

CONTRACT FOR CONSTRUCTION MANAGEMENT SOFTWARE SERVICE 20-53

This Software-as-a Service Agreement (the “Agreement”) is made and entered into this 21st day of February, 2021 (“Effective Date”) by and between the COUNTY OF MCHENRY, ILLINOIS, a body politic, located at 2200 North Seminary Avenue, Woodstock, Illinois 60098 (“County”) and, ExeVision, Inc., a corporation, with its principal place of business located at 895 W. Baxter Drive, South Jordan, UT 84905 (“Contractor”) and sets forth the terms and conditions under which Contractor agrees to provide Software-as-a Service.

RECITALS

WHEREAS, Contractor is in the business of supplying software applications and related services to companies in the transportation industry, including, among other things, project development functionality for agency road and bridge construction;

WHEREAS, County is a transportation agency that desires the use of the integrated Project Development (iPDWeb™) Construction Management software application and services;

WHEREAS, County desires to have Contractor provide Cloud Hosting services as the delivery mechanism for the software application functionality; and

WHEREAS, Contractor and County desire to enter into this Agreement defining their respective rights and responsibilities and memorializing the terms and conditions pursuant to which Contractor will provide to County the Services for a fee.

DEFINITIONS

- **“SaaS”** is an acronym for “Software-as-a-Service” and means the combined hosting and support services provided in this Agreement for both Cloud Hosting services and Software Application services.
- **“SaaS Materials”** shall mean the written or electronically supplied materials relating to the operation and use of the Contractor Software including, but not limited to, user manuals, user guides, technical manuals, release notes, and online help files regarding use of the Contractor Software provided as part of the Service, and any other materials prepared in connection with any Contractor Software modification, correction, or enhancement, and shall include any updated versions of SaaS Materials as may be provided by Contractor from time to time (1) in the course of providing the Service; (2) as part of an online tutorials or help files provided with the Service; or (3) in the course of providing web seminars in which County or County’s Users enroll.
- **“Base Components”** means the hardware, software, and hosting environment as specified in Schedule C that Contractor makes available for use by County as part of the Service.
- **“Cloud Hosting”** means the provision of products and services in a hosted, virtualized environment, accessible via the internet.
- **“Contractor Software”** means Contractor proprietary software applications and user interfaces as defined in Schedule A and made available to County by Contractor as part of the Service. Contractor Software may contain third-party components licensed to Contractor.
- **“County Data”** means all data, files, including hypertext markup language files, documents, audio and visual information or graphics that County creates, installs, uploads to or transfers in or through the Service or provides in the course of using the Service, excluding identification and other information provided by County relative to County Users.
- **“Electronic Communications”** shall mean any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically to or from the Service.

- **“Infrastructure Support Services”** shall mean the support provided by Contractor for the maintenance and stability of the computer hardware and hosting environment provided as part of the Service.
- **“Product Support Services”** shall mean the support provided by Contractor to remediate, correct, or abate errors in the out of the box Contractor Software that is provided as part of the Service as defined in Schedule B.
- **“Purchase Order Form(s)”** refers to a County document, in either electronic or written form, issued by County to confirm County’s purchase of the Service. The parties acknowledge and agree that the terms and conditions of any such Purchase Order Form shall not be binding upon the parties or in any way modify, amend, or supersede the terms and conditions of this Agreement.
- **“Service”** shall mean the software and infrastructure in a hosted environment provided and maintained by Contractor to which County is being granted access under this Agreement via a web site or another designated IP address. Service or Services includes Product Support Services described in this Agreement.
- **“Term”** means any Initial Term and/or Renewal Term as defined in Section 6 of this Agreement.
- **“Third Party Products”** means application software products provided by third party Contractors, including operating system and application software with which the Contractor Software interfaces and which provides certain functionality essential to the operation of the Contractor Software. Third Party Products are licensed to Contractor for incorporation and use in the hosted environment as part of the Service as set forth in the Statement of Work. For the sake of clarity, the term Third-Party Products does not refer to third-party software components, if any, incorporated into Contractor Software.
- **“User(s)”** means County’s employees, representatives, consultants, contractors or agents who are authorized to use the Service and have been supplied user identifications and passwords by County or on County’s behalf.

1. **SCOPE OF WORK AND PRICE:** This agreement incorporates by reference RFP #20-53 and Exevison Inc.’s bid proposal submitted in response to RFP #20-53. In consideration of fees paid by County under this Agreement, Contractor shall provide County access to the Service. Specific components of the Service to be provided to the County are as outlined in the Schedules as annexed hereto. Contractor agrees to provide an integrated web-based construction management software (“CMS”) that can be implemented by County staff. See Schedule A for the Contractor Licensed Software that the Contractor shall provide to the County. See Schedule B for the Product Support that the Contractor shall provide to the County. See Schedule C for the Infrastructure that the Contractor shall provide in terms of services and architecture. See Schedule D for the payment and fee schedule.

As part of the implementation, Vendor will deliver a proposed termination assistance/data transfer plan to County within ninety (90) business days after the Effective Date. County will have five (5) business days from the date of receipt of such proposed plan to accept the plan as-is or to provide feedback regarding the proposed plan in writing. The parties will then cooperate in good faith to finalize the plan within ten (10) business days. The termination assistance/data transfer plan will not become part of this Agreement. Instead, it is intended to further describe aspects of the Services and in the event the final plan involves any changes in scope, such changes will be addressed as part of the change control process.

Contractor will implement the infrastructure described in Schedule C in conformance with the Statement of Work entered into by separate agreement between the Parties and dated of February 21, 2021, to provide County the Services described in this Agreement.

This schedule is contingent on:

- (i) the Contractor Software having been installed and accepted by County
- (ii) County providing: all data required by Contractor in order to implement the infrastructure as defined in the Statement of Work between the Parties and dated as of the February 21, 2021.
- (iii) County completing all tasks and activities required as a prerequisite in order for the system to be placed into production use. Example of these types of activities are, but not limited to, validation activities, document approval, data migration, user training etc.
- (iv) County providing their internal infrastructure and connectivity needed to access the Services.

2. **TERM AND TERMINATION:** This Agreement shall be effective and binding from the date of its execution for an initial term ending on November 30, 2021. This initial term shall include Implementation, training and go live which is estimated for February 1, 2021. This Agreement shall automatically renew for four (4) consecutive terms. Year 2 to include ongoing support and maintenance services from December 1, 2021 through November 30, 2022. Year 3 to include ongoing support and maintenance services from December 1, 2022 through November 30, 2023. Year 4 to include ongoing support and maintenance services from December 1, 2023 through November 30, 2024. Year 5 to include ongoing support and maintenance services from December 1, 2024 through November 30, 2025. All terms may be terminated earlier pursuant to the terms hereof. Failure to comply with the terms and conditions as stated herein shall be cause for cancellation of this contract. The County will give written notice of unsatisfactory performance and the Contractor will be allowed thirty (30) days to take corrective action and accomplish satisfactory control. If at the end of the thirty days, the County deems the Contractor's performance still unsatisfactory, the contract shall be canceled. The exercise of its right of cancellations shall not limit the County's right to seek any other remedies allowed by law. Any defective work or materials, non-conformance to bid specifications, damaged materials, or unsatisfactory installation shall be corrected to the County's satisfaction by the Contractor at no additional charge.

3. **TERMS OF SERVICE:**

Service Extensions or Updates

County further agrees that, unless explicitly stated otherwise, any new features that augment or enhance the Service, and or any new service subsequently purchased by County pursuant to an amendment accepted by Contractor referencing this Agreement will be subject to this Agreement.

County Must Have Internet Access

In order to use the Service, County must have or must obtain access to the World Wide Web, either directly or through devices that access Web-based Content. County must also provide all equipment necessary to make (and maintain) such connection to the World Wide Web in accordance with the requirements set out in Schedule C.

Email and Notices

County agrees to provide Contractor with County's e-mail address (es), and to accept emails (or other Electronic Communications) from Contractor at the e-mail address. County specifies. Notwithstanding any provision in the Agreement to the contrary, acknowledgement by an officer of County is not required with respect to e-mail communications pertaining to the County's routine use of the Service, including without limitation communications relating to the support,

maintenance, or the updating of the Service. County further agrees the Contractor may provide any and all required notices including legal notices to County through either e-mail (or other electronic transmission), or by mail or express delivery service in accordance with Section 14.

County's Responsibilities

County agrees to comply with all applicable local, state, national and foreign laws, treaties, regulations and conventions in connection with its use of the Service, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data. County will ensure that any use of the Service by County's Users is in accordance with the terms of this Agreement. County agrees to notify Contractor immediately of any unauthorized use of any password or account or any other known or suspected breach of security or any known or suspected distribution of County Data.

County shall not resell the Services directly or indirectly to third parties.

Transmission of Data

County understands that the technical processing and transmission of County's Electronic Communications is fundamentally necessary to County's use of the Service. County expressly consents to Contractor's interception and storage of Electronic Communications and/or County Data, and County acknowledges and understands that County's Electronic Communications will involve transmission over the internet, and over various networks, only part of which may be owned and/or operated by Contractor. County acknowledges and understands that changes to County's Electronic Communications may occur in order to conform and adapt such data to the technical requirements of connecting networks or devices. County further understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone, or other electronic means. County agrees that Contractor is not responsible for any Electronic Communications and/or County Data which are lost, altered, intercepted or stored without authorizations during the transmission of any data whatsoever across networks not owned and/or operated by Contractor.

Contractor's Support

Contractor will make commercially reasonable efforts to promote County's successful utilization of the Service, including but not limited to maintenance and support of the Base Components, providing County with on-line help, and product support as set forth in Schedule B. Infrastructure Support Services shall be provided as set forth in Schedule C. Infrastructure Support Services pertain to the maintenance of the computer hardware and hosting environment provided as part of the Service. Contractor will also provide Product Support for Contractor Software employed as part of the Service as set forth in Schedule B annexed hereto. Product Support pertains to support designed to remedy errors in Contractor Software that cause it to deviate from the specifications as described in the SaaS Materials. Contractor may also offer "for fee" extended support options and Professional Services consultation, which services may include, among other things, additional training services, integration services, system configuration, etc.

Handling of County Data in the Event of a Termination

County acknowledges and agrees that following termination of this Agreement, County shall return all requested SaaS Materials requested by Contractor (except that it may retain a copy for archival purposes or as otherwise provided in this Agreement) to Contractor and Contractor may immediately deactivate County's account. Furthermore, at the request of County or at the discretion of Contractor, Contractor shall remove or overwrite all applicable Content from Contractor's systems following the effective date of termination or cancellation, in accordance with Contractor's standard procedures. Prior to any such deletion or destruction, however,

Contractor shall either (1) grant County reasonable access to the Service for the sole purpose of County retrieving County Data or (2) transfer all County Data to other media for delivery to County. County agrees that Contractor shall not be liable to County or to any third party for any termination of County access to the Service or deletion of County Data, provided that Contractor is in compliance with the terms of this Section. Notwithstanding the foregoing, nothing shall preclude Contractor from maintaining one copy of County Data if required by law.

Handling of Application in the Event of Termination

County data would be returned to the County as defined in the Disentanglement section of this Agreement.

4. **FEES AND PAYMENT TERMS:** County shall pay Contractor for Contractor's performance of Services hereunder as set forth in Schedule D. Contractor shall submit an itemized invoice for the Services performed with sufficient detail to allow County to review and confirm the Services performed. Payment will be processed after receipt of an invoice and appropriate affidavit. The County shall pay the amount agreed upon no later than thirty (30) days from receiving such invoice and affidavit. Contractor shall not incur any expenses or costs on behalf of the County or in performing the Services, other than what is provided for above, unless County specifically authorizes in advance such expenses or costs in writing.
5. **RELATIONSHIP OF THE PARTIES:** In performing Services hereunder, Contractor shall at all times act as an independent contractor and not as an agent or employee of County. The Services shall be completed to the satisfaction of County; however the actual details of the Services shall be under Contractor's control. Contractor is required to make appropriate filings with the taxing authorities to account for and make all payments required by local, state and federal authorities, including without limitation, income tax and social security payments. Contractor shall also comply, at its expense, with all applicable provisions of workers compensation laws, unemployment compensation laws, social security laws, the Fair Labor Standards Act and all other applicable federal, state and local regulations relating to the terms and conditions of employment required to be fulfilled by an employer. Contractor further agrees to indemnify and hold County harmless for any and all claims made by the above mentioned authorities resulting from performance of Services by Contractor hereunder or otherwise arising out of Contractor's breach of the obligations contained in this paragraph.
6. **INSURANCE:** At Contractor's sole expense, Contractor shall be required to maintain at all times, for the duration of this Agreement, insurance coverage that includes "Occurrence" basis wording and is issued by a company or companies qualified to do business in the State of Illinois with a Best's Rating of A or higher and with a Best's financial size category of Class XIV or higher, in the following types and amounts:
 - a) Commercial General Liability in a broad form, to include, but not limited to, coverage for the following where exposure exists: Bodily Injury and Property Damage, Premises/Operations, Independent Contractors, Products/Completed Operations, Personal Injury and Contractual Liability; limits of liability not less than:

\$1,000,000 per occurrence and \$2,000,000 in the aggregate;
 - b) Business Auto Liability to include, but not be limited to, coverage for the following where exposure exists: Owned Vehicles, Hired and Non-Owned Vehicles and Employee Non-Ownership; limits of liability not less than:

\$1,000,000 per occurrence combined single limit for:
Bodily Injury Liability and Property Damage Liability;

- c) Workers' Compensation Insurance to cover all employees and meet statutory limits in compliance with applicable state and federal laws. The coverage must also include Employer's Liability with minimum limits of \$100,000 for each incident.
- d) Professional Liability Insurance with \$1,000,000 per occurrence and \$1,000,000 in aggregate.

The County of McHenry shall be provided with Certificates of Insurance evidencing the above required insurance, prior to commencement of the contract and thereafter with certificates evidencing renewals or replacements of said policies of insurance at least fifteen (15) days prior to the expiration or cancellation of any such policies; The contractual liability arising out of the contract shall be acknowledged on the Certificate of Insurance by the insurance company; The County of McHenry shall be provided with thirty (30) days prior notice, in writing, of Notice of Cancellation or material change and said notification requirement shall be stated on the Certificate of Insurance; Subcontractors, if any, comply with the same insurance requirements. In addition to being named as an additional insured on the Certificate of Insurance, each liability policy shall contain an endorsement naming the County of McHenry as an additional insured. A copy of the endorsement shall be provided to McHenry County along with the Certificate of Insurance; and have McHenry County named as an additional insured and the address for certificate holder must read exactly as:

County of McHenry, a **body politic**
2200 N. Seminary Avenue
Woodstock, IL 60098

- (e) Insurance Notices and Certificates of Insurance shall be provided to:

McHenry County, Purchasing Department
2200 N. Seminary Avenue, Room 200
Woodstock, Illinois 60098

The County shall be named as additional insured on all liability policies, and the parties acknowledge that any insurance maintained by the County shall apply in excess of, and not contribute to, insurance provided by successful bidder.

The contractual liability arising out of the Agreement shall be acknowledged on the Certificate of Insurance by the insurance company. The County shall be provided with thirty (30) days prior notice, in writing, of Notice of Cancellation or material change, and said notification requirements shall be stated on the Certificate of Insurance.

Acceptance or approval of insurance shall in no way modify or change the indemnity or hold harmless clauses in this agreement, which shall continue in full force and effect.

- 7. **INDEMNIFICATION**: Each party (in such capacity the "Indemnifying Party") hereby agrees to defend, indemnify and hold harmless the other party (in such capacity the "Indemnified Party") and any of its subsidiaries and affiliates and the respective officers, directors and employees of each of the foregoing entities from and against all claims, demands, liabilities, losses, damages,

suits, judgments, costs and expenses (including reasonable attorney's fees and costs of defense) in any manner arising out of or resulting from performance of the Services contemplated herein, provided that any such claim, demand, liability, loss, damage, suit, judgment, cost or expense (1) is attributed to bodily injury, sickness, disease or death of any person, or to damage to or destruction of tangible property, including the loss of use resulting therefrom, and (2) is caused by any act or omission of the Indemnifying Party, its employees or agents, any approved subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

Furthermore, Contractor agrees to defend, indemnify and hold County harmless from and against all claims, demands, liabilities, losses, damages, suits, judgments, costs and expenses (including reasonable attorney's fees and costs of defense) in any manner arising out of the infringement or alleged infringement of any United States patent, trademark, trade dress, copyright or other intellectual property arising out of the Services provided by the Contractor to County.

The party seeking indemnification shall give prompt notice of the claim and will tender the defense; provided, however, that such party's failure to provide notification shall not affect the indemnifying party's indemnification obligations except to the extent that the failure to notify delays or prejudices the indemnifying party's ability to defend the applicable claim. The indemnifying party shall conduct the defense and shall have control of the litigation, and the indemnified party shall cooperate in defending against the claim. The indemnified party shall have the right, at any time and at its own expense, to participate in the defense of the claim with counsel of its own choosing. The indemnifying party shall not make any settlement of the claim that results in any liability or imposes any obligation on the indemnified party without the prior written consent of the indemnified party. If the indemnifying party fails to (i) respond to the notice of a claim, or (ii) assume the defense of a claim, the party seeking indemnification shall have the right to defend the claim in such manner as it may deem appropriate, at the reasonable cost, expense, and risk of the indemnifying party, and the indemnifying shall promptly reimburse the indemnified party for all such costs and expenses.

8. CONFIDENTIALITY: Each party to this Agreement may from time to time disclose (in that capacity "Discloser") to the other party (in that capacity "Recipient") information which Discloser regards as confidential. For the purposes of this Agreement, "Confidential Information" means any information that a party designates as confidential, is required by law to remain confidential, or which the receiving party knows or has reason to know is confidential.

Each party agrees to maintain in confidence and not disclose to any other person or entity or utilize, directly or indirectly, any Confidential Information disclosed by the other party in connection with this Agreement or the discussions and negotiations leading thereto except information which is (i) already known and not received from the other party in the course of negotiating or fulfilling this Agreement, (ii) information which becomes generally available to the public through no fault of the party who wishes to utilize the information, (iii) information received from a non-party who has the right to disclose such information without breaching any obligations to the other party, or (iv) information which a party is legally obligated to disclose.

Disclosure of Confidential Information shall be permitted if such disclosure is in response to a valid order of a court or other governmental body of the United States, any State, or any political subdivision thereof or is otherwise required to be disclosed by law (including the Freedom of Information Act). Contractor agrees to waive any and all potential claims or causes of action against the County and its employees arising out of the County's disclosure of Contractor's

Confidential Information when such disclosure is made pursuant to the Freedom of Information Act.

The Recipient agrees that it will (a) use such Confidential Information of the Discloser only to carry out the services contemplated by this Agreement, (b) disclose such Confidential Information only to employees who have a reasonable need for such information, (c) instruct all employees who have access to Discloser's Confidential Information of the necessity to maintain the confidentiality of such information, (d) use at least as great a standard of care in protecting the Discloser's Confidential Information as it uses to protect its own information of like character, but in no event less than a reasonable degree of care, and (e) return or destroy all such Confidential Information upon request of the Discloser.

9. NON-SOLICITATION: Contractor hereby covenants and agrees with County that at all times during the term of this Agreement and for a period of one (1) year following the termination hereof for any reason whatsoever, Contractor shall not, directly or indirectly, on its own account nor on behalf of any other person or entity, solicit, interfere with, hire, engage or endeavor to entice away from County, in order to accept employment or enter into a working relationship with any such person, any person who is or was an employee of County at any time during the term of this Agreement. The parties hereto believe that actual damages in the event of a violation of this Paragraph 8 will be difficult to determine and, therefore, Contractor agrees that upon any violation of this Paragraph 8, Contractor shall pay County the sum of one year's direct salary for each employee involved in a violation as liquidated damages and not as a penalty.

This Paragraph is not intended to restrict the rights of any employee of either party to seek and obtain or engage employment or engagement by the other party by their own initiative or in response to publicly posted employment advertisements, job fairs or employment services, provided however that no solicitation of any kind occurs on the part of the hiring party.

10. THIRD PARTY MATERIALS: Contractor will not prepare any deliverables or other material for County that contains any limitations by third parties on its use without first securing either (i) County's prior written approval of such limitations, or (ii) the third party's prior written waiver of such limitations. Contractor will not use any materials produced or provided by any third party ("Third Party Materials") having said limitations without having secured the appropriate licenses or prior written approval of each said third party. In addition, Contractor will not, without County's prior written approval, use any Third Party Materials pursuant to licenses or agreements that limit or prohibit the assignment of Contractor's rights in and to such Third Party Materials to County or County's designee. Contractor shall maintain a copy of all such licenses and agreements and provide copies to County upon County's request.
11. LICENSE GRANTS: Subject to the terms and conditions of this Agreement, Contractor grants to County during the Term of this Agreement the nontransferable, nonexclusive worldwide right to permit Users to (a) use the Service, including the Base Components thereof, (b) display and print County Data, and (c) use the SaaS Materials solely in connection with the Service, all solely for County's own internal business operations, provided such internal business operations shall not include commercial time-sharing, rental, outsourcing, service bureau or similar use. For purpose of this license grant, "County" shall include any outsourced or other third-party consultants or similar personnel supporting County as part of its typical business practices, acting under County's direction and for whom County is fully responsible hereunder. County acknowledges and agrees that the license granted, for the items listed in Schedule A herein, is a unlimited user license and that the rights granted to County in this Agreement are subject to all of the following agreements

and restrictions: (i) there is no maximum number of concurrent users for the authorized County; (ii) County shall not license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose or otherwise commercially exploit or make the Service or the SaaS Materials available to any third party other than an authorized User; (iii) County shall not modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Service, including without limitation the Contractor Software and or SaaS Materials that are provided as a part thereof, or access the Service or SaaS Materials in order to build a similar or competitive product or service; (iv) County shall not create Internet "links" to the Service or "frame" or "mirror" any part of the Service, including any content contained in the Service, on any other server or device; (v) except as expressly stated herein, no part of the Service or SaaS Materials may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means; (vi) County agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Service; (vii) County acknowledges and agrees that Contractor or its Third Party Contractors shall own all right, title and interest in and to all intellectual property rights in the Service and the SaaS Materials and any suggestions, enhancement requests, feedback, or recommendations provided by County or its Users relating to the Service or the SaaS Materials, including all unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, know-how and other trade secret rights, and all other intellectual property rights, derivatives or improvements thereof; (viii) unauthorized use, resale or commercial exploitation of any part of the Service or SaaS Materials in any way is expressly prohibited; (ix) County does not acquire any rights in the Service or SaaS Materials, express or implied, other than those expressly granted in this Agreement and all rights not expressly granted to County are reserved by Contractor and Third Party Contractors; and (x) this Agreement is not a sale and does not convey any rights of ownership in or related to the Service, Contractor Software, Third Party Products, or SaaS Materials to County.

12. LICENSES FROM COUNTY: Subject to the terms and conditions of this Agreement, County grants to Contractor and its Third Party Contractors the non-exclusive, nontransferable worldwide right to copy, store, record, transmit, display, view, print or otherwise use (a) County Data solely to the extent necessary to provide the Service and SaaS Materials to County, and (b) any trademarks that County provides Contractor for the purpose of including them in County's user interface of the Service ("County Trademarks"). County acknowledges and agrees that County Data and information regarding County and County's Users that is provided to Contractor and its Third Party Contractors in connection with this Agreement may be (a) processed by Contractor and its Third Party Contractors to the extent necessary to provide the Service and (b) transferred to any other jurisdiction within the United States where County and County's Users are located. In addition, County acknowledges and agrees that it is County's obligation to inform County's Users and County of the processing of County Data and information regarding County and County's Users pursuant to this Agreement and to ensure that such Users and County have given any necessary consent to such processing as required by all applicable data protection legislation. County shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all County Data and information regarding County and County's Users. County agrees that the license to the County Data shall survive termination of this Agreement solely for the purpose of storing backup County Data in accordance with the terms of this Agreement.

By providing County with the Services, Contractor does not acquire any right, title and/or interest in the content material (including but not limited to text, County-provided software, scripts, trademarks, logos, HTML coding, domain names, links, graphics, audio, video, and any data) that

County makes available for use by Users by means of the Services (collectively “Content”). Except as expressly set forth in the Schedules as being the responsibility of Contractor, County is solely responsible for all Content.


13. **OWNERSHIP OF WORK PRODUCT:** Contractor agrees that all work product produced by Contractor hereunder, including, without limitation, all reports and other documents (“Work Product”) shall be deemed to be works made for hire under U.S. copyright laws and that all right, title, and interest in and to the Work Product shall be the sole property of County and County shall have the exclusive right to the copyrights on the Work Product. To the extent that the Work Product is not deemed to satisfy the requirements for a work made for hire under U.S. copyright laws, Contractor hereby assigns to County all copyrights the Work Product and agrees to execute any additional documents requested by County to further such assignment at no additional cost to County. Contractor warrants that the Work Product shall not infringe the patent, copyright or other intellectual property or proprietary right of any third party and agrees to defend, indemnify and hold County harmless against any such third party claim.
14. **NON-APPROPRIATION OF FUNDS:** This Agreement is made subject to available budgetary appropriations and shall not create any obligation on behalf of the County in excess of such appropriations. In the event that no funds or insufficient funds are appropriated and budgeted, this Agreement shall terminate without penalty or expense to the County thirty (30) days after written notification of termination from the County. The Seller agrees that pursuant to requirements imposed by Illinois law, the County shall have 120 days after each election of county board members to terminate the Contract, without cause and without penalty.
15. **ASSIGNMENT AND SUBCONTRACTING:** This Agreement shall not be assigned by Contractor without prior written approval of the County, subject to such conditions and provisions as the County may deem necessary in its sole and absolute discretion. No such approval by the County of any assignment shall be deemed in any event or in any manner to provide for the incurrence of any obligation of the County in addition to the total agreed upon price. Approval by the County of an assignment shall not be deemed a waiver of any right accrued or accruing against Contractor. No assignee of Contractor shall assign this Agreement without prior written approval of the County. This Agreement shall be binding upon the parties and their respective heirs, successors, and assigns. Furthermore, Contractor shall not enter into any subcontract with any agency or individual with respect to the performance of Services under this Agreement without the written consent of the County. Such consent County may grant, condition or withhold in County’s sole discretion.

County may not assign this Agreement without the prior written approval of Contractor. Any purported assignment in violation of this section shall be void.

16. **NOTICE:** All notices and other communications required to be given under the Agreement shall be in writing and shall be deemed to have been given (i) when personally delivered; (ii) three (3) business days after mailing, postage prepaid, by certified mail; or (iii) when delivered (and receipted for) by an overnight delivery service, addressed in each case to the parties at the addresses set forth below.

If to County: Purchasing Department
 McHenry County Administration Building
 2200 N. Seminary Avenue, Room 200
 Woodstock, Illinois 60098

If to Contractor:


Exevision, Inc.
Floyd W. Millet
fmillet@exevision.com, Attn. Floyd Millet
AND Brent D. McKinley, Director of Business Development
bmckinley@exevision.com

17. ACCEPTANCE. County will have the right to inspect the Goods upon receipt, and within 15 business days after delivery, County must give written notice to Contractor of any claim for damages on account of condition, quality, or grade of the goods and County must specify the basis of the claim in detail. If the Goods or tender of delivery fail in any respect to conform to the provisions of this Agreement, County may reject the Goods upon written notice to Contractor within 15 business days of receiving the Goods.

Contractor may, at its option inspect the Goods at County's facility to confirm that the Goods do not conform. In the event the Goods do not conform to this Agreement, Contractor, at its option, shall replace the Goods at its own expense or credit County the amount of the purchase price for the non-conforming Goods. Failure of County to comply with the conditions set forth in this Paragraph will constitute irrevocable acceptance of the Goods by County.

18. WARRANTY.

Warranty of Functionality

Contractor warrants to County during the Term of this Agreement that the Service will comply with the material functionality described in the SaaS Materials and that such functionality will be maintained in all material respects in subsequent upgrades to the Service. County's sole and exclusive remedy for Contractor's breach of this warranty shall be that Contractor shall use commercially reasonable efforts to correct such errors or modify the Service to achieve the material functionality described in the SaaS Materials within a reasonable period of time. However, Contractor shall have no obligation with respect to this warranty claim unless notified of such claim within (30) days of the first material functionality problem. Further, Contractor shall have no obligation with respect to this warranty claim, and County may not terminate the Agreement, where any alleged nonconformity is due to User error as reasonably determined by the parties after investigation and analysis by Contractor's Product Support Center. Contractor does not warrant that the Service will be free of non-material errors, bugs, or minor interruption, or that all such errors will be corrected.

Data Maintenance and Backup Warranty

Contractor warrants during the Term of this Agreement, that it will, at a minimum, utilize and maintain the backup procedures provided through the Microsoft Azure Cloud Hosting services including ongoing data backup. In the event of a breach of this provision, Contractor will use commercially reasonable efforts to correct County Data or restore County Data within three (3) business days (or as otherwise agreed in writing between the parties). Provided Contractor complies with the procedures set forth in Schedule C, it shall be deemed to have satisfied its obligation with respect to this warranty.

Non-Infringement Warranty

Contractor warrants that it is the sole owner of and or has full power and authority to grant the license and use of the Service and other rights granted by the Agreement to County with respect to the Service and that neither the performance by County in its utilization of the Service, nor the

license of and authorized use by County of the Service as described herein, will in any way constitute an infringement or other violation of any U. S. copyright, trade secret, trademark, patent, invention, proprietary information, non-disclosure, or other rights of any third party.

Disclaimer of Warranties

EXCEPT AS OTHERWISE STATED ABOVE, CONTRACTOR DOES NOT REPRESENT THAT COUNTY'S USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR FREE, OR THAT THE SERVICE WILL MEET COUNTY REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE SYSTEM THAT MAKES THE SERVICE AVAILABLE WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THE SERVICE WILL OPERATE IN COMBINATION WITH OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY CONTRACTOR OR THE OPERATION OF THE SERVICES WILL BE SECURE OR THAT CONTRACTOR AND ITS THIRD PARTY CONTRACTORS WILL BE ABLE TO PREVENT THIRD PARTIES FROM ACCESSING COUNTY DATA OR COUNTY'S CONFIDENTIAL INFORMATION, OR ANY ERRORS WILL BE CORRECTED OR ANY STORED COUNTY DATA WILL BE ACCURATE OR RELIABLE. THE WARRANTIES STATED ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY CONTRACTOR. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS STATED ABOVE, THE SERVICE IS PROVIDED TO COUNTY ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND IS FOR COMMERCIAL USE ONLY. COUNTY ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR THE COUNTY'S PURPOSE.

19. LIMITATION OF LIABILITY. In no event shall either party be liable for any special, indirect, incidental or consequential damages arising out of or connected with this Agreement or the Goods, regardless of whether a claim is based on contract, tort, strict liability or otherwise.
20. GOVERNING LAW AND VENUE. The parties agree this Agreement has been executed and delivered in Illinois and that their relationship and any and all disputes, controversies or claims arising under this Agreement shall be governed by the laws of the State of Illinois, without regard to conflicts of laws principles. The parties further agree that the exclusive venue for all such disputes shall be the Circuit Court of the 22nd Judicial Circuit of McHenry County, Illinois, and the parties hereby consent to the personal jurisdiction thereof.
21. COMPLIANCE WITH LAWS. Each party hereto covenants and agrees to comply with all applicable federal, state, and local laws, codes, ordinances, rules and regulations. Failure to comply with the terms of this provision shall constitute a breach of contract and permit the County to terminate this contract.
22. NON-DISCRIMINATION. Seller shall comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., as amended and any rules and regulations promulgated in accordance therewith. Including, but not limited to the Equal Employment Opportunity Clause, Illinois Administrative Code, Title 44, Part 750 (Appendix A), 775 ILCS 5/1-102, which is incorporated herein by reference, and constituting of a written EEO Policy and a workforce profile that demonstrates its EEO practices. Furthermore, the Seller shall comply with the Public Works Employment Discrimination Act, 775

ILCS 10/0.01 et seq., as amended. The Contractor must have a written sexual harassment policy, which meets Illinois State Statutes, 775 ILCS, 15/3.

- 23. **FORCE MAJEURE.** Contractor shall not be liable for its failure to perform its respective obligations under this Agreement when such failure is caused by acts of God, strikes, lockouts, fires, war conditions, political unrest, acts of terrorism, foreign or domestic governmental controls or other actions, embargoes or other causes beyond its control.
- 24. **SEVERABILITY.** The invalidity or unenforceability of any particular word, phrase, sentence, paragraph or provision of this Agreement shall not affect the other words, phrases, sentences, paragraphs or provisions hereof. This Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted and the remainder construed so as to give them meaningful and valid effect. It is the intention of the parties that if any particular provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, the provision shall have the meaning which renders it valid.
- 25. **WAIVER.** Either Party's failure to insist upon strict compliance with any provision hereof or its failure to enforce any rights or remedy in any instance shall not constitute or be deemed to be a waiver of any provision, right or remedy.
- 26. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement and understanding of the parties with regard to the subject matter contained herein. This Agreement supersedes all prior contemporaneous communications, representations or agreements, whether oral or written, with respect to the subject matter thereof and has been induced by no representations, statements, or agreements other than those herein expressed. No agreement hereafter made between the parties shall be binding on either party unless reduced in writing and signed by the party sought to be bound thereby.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

The County of McHenry

ExeVision, Inc.

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE A – CONTRACTOR LICENSED SOFTWARE

The licenses set forth below shall be available to County during the term of the agreement.

- *Integrated Project Development (iPDWeb™)*
 - Construction Management Subsystem (CMS)

- *Integrated Contractors Desktop (iCXWeb™)*
 - Include construction functionality for:
 - *Subcontracts*
 - *Change orders*
 - *Necessary approval processes*

- Electronic Field Book (eFieldBook™)

SCHEDULE B – PRODUCT SUPPORT

During the Term of this Agreement and for so long as County is entitled to receive the Service hereunder, Contractor shall provide the following Product Support Services through its Support Centers (“SC”) for the Service infrastructure and Contractor Software as follows

- a. The SC will be the primary point of contact for all product support inquiries. The SC may be contacted via email at saas_support@exevision.com.
- b. The SC will receive, log, and respond to inquiries from the County concerning errors or defects in the Contractor Software that cause the Contractor Software to deviate from the applicable SaaS Materials.
- c. The SC is and will be staffed with qualified product support engineers who have experience with the Contractor Software and SaaS Materials and are familiar with the environments in which they operate. The SC will endeavor to provide timely and accurate answers to the County’s inquiries through Contractor’s Product Support team. The SC shall endeavor to rectify Contractor Software errors that impact County’s use and operation of the Contractor Software as set forth below. However, Contractor does not warrant that the Contractor Software will be error free, will work in combination with third party software not provided by Contractor, or will perform in an uninterrupted manner.
- d. For as long as the Agreement remains in effect, County shall have unlimited telephone and e-mail support during the hours of operation of the SC (8am – 5pm MT). Excluding legal holidays in the respective geography, telephone support shall be available Monday through Friday.
- e. Support inquiries, whether initiated by electronic mail, telephone, or otherwise, will be recorded by Contractor in the SC call-tracking system. All inquiries will be assigned a tracking number that will be used to communicate with the County and to track the progress of a specific support call or inquiry.
- f. The County and the SC contact will work together to assign a priority level when the support inquiry is initiated in accordance with the Priority Level descriptions herein. The Priority Level describes the impact that the problem is having on the County’s ability to effectively use the Contractor Software. The Priority Level initially assigned can be modified if circumstances warrant it and the appropriate representatives of the County and Contractor agree.

Priority Levels and SC average response times are as follows:

Severity Level	Severity Definition	Response Time
Severity 1	Failure that causes complete loss of application access or use. This includes delays to or failure of a project letting. No known work-around or immediate solution exists.	Remote troubleshooting within 1 hour of event notification.
Severity 2	Failure that causes partial loss of application functionality. No known work-around or immediate solution exists. May include: * Failure of a single component. * Intermittent failure(s) that are frequent. * Intermittent failure(s) that diagnosis has been unsuccessful.	Remote trouble shooting within 2 hours of event notification
Severity 3	Fault that reduces application functionality. Viable work-around exists. May included: * Intermittent failure(s) that are infrequent. * Minor Application performance problems.	Remote troubleshooting within 1 business day of event notification.
Severity 4	Minor issue(s) that has little or no impact on application functionality.	Response within 3 business days of event notification.

All times specified may be impacted by availability of County internal support, if required, to assist in investigation or resolution.

Although Contractor will endeavor to provide a resolution for all errors within the times indicated above, Contractor does not guarantee that all errors will be resolved within these times or that a Resolution will be provided at all.

Contractor shall have the right to modify the foregoing support policies as agreed by Contractor and County, provided (i) Contractor provides County with at least thirty (30) days written notice of such changes, and (ii) such changes do not materially diminish Contractor’s overall technical support obligations to County as set forth herein

SCHEDULE C – INFRASTRUCTURE

Contractor and County have agreed on the following services and architecture:

BASE COMPONENTS:

- Microsoft Azure Cloud hosting services
 - Data backup throughout the day
 - Secondary site/Business Continuity for restore or failover

Hosting Infrastructure

ExeVision has partnered with Microsoft on the Azure cloud hosting environment to provide secure, reliable, and resilient cloud hosting services. Through this strategic partnership, ExeVision Countys receive consistently reliable data and hosting services including the latest security and infrastructure certifications, 24/7 uptime, and best-in-class disaster recovery and business continuance services. As one of the big 3 public cloud platforms, Microsoft’s Azure Platform as a Service (PaaS) is built on top of multiple interconnected data centers that accomplish and extend beyond the basic tier level goals of the ANSI/TIA-942 standard.

By hosting iPDWeb™ and iCXWeb™ SaaS applications on the Microsoft Azure platform, ExeVision ensures that their County’s data and application environments are compliant with the widest range of security and infrastructure certifications available in the marketplace. Microsoft may replicate County Data to various Regions for data resiliency, but Microsoft will not replicate County Data outside the chosen Geo (e.g., United States).

Disaster Recovery and Business Continuance

ExeVision maintains a fully redundant standby/disaster recovery environment in Microsoft Azure that mirrors the production environment. This recovery environment will have sufficient geographically dispersed resources to meet recovery and resumption objectives. Dedicated standby web/application servers and application instances, as well as standby database servers and database instances, maintain synchronization with the corresponding production environment at both the application and the database tier. If the production database or environment becomes unavailable because of an unplanned outage, the standby database and application instances will be switched over to the production role, minimizing the downtime associated with the outage.

In the event of a disaster, ExeVision provides access to the disaster recovery facility by modification of the load balancer settings, redirecting all traffic to the secondary site.

Database backups are made continually throughout the day to provide any needed point-in-time data restoration. The application files are backed continuously and ExeVision has the ability through Azure “slotting”, to roll back the application as needed.

Scheduled Downtime

The *iPDWeb* and *iCXWeb* applications and the SecureVault™ database are designed to operate continuously without downtime. Routine infrastructure maintenance is not expected to result in system downtime and is performed during normal business hours. Maintenance that has the possibility of resulting in system downtime is performed during the maintenance window that extends from 10pm to 4am (MST).

Monitoring

Critical events related to unavailable services or server downtime will be detected by ExeVision's monitoring services, which automatically open an ExeVision service ticket. The Microsoft Azure server infrastructure environment is monitored in 1-minute increments using the Microsoft Application Insights monitoring suite. The *iPDWeb/iCXWeb* application environment is monitored by the Site 24/7 service

In the case of a downtime event, ExeVision will begin the support process immediately after notification and adhere to the Incident Response Plan.

SCHEDULE D – PAYMENT AND FEES SCHEDULE

	Annual Unit Cost	Extended Cost, 5 years
Software as a Service fee, lump sum, for contractor to provide software program:	\$ 7,268 ¹	\$36,340.00
Name of Proposed Software Solution: integrated Project Development (iPDWeb)		
Implementation Cost:	\$ 2,500	\$2,500
Ongoing Maintenance fee, once successful implementation is complete:	\$ 1,000 ²	\$ 5,000
Total 5-year cost:		\$43,840.00
List any Exceptions and/or Additional costs to this RFP, if applicable: (i.e. optional modules, training costs, etc.)		
eFieldBook (Field data gathering & inspection)	\$ 150/month ³	\$9,000.00
Training	\$0 ⁴	\$0
Total 5-year cost:		\$52,840.00

Above fees are based on actual product usage as outlined below:

¹**Note #1:** The iPDWeb SaaS application usage fees are based on contract size at \$1/\$1000 contract value. The example cost listed in the table above, is an example based on the average of the three years provided by MCDOT (2017 - \$8,451,101; 2018 - \$8,586,043; 2019 - \$4,767,753). $\$7,268,299/\$1,000 = \$7,268$ annually. ExeVision

²**Note #2:** Ongoing Maintenance fees have an annual flat rate regardless of system usage. This fee covers ongoing system maintenance activities.

³**Note #3:** eFieldBook is licensed at \$30 per user, per year. 5 users have been included in the price quote. If a number fewer or greater than 5 is required, this cost will be adjusted.

⁴**Note #4:** Training: ExeVision pricing includes 8 hours of web-based training for the Agency. If additional online training is required, each half day, (4 hours), is invoiced at \$500.

Payment/Billing

Note:

- The initial invoice will be sent when the solution is available to County for use in the production environment
- The initial invoice will be \$12,500 and include:

- Estimated first year's annual payment for contract-based fees based on the previous 3 years of executed contracts: \$7,268.
- Implementation fee: \$2,500 (One time)
- First year Maintenance fee: \$1,000 (Annual)
- eFieldBook: \$1,800.00 (5 users@ \$360/user/year)

At the end of each agreement year, Contractor will provide a "true-up" for the annual contract-based fees. If the fees paid are in excess of the contracts executed, the next invoice will show a credit. If the contracts executed during the year exceed the contract-based fees paid in advance, the next invoice will reflect the additional fees, added to the contract-based fee estimate for the next year. Likewise, a true-up will be conducted for eFieldBook users and the invoice for the next year will be adjusted accordingly.