Commissioners' Court-Regular Meeting

TO: Montgomery County Commissioners' Court

FROM: JD Lambright, County Attorney

DATE: 06/12/2018

SUBJECT: APPROVE INTERLOCAL SOFTWARE LICENSE AGREEMENT BETWEEN
             MONTGOMERY COUNTY, TEXAS AND FORT BEND COUNTY, TEXAS.

Attachments

Interlocal Software License Agreement

STATE OF TEXAS	§
	§
COUNTY OF FORT BEND	§

INTERLOCAL SOFTWARE LICENSE AGREEMENT

This Interlocal Software License Agreement ("Agreement"), is made and entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code (the "Act")between Fort Bend County, ("Licensor"), a body corporate and politic under the laws of the State of Texas, and Montgomery County, Texas ("Licensee"), a body corporate and politic under the laws of the State of Texas.

WITNESSETH

WHEREAS, this Agreement is entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code;

WHEREAS, Licensor developed a software application known as Risk Management Incident Reporting System and is the owner of all copyrights and all other intellectual property rights in connection therewith (the "Software"); and

WHEREAS, Licensee desires to acquire a license to use the software for its internal business operations;

WHEREAS, Licensor and Licensee believe it is in their mutual interest and desire to enter into an agreement whereby Licensee would use the Software in accordance with the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants of this Agreement, the parties hereto agree as follows:

AGREEMENT

1. **DEFINITIONS.** As used in this Agreement, the following terms shall have the following meanings:
1.1. "Authorized Platform" means the computer or operating system, or both, on which Licensee is authorized to use the software pursuant to this Agreement.
1.2. "Authorized Site" means a location at which Licensee is authorized to use the software.
1.3. "Documentation" means all user manuals and other written material created by Licensor to describe the functionality or assist in the use of the software.
1.4. "Intellectual Property Rights" means all inventions and discoveries, all improvements thereto, and all patents, patent applications, copyrights, trade secrets, know-how, confidential business information and other intellectual property rights of any type whatsoever, owned by or licensed to Licensor.
1.5. "Software" means the computer program or programs named Risk Management Incident Reporting System, and the documentation software includes any updates, modification, bug fixes, updates, enhancements, or other modifications. It does not include any version

of the software that constitutes a separate product because of differences in function or features.

2. GRANT OF LICENSE.

2.1. Grant. Subject to the terms and conditions set forth in this Agreement, Licensor hereby grants to Licensee a nonexclusive, nontransferable license in the software, and, except as provided below, nonassignable right and license to use the software exclusively for reporting and managing employee incidents and at the authorized site and to use the documentation solely in connection with Licensee's use of the software.

2.2. License Restrictions. Except as specifically granted in this Agreement, Licensor owns and retains all right, title, and interest in the Software, Documentation, and any and all related materials. This Agreement does not transfer Intellectual Property Rights of any description in the Software, Documentation, or any related materials to Licensee or any third party. Licensee will install and render the Software operational only on the Authorized Platform at the Authorized Site. Licensee will not modify, reverse engineer, or decompile the Software, or create derivative works based on the Software. Licensee will not distribute the Software to any persons or entities other than Licensee's employees, consultants, or contractors. Licensee may not sell the Software to any person or make any other commercial use of the Software. Licensee will retain all copyright and trademark notices on the software and documentation and will take other necessary steps to protect Licensor's Intellectual Property Rights.

3. LICENSE FEES.

3.1. The License granted to Licensee under this Agreement is being granted to Licensee at no cost.

4. TITLE; INTELLECTUAL PROPERTY.

4.1. The following terms shall have the indicated meanings when used in this Attachment:

(a) "Invention" shall mean any discovery, concept, or idea, whether or not patentable, made by Licensee arising directly from use of the Software, including but not limited to processes, methods, software, tangible research products, formulas and techniques, improvements thereto, and know-how related thereto.

(b) "Patent Expenses" shall mean any expenses, including attorney's fees, incurred in searching prior art, obtaining search opinions, preparing applications, filing, prosecuting, enforcing or maintaining a patent or patent application with respect to Patent Rights in any country in which the patent or patent application is filed.

(c) "Patent Rights" shall mean any patent application or patent covering any Invention made by the Licensee arising directly from use of the Software, including any continuation, continuations-in-part, divisional applications, substitutions, extensions or additions thereto, and any corresponding foreign patent applications or patents based on such applications or patents.

(d) "Technology Rights" shall mean Licensee rights under state and federal laws, including the laws of copyright, trade secret, and unfair competition, in unpatented inventions, know-how, software, and other technology developed by the Licensee arising directly from use of the Software.

4.2. Any Patent Rights and Technology Rights based upon Inventions made solely by Licensee shall be the property of Licensee. Any Patent Rights and Technology Rights based upon Inventions made jointly shall be the joint property of Licensee and Licensor. Rights arise during the term of this Agreement if they are either conceived or reduced to practice during the term of this Agreement.

4.3. After consultation with Licensor, Licensee at its sole election may prepare and file appropriate United States and foreign patent applications for Inventions. Licensee will provide Licensor, on a confidential basis, a copy of any such application filed and any documents received or filed during prosecution thereof and will provide Licensor the opportunity to comment thereon. On any application on which an employee of Licensor is named as a co-inventor, Licensor will cooperate in obtaining execution of any necessary documents by its employees.

4.4. As partial consideration for Licensor's obligations described above, Licensee grants to Licensor an option to negotiate a worldwide, royalty-bearing exclusive license under Patent Rights and Technology Rights to practice any Invention and use any technology made during the term of this Agreement. Such option shall be exercisable in the following manner:

(a) Whenever Licensee, in its good faith judgment, believes that it has a commercially exploitable item within Patent Rights and Technology Rights ("Item"), it shall present the Item to Licensor on a confidential basis. Within thirty (30) days after such presentation, Licensor shall notify Licensee in writing if it wishes to exercise its option for that Item, and a license agreement shall be negotiated in good faith for a period not to exceed one hundred twenty (120) days from the date that Licensor exercises its option, or such period of time as the parties shall mutually agree. In the event that Licensor and Licensee fail to enter into an agreement during that period of time, then the rights to such inventions and technology shall be disposed of in accordance with Licensee's policies, with no further obligation to Licensor. Until any such Item, such as an invention disclosure, patent, patent application, or identifiable piece of unpatented technology, has been presented as set forth above, Licensee shall not offer rights to the Item to any third party.

4.5. Licensor may exercise its option on Patent Rights and Technology Rights by informing Licensee as provided in Section 4.4 of the identity of the Item within Patent Rights and Technology Rights and by providing a written statement of its intention to develop the Item, or cause the Item to be developed, for public use as soon as practicable, consistent with sound and reasonable business practices and judgment.

4.6. Any license to Patent Rights and Technology Rights granted to Licensor, as provided herein, shall include at least the following terms and conditions:

(a) A reasonable and customary running royalty on net sales from licensed products;

(b) The right of Licensor to grant sublicenses, with payment to the Licensee of 50% of any royalties or other proceeds received by Licensor;

(c) A term that does not exceed any limits imposed by law; and

(d) Retention by the Licensee of the complete royalty-free right to use any Patent Rights and Technology Rights, including any licensed Invention, technology, or software for research or other educational or academic purposes.

5. CONFIDENTIALITY.

5.1. Licensee recognizes that the Software is Licensor's trade secret as defined by the Texas Uniform Trade Secret Act, Tex. Civ. Prac. & Rem. Code Chapter 134A. Licensee further acknowledges that Licensor shall be entitled to seek any remedy available to Licensor under the Texas Uniform Trade Secret Act for Licensee's failure to preserve Licensor's trade secrets in accordance with this Agreement.

5.2. Licensee recognizes that the Software is the proprietary and confidential property of Licensor. Accordingly, Licensee shall not, without the prior written consent of Licensor, disclose or reveal to any third party or utilize for its own benefit other than pursuant to

this Agreement, any information provided by Licensor concerning the Software, provided such information was not previously known to Licensee or to the general public. Licensee further agrees to take all reasonable precaution to preserve the confidentiality of the Software and shall assume responsibility that its employees and permitted assignees will similarly preserve this information against third parties.

5.3. This Agreement imposes no obligation on Licensee with respect to any portion of the Software received from Licensor which:

(a) was known to Licensee prior to disclosure by Licensor;

(b) is lawfully obtained by Licensee from a third party under no obligation of confidentiality;

(c) is or becomes generally known or publicly available other than by unauthorized disclosure;

(d) is independently developed by Licensee;

(e) is disclosed by Licensor to a third party without a duty of confidentiality on the third party; or

(f) is required to be disclosed by the Texas Public Information Act, order of a legislative body or order from a court of competent jurisdiction. In the event that said Software is required to be disclosed by Licensee, Licensee shall provide reasonable notice to Licensor to allow Licensor to assert whatever exclusions or exemptions may be available under such law, regulation or order, or other legal remedies available to Licensor to prevent disclosure of the Software.

6.   LICENSOR'S OBLIGATIONS.

6.1. On execution of this Agreement, Licensor will deliver the software to Licensee in a format appropriate for the authorized platform at the authorized site, together with the documentation.

7.   TERM AND TERMINATION

7.1. Term. This Agreement, and the license granted under this Agreement, becomes effective on the date set forth in Section 10.11, below. Unless sooner terminated as set forth in Sections 7.2 and 7.3, below, the Agreement will continue in effect until the expiration of Licensor's rights in the software.

7.2. Termination for Convenience. Licensee may terminate the Agreement at any time and from time to time on sixty (60) days' prior written notice to Licensor.

7.3. Termination for Cause. Either party, as applicable, will have the right, in addition, and without prejudice to any other rights or remedies, to terminate this Agreement as follows:

(a) By Licensor, on 15 days' written notice, if Licensee fails to pay any amounts due to Licensor pursuant to this Agreement;

(b) By either party for any material breach of this Agreement that is not cured within 10 days of receipt by the party in default of a notice specifying the breach and requiring its cure.

7.4. Rights on Termination. Licensor has and reserves all rights and remedies that it has by operation of law or otherwise to enjoin the unlawful or unauthorized use of Software or Documentation. On termination,

(a) all rights granted to Licensee under this Agreement cease and Licensee will promptly cease all use and reproduction of the Software and Documentation.

(b) Licensee will promptly return all copies of the software to Licensor or destroy all of Licensee's copies of the Software and Documentation and so certify to Licensor in writing within 14 days of termination. Sections 4, 5, 7, and 8 will survive termination

or expiration of this Agreement as will any cause of action or claim of either party, whether in law or in equity, arising out of any breach or default.

8.   WARRANTIES, DISCLAIMER, AND LIMITATIONS

8.1.   Warranties. Licensor hereby warrants to Licensee: (a) Licensor is the owner of the Software and the Documentation or has the right to grant to Licensee the license to use the Software and Documentation in the manner and for the purposes set forth in this Agreement without violating any rights of a third party, and (b) the media containing the software will be free from defects for a period of thirty (30) days from the date of delivery to Licensee, provided that this warranty does not cover defects in the diskettes due to Licensee's misuse of the software media or an accident subsequent to delivery to Licensee.

8.2.   Disclaimer. THE WARRANTIES SET FORTH IN SECTION 8.1, ABOVE, ARE IN LIEU OF, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION: (a) ANY WARRANTY THAT THE SOFTWARE IS ERROR-FREE, WILL OPERATE WITHOUT INTERRUPTION, OR IS COMPATIBLE WITH ALL EQUIPMENT AND SOFTWARE CONFIGURATIONS; (b) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY; AND (c) ANY AND ALL WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

8.3.   Remedies on Breach of Warranty. In the event of any breach of the warranty set forth in Section 8.1(b), Licensee's exclusive remedy will be for Licensor to promptly replace defective software media; if Licensor is unable to replace the media within 30 days of notification by Licensee of a defect, Licensee's sole remedy is to terminate this Agreement.

8.4.   Limitation of Liability. LICENSOR IS NOT LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING THE LOSS OF PROFITS, REVENUE, DATA, OR USE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS INCURRED BY LICENSEE OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT OR BASED ON A WARRANTY, EVEN IF LICENSOR OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.   EXPORT CONTROLS AND RESTRICTED RIGHTS

9.1.   Export Controls. The Software, the Documentation, and all underlying information or technology may not be exported or reexported into any country to which the U.S. has embargoed goods, or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. Licensee will not export the Software or Documentation or any underlying information or technology to any facility in violation of these or other applicable laws and regulations. Licensee represents and warrants that it is not a national or resident of, or located in or under the control of, any country subject to such export controls.

10.   INDEMNITY.

10.1. LICENSEE SHALL INDEMNIFY AND DEFEND LICENSOR AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING FROM LICENSEE'S USE OF THE SOFTWARE AND DOCUMENTATION, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF LICENSEE OR ANY OF LICENSEE'S AGENTS, SERVANTS OR EMPLOYEES.

11.   Notices.

11.1. Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of

the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), nationally recognized overnight courier (with all fees prepaid), or by fax.

11.2. Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this section:

Licensor:	Fort Bend County Attn: County Judge 401 Jackson Street, Richmond, TX 77469 Fax: (281) 341-8609
With a Copy To:	Fort Bend County Attorney's Office 401 Jackson Street, Richmond, Texas 77469 Fax: (281) 341-4557
Licensee:	Montgomery County Attn: County Judge 501 N. Thompson, Suite 401 Conroe, TX 77301 Fax: (936) 760-6919
	Montgomery County Attorney's Office 501 N. Thompson, Suite 401 Conroe, TX 77301 Fax: (936) 760-6920

11.3. A Notice is effective only if the party giving or making the Notice has complied with subsections 11.1 and 11.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

11.4. If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

11.5. If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

12. GOVERNING LAW.

12.1. The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the Licensor's sovereign immunity.

12.2. By signature below, Licensee represents pursuant to Section 2252.152 of the Texas Government Code, that Licensee is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

13. Dispute Resolution.

13.1. Any controversy or claim arising out of or relating to this Agreement or any related agreement will be settled in the following manner:

(a) Senior executives representing each Licensor and Licensee will meet to discuss and attempt to resolve any such controversy or claim;

(b) If such controversy or claim is not resolved as contemplated by paragraph (a), Licensor and Licensee will, by mutual consent, select an independent third party to mediate such controversy or claim, provided that such mediation will not be binding upon any of the parties; and

(c) If such controversy or claim is not resolved as contemplated by paragraphs (a) or (b), the parties will have such rights and remedies as are available under this Agreement or, if and to the extent not provided for in this Agreement, are otherwise available.

14. Successors and Assigns.

14.1. Licensor and Licensee bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

15. Third Party Beneficiaries.

15.1. This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

16. Severability.

16.1. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

17. Publicity.

17.1. Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall [Enter Company's Abbr. Name] release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

18. Captions.

18.1. The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

19. Conflict.

19.1. In the event there is a conflict between this Agreement and the attached exhibit(s), this Agreement controls.

20. Understanding, Fair Construction.

20.1. By execution of this Agreement, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Agreement. This Agreement, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.

Signatures Follow On Next Page

IN WITNESS WHEREOF, this Agreement is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Agreement and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

_____
Robert Hebert, County Judge

_____
Date

ATTEST:

_____
Laura Richard, County Clerk

MONTGOMERY COUNTY

_____
Craig Doyal, County Judge

___ JUN 1 2 2018 _____
Date

ATTEST:

_____
Mark Turnbull, County Clerk
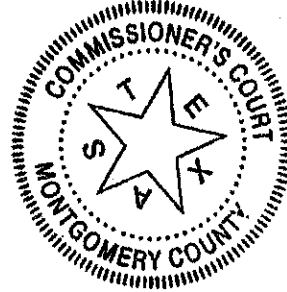
AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of $_____ to accomplish and pay the obligation of Fort Bend County under this Agreement.

_____
Robert E. Sturdivant, County Auditor