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CONSULTING AGREEMENT

Res. 17340

THIS AGREEMENT, made and entered into on this 21 day of Sept, 2010, by and between **JACKSON COUNTY, MISSOURI**, hereinafter called the "County" and **TYLER TECHNOLOGIES, INC.**, 3199 Klepinger Road, Dayton, Ohio 45406, hereinafter called "Consultant."

WITNESSETH:

WHEREAS, the County and Consultant are parties to a Professional Services Agreement dated May 18, 2009, whereunder Consultant has undertaken to provide for the County certain services relating to market valuation for County's Assessment Department; and

WHEREAS, the County is now interested in increasing the scope of Consultant's services by obtaining access to Consultant's Computer-Assisted Mass Appraisal (CAMA) software, and training in the use of said CAMA software; and

WHEREAS, Consultant has agreed to provide such services, as is more fully set out in the proposal attached hereto as Exhibit A, in accordance with the terms, conditions, and covenants as set forth in this Agreement; and,

WHEREAS, Consultant and County have agreed to be bound by the provisions hereof,

NOW THEREFORE, in consideration of the foregoing and the terms and provisions herein contained, County and Consultant respectively promise, covenant and agree with each other as follows:

1. Consultant shall provide a license for Consultant's CAMA software, and training in the use of said software, for the Jackson County Assessment Department, as

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MARY JO SPINO
COUNTY CLERK

is more fully described in Exhibit A. The issuance of the software license shall be governed by the terms set out in the document attached hereto as Exhibit B.

2. Consultant shall work as an independent contractor and not as an employee of the County. The manner in which the services are to be performed and the specific hours to be worked by Consultant shall be determined by the Consultant. The County will rely on Consultant to determine and work as many hours as may be reasonably necessary to fulfill Consultant's obligations under this Agreement. Consultant shall be subject to the direction of County only as to the result to be accomplished and not as to the means and methods for accomplishing the result. Consultant shall report all earnings received hereunder as gross income, and be responsible for its own Federal, State and City withholding taxes and all other taxes, and operate its business independent of the business of County except as required by this Agreement.

3. County shall pay Consultant the total sum not to exceed \$120,000.00 for its services pursuant to this Agreement, as is more fully set out in Exhibit A. Of this sum, \$60,000 is allocated to the software license. Payment for the license shall be due upon the execution of the Agreement and receipt of Consultant's invoice in the amount of \$60,000. Consultant shall invoice the County on a monthly basis for the remaining work performed under this Agreement, and County shall promptly pay said invoices.

4. County shall pay Consultant's reasonable expenses incurred under this Agreement as set out in Exhibit A, provided that the total amount payable hereunder shall not exceed \$120,000.00. Reimbursement for meals will be limited to that amount established for travel by County employees traveling on County business. The costs listed on Exhibit A for on-site visits by Consultant's personnel to County facilities are inclusive of

expenses.

5. The term of this Agreement shall be effective upon execution, and shall extend until December 31, 2011. Consultant or County may terminate this Agreement by giving 30 days' written notice to the other party. Termination of this Agreement shall not constitute a waiver of the rights or obligations which County or Consultant may be entitled to receive or be obligated to perform under this Agreement. Should this Agreement terminate, all books, brochures, fliers, lists, and all other County materials must be delivered and returned by Consultant to County within three (3) days of the demand of County.

6. Consultant warrants that no officer or employee of the County, whether elected or appointed, shall in any manner whatsoever be interested in or receive any benefit from the profits or emoluments of this Agreement.

7. Consultant shall be responsible for its own compliance with all applicable federal, state and local laws and regulations of the jurisdiction(s) in which Consultant's services shall be rendered.

8. Consultant promises, covenants, and agrees, in addition to all other provisions herein, that during the term of this Agreement, it shall not assign any portion or the whole of this Agreement without the prior written consent of County.

9. If any covenant or other provision of this Agreement is invalid or incapable of being enforced by reason of any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect and no covenant or provision shall be deemed dependent upon any other covenant or provision unless so expressed herein.

10. This Agreement shall be governed by the laws of the State of Missouri.

11. No party to this Agreement shall assume any liability for the acts of any other party to this Agreement, its officers, employees or agents. Each party agrees to indemnify, defend and hold the other harmless from any and all claims, liability, damages, and costs (including reasonable attorney's fees directly related thereto) including but not limited to violation of civil rights and/or bodily injury to or death of any person, and for damage to or destruction of property, if and to the extent caused by the negligence, willful misconduct or omissions of a party or its officers, employees or agents during the performance of this Agreement.

12. This Agreement, together with Exhibit A, the Proposal, incorporates the entire understanding and agreement of the parties. In case of a conflict between these documents, the provisions of this Agreement shall govern.

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

APPROVED AS TO FORM:

JACKSON COUNTY, MISSOURI

By *William G. Snyder*
William G. Snyder,
Acting County Counselor

By *Michael D. Sanders*
Michael D. Sanders,
County Executive

ATTEST

TYLER TECHNOLOGIES, INC.

By *Mary Jo Spino*
Mary Jo Spino
Clerk of the Legislature

By *John R. Bader*
75-2303920
Federal I.D. Number

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 \$120,000.00 which is hereby authorized.

September 16, 2010
Date

[Signature]
Director of Finance and Purchasing

Account No. *045-1902-56080* \$60,000.⁰⁰
045-1902-56661 \$60,000.⁰⁰
19022010002

July 2010

QUOTE FOR TYLER TECHNOLOGY SOFTWARE AND SERVICES

SOFTWARE AND ANNUAL MAINTENANCE

OASIS PC Market Software License

Site license fee for the OASIS PC market CAMA valuation software for Jackson County, Missouri. County will download current application software including documentation and updates as applicable from the Company ftp site.

\$60,000 due upon signing

CAMA Modeling and Valuation Consulting Services

To aid the County in estimating the costs of CAMA Modeling and Valuation Consultation the Company provided indicative costs back in December of 2009 for consultation over the course of the County's revaluation effort. The following rates apply to services billable on a monthly basis for consultation rendered during the prior month.

On-site consultation, billable per trip as described below:

Two day visits (travel in pm before first day; depart late pm of second day on site; limited prep; follow-up report ... three days consultant time plus expenses):

Sr. Research Analyst (Rich Borst): \$4,500
Sr. Company Officer (John Thompson): \$5,500

Off-site analysis and support :

Sr. Research Analyst (Rich Borst): \$1,000 per day
Sr. Company Officer (John Thompson): \$1,350 per day

The County did not engage the Company in the anticipated consultation during the first half of 2010 and has requested an initial consultation level of \$25,000. The following costs are indicative of what can be provided:

On-site consultation:

Sr. Research Analyst (1 visit) \$4,500
Sr. Company Officer (1 visit) \$5,500

Off-site consultation:

Sr. Research Analyst (6.9 days) \$6,900
Sr. Company Officer (6 days) \$8,100
TOTAL \$25,000

TOTAL for LICENSE and REQUESTED CONSULTATION \$85,000

Forecast effort based upon the Company's December 2009 indicative costs to the County:

We might anticipate 5-6 visits over the course of June to December 2010 time frame depending upon the extent to which the County wishes to engage the Company in on-site review. This could range from \$25,000 to 30,000)

- July – work on finalizing modeling and valuation parameters for initial pre-testing of first valuation area (Independence?) ... may include condos
- September – support county in finalizing models and analyzing results for first valuation area and getting pre-tests produced for additional valuation areas ... will include condos
- October – support county in finalizing additional models and valuation results; discuss feedback from initial review / adjustments needed for subsequent valuation runs
- November – support county in finalizing additional models and valuation results; discuss feedback from initial review / adjustments needed for subsequent valuation runs
- December 2010/January 2011 -

Off-site analysis and support ... This would cover review of cost tables, setting up of modeling parameters for condominiums, as well as back end work in reviewing modeling results and making recommendations / adjustments to parameters to improve modeling results, adjustments to some of the spreadsheet and analysis output results, etc. This will also include over the phone support to help with PC market questions / issues.

Some of the tasks may only involve a few hours; others might involve several days. We could anticipate approx. one day per month for phone support. Assuming a combined level of effort averaging 5 days per month this could range from \$35,000 to \$45,000.

Based upon the above the County should anticipate \$60,000 to \$75,000 in Tyler consulting and support for the 2011 residential revaluation

Ongoing Software Maintenance

OASIS PC Market annual software maintenance and technical support fee of \$15,000 per annum is deferred for 120 days (four months) following the execution of the agreement to license OASIS PC Market. The County will need to enter into a separate agreement for OASIS PC Market annual software maintenance and technical support within that time frame in order to receive continuing software and technical support including over the phone help.

\$15,000 per annum

EXHIBIT B

1. SOFTWARE LICENSE

OASIS PC MARKET SOFTWARE

1. Subject to the terms and conditions hereinafter set forth, the Company grants to the County a perpetual right-to-use, non-exclusive, non-transferable license to use the Company's Licensed Software, hereinafter referred to as the OASIS PC Market (OASIS) software, solely in the conduct of the business of the County, OASIS Software, related documentation, and any improvements, additions or modifications of the version or versions of the software which the Company has licensed to the County, together with the right to make such copies of the software as may be required for the County's own internal business purposes.
2. The County understands that the software provided under this Agreement contains trade secrets and proprietary information belonging to the Company. The County agrees to hold the software in trust and confidence and will safeguard the software to the same extent that the County safeguards other trade secret information related to its uses. The County agrees not to disclose, provide or otherwise make available the software to any person other than the County's employees or agents or the Company's employees without prior written consent of the Company. The County further agrees not to sell, assign, lease, license or in any manner encumber, pledge, convey or transfer the Company's software or any interest therein. Software ownership will pass to the County in the case where the Company is financially unable to perform.

2. ASSURANCES, REPRESENTATIONS AND WARRANTIES OF COMPANY

- a. The Company warrants to the County that the System will operate according the published performance standards.
- b. The Company warrants that the System shall operate in accordance with the requirements of this Agreement from the date of acceptance through the maintenance periods provided for herein, and any extension or renewal thereof.
- c. The Company warrants and represents to the County that the Company has the right to grant to the County the right to use all software without restriction or limitation except as provided herein.
- d. The Company warrants the software will perform as specified herein and shall perform as represented by the Company with respect to updates, enhancements or additional software which may be acquired by the County so long as the County continues with a Maintenance Agreement with the Company or the Company's successors or assigns.

During the maintenance period, the Company will design, code, test, document and deliver any amendments or alterations (the "Amendments") to the Company's software that is necessary to correct or avoid any defect in the Company's software which is present at the time of delivery, or is discovered during County usage, and affects performance of the Company's software. The Company shall only be responsible to correct defects that are documented or submitted in writing during the maintenance agreement period. Oral notification or other unwritten complaints will not constitute notice under this Agreement.

At any time during the Period of Agreement the Company shall not be required to correct any defects in any of the Company software caused by the County's negligence, improper installation or operation of the Company's software or other improper action by the County operating the Company's software.

The warranties specified in herein do not cover damage, defect, malfunctions or failure caused by: (i) failure by the County to follow the Company's and the manufacturer's installation, operation, or maintenance instructions or its failure to fulfill its obligations under this Agreement, (ii) the County's modification or relocation of the System, (iii) the County's abuse, misuse or negligent acts, (iv) power failure or surges, lightning, fire, flood, accident, actions of third parties and other events, including force majeure, outside Company's reasonable control, and (v) failure of County to provide an operating environment for the System.

3. LIMITATION OF ACTIONS AND LIABILITY

- a. Neither party shall be liable to the other for any loss, damage, failure, delay or breach in rendering any services or performing any obligations hereunder to the extent that such failure, delay or breach results from any cause or event beyond the control of the party being released hereby ("Force Majeure"), including, but not limited, to acts of God, acts or omissions of civil or military authorities.

If either party is prevented or delayed in the performance of its obligations hereunder by Force Majeure, that party shall immediately notify the other party in writing of the reason for the delay or failure to perform, describing in as much detail as possible the event of Force Majeure causing the delay or failure and discussing the likely duration of the Force Majeure and any known prospects for overcoming or ameliorating it. Both parties agree to take any commercially reasonable measures to overcome or ameliorate the Force Majeure and its adverse effects on this Agreement, and to resume performance as completely as is reasonably possible once the Force Majeure is overcome or ameliorated.

- b. Neither party shall be liable to the other for consequential, indirect or incidental damages, including, but not limited to, loss of tax revenue or claims related to valuation of property, whether based in contract, negligence, strict liability or otherwise even if Company has been advised of the possibility of same except for the amount of direct damages to real or personal property and personal injury caused by the negligent acts, errors or omissions of Company or its officers, agents and employees.
- c. In any event, the Company's liability for damages (except for damage to real or personal property or personal injury as provided above) under any theory of liability or form of action including negligence shall not exceed the total amount paid by the County to the Company under this Agreement.
- d. This section shall survive the failure of any exclusive remedy.

4. PATENT AND COPYRIGHT INDEMNIFICATION

- a. Company shall defend or settle any PATENT AND COPYRIGHT INFRINGEMENT suit or proceeding brought against County by a third party arising out of, or relating to, County's own internal use of the Software provided that Company is given written notice within ten (10) days of receipt of notice of such claim and is given information, reasonable assistance and sole authority to defend or settle the claim. Provided, however, in any suit or proceeding in which it is alleged that the infringement is based upon actions of the County excluded under (c) below and the matter is finally settled (with the consent of Company) or held by a court of competent jurisdiction, including appellate proceedings, that such infringement did not arise as a result of any action of County covered under (c) below, then Company shall pay all costs incurred by County in defending such claim, including reasonable attorneys' fees.

- b. Company, at its option, may obtain for County the right to continue using or to replace or modify the equipment or Licensed Software involved so it becomes non-infringing; or if such remedies are not reasonably available, grant County a refund, based on the County's net book value, for the equipment or Licensed Software provided pursuant to this Agreement and accept the return of the infringing product.
- c. The Company shall have no obligation under this section if the alleged infringement or violation is based upon the use of software in combination with other hardware or software not provided by the Company or from modifications, or enhancements or changes not provided by the Company.
- d. THIS SECTION STATES THE ENTIRE LIABILITY OF COMPANY FOR PATENT OR COPYRIGHT PROTECTION INFRINGEMENT BY THE LICENSED SOFTWARE OR THE EQUIPMENT OR ANY PORTIONS THEREOF.