## SECOND ADDENDUM TO AGREEMENT

**THIS SECOND ADDENDUM TO AGREEMENT**, made and entered into this **22**

day of **December**, 2010, by and between **JACKSON COUNTY, MISSOURI**,

hereinafter called "the County", and **MITCHELL HUMPHREY & CO.**, 1285 Fern Ridge

Parkway, St. Louis, MO 63141-4402, hereinafter called "Mitchell Humphrey."

WHEREAS, by Resolution 15550, dated June 27, 2005, the Legislature did

authorize a Software Products License and Maintenance Support Agreement with Mitchell

Humphrey for the furnishing of financial systems software, installation, training, consulting

and customization services; and,

WHEREAS, Mitchell Humphrey and the County entered into said agreement, dated

June 27, 2005; and,

WHEREAS, by a First Addendum to Agreement dated March 23, 2009, the County

and Mitchell Humphrey did agree to expand the scope of the original agreement to provide

for an upgrade to the financial systems software's budgeting and position budgeting

module, at an additional cost to the County not to exceed $45,000.00; and,

WHEREAS, the parties now desire to further increase the scope of this engagement

to provide for additional updating and implementation of the budgeting module, at an

additional cost to the County not to exceed $6,800.00;

NOW, THEREFORE, in consideration of the foregoing and the terms and provisions

herein contained, the County and Mitchell Humphrey respectively agree with each other

as follows:

1.      Except as expressly provided herein, all provisions of the agreement between

Mitchell Humphrey and the County and the First Addendum thereto dated March 23, 2009, shall remain in full force and effect pursuant to their terms.

2.	Mitchell Humphrey shall provide services in order to upgrade and implement the budgeting and position budgeting module to meet the County's requirements, as is more fully set out in the Proposal attached hereto as Exhibit A, and incorporated herein by reference. For all services contemplated under both the First Addendum and this Second Addendum, Mitchell Humphrey shall be paid a maximum amount not to exceed $51,800.00 for services, as is set out in Exhibit A.
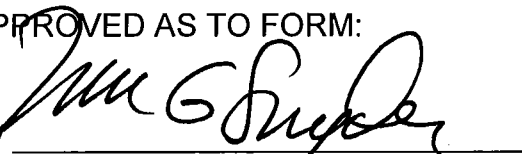
3.	The Addendum shall be effective upon its execution and shall extend until December 31, 2011.

5.	This Second Addendum to Agreement, together with the Agreement of June 27, 2005, and First Addendum dated March 23, 2009, incorporates the entire understanding and agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have signed and executed this First Addendum on the date first above written.
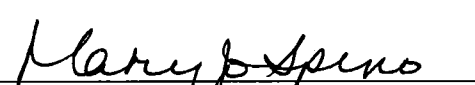
APPROVED AS TO FORM:

By _____
    William G. Snyder
    Acting County Counselor

JACKSON COUNTY, MISSOURI

By _____
    Michael D. Sanders
    County Executive

ATTEST:

_____
Mary Jo Spino
Clerk of the County Legislature

MITCHELL HUMPHREY & CO.
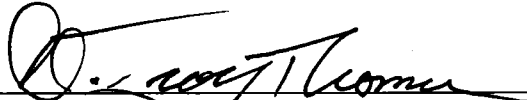
By _____

_____43-1110836_____
Federal I.D. Number

-2-

## REVENUE CERTIFICATE

I hereby certify that there is a balance otherwise unencumbered to the credit of the appropriation to which this contract is chargeable, and a cash balance otherwise unencumbered in the treasury from which payment is to be made, each sufficient to meet the obligation of $6,800.00 which is hereby authorized.

_December 17, 2010_
Date

_signature_
Director of Finance and Purchasing
Account # _001-5101-56790_
_5101 2010 041_

# MITCHELL HUMPHREY
## s o f t w a r e

December 2, 2010

To:   Scott Jacoby
      Jackson County, MO

Re:   Budgeting Solution Proposal

**Scope**:  Installation, configuration, and training of TeamBudget software application.

**Responsibility:**  Mitchell Humphrey to provide software and services for a budget application used by Jackson County that is powered by TeamBudget of Questica, Inc., a Solution Partner of Mitchell Humphrey Software.

This includes:

> Application software:
> - TeamBudget Operating Framework
> - TeamBudget Operating module License Seats (15 Named Users)
> - TeamBudget Salary/Position Planning module License Seats (15 Named Users)
> - TeamBudget Actual Costs module
> - TeamBudget e-Mail Notification module
>
> Services:
> - Configuration
> - Data Import – Operating module only
> - User Training – Train the Trainer
> - FMS II Integration and FMS II Web Service (Budgeting Batch) – Operating module only
> - Ad Hoc Reporting – Standard models

**Estimate:**

| | |
|---|---|
| Budget Module Software (Powered by TeamBudget) and FMS II Web service: | $ 32,900 |
| Budget Services Fee: | 18,900 |
| Total Scope | $ 51,800 |

# MITCHELL
# HUMPHREY
*s   o   f   t   w   a   r   e*

**EXHIBIT A**

*1285 Fern Ridge Parkway*
*St. Louis, Missouri 63141-4402*
------------------------------------------
*800 237-0028 ● 314 991-2440*
*www.mitchellhumphrey.com*

## Other Notes:

- The number of User Licenses is 15, however, Jackson County can use any number of licenses needed in the first year. Prior to the end of the initial year, an analysis will be completed on the account to see how many licenses are truly needed. At that time, Jackson County will be able to purchase the additional licensees at the discounted rate. Any licenses added thereafter will be based on list price of the software.

- Spreadsheet templates will be provided for the Operating module data import (historical values, actual and budget) and will be completed by Jackson County staff. All Salary/Benefit data will be entered manually by Jackson County staff.

- A Software License Agreement and Scope document will need to be signed between Jackson County and Questica prior to project kickoff.

- Once the project is completed, Jackson County would then agree to become a TeamBudget Customer Case Study for marketing purposes.

- The annual maintenance fee is 20 percent of the current list price of the software under license. Maintenance for the first year will be included with purchase for the TeamBudget software. Due date for the Maintenance on the TeamBudget software will coincide with the due date of Jackson County's FMS II Maintenance. Maintenance on FMS Web Services will be due on the first year.

- Travel is not anticipated for this project. All implementation, configurations, and training will be completed remotely using network and internet.

**Delivery Date currently available: Decided upon Delivery.**
(Subject to availability on date of acceptance)

**Pricing/Terms:**
Payment for services is due thirty days from receipt of invoice date. Additional work performed will be chargeable if it was not identified in the original proposal scope. Additional work required to correct a condition specific to the operating environment of the customer may also be charged at the stated rate. The rate for consulting and customization is billed at a daily rate of $1,500 per day, plus travel expenses if required, unless the proposal is stated as a fixed-price proposal.

**Policy Statement:**
It is Mitchell Humphrey and Co.'s policy that estimates may vary due to scope, analysis, complexity, unknown variables, and or time invested. Projects are invoiced on actual time and materials consumed, which may vary from the estimates provided, unless the proposal is presented. The only customization quoted in this proposal is the integration between TeamBudget and FMS II via Web Services. This is not a complex procedure and should not require additional time, unless Jackson County requests additional integration outside the scope of this proposal. TeamBudget is an out-of-the box application and no customization within Team Budget is being proposed. By your approval below, the customer authorizes Mitchell Humphrey and Co. to commence work on the above listed project. The customer agrees to pay all costs incurred on the project up to the time of termination if the engagement is terminated prior to completion by either party.

# MITCHELL HUMPHREY
*s  o  f  t  w  a  r  e*

EXHIBIT A

## Confidentiality Notice:

The documents accompanying this telecopy transmission contain information from Mitchell Humphrey & Co. which is confidential and/or legally privileged. The information is intended only for the use of the individual or entity named on this transmission sheet. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited, and that the documents should be returned to this company immediately. In this regard, if you have received this telecopy in error, please immediately notify us by telephone so that we can arrange for the return of the original documents to us at no cost to you.

## Customer Approval and Additional Requirements:

Jackson County, MO

By:_____
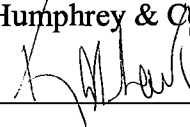
Typed Name:____Michael D. Sanders____

Title:____JACKSON COUNTY EXECUTIVE____

Date:____12/22/10____

Mitchell Humphrey & Co.

By:_____

Typed Name:____Kim A. Schaefer, CPA____

Title:__President and Chief Operating Officer__

Date:____12/13/10____
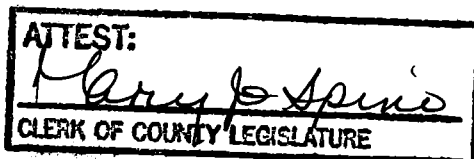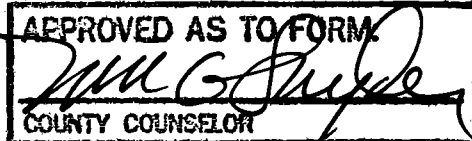
APPROVED AS TO FORM:

COUNTY COUNSELOR

ATTEST:

CLERK OF COUNTY LEGISLATURE

| RECOMMENDED SOFTWARE | Cost | Quantity | License Fees |
|---|---|---|---|
| **Application Software** | | | |
| TeamBudget Operating Framework | $  10,000 | 1 | $    10,000 |
| TeamBudget Operating License Seats (Named User) | 1,200 | 15 | 18,000 |
| TeamBudget Actual Costs Module | 6,000 | 1 | 6,000 |
| TeamBudget Email Notification Module | 3,000 | 1 | 3,000 |
| TeamBudget Discount | | | (8,000) |
| **Subtotal TeamBudget Software** | | | **$    29,000** |
| | | | |
| FMS II Web Services - Create Budget Batch | $    5,000 | 1 | $      5,000 |
| FMS II Discount | | | (1,100) |
| **Subtotal FMS II Software** | | | **$      3,900** |
| | | | |
| **Total Software TeamBudget and FMS II** | | | **$    32,900** |
| **SCHEDULE OF SERVICES** | | | |
| TeamBudget Configuration | $    1,400 | 2 | $      2,800 |
| TeamBudget Data Import | 1,400 | 4 | 5,600 |
| TeamBudget User Training | 1,400 | 2 | 2,800 |
| TeamBudget and FMS II Integration | 1,400 | 5 | 7,000 |
| TeamBudget Ad Hoc Report Models | 1,400 | 0.5 | 700 |
| | | | **$    18,900** |
| | | | |
| **Total Software and Services** | | | **$    51,800** |

Notes:

• The annual maintenance fee is 20 percent of the current list price of the software under license.  Maintenance for the first year will be included with purchase for the TeamBudget software.  Due date for the Maintenance on the TeamBudget software will coincide with the due date of Jackson County's FMS II Maintenance.  Maintenance on FMS Web Services will be due on the first year.

**QUESTICA**

# TEAMBUDGET
# SOFTWARE LICENSE AGREEMENT

This SOFTWARE LICENSE AGREEMENT (the "Agreement") is made this _13_ day of December 2010 ( the "Effective Date") by and between QUESTICA INCORPORATED, a corporation incorporated under the laws of Ontario, Canada ("Questica") and **JACKSON COUNTY, MISSOURI**, including, without limitation, all its subdivisions, departments, and constituent entities within its legal scope and jurisdiction (collectively, the "Licensee").

## BACKGROUND

A. Questica has made a substantial investment in the development of the TEAMBUDGET computer software products identified in Exhibit "A" (the "Software"), and in the development of documentation related thereto (the "Documentation" and together with the Software, the "Work").

B. Questica has the right to license the Work to third parties.

C. The Licensee wishes to use the Work, and Questica has agreed to license such use, pursuant to the terms of this Agreement.

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration (the receipt and adequacy of which are hereby acknowledged), Questica and Licensee (collectively, the "Parties" and individually, a "Party") agree as follows:

## 1. PERMITTED USE

Subject to the terms of this Agreement, Questica hereby grants to Licensee a perpetual, Personal, non-transferable and non-exclusive license to use the Software, solely in executable code format, and the Documentation provided therewith, solely for Licensee's own internal business purposes exclusively within the facilities and sites within the jurisdiction of the Licensee.

If Licensee wishes to use the Software at or from an additional site or sites outside of its jurisdiction, Licensee agrees to obtain a separate license for such site(s). Licensee's right to use the Software and the Documentation is limited to those rights expressly set out herein. Licensee shall not use the Software, in whole or in part, on behalf of or for the benefit of any other Person, including an affiliate of the Licensee, except as expressly provided herein.

### 1.1 STAFF WORK-AT-HOME USE RIGHTS

Staff of the Licensee may use the Software from their home as an extension of the license granted to the Licensee, for business related purposes. Staff may not use the Software at home for personal purposes.

Licensee is responsible for ensuring that the Software is made inaccessible to its staff if a) any event causes the staff member to no longer be an employee for any reason, or b) the staff member would not normally require the use of the Software in the at-work environment.

## 2. PERMITTED CUSTOMIZATIONS

Questica also grants the Licensee a non-sub licensable, non-exclusive, non-transferable right to create, or to have created on its behalf, "Permitted Customizations" to the executable code components of the Software solely for internal use and only for use as part of and in conjunction with the related Software. "Permitted Customizations" is custom software or reports which are developed that access or interact with the Software or its associated database(s). The Licensee may only create Permitted Customizations that do not require access and changes to the source code. The Licensee may only create Permitted Customizations that do not require the source code of the Software to create the Permitted Customizations, and access the executable code version of the Software or its associated databases in a way that is reasonably practical without access to the source code of the Software at any time.

Permitted Customizations Do Not Inhibit Questica's Right to Innovate. Independently, Questica is continually innovating and improving its software to meet the needs of its customers. The Licensee acknowledges that, while it has the ability to create its own Permitted Customizations, Questica must not be prevented from continuing to develop and enhance its software in any respect, even if such modifications may be similar to the Permitted Customizations in functionality, appearance or otherwise. Therefore, if Questica develops any modifications which may be similar to the Permitted Customizations, Licensee agrees to not make any claim against Questica for infringement of any of its (or its subcontractors) rights in or to the Permitted Customizations. Questica shall not directly incorporate into its modifications any original source code independently developed by the Licensee.

## 3. RESTRICTIONS ON USE

Except as set forth herein, Licensee shall (a) not copy the Software except to copy it onto the site computers being used by Licensee and to make one copy of the Software solely for backup or testing purposes; (b) not copy any of the Documentation for any use outside the site; (c) not assign this Agreement or transfer, lease, export or grant a sub-Licensee of the Work or the license contained herein to any Person or organization except as and when authorized to do so by Questica in writing; (d) not reverse engineer, decompile or disassemble the Software; (e) not use the Work except as authorized herein; (f) take such precautions with respect to the Software, as it would take to protect its own proprietary software or hardware or information. For the purposes of this Agreement, "Person" includes an individual, corporation, partnership, joint venture, trust, unincorporated organization, the Crown or any agency or instrumentality thereof or any other judicial entity recognized by law.

## 4. PRICING AND PAYMENT

### 4.1 LICENSE FEE

For the right and license granted to Licensee pursuant to the terms of and for the term of this agreement, Licensee shall pay a fee in the amount of $29,000. This fee shall be paid to Mitchell Humphrey with the following terms:

      Upon the execution of this Agreement:                $29,000

Such fees shall be paid by Licensee within thirty (30) days from the later of a) the date of receipt of invoice or b) the invoice date.

The $29,000 fee includes:

| | |
|---|---|
| The TEAMBUDGET Solution Framework | $10,000 |
| 15 Licensed Users | $18,000 |
| Actual Cost Module | $6,000 |
| E-Mail Notification Module | $3,000 |
| Subtotal | $37,000 |
| Discount | ($8,000) |
| **Total** | **$29,000** |

Licensee is also granted an additional 15 Licensed Users at no charge for a period of 12 months to begin upon execution of this agreement. Before the end of this 12 month period, the licensee can elect to purchase any number of licenses at the above discounted rate. Licenses purchased after this period will be at the then current list price.

## 4.2 ANNUAL PRODUCT MAINTENANCE AND SUPPORT FEE

The Annual Product Maintenance and Support Fee is calculated as 20% of the cost of the licensed software, prior to discounts. This value is adjusted as necessary with the purchase of additional licenses or modules. For the Product Maintenance and Technical Support to be provided by Questica in accordance with Section 10 herein below, for an initial one year period.

This fee shall be paid to Questica with the following terms:

| | |
|---|---|
| Year 1 (Waived) | $0 |
| Year 2 and subsequent years | $7,400 |

Such fee shall be paid by Licensee within thirty (30) days from the later of a) the date of receipt of invoice or b) the invoice date.

Questica shall provide the said Product Maintenance and Support for additional subsequent one year periods provided an Annual Product Maintenance and Support Fee is received by Questica by no later than the first Business Day of each additional one year period. Questica will invoice Licensee for the next year's maintenance and support services not less than two months prior to the first Business Day of said next year, and for each year thereafter for so long as Licensee continues to pay said Annual Product Maintenance and Support Fee. If payment of the Annual Product Maintenance and Support Fee is not received by Questica on or before said first Business Day of the next additional year, Questica's obligation to provide the said maintenance and support services pursuant to Section 10 hereof shall be terminated.

Annual Product Maintenance and Support beyond the first year of this Agreement is optional.

The annual product maintenance shall commence upon the signing of this agreement. The renewal date of the product maintenance and support shall be set to March 1st. The first year of payable annual maintenance shall be pro-rated to align with the March 1st Mitchell Humphrey renewal date.

## 4.3 PRODUCT CUSTOMIZATION

Not applicable.

## 4.4 PRODUCT IMPLEMENTATION

Product Implementation, as detailed in the attached Scope of Work (Exhibit B) including associated consulting and training, shall be provided for a fee of $18,900. This fee shall be paid to Mitchell Humphrey with the following terms:

| | |
|---|---|
| Upon the execution of this Agreement: | $18,900 |

Such fees shall be paid by Licensee within thirty (30) days from the later of a) the date of receipt of invoice or b) the invoice date.

If applicable, on-site days are six and one half (6 ½) hours in duration (9:00am to 12 noon, 1:00pm to 4:30pm). Alternate lunch hours can be mutually arranged with the consultant/training if necessary. If the Licensee requests that the consultant remain onsite beyond the established hours in order to complete or continue with scheduled or new topics, the Licensee will be billed at the fixed after-hours rate of $175 per hour.

Only approved Consulting, Training or Implementation time shall be invoiced. Such work will proceed only with the written approval of the Licensee's primary contact or their delegate. A mutually determined change control mechanism will be used to accommodate modifications to the scope of the implementation.

## 4.5 ADDITIONAL CUSTOMIZATION AND OTHER FEES

Questica may provide other customization or support services in addition to those outlined in this Agreement. Such customization and other fees shall be paid by Licensee within thirty (30) days from the later of a) the date of receipt of invoice or b) the invoice date. Questica will not begin any customization or other services without the written approval of the Licensee. Below are Questica's standard rates:

| Hours | |
|---|---|
| Data Conversion | $175/hr |
| Custom Services | $175/hr |
| Business Consultation | $175/hr |

| Travel Costs | |
|---|---|
| Travel Time | $75/hr |
| Travel – via auto | $.50/km |
| Travel / Rental Car | Actual Cost |
| Per Diem | $75 per Day |
| Lodging | Actual Cost |

## 4.6 ESCALATION OF FEES

Questica may, in its sole discretion, increase the Annual Product Maintenance Fee and/or the Customization and Other Fees, as referred to in Section 4.6, upon 30 days prior written notice thereof to the Licensee. Such increases shall under no circumstances exceed 5% in any one year.

## 4.7 WAIVER OF FEE ESCALATION

Questica may, in its sole discretion, waive the escalation provided for in Section 4.7 for any particular year, years, or part of a year. No such waiver shall preclude Questica from applying the escalation to any subsequent year or part of a year, and from making the subsequent application as if all subsequent escalations had been duly made over the period since the date of the last increase.

## 4.8 GENERAL

The License Fee, Annual Product Maintenance and Support Fees and all customization and other fees are exclusive of all sales, use or other taxes, customs duties and similar levies, if any, payable in or to any jurisdiction or authority whatsoever, which taxes, duties and levies shall be the responsibility of the Licensee (other than taxes on the net income of Questica).

All overdue fees shall accrue interest from the relevant due date until the date that payment is received at the rate of one and one half percent (1 ½ %) per month (eighteen per cent (18%) per annum). Under any circumstances, the Overdue Fees shall be capped at the maximum allowable as permitted by applicable law. For the purposes of this Agreement, Business Day means any day other than a Saturday, Sunday, statutory or civic holiday in Ontario.

All monetary references made in this Agreement are expressed in US dollars.

## 5. OWNERSHIP AND COPYRIGHT

Questica is the owner of all intellectual property rights in the Work, related written materials, logos, names and other support materials provided pursuant to the terms of this Agreement. No title to the intellectual property in the Work or in any magnetic media or other physical media provided therewith is transferred to the Licensee by this Agreement.

Questica shall defend Licensee against any claim that the Work infringes a patent, copyright, trade-mark or other intellectual property right of any third party and Questica will pay resulting cost, damages and reasonable legal fees finally awarded, provided that:

(A) Licensee promptly notifies Questica in writing of the claim; and

(B) Questica has sole control of the defense and all related settlement negotiations.

If such claim has occurred or in Questica's opinion is likely to occur, Licensee agrees to permit Questica at its option and expense, either to procure for Licensee the right to continue using the work or to replace or modify the same so that it becomes non-infringing without loss of functionality.

Questica shall have no obligation to defend Licensee or to pay costs, damages or legal fees for any claim based upon use of other than a current unaltered release of the Work, if such infringement would have been avoided by the use of a current unaltered release thereof.

The foregoing states the entire obligations of Questica with respect to infringement or proprietary or intellectual rights of third parties.

## 6. LIMITED WARRANTY

Questica warrants that so long as maintenance and support services are provided by Questica, that the Software, when properly installed, will perform substantially in accordance with the accompanying written materials. If the Software does not so perform during such period, Questica will correct, at no cost to Licensee, programming errors in the Software to make the Software so perform provided that:

(A) the Software has been properly used by the Licensee in accordance with the documentation furnished by Questica to Licensee in connection therewith;

(B) Licensee notifies Questica of the programming errors and describes the nature of the suspected errors and of the circumstances in which they occur;

(C) Questica, using reasonable efforts, is able to confirm the existence of the programming errors; and

(D) Licensee or any third party has not changed or modified the Software.

Licensee agrees that Questica shall not be liable to the Licensee or any other person, regardless of the cause, for the effectiveness or accuracy of the Software, the Documentation or any other related materials, or for any other special, indirect, incidental or consequential damages arising from or occasioned by the use of the Software, the Documentation or the related materials, or the failure or omission on the part of Questica to comply with its obligations under this Agreement.

The Licensee hereby agrees that Questica's maximum liability for any claim arising in connection with the Software, the Documentation or any related materials (whether in contract, tort, including negligence, product liability or otherwise) shall not exceed the License Fee paid by the Licensee in accordance with Section 4 above.

THE ABOVE EXPRESS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS (EXPRESS AND IMPLIED) AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF MERCHANTABLE QUALITY OR FITNESS FOR A PARTICULAR PURPOSE. NO OTHER WARRANTIES OR CONDITIONS EXPRESS OR IMPLIED ARE GIVEN.

## 7. LIMITATIONS OF REMEDIES AND DAMAGES

Subject to Section 12 hereof, Questica's entire liability and the Licensee's exclusive remedy under this agreement shall be:

(A) if Questica is in breach of the Limited Warranty, to require Questica to replace any defective media or to correct any defects and make any modifications which are necessary to cause the Software to confirm in all material respects to the Documentation; or

(B) the termination of this agreement.

In the event of any such termination, Questica shall not be liable in the aggregate for any damages which exceed the amount paid hereunder by the Licensee to Questica as Software License Fees. In no event shall Questica be liable for indirect, special, incidental, or consequential damages, even if advised of the possibility of such damages.

## 8. DISPUTE RESOLUTION / ARBITRATION

In the event of any dispute arising out of or relating to and/or in connection with this Agreement, the parties' project managers shall use every reasonable effort to resolve such dispute in good faith within ten (10) business days. If the project managers have failed to resolve the dispute within such time frame, then the dispute shall be escalated to the next escalation level. At each escalation level, the designated executives shall negotiate in good faith in an effort to resolve the dispute.

| Escalation Level | Questica Management Level | LICENSEE Management Level | Period of Resolution Efforts |
|---|---|---|---|
| First Level | Project Manager | Project Manager | 10 business days |
| Second Level | President | Finance Department Manager | 5 business days |
| Third Level | Chairman | Director of Finance or Treasurer | 5 business days |

If the above escalation periods have elapsed and there continues to be a dispute as to any matter herein, the matter in dispute shall be referred to arbitration by a single arbitrator, if such parties agree upon one arbitrator, or otherwise by three arbitrators, of whom one shall be appointed by Licensee and one shall be appointed by Questica and the third shall be chosen by the first two named before the arbitration. The arbitration and the appointment of the arbitrator shall, unless expressly provided for herein, be conducted in accordance with the Arbitrations Act (Ontario). The award and determination of such arbitrator, arbitrators or any two of such three arbitrators **_shall be binding_** upon the parties and their respective successors and permitted assigns. Licensee and Questica shall co-operate in completing any arbitration as expeditiously as possible and the arbitrator or arbitrators may hear such experts as may appear to him or them appropriate. Any interested party shall bear its costs and expenses incurred in connection with the arbitration except for the cost of the arbitrator or arbitrators and experts engaged by him or them which shall be borne by Questica and Licensee equally. Notwithstanding the foregoing, arbitration shall not preclude the right of either party to seek injunctive relief.

## 9. IRREPARABLE HARM

Licensee acknowledges and agrees with Questica that the breach by it of any of the provisions of Sections 1- 5, 11 or 12 of this Agreement would cause serious harm to Questica which could not adequately be compensated for in damages and in the event of a breach by Licensee of any of such provisions, Licensee understands that an injunction may be issued against it restraining it from any further breach of such provisions, but such actions shall not be construed so as to be in derogation of any other remedy which Questica may have in the event of such breach.

## 10. PRODUCT MAINTENANCE AND SUPPORT

For the first year of this Agreement, upon paying the Licensee Fee and for each year thereafter, provided that Licensee continues to pay the Annual Product Maintenance and Support Fee in accordance with section 4 hereinabove, Questica shall provide the following Maintenance and Technical Support services (the "Services") for the software if the Licensee is not otherwise in breach of the provisions of this Agreement:

(A) Product Maintenance. On an as-available basis, Questica will provide enhancements, modifications or upgrades to the Software as Questica may from time to time make available to its Licensees generally ("Updates") but excluding any New Product (a "New Product" being a solution which, in Questica's determination and subject to general industry standards, does not replace the Software licensed hereunder.) Updates do not include:

    I.    Platform extensions including product extensions to (i) different hardware platforms; (ii) different windowing system platforms; (iii) different operating system platforms; and

    II.    New applications.

    III.    Services associated with the application or installation of Updates

Installation of Updates is the responsibility of the Licensee. If requested, Questica will provide assistance in the installation of Updates on a time and materials basis at its then current rates.

(B) Technical Support Services. Comprehensive Phone and e-mail based Technical Support of a reasonable nature. A technical support incident or problem is a single user defined problem seeking resolution. It must be related to the original intent and design of the software. Each support incident is deemed closed when a remedy, workaround, or recommendation for the installation of a current maintenance release has been offered, and a commercially reasonable effort has been made to restore operation to the original intent and design of the software.

Technical Support does not include:

    I.    Custom Programming Services

    II.    On-site support

    III.    Software Installation or re-installation

    IV.    Update Installation, or data and report updates required to support Updates

    V.    Licensee developed interfaces , API interactions, or customizations

    VI.    Licensee developed reports

    VII.    End-User Training or Re-Training

    VIII.    Licensee Hardware Issues

    IX.    Correction of data issues derived from user error or product misuse

    X.    Issues related to Questica developed customizations (e.g. reports, integrations, custom development, etc.) discovered more than 90 days after the Licensee has accepted the customization

Licensee is responsible for all hardware, operating systems, network setup, network maintenance and setup and use of any file access control systems required in the support of the Software. Licensee may be required to grant Questica certain limited access rights to Licensee's computer systems in order to render support.

Licensee is responsible for ensuring that its personnel have sufficient training to attain and maintain competence in the operation of the Software.

Technical Support is available through Questica's normal business hours, Monday through Friday, 9am through 4:30pm, Eastern Standard Time. Extended coverage is available for an additional fee.

## 11. CONFIDENTIAL INFORMATION AND NONDISCLOSURE

### 11.1 CONFIDENTIAL INFORMATION

Each of the Parties shall use reasonable efforts (and, in any event, efforts that are no less than those used to protect its own confidential information) to protect from disclosure the confidential information only to its employees or agents who require access to it for the purpose of this Agreement or as otherwise provided in this Agreement. This Section shall survive the termination of the Agreement. For the purposes of this Section, "confidential information" means all data information which when it is disclosed by a Party is designated as confidential and shall include the Work and any other proprietary and trade secrets of Questica to which access is obtained or granted hereunder to Licensee; provided, however that confidential information shall not include any data or information which (a) is or becomes publicly available through no fault of the other Party, (b) is already in the possession of the Party prior to its receipt from the other Party, (c) is independently developed by the other Party, (d) is rightfully obtained by the other Party from a third party, (e) is disclosed with the written consent of the Party whose information it is, or (f) is disclosed pursuant to court order, or other legal compulsion.

### 11.2 NONDISCLOSURE OF AGREEMENT

Neither Party shall disclose the terms of this Agreement except as required by law or governmental regulation, without the other party's prior written consent, except that either Party may disclose the terms of this Agreement on a confidential basis to accountants, attorneys, and financial advisors and lenders.

## 12. TERMINATION

This Agreement is effective as of the Effective Date and shall continue unless and until this Agreement is terminated.

Licensee may terminate this Agreement if Questica is declared insolvent, has assigned this Agreement in violation of the terms and conditions herein, or has made an assignment for the benefit of creditors.

After a one year period from the Effective Date, the Licensee may terminate this Agreement at any time for any reason, or no reason, providing their financial obligations to Questica as outlined in Section 4 have been satisfied and paid in full. If the Agreement is terminated in this manner, no refund will be provided for any maintenance or support services paid in advance.

In the event that Licensee shall be in breach of any provisions of the Dispute Resolution / Arbitration Section outlined in this Agreement, Questica may provide notice of such breach to Licensee, who shall have thirty (30) days from the date of such notice to cure or rectify the said breach. Should Licensee fail to cure or rectify the said breach in the said thirty (30) days, Questica may terminate this Agreement. Such termination by Questica shall be in addition to and without prejudice to such rights and remedies as may be available to Questica including injunction and other equitable remedies.

The provisions of Sections 1-5, 7, 9, 11, 13, 14 herein shall survive the termination of this Agreement.

## 13. DISENTAGLEMENT

In the event that Licensee has entered into or enters into agreements with other Contractors or government institutions for additional work related to the Capital or Operating Budgeting process, Questica agrees to cooperate with such other parties. Questica shall not commit any act which will unnecessarily interfere with the work performed by any such third parties.

In the event of termination of this Agreement, Questica agrees that it shall provide reasonable assistance to, and shall not hinder a complete transition of the software functionality being terminated from Questica and its subcontractors to the Licensee, or to any replacement provider designated by the Licensee, without any interruption of or adverse impact on the services provided hereunder or any other services provided by third parties. Any additional services requested by Licensee during the disentanglement period shall be provided by Questica at Questica's standard rates.

## 14. NOTICE

Any notice or other communication required or permitted to be given hereunder or for the purposes hereof to any party shall be in writing and shall be sufficiently given if delivered personally to such party, or if sent by prepaid registered mail or if transmitted by facsimile transmissions to such Party:

(A) in the case of a notice to Questica:

> 3190 Harvester Road, Suite 102A,
> Burlington, Ontario
> Canada
> L7N 3T1
> Attention: The President
> Telephone No. (905) 634-0110
> Facsimile No. (905) 634-4039

(B) in the case of a notice to Licensee :

<div align="center">
Jackson County, MO<br>
415 East 12<sup>th</sup> Street<br>
Kansas City, MO  64106
</div>

or at such other address or facsimile number as the Party to whom such notice is to be given shall have last notified (in the manner provided herein) the Party giving such notice. Any notice delivered to the Party to whom it is addressed as provided herein shall be deemed to have been given and received on the day it is delivered at such address, provided that if such day is not a Business Day, then the notice shall be deemed to have been given and received on the Business Day next following such day. Any notice mailed to a Party shall be deemed to have been given and received on the fifth Business Day next following the date of its mailing provided that no postal strike is then in effect or comes into effect within four (4) Business Days after such mailing. Any notice transmitted by facsimile shall be deemed given and received on the day of its transmission if such day is a Business Day and if not, then on the next day that is a Business Day.

## 15. FORCE MAJEURE

Except as expressly provided otherwise in this agreement, dates and times by which any Party is required to render performance under this agreement or any schedule hereto shall be postponed automatically to the extent and for the period that such Party is prevented from meeting them by reason of any cause beyond its reasonable control (other than lack of funds), provided that the Party prevented from rendering performance notifies the other Party immediately and in detail of the commencement and nature of such cause and the probable consequences thereof, and provided further that such Party uses its reasonable efforts to render performance in a timely manner utilizing to such end all resources reasonably required in the circumstances, including obtaining supplies or services from other sources if same are reasonably available.

## 16. SOFTWARE ESCROW

Questica will deposit in escrow the Software source code for the most recent version of the Software. The Escrow Agent will be authorized to release the escrowed source code to the Licensee should Questica become insolvent or cease to carry on business and the business of Questica is not continued by a Receiver or Trustee or Assignee.

## 17. MEDIA RELEASES

Neither party shall use the name, trademark or logo of the other party without the prior written consent of the other party. Notwithstanding the foregoing, Questica may use the Licensee's name and identify the Licensee as a Questica client in advertising, marketing materials, press releases and similar materials.

## 18. USE OF SUBCONTRACTORS

Questica warrants that all persons assigned by it to the performance of this Agreement shall be employees or authorized subcontractors of Questica and shall be fully qualified to work under this Agreement. Questica shall ensure that an adequate number of appropriately qualified personnel are employed and available to satisfy its obligations as outlined in this Agreement.

## 19. EXPORT CONTROL

The Software is intended for distribution only in the United States and Canada. Licensee agrees that it will not directly or indirectly, export or re-export the Software (or portions thereof) to any country, person, entity or end user subject to U.S. or Canadian export restrictions.

## 20. MISCELLANEOUS

This Agreement, including all Schedules and Exhibits attached hereto, is the entire agreement between Licensee and Questica pertaining to Licensee's right to use the Work and supersedes all prior or collateral oral or written representations or agreement related thereto. This Agreement shall be governed by the law of the province of Ontario, Canada. Except as otherwise provided herein, no term or provisions hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the Party to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

## 21. HEADINGS; SEVERABILITY

The headings and other captions in this Agreement are for convenience and reference only and are not to be construed in any way as additions or limitations of the covenants and agreements contained in this Agreement. In the event that any provision hereof is found invalid or enforceable pursuant to judicial decree or decision, any such provision shall be deemed to apply only to the maximum extent permitted by law, and the remainder of this Agreement shall remain valid and enforceable according to its terms.

**IN WITNESS WHEREOF** the Parties hereto have duly executed this Agreement.

(QUESTICA)

By: _Allen Both_    c/s

Name: _Allan Both_

Title: _Partner, Questica, Inc._

(Licensee)

By: _____ c/s

Name:    **Michael D. Sanders**

Title:    **JACKSON COUNTY EXECUTIVE**

APPROVED AS TO FORM:

COUNTY COUNSELOR

ATTEST:

CLERK OF COUNTY LEGISLATURE

## EXHIBIT A

### Description of the Software

TEAMBUDGET is a web-based budgeting and forecasting solution designed to simplify the municipal budgeting process.

**Operating Budget Module**

Key Features:

- Integrates all capital budget and forecasting processes in three straightforward modules: Projects, Reports, and Administration
- Create separate budget details for multiple budget scenarios at the monthly, quarterly and yearly levels
- Fully secured from unauthorized access
- Budgets are project based, multi-year capable, on a monthly basis.
- Workflow tracks and controls each budget throughout its lifecycle.
- Actual cost tracking against actual budgets
- Developed using Microsoft .NET technology

**Notification Module**

- Provides dynamic e-mail based notifications based on budgeting events within the TEAMBUDGET suite
- Utilizes your existing SMTP based server technology

**Actual Cost Module**

- Facilitates the import of actual budget data from third party financial products

## EXHIBIT B

### Scope of Work

#### 1.1 Team Budget Configuration

| Functional Area | Description | Software | Scope of Work |
|---|---|---|---|
| Client Site Configuration | The Customer will provide an operating environment as follow:<br>Microsoft Windows Server<br>Versions 2003 or 2003R2 (32 bit only) *or*<br>Versions 2008, or 2008R2 (32 or 64 bit)<br>Microsoft SQL Server 2005 with service pack 3 installed<br>Microsoft SQL Server 2008 or 2008R2 with 2005 backward compatibility pack installed<br>Microsoft .NET 4.0 installed<br>The Customer will provide a technical contact with full security access to the operating environment to assist Questica in the configuration of TeamBudget or provide Questica personnel with full VPN access to the operating environment. | Yes | In Scope |

#### 1.2 Operating Module

| | | Software | Scope of Work |
|---|---|---|---|
| Initial Data Import - **Actuals** | The Customer will provide 2 years of historic Budget data on an Excel spreadsheet in a format provided by Questica. Questica will import the data once to:<br>Create Costing Centers<br>Create Departments & Divisions<br>Create the relationship between Departments & Divisions<br>Add Costing Centers to Divisions<br>Define funds<br>Associate Costing Centers with funds<br>Create Objects<br>Associate Objects with Object Categories<br>Associate Dollar amounts with objects at the costing center level. | Yes | Two (2) data import attempts are In Scope |
| Initial Data Import - **Budget** | The Customer will provide 2 years of historic Actual data on an Excel spreadsheet in a format provided by Questica. Questica will import the data once to:<br>Create Costing Centers<br>Create Departments & Divisions<br>Create the relationship between Departments & Divisions<br>Add Costing Centers to Divisions<br>Define funds<br>Associate Costing Centers with funds<br>Create Objects<br>Associate Objects with Object Categories<br>Associate Dollar amounts with objects at the costing center level. | Yes | Two (2) data import attempts are In Scope |
| Initial Data Import – Inconsistencies | *The Customer will resolve any inconsistencies in the structures implicit in the Actual and Budget import data prior to providing them to Questica for import to TeamBudget. The Object/Object Category and Department/Division/Costing Center structures must be consistent across all years.* | N/A | Customer task |
| Costing Centers | Import as above | Yes | In Scope |
| Objects & Object Categories | Import as above | Yes | In Scope |
| Department/Division structure | Import as above | Yes | In Scope |
| Funds | Import as above | Yes | In Scope |
| Scenarios | The Customer will determine how and when to use the concept of | Yes | Customer task |

| | Scenarios to assist in their budget process | | |
|---|---|---|---|
| Budget stages | The Customer will determine how and when to use the concept of Budget Stages to assist in their budget process and establish those stages. | Yes | Customer task |
| Security | The Customer will determine how and when to use the various security levels available within TeamBudget, enter users and assign them to groups and roles. | Yes | Customer task |
| Operating general ledger integration | Questica will co-operate with Mitchell Humphrey Software in the implementation of integration between TeamBudget and FMS II. | Yes | In Scope |
| | Data will be transferred from Team Budget to FMS II on an annual basis when invoked by a user on demand at a the approved budget object/costing center level | Yes | In Scope |
| | Data will be transferred from FMS II to TeamBudget on a daily basis when automatically scheduled at a transaction level | Yes | In Scope |
| Train the-Trainer Training | Questica will provide two days of "Train the Trainer" training. | N/A | In Scope |
| End-user Training | End user training | N/A | Customer task |
| Standard Reports | All Operating Module standard reports are included | Yes | In Scope |
| Custom Reports | No Operating Module custom reports are included | N/A | Not in Scope |
| Custom Work | No Operating Module custom work is included | N/A | Not in Scope |

## 1.3 Capital Module  (this module not purchased - not in Scope)

| | | Software | Scope of Work |
|---|---|---|---|
| Initial Capital Project Actual Data Import | The Customer will provide _____ years of historic Capital Actaul data on an Excel spreadsheet in a format provided by Questica.  Questica will import the data once to:<br>Create Projects<br>Create Departments & Divisions<br>Create the relationship between Departments & Divisions<br>Add Projects to Divisions<br>Define funds<br>Create Objects<br>Associate Objects with Object Categories<br>Associate Project & Object combinations with Funds<br>Associate Dollar amounts with object/Funds at the Project level. | No | Not in Scope |
| Initial Capital Project Budget Data Import | The Customer will provide _____ years of historic Capital Budget data on an Excel spreadsheet in a format provided by Questica.  Questica will import the data once to:<br>Create Projects<br>Create Departments & Divisions<br>Create the relationship between Departments & Divisions<br>Add Projects to Divisions<br>Define funds<br>Create Objects<br>Associate Objects with Object Categories<br>Associate Project & Object combinations with Funds<br>Associate Dollar amounts with object/Funds at the Project level.<br>The Customer will resolve any inconsistencies in the structures implicit in the Actual and Budget import data prior to providing them to Questica for import to TeamBudget. The Object/Object Category and Department/Division/Project structures must be consistent across all years and across the Operating Module and Capital Module if both are used. | No | Not in Scope |
| Capital Budget Preparation | Capital projects | No | Not in Scope |
| | Department/Division/Project | No | Not in Scope |
| | Scenarios | No | Not in Scope |
| | Capital budget stages | No | Not in Scope |
| | Capital Budget Funds | No | Not in Scope |
| | Project Ranking | No | Not in Scope |
| | Project Location | No | Not in Scope |
| | Project Relationships | No | Not in Scope |
| Training | One "Train the Trainer" training session | N/A | Not in Scope |
| Training | End user training | N/A | Not in Scope |

| Capital Budget general ledger integration | Questica will co-operate with the Customer in the implementation of integration with TeamBudget. | No | Not in Scope |
|---|---|---|---|
| | Data will be transferred from Team Budget to _____ on a daily/weekly/monthly/quarterly/annual basis when invoked   by a user/automatically at a transaction/year-to-date total level | No | Not in Scope |
| | Data will be transferred from _____ to TeamBudget on a daily/weekly/monthly/quarterly/annual basis when invoked   by a user/automatically at a transaction/year-to-date total level | No | Not in Scope |
| Standard Reports | No Capital Module standard reports are included | No | Not in Scope |
| Custom Reports | No Capital Module custom reports are included | N/A | Not in Scope |
| Custom Work | No Capital Module custom work is included | N/A | Not in Scope |

## 1.4 Salaries Module

| | | Software | Scope of Work |
|---|---|---|---|
| Profiles | The Customer will determine and input Profiles | Yes | Customer task |
| Positions | The Customer will determine and input Positions | Yes | Customer task |
| Contracts | The Customer will determine and input Contracts | Yes | Customer task |
| Grades | The Customer will determine and input Grades | Yes | Customer task |
| Grade Steps | The Customer will determine and input Grades Steps | Yes | Customer task |
| benefits | The Customer will determine and input Employee Benefits | Yes | Customer task |
| Publish to operating | The Customer will determine when to publish to Operating | Yes | Customer task |
| Train the Training | A One day "Train the Trainer" training sessions | N/A | In Scope |
| End-user Training | End user training | N/A | Customer task |
| Standard Reports | All Salary Module standard reports are included | Yes | N/A |
| Custom Reports | No Salary Module custom reports are included | N/A | Not in Scope |
| Custom Work | No Salary Module Custom work is included | N/A | Not in Scope |