITED SOFTWARE WARRANTY IS IN LIEU OF ALL SUCH REPRESENTATIONS OR WARRANTIES WHETHER EXPRESS OR IMPLIED, INCLUDING, *BUT NOT LIMITED TO*, ANY IMPLIED WARRANTIES OR REPRESENTATIONS OF MERCHANTABILITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUE OR OTHERWISE IN LAW OR FROM THE COURSE OF DEALING OR USAGE OF TRADE. BSA DOES NOT REPRESENT OR WARRANT THAT THE BSA SOFTWARE PRODUCTS

WILL MEET ALL OF CUSTOMER'S PARTICULAR REQUIREMENTS, THAT THE OPERATION OF THE BSA SOFTWARE PRODUCTS WILL OPERATE ERROR-FREE OR UNINTERRUPTED, OR THAT ALL PROGRAMMING ERRORS IN THE BSA SOFTWARE PRODUCT(S) CAN BE FOUND IN ORDER TO BE CORRECTED.

4. Ownership of BSA Software Products/Proprietary Information.

4.1. BSA shall retain ownership of, including all intellectual property rights in and to, the BSA Software Products. Customer agrees not to challenge such rights and hereby assigns any and all copyrights and other intellectual property rights in and to the BSA Software Products to BSA and agrees to execute any and all documents necessary to effect the purposes of this paragraph. "Intellectual property rights" means all trademarks, copyrights, patents, trade secrets, moral rights, know-how, and all other proprietary rights.

5. **Source Code Escrow.** The source code for the software products included will be placed into escrow by BS&A Software, subject to separate escrow agreement, as detailed in Exhibit D.

SECTION B – PROFESSIONAL SERVICES

6. **Professional Services.** BSA shall provide the services ("Professional Services") set forth in **Schedule 2 to Exhibit A and Exhibit J** (Statement of Work), for the prices indicated, provided Customer fulfills its obligations set forth in this Agreement. The Parties may enter into future Statements of Work, which shall become part of this Agreement.

6.1. Once assigned, the assigned personnel will not be removed from the project without advance notice to the customer. In the case that personnel reassignment is necessary, these personnel will be assigned by mutual agreement. If BSA personnel are not providing services as outlined in the Professional Services Warranty, the City will inform BSA in order to provide BSA the opportunity to take corrective action. If the issue(s) persist, BSA will provide replacement personnel.

7. **Change Orders.** If Customer requires the performance of professional services not covered by the existing Agreement, or requires a change to the existing Professional Services, Customer shall deliver to BSA's Project Manager a written change order and specify in such change order the proposed work with sufficient detail to enable BSA to evaluate it ("Change Order"). BSA may, at its discretion, prescribe the format of the Change Order. BSA shall provide the Customer with an evaluation of the Change Order, which may include a written proposal containing the following: (i) implementation plans; (ii) the timeframe for performance; and (iii) the estimated price for such performance. Upon execution, all Change Orders shall be governed by the terms and conditions of this Agreement, unless mutually agreed upon otherwise in writing. Customer acknowledges that such Change Orders may affect the implementation schedule and Go-Live Dates.

8. License and Ownership.

8.1. All rights, including all intellectual property rights, in and to work product delivered as a result of Professional Services under this Agreement shall be owned by BSA. For the avoidance of doubt, work product that constitutes a BSA Software Product or portion thereof shall be governed by Section A including Section 1.1 thereof.

8.2. Subject to Section 7.1 and Customer's compliance with this Agreement (including payment in full), BSA grants to Customer a perpetual, non-exclusive, non-transferable, and non-assignable license to use the work product and the intellectual property rights therein for Customer's internal business purposes only.

9. **Cancellation.** In the event Customer cancels or reschedules Professional Services, and without prejudice to BSA's other rights and remedies, Customer is liable to BSA for: (i) all expenses incurred by BSA on Customer's behalf that cannot be cancelled, such as non-refundable flights, hotel reservations, rental car reservations, as well as per diem costs already incurred prior to the cancellation; and (ii) daily fees for the number of onsite implementation days associated with the canceled Professional Services (in accordance with the daily fee rate), if less than two weeks advance notice is given regarding the need to cancel or reschedule and BSA cannot reasonably reassign its affected human resources to other projects where comparable skills are required. Customer shall not be held liable for such charges and reimbursements in the event of cancellation by BSA.

10. Limited Professional Services Warranty.

10.1. BSA warrants that its Professional Services will be performed in a professional and workmanlike manner, materially in accordance with the Statement of Work attached as Exhibit E and the prevailing standards of BSA's industry. In the event of a breach of the foregoing warranty and a claim in accordance with the next sentence, BSA's sole obligation and Customer's exclusive remedy with respect to such claim will be to have BSA re-perform at no additional cost to the city, including travel expenses, or by mutual agreement, to refund the amount paid for, the portion of the Professional Services with respect to which the warranty has been breached, to bring it into compliance with such warranty. These services apply only to the Scope of Services identified in the Statement of Work, and does not apply to additional services not identified therein. Prior to any required re-performance, BSA and the City will mutually agree to the services to be provided in order to bring the Professional Services into compliance. Any claim for breach of the foregoing warranty must be made by notice to BSA within thirty (30) days of performance

of, the portion of the Professional Services with respect to which the claim is made, or said claim shall be deemed waived.

- 10.2. THE FOREGOING LIMITED PROFESSIONAL SERVICES WARRANTY IS IN LIEU OF ALL OTHER REPRESENTATIONS OR WARRANTIES RELATING TO THE PROFESSIONAL SERVICES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR REPRESENTATIONS OF MERCHANTABILITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM THE COURSE OF DEALING OR USAGE OF TRADE.**

SECTION C – MAINTENANCE AND SUPPORT

11. Maintenance and Support Generally.

- 11.1.** For a one-year period, commencing on the installation of the BSA Software Products, and subject to Customer's compliance with the Agreement, BSA will provide, at no charge to Customer, "Maintenance and Support," meaning the following: (i) Modifications (such as patches, corrections, and updates) as are generally provided at no additional charge (beyond the cost of annual Maintenance and Support) by BSA to BSA customers; and (ii) technical support, as further described in Section 11, during BSA's normal business hours.
- 11.2.** Commencing one (1) year from the installation of the BSA Software Products, Maintenance and Support will be provided on an annual basis, subject to compliance with the terms of the Agreement and payment of the annual Maintenance and Support fees outlined in **Exhibit B**. Maintenance and Support will be renewed annually unless either Party notifies the other at least sixty (60) days prior to the anniversary of installation of its intent to terminate.
- 11.3.** BSA guarantees that the Maintenance and Support annual fee set forth in **Exhibit B** will not change for two (2) years from the date of the installation of the BSA Software Products. After that date, BSA reserves the right each year to increase the fee over the previous year by no more than an amount that is proportionate to the increase (measured from the beginning of such previous year) in the Consumer Price Index as set forth by the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index – All Urban Consumers – U.S. City Average (the "Annual Renewal Fee").

12. Support.

- 12.1.** With respect to Errors following expiration of the Limited Software Warranty, BSA's sole obligation and Customer's sole remedy are set forth in this section 11. Subject to Customer's compliance with the terms of the Agreement and purchase of Maintenance and Support, BSA shall use commercially reasonable efforts, commensurate with the severity level, to achieve its support response and resolution targets with respect to Errors as set forth in **Exhibit C**. An "Error" means a verifiable failure of a BSA Software Product, which can be reproduced by following the same steps on the same data to operate in accordance with the existing program manuals, to be supplemented by help documents, Courseware and Tutorials, under conditions of normal use and where the Error is directly attributable to the BSA Software Product as updated with current Modifications. If the customer modifies the BSA Software Products without BSA's written consent, BSA's obligation to provide support services on the BSA Software Products will be void.
- 12.1.1.** In the event of an error which cannot be reproduced, BSA and the City will make every effort to evaluate possible resolutions, including, but not limited to, attempts to isolate possible hardware causes, attempts to reproduce via other methods, evaluation of other software installed which may have an adverse impact on operations, or introduction of programming in the source code, intended to reveal the specific nature of the problem.
- 12.2.** Support does not include the following: (i) installation or implementation of the BSA Software Products; (ii) onsite training/support, remote training, application design, and other consulting services; (iii) support of an operating system, hardware, or support outside of BSA's normal business hours; (iv) support or support time due to a cause external to the BSA Software Products adversely affecting their operability or serviceability, which shall include but not be limited to water, fire, wind, lightning, other natural calamities, transportation, misuse, abuse, or neglect; (v) repair of the BSA Software Products modified in any way other than modifications made by BSA or its agents; (vi) support of any other third-party vendors' software, such as operating system software, network software, database managers, word processors, etc.; and (vii) support of the BSA Software Products that have not incorporated current Modifications. All such excluded Maintenance and Support Services performed by BSA at Customer's request shall be invoiced to Customer on a time and materials basis, plus reasonable expenses associated therewith.
- 12.3.** Notwithstanding anything to the contrary, in order to maintain the integrity and proper operation of the Software, Customer agrees to use commercially reasonable efforts to implement, in the manner instructed by BSA, all Modifications in a timely manner. Customer's failure to implement any Modifications may limit or restrict the ability of Customer to implement future Modifications. Customer shall provide prompt notice of any Errors discovered by Customer, or otherwise brought to the attention of Customer. Proper notice may include, without limitation, prompt

telephonic and written (either via e-mail or postal mail) notice to BSA of any purported Error. If requested by BSA, Customer agrees to provide written documentation of Errors to substantiate those Errors and to otherwise assist BSA in the detection and correction of said Errors. BSA will use its commercial reasonable judgment to determine if an Error exists.

- 12.4. Customer acknowledges and agrees that BSA and product vendors may require online access to the BSA's system in order for BSA to provide Maintenance and Support Services hereunder. Accordingly, Customer shall provide a connection to the Internet to facilitate BSA's remote access to BSA's system. BSA shall provide remote connection software, which may require installation of a software component on a workstation or server computer, provided under BSA's license, at no cost to the Customer.

SECTION D – GENERAL TERMS AND CONDITIONS

13. **Customer Assistance.** Customer acknowledges that the implementation of the BSA Software Products is a cooperative process requiring time and resources of Customer personnel. Customer shall, and shall cause Customer personnel to, use all reasonable efforts to cooperate with and assist BSA as may be reasonably required to meet the project deadlines and other milestones agreed to by the Parties for implementation. Neither party shall be liable for failure to meet such deadlines and milestones when such failure is due to force majeure (as defined in Paragraph 1. above) or to the failure by personnel of the other party to provide such cooperation and assistance (either through action or omission).

14. **BSA Proprietary Information.**

- 14.1. Customer acknowledges that the information associated with or contained in the BSA Software Products and information used in the performance of Professional Services include trade secrets and other confidential and proprietary information of BSA (the "Proprietary Information").
- 14.2. The Customer shall maintain in confidence and not disclose Proprietary Information, beyond that strictly necessary for administration by the Third Party Information Technology provider directly or indirectly, to any third party without BSA's prior written consent. Customer shall safeguard the Proprietary Information to the same extent that it safeguards its own most confidential materials or data, but in no event shall the standard implemented be less than industry standard for entities of a similar class and resources as Customer. Proprietary Information shall be used by Customer solely to fulfill its obligations under this Agreement. Customer shall limit its dissemination of such Proprietary Information to employees within the Customer's business organization who are directly involved with the performance of this Agreement and have a need to use such Proprietary Information. Customer shall be responsible for all disclosures by any person receiving Proprietary Information, by or through it, as if Customer itself disseminated such information.
- 14.3. Proprietary Information shall not include any information that: (a) is or becomes publicly known through no wrongful act or breach of any obligation of confidentiality by Customer; (b) was lawfully known to Customer prior to the time it was disclosed to or learned by Customer in connection with this Agreement, provided that such information is not known to Customer solely because of its prior business relationship with BSA; (c) was received by Customer from a third party that is not under an obligation of confidentiality to BSA; or (d) is independently developed by Customer for a party other than BSA without the use of any Proprietary Information. The following circumstances shall not cause Proprietary Information to fall within any of exceptions (a) through (d) above: (i) a portion of such Proprietary Information is embraced by more general information said to be in the public domain or previously known to, or subsequently disclosed to, the Customer; or (ii) it is a combination derivable from separate sources of public information, none of which discloses the combination itself.
- 14.4. If Customer is required, or anticipates that it will be required, to disclose any Confidential Information pursuant to a court order or to a government authority, Customer shall, at its earliest opportunity, provide written notice to BSA so as to give BSA a reasonable opportunity to secure a protective order or take other actions as appropriate. Customer shall at all times, cooperate with BSA so as to minimize any disclosure to the extent allowed by applicable law.
15. **Limitation on Liability and Damages.** BSA'S ENTIRE LIABILITY AND RESPONSIBILITY FOR ANY AND ALL CLAIMS, DAMAGES, OR LOSSES ARISING FROM THE BSA SOFTWARE PRODUCTS (INCLUDING BUT NOT LIMITED TO THEIR USE, OPERATION, AND/OR FAILURE TO OPERATE), PROFESSIONAL SERVICES, MAINTENANCE AND SUPPORT, ANY THIRD-PARTY PERFORMANCE OR LACK THEREOF, OR OTHERWISE ARISING OUT OF OR RELATING TO THIS AGREEMENT, SHALL BE ABSOLUTELY LIMITED TO DIRECT DAMAGES NOT IN EXCESS OF THE PURCHASE PRICE OF BSA SOFTWARE PRODUCTS PLUS, TO THE EXTENT APPLICABLE, THE PURCHASE PRICE OF ANY PROFESSIONAL SERVICE SET FORTH IN THIS AGREEMENT THAT GIVES RISE TO THE CLAIM. NOTWITHSTANDING ANY PROVISION CONTAINED HEREIN, BSA SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR CONTINGENT DAMAGES OR EXPENSES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, ARISING IN ANY WAY OUT OF THIS AGREEMENT, BSA SOFTWARE PRODUCTS, ANY THIRD-PARTY PERFORMANCE, OR LACK THEREOF, OR BSA'S PERFORMANCE, OR

LACK THEREOF, UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LOSS OF REVENUE, PROFIT, OR USE. TO THE EXTENT THAT APPLICABLE LAW DOES NOT PERMIT THE LIMITATIONS SET FORTH HEREIN, THE LIABILITY AND DAMAGES SHALL BE LIMITED AND RESTRICTED TO THE EXTENT PERMITTED BY LAW.

16. Customer is solely responsible for its data, its database, and for maintaining suitable back-ups of the data and database to prevent data loss in the event of any hardware or software malfunction. Customer covenants and agrees to undertake all necessary measures to protect and secure its data, including implementation of technical, administrative and physical protections. BSA SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR DATA LOSS REGARDLESS OF THE REASONS FOR SAID LOSS. in the event that BSA is required to perform activities that may impact the City's data, or database, both parties will mutually agree to the activities to be performed. If data loss occurs as a result of this agreed upon activity, BSA will work with the City to attempt to recover lost data. To the maximum extent authorized by law, Customer agrees to defend, indemnify and hold BSA harmless for any claim by any person or entity arising out of any loss or compromise of data or data security or arising out of Customer's breach of this Agreement.
17. **Additional Disclaimer.** SUPPLIER PROVIDES NO WARRANTY FOR ANY THIRD-PARTY SOFTWARE AND/OR HARDWARE. EXCEPT AS SET FORTH IN THIS AGREEMENT, SUPPLIER WILL NOT BE RESPONSIBLE FOR ANY THIRD-PARTY SOFTWARE, THIRD-PARTY SERVICES AND/OR HARDWARE.
18. **Indemnification for Intellectual Property Infringement.** If a claim is made or an action is brought alleging that a BSA Software Product infringes on a U.S. patent, or any copyright, trademark, trade secret or other proprietary right, BSA at its sole cost will indemnify, defend and hold harmless Customer against such claim and will pay resulting costs and damages finally awarded, provided that: (a) Customer promptly notifies BSA in writing of the claim; (b) BSA has sole control of the defense and all related settlement negotiations; (c) Customer reasonably cooperates in such defense at no expense to BSA except for defense costs; and (d) Customer remains in compliance with the Agreement and has continued to purchase Maintenance and Support Services. The obligations of BSA under this Section are conditioned on Customer's agreement that if the applicable BSA Software Product, in whole or in part, or the use or operation thereof, becomes, or in the opinion of BSA is likely to become, the subject of such a claim, BSA may at its expense either procure the right for Customer to continue using the BSA Software Product or, at the option of BSA, replace or modify the same so that it becomes non-infringing (provided such replacement or modification maintains the same material functionality and does not adversely affect Customer's use of the Update as contemplated hereunder).
19. **No Intended Third-Party Beneficiaries.** This Agreement is entered into solely for the benefit of BSA and Customer. No third party will be deemed a beneficiary of this Agreement, and no third party will have the right to make any claim or assert any right under this Agreement.
20. **Termination.** Without prejudice to other rights and remedies, and except as otherwise provided in this Agreement, either Party may terminate this Agreement for the other Party's material breach upon failure to cure such breach after thirty (30) days' written notice identifying with specificity the nature of the breach. Upon termination of this Agreement: (a) Customer shall promptly pay all amounts payable to BSA for Services rendered up to the date of termination; and (b) Customer shall return or destroy, at the direction of the BSA, BSA's Proprietary Information in its possession after Customer's data and software conversion to a successor provider is completed, no later than thirty (30) days after the termination of the agreement. Notwithstanding anything in the Agreement to the contrary, Customer shall have the option to terminate this Agreement upon thirty (30) days written notice if BSA is unable to promptly correct any critical error involving BSA software or services. The termination of this Agreement will not discharge or otherwise affect any pre-termination obligations of either Party existing under this Agreement at the time of termination. Sections 1.2, 4.1, 8.1, 14 through 17, 18, 19, 22 through 30, and the provisions of this Agreement, which by their nature extend beyond the termination of this Agreement, will survive termination of the Agreement. No action arising out of this Agreement, regardless of the form of action, may be brought by Customer more than one (1) year after the date the action occurred.
- 20.1. **Termination for Lack of Appropriations.** In the event that public funds are unavailable and/or not appropriated for the City's obligations under this contract, the contract shall automatically expire without penalty to the City upon receipt of a written thirty (30) day notice by the City to BSA of the unavailability and/or non-appropriation of funds. The City will pay the license fees fees and services received from BSA prior to the termination.
- 20.2. **Termination for convenience.** The City may terminate the entire agreement, or a portion of the agreement as mutually agreed upon by the City and BSA for convenience. The City shall provide to BSA a written notice of termination for convenience indicating if the entire agreement or a portion of the agreement is terminated. If a portion is terminated, the written notice will indicate the applicable sections of the agreement. The termination will be considered effective thirty days after the City submits the notice to BSA. The City will pay the license fees and services received from BSA prior to the termination.
21. **Payment Terms.** Customer shall pay BSA for all amounts in accordance with this Agreement and **Exhibit A**.
22. **Governing Law and Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the state of Nebraska, without regard to its choice of law rules. BSA and the Customer agree that the exclusive venue for any legal or equitable action shall be the Courts of the County of Sarpy, State of Nebraska, or in any court of the United States of America lying in the Eastern District of Nebraska.

- 23. Entire Agreement.** This Agreement, which shall include BSA's bid as accepted by Customer's City Council, represents the entire agreement of Customer and BSA with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. Customer hereby acknowledges that in entering into this Agreement, it did not rely on any information not explicitly set forth in this Agreement.
- 24. Export.** Customer will comply with all applicable laws, including applicable export control laws that prohibit export or diversion of certain products and technology to certain countries or individuals, including foreign nationals in the United States. Customer undertakes to determine any export licensing requirements and to comply with such obligations. The BSA Software Products are deemed to be commercial computer software as defined in FAR 12.212 and subject to restricted rights as defined in FAR Section 52.227-19 "Commercial Computer Software-Restricted Rights" and DFARS 227.7202, "Rights in Commercial Computer Software or Commercial Computer Software Documentation", as applicable, and any successor regulations. Any use, modification, reproduction release, performance, display, or disclosure of BSA's Software Products by the U.S. Government shall be solely in accordance with the terms of this Agreement.
- 25. Severability.** If any term or provision of this Agreement, or the application thereof, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is held invalid or unenforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and enforced to the fullest extent permitted by law.
- 26. Successors and Assigns.** This Agreement shall be binding upon the successors, permitted assigns, representatives, and heirs of the Parties hereto. For avoidance of doubt, any expanded use by Customer of the Program, for example, in the event of annexation or desired shared services, shall require the consent of BSA.
- 27. Force Majeure.** "Force Majeure" is defined as an event beyond the reasonable control of a Party, including governmental action, war, riot or civil commotion, fire, natural disaster, problematic weather, lack of availability of Customer provided technology, labor disputes, restraints affecting shipping or credit, delay of carriers or any other cause that could not, with reasonable diligence, be foreseen, controlled or prevented by the Party. Neither Party shall be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure.
- 28. Notice.** All notices, requests, demands, and determinations under the Agreement (other than routine operational communications), shall be in writing and shall be deemed duly given: (i) when delivered by hand; (ii) one (1) business day after being given to a nationally recognized overnight delivery service for next-business-day delivery, all fees prepaid; (iii) when sent by confirmed facsimile with a copy sent by another means specified in this provision; or (iv) six (6) calendar days after the day of mailing, when mailed by United States mail, via registered or certified mail, return receipt requested, postage prepaid, and in each case addressed as shall be set forth below. A Party may from time-to-time change its address or designee for notification purposes by giving the other prior written notice of the new address or designee and the date upon which it will become effective.

If to BSA:

BSA Software
14965 Abbey Lane
Bath, MI 48808
Attn: Contracts Manager
Telephone: 517-641-8900

If to Customer:
City Clerk
City of La Vista
8116 Park View Blvd
La Vista, NE 68128
Telephone No.: (402) 331-4343

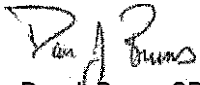
- 29. Independent Contractor.** This is not an agreement of partnership or employment of BSA or any of BSA's employees by Customer. BSA is an independent contractor for all purposes under this Agreement.
- 30.** The text of the Agreement without any Exhibits and Schedules shall control over any inconsistent text in any of the Exhibits or Schedules.

31. **Contract Documents and Order of Precedence.** The text of the Agreement without any Exhibits and Schedules shall control over any inconsistent text in any of the Exhibits or Schedules. This Agreement includes the following Exhibits and Schedules:

- Exhibit A – Payment Terms Generally
- Schedule 1 to Exhibit A – License/Interface/Customization Fees
- Schedule 2 to Exhibit A – Professional Services Fees
- Exhibit B – Maintenance and Support Fees
- Exhibit C – Support Call Process
- Exhibit D – Source Code Escrow Agreement
- Exhibit E – Original La Vista NE RFP
- Exhibit F – BSA Response to La Vista RFP
- Exhibit G – La Vista NE Request for Clarification
- Exhibit H – BSA Response to La Vista Request for Clarification
- Exhibit I – Insurance Information
- Exhibit J – Statement of Work
- Exhibit K – Additional BSA Products

IN WITNESS THEREOF, the Parties hereto have executed this Agreement as of the dates set forth below.

BSA SOFTWARE, INC.

By: 
 Name: Dan J. Burns, CPA
 Title: Account Executive
 Date: 3/9/16

CUSTOMER

By: _____
 Name: _____
 Title: _____
 Date: _____

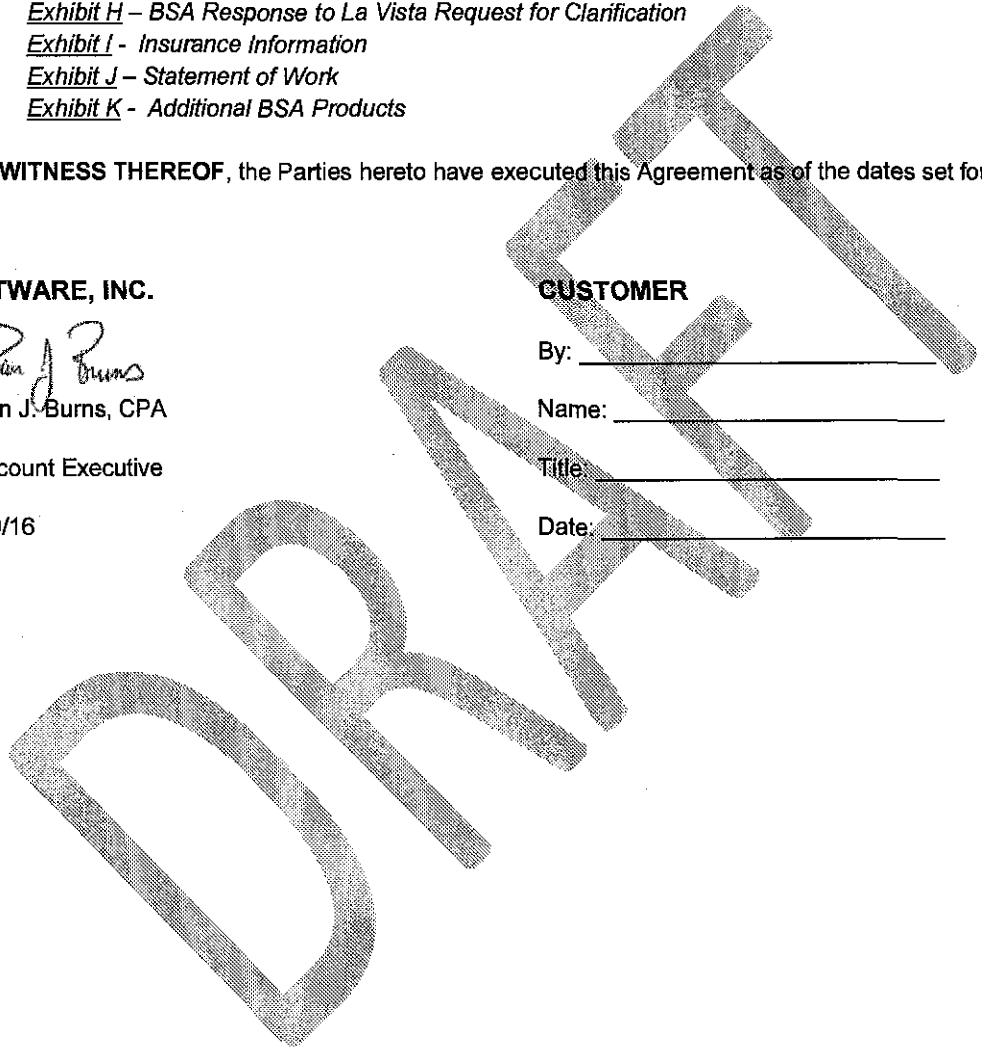


EXHIBIT A

Payment Terms

1. Customer shall pay BSA within thirty (30) days of invoice. Payments not received within fifteen (15) days of the due date shall be subject to a one and one-half percent (1.5%) per month interest charge (or, if lower, the highest amount chargeable at law) assessed against the undisputed unpaid balance from the date due until the date payment is received
2. The City agrees to pay BSA the professional services fees, not to exceed the amounts identified in Schedule 2 to Exhibit A, for the activities described. BSA will deliver the professional services to the City based on the Statement of Work. If BSA is not able to deliver the professional services to the City as described in the Statement of Work, BSA will provide the services to complete the Statement of Work at no additional cost to the City so long as the City has met the obligations of the Statement of Work, and the fault is that of BSA, and not the City
3. Any amount not subject to good faith dispute and not paid within thirty (30) days of the date of each invoice shall, without prejudice to other rights and remedies, be subject to an interest charge equal to the lesser of 1.5% monthly or the maximum interest charge permissible under applicable law, payable on demand. Any charges not disputed by Customer in good faith will be deemed approved and accepted by Customer. For purposes of this Agreement, a good faith dispute regarding amounts owed exists only if Customer provides in writing on or before due date of payment on the invoice, notification of such dispute, the specific portion of the invoice in dispute, and the specific grounds of the dispute (which must be asserted in good faith), and Customer pays in timely fashion such portions that are not subject to such dispute. If the City believes that the software, or services provided, does not meet the warranties identified within the master agreement, the City shall submit written notice to BSA within thirty (30) days from the invoice date of the invoice identifying the software or service under dispute.. BSA will respond, in writing, within 30 days of notification of dispute. Both the City and BSA will work to identify and enact a mutually agreed upon solution.
4. BSA shall invoice Customer \$43,165 upon Effective Date for BSA's Project Management/Implementation Planning Fees and Data Conversion fees as set forth in Schedule 2.
5. BSA shall invoice Customer \$71,365 at start of Phase I On-Site Implementation and Training. Such amount equals BSA's software license fees as set forth in Schedule 1.
6. BSA shall invoice Customer \$47,230 at completion of Phase I On-Site Implementation and Training. Such amount equals On-Site Implementation and Training costs, Customization and Interface costs, and travel expenses, as set forth in Schedule 2.
7. BSA shall invoice Customer \$28,975 upon the initiation of Phase II of the project for the remainder of the Project Management/Implementation Planning Fees and Data Conversion fees, relating to Phase II, as set forth in Schedule 2.
8. BSA shall invoice Customer \$35,895 at start of Phase II On-Site Implementation and Training. Such amount equals BSA's software license fees relating to Phase II, as set forth in Schedule 1.
9. BSA shall invoice customer \$28,840 at completion of Phase II On-Site Implementation and Training. Such amount equal On-Site Implementation and Training costs, Customization and Interface costs, and travel expenses, as set forth in Schedule 2.
10. Customer shall be responsible for all taxes (including sales taxes) imposed as a result of any transaction associated with this Agreement, exclusive of taxes on BSA's net income, provided, however, Customer is a Nebraska political subdivision and exempt from Nebraska sales taxes .

Schedule 1 to Exhibit A

License/Interface/Customization Fees

License fees:

General Ledger .NET	\$10,495
Accounts Payable .NET	\$8,920
Cash Receipting .NET	\$8,920
Miscellaneous Receivables .NET	\$8,920
Fixed Assets .NET	\$8,920
Purchase Order .NET	\$8,920
Work Order .NET	\$8,920
Citizen's Request for Action	\$7,350
Building Department .NET	\$13,115
Field Inspection .NET	\$3,150
AccessMyGov/Building Department	\$7,870

Please select the features you would like to use. All of the features can be included without impacting the Annual Service Fee or Project Management and Implementation Planning Fee.

- View My Activity (always enabled): Enables contractors and the general public to easily access inspections and permits they have requested.
- Inspection Scheduling: Enables contractors and the general public to submit requests for inspections online.
- Building Department Search: Performs a search by any record number, including addresses, permits, and certificates.
- Rental Property Search: Enables users to search for addresses that are flagged as rental properties.
- Permit Applications: Enables contractors and the general public to submit permit applications online (see "Application Fee," below). This feature requires the Payment of Fees feature.
- Payment of Fees: Enables contractors and the general public to pay for permit and other fees online (see "Payment Processing Requirements," below).

Business Licensing .NET	\$7,350
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AMG/Business Licensing	\$4,410
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Please select the features you would like to use. All of the features can be included without impacting the Annual Service Fee or Project Management and Implementation Planning Fee.

- View My Activity (always enabled): Enables businesses to view a history of their licenses, renewals, and business information changes.
- License Application and Business Management: Enables businesses to submit license applications, pay for business renewal fees, and edit business information online. This feature requires the Payment of Fees feature.
- Payment of Fees: Enables businesses to pay fees online (see "Payment Processing Requirements," below).

Subtotal	\$107,260
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Schedule 2 to Exhibit A

Professional Services Fees

Conversion Services

Data Conversion

Convert existing Summit Financial Management System provided by Data Tech to BS&A format. Conversion pricing provided for estimation purposes only. Firm pricing, as well as scope of data conversion to be determined upon a review of data provided.

General Ledger	\$5,250	
Accounts Payable	\$4,460	
Cash Receipting	\$4,460	
Fixed Assets	\$4,460	
Work Order	\$4,460	
Convert existing Blue Prince data to BS&A format:		
Building Department	\$11,150	
Database Setup:		
Miscellaneous Receivables (Setup of Billing Items, Penalties)	\$1,650	
Business Licensing	\$6,250	
	Subtotal	\$42,140

No conversion to be performed for:

Field Inspection
Purchase Order
Citizen's Request for Action

Project Management and Implementation Planning

Services include:

- Analyzing customer processes to ensure all critical components are addressed.
- Creating and managing the project schedule in accordance with the customer's existing processes and needs.
- Planning and scheduling training around any planned process changes included in the project plan.
- Modifying the project schedule as needed to accommodate any changes to the scope and requirements of the project that are discovered.
- Providing a central contact between the customer's project leaders, developers, trainers, IT staff, conversion staff, and other resources required throughout the transition period.
- Installing the software and providing IT consultation for network, server, and workstation configuration and requirements.
- Reviewing and addressing the specifications for needed customizations to meet customer needs (when applicable).

\$30,000

Customization and Training Services

Custom Import	\$1,500		
Training	\$47,000		
Software Setup		Days: 4	\$4,000
General Ledger .NET		Days: 2	\$2,000
Accounts Payable .NET		Days: 3	\$3,000
Cash Receipting .NET		Days: 5	\$5,000
Miscellaneous Receivables .NET		Days: 2	\$2,000
Fixed Assets .NET		Days: 1	\$1,000
Purchase Order .NET		Days: 4	\$4,000
Work Order .NET		Days: 3	\$3,000
Citizen's Request for Action		Days: 3	\$3,000
Building Department .NET		Days: 10	\$10,000
Field Inspection .NET		Days: 2	\$2,000
AMG-Building Department		Days: 2	\$2,000
Business Licensing .NET		Days: 2	\$2,000
Post-Go Live for all Financial.Mgt apps for which training was performed		Days: 4	\$4,000
Travel Expenses	\$27,570		
Total	\$76,070		
Grand Total	\$148,210		

EXHIBIT B

Maintenance and Support Fees

General Ledger .NET	\$2,100
Accounts Payable .NET	\$1,780
Cash Receipting .NET	\$1,780
Miscellaneous Receivables .NET	\$1,780
Purchase Order .NET	\$1,780
Fixed Assets .NET	\$1,780
Work Order .NET	\$1,780
Citizen Request for Action .NET	\$1,470
Building Department .NET	\$2,620
Field Inspection .NET	\$630
AccessMyGov/Building Department	\$1,570
Business Licensing .NET	\$1,470
AccessMyGov/Business Licensing .NET	\$880
Grand Total	\$21,420

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EXHIBIT C

Support Call Process

BSA's standard hours for telephone support are from 8:30 a.m. to 6:00 p.m. (EST), Monday through Thursday, and 8:30 a.m. to 5:00 p.m. (EST) on Friday.

You can lodge a support request in three ways: (i) **Contact Customer Support** option located within the Help menu of all of our applications (ii) our toll-free support line (1-855-BSA-SOFT) or (iii) via email.

BSA targets less than thirty (30) minutes for initial response ("Initial Response Target").

Customer service requests fall into four main categories:

- A. Technical.** Questions or usage issues relating to I.T. functionality, future hardware purchases, and configuration. BSA tries to resolve these issues within BSA's Initial Response Target or as soon thereafter as reasonably possible.
- B. Questions/Support.** General questions regarding functionality, use, and set-up of the applications. BSA tries to resolve these issues within BSA's Initial Response Target or as soon thereafter as reasonably possible.
- C. Requests.** Customer requests for future enhancements to the applications. Key product management personnel meet with development staff on a regular basis to discuss the desirability and priority of such requests. BSA tries to resolve these issues within BSA's Initial Response Target or as soon thereafter as reasonably possible.
- D. Issues/Bugs.** Errors fall into three (3) subcategories:
 - i. Critical.** Cases where an Error has rendered the application or a material component unusable or not usable without substantial inconvenience causing material and detrimental consequences to business -- with no viable Customer workaround or alternative. The targeted resolution time for critical issues is less than one (1) day.
 - ii. Moderate.** Cases where an Error causes inconvenience and added burden, but the application is still usable by Customer. The targeted resolution time for all moderate issues is within two (2) weeks, which is within our standard update cycle.
 - iii. Minimal.** Cases that are mostly cosmetic in nature, and do not impede functionality in any significant way. These issues are assigned a priority level at our regular meetings, and resolution times are based on the specified priority.

Remote Support Process

Some support calls may require further analysis of Customer's database or set-up to diagnose a problem or to assist Customer with a question. BSA's remote support tools share Customer's desktop *via* the Internet to provide Customer with virtual on-site support. BSA's support team is able to quickly connect remotely to Customer's desktop and view its setup, diagnose problems, or assist Customer with screen navigation.

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EXHIBIT D

Source Code Escrow Agreement

for BS&A Software Programs

Software Products of Bellefeull, Szur, & Associates, Inc.

This Escrow Agreement is entered into and effective as of the ____ day of _____ by and among Licensee having its principal place of business in **Michigan** and Licenser, having its principal place of business in **Nebraska** and **IT Right**, ("the Independent third party Escrow Agent"), having its principal place of business in Michigan.

WHEREAS, Licenser has granted a license to Licensee to use certain computer software pursuant to the terms and conditions of a Computer Software License Agreement (the "License Agreement"), and

WHEREAS, the uninterrupted availability of all forms of such computer software is critical to Licensee in the conduct of its business; and

WHEREAS, Licenser has agreed to deposit in escrow a copy of the source code form of the computer program (the "Software") included in the Software System covered by the License Agreement, as well as any corrections or enhancements to such source code, to be held by Escrow Agent in accordance with the terms and conditions of this Escrow Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. Deposit

Licenser has concurrently herewith deposited with Escrow Agent a copy of the source code form of the Software (the "Source Code"), including all relevant commentary, explanations, and other documentation of the Source Code (collectively, "Commentary"). Licenser also agrees to deposit with Escrow Agent, at such times as they are made, a copy of all revisions to the Source Code or Commentary encompassing all corrections or enhancements made to the Software by Licenser pursuant to the License Agreement or any Software Maintenance Contract between the parties.

2. Term

This Escrow Agreement shall remain in effect during the term of the License Agreement and any Software Maintenance Contract between Licensee and Licenser. Termination hereof is automatic upon delivery of the deposited Source Code and Commentary to Licensee in accordance with the provisions hereof.

3. Default

A default by Licenser shall be deemed to have occurred under this Escrow Agreement upon the occurrence of any of the following:

(a) if Licensor has availed itself of, or been subjected to by any third party, a proceeding in bankruptcy in which Licensor is the named debtor, an assignment by Licensor for the benefit of its creditors, the appointment of a receiver for Licensor, or any other proceeding involving insolvency or the protection of, or from, creditors, and same has not been discharged or terminated without any prejudice to Licensee's rights or interests under the License Agreement within thirty (30) days; or

(b) if Licensor has ceased its on-going business operations, or sale, licensing, maintenance or other support of the Software; or

(c) if Licensor fails to pay the annual fee, if any, due to Escrow Agent hereunder; or

(d) if any other event or circumstance occurs which demonstrates with reasonable certainty the inability or unwillingness of Licensor to fulfill its obligations to Licensee under the License Agreement, this Escrow Agreement or any Software Maintenance Contract between the parties, including, without limitation, the correction of defects in the Software.

4. Notice of Default

Licensee shall give written notice to Escrow Agent and Licensor of the occurrence of a default hereunder, except that Escrow Agent shall give notice of the default to Licensee and Licensor if same is based on the failure of Licensor to pay Escrow Agent's annual fee, if any. Unless within seven (7) days thereafter Licensor files with the Escrow Agent its affidavit executed by a responsible executive officer stating that no such default has occurred or that the default has been cured, then the Escrow Agent shall upon the eighth (8th) day deliver to Licensee in accordance with Licensee's instructions the entire Source Code and Commentary with respect to the Software then being held by Escrow Agent.

5. Compensation

As compensation for the services to be performed by Escrow Agent hereunder, Licensor shall pay to Escrow Agent an initial fee of \$ 0, payable at the time of execution of this Agreement, and an annual fee in the amount of \$ 0, to be paid to Escrow Agent in advance on each anniversary date hereafter during the term of this Agreement.

6. Liability

Escrow Agent shall not, by reason of its execution of its Agreement, assume any responsibility or liability for any transaction between Licensor and Licensee, other than the performance of its obligations, as Escrow Agent, with respect to the Source Code and Commentary held by it in accordance with this Agreement.

7. Confidentiality

Except as provided in this Agreement, Escrow Agent agrees that it shall not divulge or disclose or otherwise make available to any third person whatsoever, or make any use whatsoever, of the Source Code or Commentary, without the express prior written consent of Licensor.

8. Address

All notices or other communications required or contemplated herein shall be in writing, sent by certified mail, return receipt requested, addressed to another party at the address indicated below or as same may be changed from time to time by notice similarly given:

If to Licensor: BS&A Software, 14965 Abbey Lane, Bath MI 48808

Attention: Contracts Manager

If to Licensee: _____

Attention: _____

If to Escrow Agent: IT Right, 13937 Webster Rd, Bath MI 48808

Attention: Dan Eggleston, President

9. Assignment

Neither this Escrow Agreement, nor any rights, liabilities nor obligations hereunder may be assigned by Escrow Agent without the prior written consent of Licensee and Licensor.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

ESCROW AGENT

By: _____

Date: _____

LICENSEE

By: _____

Date: _____

LICENSOR

By: _____

Date: _____