

**COUNTY OF MONTEREY STANDARD AGREEMENT
(NOT TO EXCEED \$100,000)**

This **Agreement** is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:

HLP, Inc.

(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1.0 GENERAL DESCRIPTION.

- 1.01 The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The goods and/or services are generally described as follows:

Provide Chameleon/CMS and Public Access software license subscription, maintenance/support, and technical support services.

2.0 PAYMENT PROVISIONS.

- 2.01 County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement is not to exceed the sum of \$ 55,680.00.

3.0 TERM OF AGREEMENT.

- 3.01 The term of this Agreement is from July 1, 2014 to June 30, 2017, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and **CONTRACTOR may not commence work before County signs this Agreement.**

- 3.02 The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

4.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS.

- 4.01 The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A Scope of Services/Payment Provisions

Exhibit B Software Licensing Subscription Terms/Conditions

5.0 PERFORMANCE STANDARDS.

- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.02 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.03 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6.0 PAYMENT CONDITIONS.

- 6.01 Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided herein. The County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.02 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County and the CONTRACTOR.
- 6.03 Invoice amounts shall be billed directly to the ordering department.
- 6.04 CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

7.0 TERMINATION.

- 7.01 During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.
- 7.02 The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of

CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

- 7.03 The County's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

8.0 INDEMNIFICATION.

- 8.01 Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.

9.0 INSURANCE REQUIREMENTS.

9.01 Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.02 Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

- 9.03 Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Business Automobile Liability Insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

(Note: any proposed modifications to these workers' compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Professional Liability Insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

(Note: any proposed modifications to these insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

9.04 **Other Requirements:**

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of

three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall **provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds** with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that **such insurance is primary** insurance to any insurance or self-insurance maintained by the County and that the insurance of **the Additional Insureds shall not be called upon to contribute** to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10.0 RECORDS AND CONFIDENTIALITY.

- 10.01 **Confidentiality.** CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by

CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.

- 10.02 County Records. When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.03 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.04 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.05 Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

11.0 NON-DISCRIMINATION.

- 11.01 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS.

- 12.01 If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall

be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13.0 INDEPENDENT CONTRACTOR.

13.01 In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

14.0 NOTICES.

14.01 Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
Teresa Rios, Management Analyst III	Keith Brakey, Director of Finance
Name and Title	Name and Title
1270 Natividad Road Salinas, CA 93906	9888 West Belleview Avenue #110 Littleton, CO 80123
Address	Address
Phone: 831-755-8979 Fax: 831-755-4780	800-459-8376 Ext. #817
Phone	Phone

15.0 MISCELLANEOUS PROVISIONS.

15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.

15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.

- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

- 15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

-----*This section left blank intentionally*-----

16.0 SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

CONTRACTOR

By: _____
Contracts/Purchasing Officer

HLP, INC.
Contractor's Business Name*

Date: _____

By: _____
Department Head (if applicable)

By: Robert K. Hoover
(Signature of Chair, President, or Vice-President)*

Date: _____

ROBERT K. HOOVER, Pres.
Name and Title

Approved as to Form¹
By: Rebecca M. Quisenberry
County Counsel

Date: 07-05-2015

Date: August 10, 2015

By: Diane L. Hoover
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

Approved as to Fiscal Provisions²
By: Diane L. Hoover
Auditor/Controller

DIANE L. HOOVER, V.P.
Name and Title

Date: 8-10-15

Date: 07-05-2015

Approved as to Liability Provisions³

By: _____
Risk Management

Date: _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

¹Approval by County Counsel is required

²Approval by Auditor/Controller is required

³Approval by Risk Management is required only if changes are made in sections 7 or 8

EXHIBIT A
SCOPE OF SERVICES/PAYMENT PROVISIONS

I. Scope of Services

This Agreement is for the provision of Chameleon/CMS Software Package and the Public Access Software Package, combined (“CMS”) license subscription, software maintenance/support defined in Exhibit B, Software Licensing Subscription Terms/Conditions, and other application and technical support services as requested by County, for **1 server and 10 workstations software licenses.**

A. Software Maintenance/Support

1. The yearly license and maintenance/support subscriptions for CMS entitle County to receive the following software maintenance/support services as part of the software subscription:
 - a. Technical Support: Monday – Friday, 8am – 5pm PST excluding weekends, Christmas Eve, New Year’s Eve, and all Federal holidays.
 - b. Access to online published reports, upload and download data regarding the application, and accessibility to user forums hosted by CONTRACTOR.

B. Technical Support not covered under the yearly software licensing/maintenance/support costs can be requested in writing by County. Examples of technical support not covered under the standard software subscription and maintenance/support services may include but is not exclusive to: server upgrades, server moves, operating system upgrades, and other activities initiated by County. CONTRACTOR shall provide written proposal and estimated cost at an Hourly Rate of \$75. Upon written approval by County, services may commence.

II. Term of the Agreement

The term of this Agreement shall be retroactive to **July 1, 2014 through June 30, 2017** unless sooner terminated pursuant to the terms of this Agreement.

III. Schedule of Rates

Following table reflects the rates under this Agreement.

Qty	Description	Rate
1	Server License	\$960
1	Workstation License	\$960
1	Hourly Rate for Technical Support conducted at County’s facility not included in recurring software license maintenance/support costs including but not exclusive to support during server or operating system upgrades which is County responsibility.	\$75

IV. Payment Provisions

1. For the software licensing maintenance/support and technical support, the maximum obligation of the County will be **\$55,680.00**. The payment conditions as specified in Section 6 of the body of this Agreement shall apply. Agreement cost breakdown is as follows:

Term	Description	Qty License	Cost
July 1, 2014 - June 30, 2015	CMS Software License Subscription, Maintenance/Support	11	\$ 10,560.00
July 1, 2015 - June 30, 2016	CMS Software License Subscription, Maintenance/Support	11	\$ 10,560.00
July 1, 2016 - June 30, 2017	CMS Software License Subscription, Maintenance/Support	11	\$ 10,560.00
April 1, 2015 - June 30, 2017	Technical Services not included in Software License Support/Maintenance Recurring Costs	\$75/Hour	\$ 9,000.00
July 1, 2015 - June 30, 2017	Additional Software Licenses as Requested and Approved by County		\$ 15,000.00
		Total	\$ 55,680.00

2. In order to be reimbursed for travel costs, Contractor must comply with Monterey County Travel Policy which is available on the County website at:
<http://www.co.monterey.ca.us/auditor/pdfs/travelpolicy2008.pdf>
3. Any tax, such as sales and use taxes, exclusive of property and income taxes, that CONTRACTOR is required to collect or pay based upon the sale or delivery of products or services under this Agreement shall be paid by County to CONTRACTOR, or County shall pay directly to the taxing agency with proof of payment provided to CONTRACTOR. This obligation extends retroactively if so assessed by a taxing agency.
4. Invoices shall be mailed to:

Monterey County Health Department, Environmental Health
1270 Natividad Road
Salinas, CA 93906
Attn: Accounts Payable

EXHIBIT B

SOFTWARE LICENSING SUBSCRIPTION TERMS/CONDITIONS

I. GRANT OF LICENSE and USE:

CONTRACTOR shall grant County this License for use of the Chameleon/CMS Software Package and the Public Access Software Package, combined ("CMS"), at the time of payment. The Public Access package is composed of ChamCam, Knowledge Rocket, WebChameleon, PaWWW, PetLink, the integrated hardware, and their media products. CONTRACTOR grants no software licenses whatsoever, either explicitly or implicitly, except by full payment for the CMS Software. This license entitles the County the right to install CMS on a single Server unit to be used by any number of Client Workstations. Additional Servers require additional Licenses, except as stated under Terms and Restrictions. This License Agreement is with the designated County only. This County may not rent, lease, give, sell or in any way transmit any part of the CMS Software Package to an unauthorized, unlicensed entity. This is a non-exclusive, non-transferable license to the use of CMS.

II. PAYMENT:

Payment terms and conditions will be as defined in Section 6.0 Payment Conditions and in Exhibit A, Section IV Payment Provisions.

III. OWNERSHIP:

- a. This Standard Agreement is not for the purchase of the CMS software but for the subscription to the stated number of licenses specified in Exhibit A, Section IV for County to use the software. Should County need additional license subscriptions, County shall provide a written request to CONTRACTOR. CONTRACTOR shall provide additional licenses as requested with County to be responsible for the recurring software subscription fees accordingly as on a per license basis.
- b. Title to CMS shall remain with CONTRACTOR. The CMS product name, software, documentation, and other material parts of the CMS package are owned by CONTRACTOR and may not be reproduced in any form, except as stated under Terms and Restrictions. CMS Software contains the proprietary technology of CONTRACTOR.
- c. All modifications, additions, upgrades, and new versions provided for under Support and Maintenance are considered part of this title and subject to the conditions of this License.
- d. County hereby acknowledges CONTRACTOR's copyright of CMS regardless of whether the copyright notice appears on CMS or whether it has been filed with the United States Copyright Office.

IV. TERMS and RESTRICTIONS:

- a. The County shall receive an executable copy of CMS Software. The County may load, copy, or transmit CMS, in whole or in part, only as is necessary for execution, backup, and hot standby under the terms and conditions of this Agreement.

- b. County may modify or merge CMS solely for execution by itself. Any part of this Software included in such adaptations will continue to be subject to this License.
- c. CONTRACTOR shall bill the County a Support & Maintenance FEE yearly using the formula Specified in Exhibit A, Section IV. Payment shall be made according to Section 6 Payment Conditions in the Agreement.
- d. CONTRACTOR reserves the right to revoke this License if the Support & Maintenance FEE becomes delinquent and is not remedied 30 days after notification in writing. The County shall then cease use of CMS.
- e. County agrees not to reverse engineer, decompile, or disassemble CMS

V. MAINTENANCE

CONTRACTOR agrees to provide the following maintenance services:

- a. **NEW VERSIONS:** New Versions are major changes to the look or feel of CMS. All new versions are included and guaranteed to County.
- b. **UPGRADES:** As requests for improvements are accumulated from more than one user site, they will be incorporated into periodic upgrades. These upgrades are included and guaranteed to County.
- c. **DIAGNOSIS:** Technical personnel will diagnose the cause of system problems and refer the County to the appropriate avenue of correction. CONTRACTOR shall correct the problem only if the cause is a bug in CMS.
- d. **CORRECTIONS:** Corrections in CMS code will be available to County through the technical support office. Corrections will be made as soon as possible after reported and prioritized as to urgency to CMS operations.

VI. SUPPORT:

CONTRACTOR agrees to provide the following support services:

- a. **TECHNICAL SUPPORT LINE:** This shall entitle the County faster access to a technical support person for questions of high priority. Calls are answered during business days and hours and referred to the appropriate staff person. Requests may be faxed or left on the message service when lines are busy or after hours. Evenings, weekends, and holidays are available by pre-arrangement.
- b. **SYSTEM to SYSTEM:** When requested, CONTRACTOR can provide the County direct support via modem and communication software in real time.
- c. **SYSTEM ON-LINE HELP:** CMS contains comprehensive, context-sensitive, and hyper-texted HELP files that are installed with the software and upgraded as needed.

- d. **INTERNET WEB SITE:** An internet site is available 24 hours and 7 days to registered Users. Questions, suggestions, and comments may be posted to other Users or the CONTRACTOR staff. Data can be uploaded and down loaded, all through a local access call.
- e. **PERSONNEL ON-SITE:** If, for any reason, CONTRACTOR cannot resolve the County's request by the means of support listed above, and CONTRACTOR deems the request critical, then CONTRACTOR staff may visit the County's site to resolve the problem.

VII. SOURCE CODE ESCROW:

- a. This License does not include or cover access in any way to the CMS Source Code.
- b. CONTRACTOR has placed in escrow all current Source Code for CMS with an authorized escrow Agent.
- c. The County shall be entitled to claim a copy of the CMS Source Code under the terms and conditions set forth in the Chameleon/CMS Source Code Escrow Agreement (Attachment 1 to this Exhibit B).

VIII. LIMITED WARRANTY:

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

IX. LIABILITY:

Under this agreement, CONTRACTOR's liability for damages to the County resulting from the use of CMS shall not exceed the amount of the County's initial License. Under this agreement,

CONTRACTOR shall not be liable for any damages resulting from loss of data or use, lost profits or revenue, or any incidental or consequential damages.

X. TERMINATION:

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



44 Union Blvd. Suite 115
Lakewood, CO 80228
303-986-4848 Phone 303-986-4761 Fax
www.bankersescrow.com

Software Escrow Agreement

Special Escrow # 3072

Date: June 22, 2000

This agreement ("Escrow Agreement") is executed as of this 22nd day of June, 2000 by and between HLP, Inc. ("Licensor"), and Bankers Financial Holding Corporation, a Colorado Corporation doing business as Bankers Escrow Corporation ("BEC"), as "Escrow Agent".

RECITALS

- A. Licensor has developed and owns certain proprietary computer software programs and related support materials (the "Documentation"), as further described in Exhibit A, hereto;
- B. Licensor licenses the use of said programs to certain licensees of Record, as identified in Exhibit B hereto ("Licensees"), pursuant to license agreements between Licensor and licensees ("License Agreements");
- C. Continuous availability of such programs and maintenance thereof are critical to Licensees in the conduct of their business;
- D. Licensor wishes to protect the integrity of its programs from duplication, theft or other misappropriation by maintaining its Documentation in strict confidence as trade secrets. Licensor performs necessary maintenance and modification of its programs for its Licensees without disclosing such Documentation to Licensees or other persons. However, Licensor hereby enters into this Escrow Agreement in order to grant Licensees access to Documentation under certain circumstances as set forth herein;
- E. Licensor wishes to insure that maintenance for Licensor's software is available in the event Licensor fails to fulfill its maintenance obligations or in the event Licensor does not remain in business;
- F. BEC is in the business of providing third party software escrow protection by storing, retaining and allowing limited access to proprietary computer software, related media and materials.

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

1. **DEPOSIT OF DOCUMENTATION** Licensor agrees to deposit with BEC a complete copy of the Documentation within 30 days after execution of this Escrow Agreement. The Documentation, including revisions and this Escrow Agreement shall be referred to herein as the "Deposit". Licensor's deposit of the Documentation, in and of itself, does not transfer to BEC or any other party, or deprive Licensor of, any right, title or interest in the Deposit - any such right, title or interest in the Deposit only shall occur as specifically provided for in this Escrow Agreement.
2. **CERTIFICATE OF ESCROW** BEC will upon written request hereafter from Licensor issue a Certificate of Escrow in the form attached hereto as Exhibit D, to each Licensee of Licensor for which a certificate is requested in writing. Licensor agrees to pay BEC a fee as set forth in Exhibit C.
3. **REVISIONS AND MAINTENANCE**
 - (a) Licensor agrees to deposit with BEC copies of all major revisions of and additions to the Documentation within 60 days after said revisions are made available to Licensee.
 - (b) Upon receipt of a new revision, BEC agrees to return to Licensor all such Documentation from previous revisions as specified by Licensor in writing to BEC.
 - (c) BEC shall acknowledge receipt of all revisions of or additions to the Documentation by sending written acknowledgment thereof to Licensor and to all Licensees.
4. **STORAGE AND SECURITY**
 - (a) BEC shall act as custodian of the Deposit until the Escrow is terminated pursuant to Section 10 of this Escrow Agreement. BEC shall establish, under its control, a Safe Deposit

Box in an FDIC insured banking institution for the purpose of storing the Deposit.

(b) The Deposit shall remain the exclusive property of the Licensor, except as otherwise provided in this Escrow Agreement.

(c) BEC shall not divulge, disclose or otherwise make available the Deposit to any parties other than those persons duly authorized in writing by a competent officer of Licensor, except as provided in this Escrow Agreement.

(d) BEC shall not permit any person access to the Deposit except as may be necessary for BEC's authorized representatives to perform under this Escrow Agreement.

(e) Access to the Deposit shall not be granted without compliance with all security and identification procedures instituted by BEC.

(f) If Licensee desires to inspect the Deposit, Licensor must be given at least ten (10) days prior notice. Any such inspection shall be in the presence of an authorized representative(s) of Licensor (unless Licensor elects not to be present), the Licensee requesting inspection, and BEC.

(g) BEC shall have no obligation or responsibility to verify or determine that the Deposit does, in fact, consist of those items that the Licensor is obligated to deliver under any agreement, and BEC shall bear no responsibility whatsoever to determine existence, relevance, completeness, currency, or accuracy of the Deposit.

(i) BEC's sole responsibility shall be to accept, store and deliver the Deposit, in accordance with the terms and conditions of this Escrow Agreement.

(j) If any of the Deposit shall be attached, garnished or levied upon pursuant to an order of the court, or the delivery thereof shall be stayed or enjoined by an order of court, or any other order, judgment or decree shall be made or entered by any court affecting the Deposit or any part thereof, upon no less than three business days prior written notice to Licensor provided that the three day time period is not in violation of order of court, BEC is hereby expressly authorized in its sole discretion to obey and comply with all orders, judgments or decrees so entered or issued by any court, without the necessity of inquiring whether such court had jurisdiction, and in case BEC obeys or complies with any such order, judgment or decree, BEC shall not be liable to any Licensee, Licensor or any third party by reason of such compliance, notwithstanding that such order, judgment or decree may subsequently be reversed, modified or vacated.

5. EVENTS OF DEFAULT The occurrence of any of the following shall constitute an "Event of Default" for purposes of this Escrow Agreement.

(a) Licensor's failure to support the Documentation and related software in breach of the License Agreement; or

(b) Licensor becomes insolvent or generally fails to pay, or admits in writing its inability to pay, its debts as they become due; or

(c) Licensor applies for or consents to the appointment of a trustee, receiver or other custodian for Licensor, or makes a general assignment for the benefit of its creditors; or

(d) Any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceedings commenced by or against Licensor, and if such case or proceeding is not commenced by Licensor, it is acquiesced in or remains un-dismissed for sixty (60) days; or

(e) Licensor ceases active operation of its business or discontinues the sale, licensing or maintenance of the Deposit in breach of the License Agreement; or

(f) Licensor takes any corporate or other action to authorize, or in furtherance of, any of the foregoing.

6. RELEASE OF DOCUMENTATION

(a) Upon the occurrence of any Event of Default (as defined in Section number 5) any Licensee may notify BEC in writing as to such Event of Default (a "Notice"), and BEC shall simultaneously provide a copy of any such Notice to Licensor. Unless Licensor shall have provided Contrary Instructions to BEC within five (5) business days following Licensor's receipt of such Notice, BEC shall deliver a copy of the Deposit to such Licensee; provided, however, that BEC shall be under no obligation to deliver a copy of such Deposit until such Licensee had

first paid to BEC the cost and expenses of reproduction and delivery of the Deposit plus a \$150.00 administration fee. Such delivery to Licensee shall terminate all duties and obligations of BEC to that Licensee and to Licensor with respect to such Licensee and to the copy of the Deposit delivered to that Licensee. BEC shall copy all copyright, nondisclosure, and other proprietary notices and titles contained on the Deposit materials onto any copies made by BEC.

(b) "Contrary Instruction" for the purpose of the Escrow Agreement means a notarized affidavit executed by an authorized representative of Licensor stating that Event or Events of Default specified in the Licensee's Notice have not occurred, or have been cured.

(c) Upon timely receipt of such Contrary Instructions, BEC shall not release a copy of the Deposit, but shall continue to store the Deposit until otherwise directed by the Licensee and Licensor jointly, or until resolution of the dispute pursuant to Section 7 of this Escrow Agreement, or by a court of competent jurisdiction.

(d) BEC shall be entitled to receive payment for costs, fees and expenses due it, prior to any release of a copy of the Deposit.

7. **DISPUTE RESOLUTION** Licensor and Licensees agree that if Contrary Instructions are timely given by Licensor pursuant to Section 5 hereof, the Licensor and the Licensee giving Notice shall submit their dispute regarding Licensee's Notice to arbitration by a single arbitrator who is a member of the American Arbitration Association, according to its rules and regulations then in effect, at its offices in Denver, Colorado. The decision of the arbitrator shall be final and binding upon the parties and enforceable in any court of competent jurisdiction, and a copy of such decision shall be delivered immediately to Licensor, Licensee and BEC. The parties shall use commercially reasonable efforts to commence the arbitration proceeding within ten (10) business days following delivery of the Contrary Instructions. The sole question to be determined by the arbitrator shall be whether or not there existed an Event of Default at the time the Licensee delivered the Notice thereof under Section 4. If the arbitrator finds such Licensee properly gave the Notice, BEC shall promptly deliver a copy of the Deposit to said Licensee. All fees and charges by the American Arbitration Association and the reasonable attorney's fees and costs incurred by the prevailing party in the arbitration shall be paid by the non-prevailing party in the arbitration.

8. **BANKRUPTCY** Licensor acknowledges that this Escrow Agreement is an "agreement supplementary to" the License Agreement as provided in Section 365(n) of Title 11, United States Code (the "Bankruptcy Code"). Licensor acknowledges that if Licensor as a debtor in possession or a trustee in bankruptcy in a case under the Bankruptcy Code rejects a License Agreement or this Escrow Agreement, Licensee may elect to retain its rights under the License Agreement and this Escrow Agreement as provided in Section 365(n) of the Bankruptcy Code. Licensor or such Bankruptcy Trustee shall not interfere with the rights of Licensee as provided in the License Agreement and this Escrow Agreement, including the right to obtain the Deposit from BEC.

9. **INDEMNIFICATION** Escrow Agent shall be responsible to perform its obligations under this Escrow Agreement and to act in a reasonable and prudent manner with regard to this escrow arrangement. Provided that Escrow Agent has acted in a manner stated in the preceding sentence, Licensor agrees to defend and indemnify BEC and to hold BEC harmless from and against any and all claims, actions and suits, whether groundless or otherwise, and from and against any and all liabilities, losses, damages, costs, charges, penalties, reasonable counsel fees, and any other reasonable expense of any other nature, including, without limitation, settlement costs incurred by BEC on account of any act or omission of BEC, in respect of or regard to this Escrow Agreement, except insofar as such liabilities arise by reason of BEC gross negligence or willful misconduct.

10. **GOOD FAITH RELIANCE** BEC may rely and act upon any instruction, instrument, or signature believed by BEC in good faith to be genuine, and may assume that any person purporting to give any writing, notice, advice, or instruction in connection with or relating to this Escrow Agreement has been duly authorized to do so.

11. **TERM; TERMINATION**

(a) The initial term of this Escrow Agreement is for a period of one year. Thereafter, this Escrow Agreement automatically shall renew from year-to-year unless terminated as provided herein. With the written consent of each Licensee, Licensor may terminate this Escrow Agreement upon five (5) days prior written notice to BEC, which shall include evidence

satisfactory to BEC of such consents.

(b) BEC reserves the right to resign as Escrow Agent upon sixty (60) days' prior written notice to Licensor. On or before the end of the said sixty (60) days, the Licensor agrees to appoint a new escrow agent to receive the Deposit held by BEC. If a new escrow agent is not appointed, upon resignation, BEC shall return the Deposit to Licensor only after having received payment of its fees and costs pursuant to Section 12 of this Escrow Agreement.

(c) In the event that the sixty (60) day notice period in 11(b) elapses without BEC having received payment of the remaining fees due, BEC shall then have the option, without further notice to either Licensor, to terminate the Escrow agreement and to destroy the Deposit.

12. FEES

(a) In consideration of performing its functions as Escrow Agent, BEC shall be compensated by Licensor as set forth in Exhibit C. The fees set forth in Exhibit C will be billed annually by BEC to Licensor.

(b) The fees set forth in Exhibit C are for BEC's ordinary services as Escrow Agent. In the event BEC is required to perform any additional or extraordinary services outside the reasonable scope of this Escrow Agreement as a result of being Escrow Agent, including intervention in any litigation or proceeding, BEC shall receive reasonable compensation for such services and be reimbursed for such costs incurred, including reasonable attorney's fees.

13. ENTIRE AGREEMENT This Escrow Agreement, including the Exhibits hereto, constitutes the entire agreement among the parties regarding the subject matter hereto, and shall supersede all previous and contemporaneous communications, representations, understandings and agreements, either oral or written between the parties.

14. NOTICE All notices required or permitted by this Escrow Agreement shall be sufficiently served by mailing the same by certified or registered mail, return receipt requested, to the parties at their respective address as follows:

(a) Bankers Escrow Corporation
44 Union Blvd, Suite 116
Lakewood, Colorado 80228

(b) Licensor: HLP, INC.
Chameleon/CMS Software
2695 S. Lewis Way Ste B-124
Lakewood, CO 80227

15. GOVERNING LAW This Escrow Agreement shall be governed by and construed according to the laws of the state of Colorado.

16. SEVERABILITY In the event any of the provisions of this Escrow Agreement shall be held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Escrow Agreement will remain in full force and effect.

17. HEADINGS The section headings in this Escrow Agreement do not form a part of it, but are for convenience only and shall not limit or affect the meaning of the provisions.

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Rev. 03/02/00

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement on the date first above written.

Licensor: HLP, Inc.

By: Diane L. Hoover 3/26/08

Diane L. Hoover, VP & CFO

Bankers Escrow Corporation:

By: Mary Lou Schwab

Mary Lou Schwab, VP

EXHIBIT "D":

CERTIFICATE OF ESCROW

THIS CERTIFICATE OF ESCROW is issued to (SAMPLE) ("Certificate Holder") who is the licensee of the computer software program(s) and related support materials known as Chameleon/CMS Software Source Code ("the Software") from HLP, INC. ("Licensor"), under the terms of a written license agreement (the "License Agreement") between Licensor and the Certificate Holder.

Bankers Financial Holding Company, a Colorado Corporation doing business as Bankers Escrow Corporation ("BEC") and Licensor are parties to a Software Escrow Agreement dated June 22, 2000 whereby the Licensor has deposited a copy of source code version of the Software with BEC as Escrow Agent. Licensor represents and warrants to BEC that the Software deposited contain the current Software source code version.

BEC has agreed to act as Escrow Agent for the benefit of Licensor and Certificate Holder to hold the Software in escrow and disburse a copy of the Software to the Certificate Holder according to the terms and conditions described in the Software Escrow Agreement, a copy of which has been furnished to Certificate Holder by Licensor. By the acceptance of this Certificate of Escrow, Certificate Holder acknowledges and represents to BEC that it has received a copy of the Software Escrow Agreement and that it has read and understands the terms thereof.

Any disbursement of Software to a Certificate Holder by BEC under the Software Escrow Agreement shall be deemed by granting of a license to the Certificate Holder by Licensor of the source code version of the Software, the terms of which license shall be identical to the terms of the Certificate Holder's License, including all restrictions regarding use and non-disclosure. By accepting this Certificate of Escrow and the benefits of it and the Software Escrow Agreement, the Certificate Holder agrees that the only rights acquired by the Certificate Holder upon disbursement to it of a copy of the Software from BEC pursuant to the Software Escrow Agreement is the license referred to above, including all restrictions regarding use and non-disclosure.

BEC agrees that a copy of the Software which BEC is holding in its Safe Deposit Box in an FDIC insured banking establishment will be delivered to the Certificate Holder only after BEC has received evidence satisfactory to BEC that the Licensor has an Event of Default as specified in the Software Escrow Agreement. In such Event of Default, the Certificate Holder, upon presentation of its Certificate of Escrow and a certified copy of the Event of Default, may require from BEC a copy of the Software for the purposes described in this Certificate of Escrow upon paying BEC a copy fee as specified in the Software Escrow Agreement.

By its written request to BEC for the issuance of this Certificate, Licensor has represented and warranted to the Certificate Holder and BEC that Certificate Holder has had, or will be given on its request, ample opportunity to inspect the Software and determine that the Software complies with the terms of the License Agreement; and the Software Escrow Agreement has satisfied the terms of any and all obligations due and owing from Licensor to Certificate Holder with respect to the escrow and maintenance of Software source code.

Certificate Holder agrees to indemnify and hold harmless BEC from any and all claims, costs, demands, charges, and expenses incurred by or assess against BEC for any act it may do or omit to do while acting in good faith and in the exercise of the instructions contained herein, and any act done or committed upon the advice of BEC's attorneys shall be presumptive evidence of good faith. Should BEC be involved in legal action as a result of the issuance of this Certificate of Escrow or under the Software Escrow Agreement, Certificate Holder agrees to compensate BEC for cost of defending itself, including reasonable attorneys fees, unless such action is based upon BEC's failure to act in good faith or its failure to comply with the instructions contained in this agreement.

Certificate Holder acknowledges that, except as provided in the Software Escrow Agreement and this Certificate of Escrow, with respect to the issuance of Certificates of Escrow, the holding and retention of the Software as a depository for the benefit of the Licensor and the Licensees, and the delivery of copies of the Software in accordance with the instructions contained herein and in the Software Escrow Agreement, BEC has no liability or responsibility to Certificate Holder for the origination, design, creation, authorship, content, operation, performance, accuracy or durability of the Software held in escrow.

(To be signed at time of redemption of the Software)

_____ hereby acknowledges receipt of an original copy of the foregoing Escrow Materials, this Certificate of Escrow is number _____, signed this _____ day of _____.

By: _____ In the presence of _____