



ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VIRGINIA 22201

CONTRACT AWARD COVERPAGE

TO: e-Builder, Inc.	DATE ISSUED: December 16, 2022
13450 W Sunrise Blvd, 6 th Floor Suite 600	CONTRACT NO: 22-DES-SLA-718
Sunrise, Florida 33323	CONTRACT TITLE: e-Builder SaaS Services

THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

The contract documents consist of the terms and conditions of AGREEMENT No. 22-DES-SLA-718 including any attachments or amendments thereto.

EFFECTIVE DATE: May 1, 2022

EXPIRES: April 30, 2024

RENEWALS: INITIAL TWO-YEAR AWARD NOTICE OF A POSSIBLE 5-YEAR CONTRACT.

COMMODITY CODE(S): 92005

LIVING WAGE: N

ATTACHMENTS:

AGREEMENT No. 22-DES-SLA-718

EMPLOYEES NOT TO BENEFIT:

NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

VENDOR CONTACT: Natalie Bao

VENDOR TEL. NO.: (773) 412-9788

EMAIL ADDRESS: natalie_bao@trimble.com

COUNTY CONTACT: Claudia O'Conner (DES)

COUNTY TEL. NO.: (703) 228-3282

COUNTY CONTACT EMAIL: cloconnor@ARLINGTONVA.US

PURCHASING DIVISION AUTHORIZATION

Sy Gezachew

Title Procurement Officer

Date 12/16/2022



**ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VA 22201**

AGREEMENT NO. 22-DES-SLA-718

THIS AGREEMENT is made, on 12/16/2022, between e-Builder, Inc., a Florida corporation and a wholly owned subsidiary of Trimble Inc., 13450 W. Sunrise Blvd, 6th FL, Suite 600, Sunrise, FL 33323), authorized to do business in the Commonwealth of Virginia ("Contractor"), and the County Board of Arlington County, Virginia ("County"). Hereinafter, Contractor or County may be referred to individually as a "Party," or collectively as the "Parties." The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The "Contract Documents" consist of:

- This Agreement
- Exhibit A – Non-Disclosure and Data Security Agreement
- Exhibit B – eBuilder Master License and Services Agreement, Work Order (Exhibit 1), and Acceptable Use Agreement (Exhibit 2)

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement will prevail over the other Contract Documents, and the remaining Contract Documents will be complementary to each other. If there are any conflicts, the most stringent terms or provisions will prevail.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either party has made any representation or promise with respect to the parties' agreement that is not contained in the Contract Documents. Any additional or contrary terms stated on a county purchase order are null and void as they relate to Contractor. The Contract Documents may be referred to below as the "Contract" or the "Agreement".

2. SCOPE OF WORK

Under the terms set forth in the Contract Documents, the Contractor will provide the County with access (over the internet) to its SaaS Service as detailed in Exhibit B (the "Work"). It will be the Contractor's responsibility, at its sole cost, to provide the specific services set forth in the Contract Documents and

sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents limits the Contractor's responsibility to manage the details and execution of the Work.

3. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer, who will be appointed by the Director of the Arlington County department or agency requesting the Work under this Contract.

4. CONTRACT TERM

Time is of the essence. The Initial Term of this Agreement shall commence on May 1, 2022 and conclude on April 30, 2024 (the "Initial Contract Term"). Thereafter, the County may, through issuance of a bilateral Notice of Renewal, authorize continuation of the Work for three (3) additional 12-month periods from May 1, 2024, to April 30, 2027 (each a "Subsequent Contract Term"). The Initial Contract Term and any Subsequent Contract Term(s) are together the "Contract Term."

5. CONTRACT AMOUNT

The County will pay the Contractor in accordance with the terms of the Payment section below and of Exhibit B for the Contractor's completion of the Work as required by the Contract Documents. In the Initial Contract Term, the Contractor will complete the Work for the total amount specified in Exhibit B ("Contract Amount"). For Subsequent Contract Terms, the Contractor reserves the right to increase the Annual Software Subscription Fee by the greater of CPI plus 2% or 5%. In addition, at any time during the Contract Term, the Contractor reserves the right to adjust the Annual Software Subscription Fees based upon the County's actual Average Annual Capital Spend. "Annual Capital Spend" means the expenses incurred by Customer to demolish, plan, design, build, repair, remodel and furnish a building or site over a period of one year. "Average Annual Capital Spend" means the average of the estimated next three (3) fiscal years of the Customer's Annual Capital Spend. "CPI" means the Consumer Price Index for all Urban Consumers for the previous twelve (12) months at the time e-Builder is accessing the renewal fee.

The County will not compensate the Contractor for any goods or services beyond those included in Exhibit B unless those additional goods or services are covered by a fully executed amendment to this Contract.

6. PAYMENT

Payment of the first (1st) year's Annual Software Subscription term (5/1/2022 – 4/30/2023) is due upon the execution of the Agreement. The County paid \$141,282.90 towards its Year 1 Annual Subscription fee on or around September 15, 2022. Thus, the balance, \$43,982.58, is due upon execution of the Agreement. Payment of the Year 2 Annual Software Subscription term (5/1/2023 – 4/30/2024) will be invoiced in advance of the anniversary date and is due on 5/1/2023. Payment of the Annual Software Subscription for any Subsequent Contract Term will be invoiced in advance of the applicable anniversary date and due thereon.

The Contractor must submit invoices to the County's Project Officer, who will either approve the invoice or require corrections. The County will pay the Contractor within forty-five (45) days after receipt of an invoice for completed work that is in accordance with the Contract Documents. The number of the County Purchase Order pursuant to which goods or services have been delivered or performed must appear on all invoices.

7. REIMBURSABLE EXPENSES

The County will not reimburse the Contractor for any expenses under this Contract. The amount in Exhibit B includes all costs and expenses of providing the services described in this Contract.

8. * PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven days after receipt of payment by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment, with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest will accrue at the rate of 1% per month.

The Contractor must include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

9. NO WAIVER OF RIGHTS

The County's approval or acceptance of or payment for any goods or services under this Contract will not waive any rights or causes of action arising out of the Contract.

10. * NON-APPROPRIATION

All payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia ("Board"). In the event that the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever event occurs first.

11. * COUNTY PURCHASE ORDER REQUIREMENT

County purchases are authorized only if the County issues a Purchase Order in advance of the transaction, indicating that the ordering County agency has sufficient funds available to pay for the purchase. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense. The County will not be liable for payment for any purchases made by its employees that are not authorized by the County Purchasing Agent.

12. * EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of its work pursuant to this Contract:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability or on any other basis prohibited by state law. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting the requirements of this section.
- C. The Contractor will state in all solicitations or advertisements for employees that it places or causes to be placed that such Contractor is an Equal Opportunity Employer.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), which prohibits discrimination against individuals with disabilities in employment and mandates that disabled individuals be provided access to publicly and privately provided services and activities.
- E. The Contractor must include the provisions of the foregoing paragraphs in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

13. * EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with §2.2-4311.1 of the Code of Virginia, as amended, the Contractor must not during the performance of this Contract knowingly employ an unauthorized alien, as that term is defined in the federal Immigration Reform and Control Act of 1986.

14. * DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor must: (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violating such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "workplace" means the site(s) for the performance of the work required by this Contract.

15. *SEXUAL HARASSMENT POLICY

If the Contractor employs more than five employees, the Contractor shall (i) provide annual training on the Contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the Contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the Contractor owns or leases for business purposes and (b) the Contractor's employee handbook.

16. COVID-19 VACCINATION POLICY FOR CONTRACTORS

Due to the ongoing COVID-19 pandemic, the County has taken various steps to protect the welfare, health, safety, and comfort of the workforce and public at large. As part of these steps, the County has implemented various requirements with respect to health and safety including policies with respect to social distancing, the use of face-coverings and vaccine mandates. To protect the County's workforce and the public at large, all employees and subcontractors of the Contractor who are assigned to this Contract, should be fully vaccinated against COVID-19. Any contractor employee or subcontractor who is not fully vaccinated should be following a weekly testing protocol as established by the Contractor, unless exempt pursuant to a valid reasonable accommodation under state or federal law.

17. TERMINATION

The County may terminate this Contract at any time as follows: (1) for cause, if, as determined by the County, the Contractor is in breach or default or has failed to perform the Work satisfactorily; or (2) for the convenience of the County.

Upon receipt of a notice of termination, the Contractor must not place any further orders or subcontracts for materials, services or facilities; must terminate the work of all vendors and subcontractors on this Contract, except as necessary for the completion of any portion of the Work that the County did not terminate; and must immediately deliver all documents related to the terminated Work, other than the County Information addressed in Section 22e, to the County.

Any purchases that the Contractor makes after the notice of termination will be the sole responsibility of the Contractor, unless the County has approved the purchases in writing as necessary for completion of any portion of the Work that the County did not terminate.

If any court of competent jurisdiction finds a termination for cause by the County to be improper, then the termination will be deemed a termination for convenience.

A. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

1. Termination for Unsatisfactory Performance. If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure them within 15 days or any other longer period specified by the County ("Cure Period"). If the Contractor fails to cure within the Cure Period, the County may terminate the Contract for failure to provide satisfactory performance by providing written notice with a termination date. The Contractor must submit any request for termination costs, with all supporting documentation, to the County Project Officer within 30 days after the expiration of the Cure Period. The County may accept or reject the request for termination costs, in whole or in part, and may notify the Contractor of its decision within a reasonable time.

In the event of termination by the County for failure to perform satisfactorily, the Contractor must continue to provide its services as previously scheduled through the termination date, and the County must continue to pay all fees and charges incurred through the termination date.

2. Termination for Breach or Default. If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination will be immediate after notice of

termination to the Contractor (unless the County provides for an opportunity to cure), and the Contractor will not be permitted to seek termination costs.

Upon any termination pursuant to this section, the Contractor will be liable to the County for a refund of any prepaid but unused fees.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt the notice of the termination.

B. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The County may terminate this Contract in whole or in part whenever the Purchasing Agent determines that termination is in the County's best interest. The County will give the Contractor at least 15 days' notice in writing. The notice must specify the extent to which the Contract is terminated and the effective termination date.

In the event the County terminates this Agreement for convenience during the Contract Term, all previously paid subscription fees shall be nonrefundable and forfeited, and any unpaid subscription fees shall be due prior to the effective date of termination. In addition, all earned, but unpaid, fees for Professional Services must be paid in full before the termination becomes effective. Except as otherwise directed by the County, the Contractor must stop work on the date of receipt of the notice of the termination.

C. TERMINATION FOR CAUSE BY CONTRACTOR

The Contractor may terminate this Agreement for cause, upon written notice to the County, for the following reasons: (a) payment default that is not cured within thirty (30) days or (b) a material, non-monetary default that is not cured within sixty (60) days following receipt of written notice describing such default in Exhibit B.

18. INDEMNIFICATION

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify the County and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the "County Indemnitees") from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, demands or exposure resulting from, to the extent caused by the Contractor's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

Contractor's indemnification obligations in this Section are subject to the Limitation of Liability section of Exhibit B (the MSA). Except for Contractor's indemnification obligations under Section 19 below, in no event shall Contractor's total indemnification obligation under this Agreement exceed or extend beyond the Contractor's limited liability as set forth in Exhibit B.

19. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor warrants and guarantees that in providing services under this Contract, the Contractor Offerings (as defined in Exhibit B) and any subcontractor services do not infringe on the intellectual property rights (including, but not limited to, copyright, patent, mask, and trademark) of third parties.

If the Contractor or any of its employees or subcontractors uses any design, device, work, or material that is covered by patent or copyright, it is understood that the Contract Amount includes all royalties, licensing fees, and any other costs arising from such use in connection with the Work under this Contract.

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless, and indemnify the County Indemnitees, as defined above, from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability or exposure that the e-Builder Offerings infringe, any copyright, patent or other intellectual property rights of a third party. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

Indemnity Exclusions. The foregoing indemnification obligations of the Contractor relating to any claims of third party infringement shall not apply with respect to: (a) the Contractor Offerings (as defined in Exhibit B) that, after shipment or delivery, are modified or used by any party other than e-Builder, in a manner where such modification or use was not recommended, authorized in writing or required by e-Builder, and where such modification or use is the basis of the third party claim; and (b) the Contractor Offerings are combined or bundled with any non-e-Builder products, processes or materials that were not recommended, authorized or provided by e-Builder, if such liability would not have arisen but for such combination or bundling.

20. OWNERSHIP OF WORK PRODUCT

Subject to the County Data and Marketing Section in Exhibit B, this Contract does not confer on the Contractor any ownership rights or rights to use or disclose the County's data or inputs.

All work product, in any form, that results from this Contract is the property of the County and must be provided or returned to the County upon completion, termination, or cancellation of this Contract. The Contractor will not use or allow others to use the work product for any purpose other than performance of this Contract without the written consent of the County.

The work product is confidential, and the Contractor may neither release the work product nor share its contents. The Contractor will refer all inquiries regarding the status of any work product to the Project Officer or to his or her designee. At the County's request, the Contractor will deliver all work product, including hard copies of electronic files, to the Project Officer and will destroy all electronic files.

The Contractor must include the provisions of this section as part of any contract or agreement related to this Contract into which it enters with subcontractors or other third parties.

The provisions of this section will survive any termination or cancellation of this Contract.

21. **DATA SECURITY AND PROTECTION**

The Contractor will hold County Information, as defined below, in the strictest confidence and will comply with all applicable County security and network resources policies, as well as all local, state and federal laws and regulatory requirements concerning data privacy and security. The Contractor must develop, implement, maintain, continually monitor and use appropriate administrative, technical and physical security measures to control access to and to preserve the confidentiality, privacy, integrity and availability of all electronically maintained or transmitted information received from or created or maintained on behalf of the County. For purposes of this provision, and as more fully described in this Contract and in the County's Non-Disclosure and Data Security Agreement (NDA), "County Information" includes, but is not limited to, electronic information; documents; data; images; financial records; personally identifiable information; personal health information (PHI); personnel, educational, voting, registration, tax and assessment records; information related to public safety; County networked resources; and County databases, software and security measures that are created, maintained, transmitted or accessed to perform the Work under this Contract.

- (a) **County's Non-Disclosure and Data Security Agreement.** The Contractor on behalf of itself and its Designees (Contractor Designees shall include, but shall not be limited to, all Contractor-controlled non-employee agents or subcontractors working on-site at County facilities or otherwise performing any work under this Contract) must sign the NDA (Exhibit A) before performing any work or obtaining or permitting access to County networked resources, application systems or databases. The Contractor will make copies of the signed NDA available to the County Project Officer upon request.
- (b) **Use of Data.** The Contractor will ensure against any unauthorized use, distribution or disclosure of or access to County Information and County networked resources by itself or its Designees. Use of County Information other than as specifically outlined in the Contract Documents is strictly prohibited. The Contractor will be solely responsible for any unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access to or disclosure of County Information and for any non-compliance with this provision by itself or by its Designees.
- (c) **Data Protection.** The Contractor will protect the County's Information according to standards established by federal law and Commonwealth of Virginia statutes including but not limited to the Government Data Collection and Dissemination Practices Act, Chapter 38 of Title 2.2 of the Code of Virginia (§ 2.2-3800 and 2.2-3803), Administration of systems including personal information; Internet privacy policy; exceptions, Code of Virginia, § 2.2-3803, and the Virginia Freedom of Information Act § 2.2-3700, et seq., and will adhere to industry best practices including the National Institute of Standards and Technology (NIST) SP 800-53 Security and Privacy Controls for Information Systems and Organizations and the Payment Card Industry Data Security Standard (PCI DSS), as applicable, and no less rigorously than it protects its own data and proprietary or confidential information. The Contractor must provide to the County a copy of its data security policy and procedures for securing County Information and a copy of its disaster recovery plan(s). If requested by the County, the Contractor must also provide annually the results of a its SOC 2 Type 2 audit provided by an outside firm. In the event the County requests e-Builder's SOC audit, a separate NDA will be required.
- (d) **Security Requirements.** The Contractor must maintain the most up-to-date anti-virus programs, industry-accepted firewalls and other protections on its systems and networking

equipment. The Contractor certifies that all systems and networking equipment that support, interact with or store County Information meet the above standards and industry best practices for physical, network and system security requirements. Devices (laptops, mobile phones, printers, copiers, fax machines, or similar) that store County Data utilize encryption. The County's Chief Information Security Officer or designee must approve any deviation from these standards. The downloading of County information onto devices, other portable storage media or services such as personal e-mail, Dropbox etc. is prohibited without the written authorization of the County's Chief Information Security Officer or designee.

- (e) **Conclusion of Contract.** Within 30 days after the termination, cancellation, expiration or other conclusion of the Contract, the Contractor must, return all County Information to the County as set forth in Exhibit B.
- (f) **Notification of Security Incidents.** The Contractor must notify the County Chief Information Officer and County Project Officer within 72 hours of the discovery of any confirmed security breach or unauthorized use or disclosure of County Information.
- (g) **Subcontractors.** If subcontractors are permitted under this Contract, the requirements of this entire section must be incorporated into any agreement between the Contractor and the subcontractor. If the subcontractor will have access to County Information, each subcontractor must provide to the Contractor a copy of its data security policy and procedures for securing County Information and a copy of its disaster recovery plan(s).

22. * ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as all state and federal laws related to ethics, conflicts of interest or bribery, including the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its proposal was made without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor; and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

23. * COUNTY EMPLOYEES

No Arlington County employee may share in any part of this Contract or receive any benefit from the Contract that is not available to the general public.

24. FORCE MAJEURE

Neither party will be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to a failure of the Internet, failure or error of an Internet services provider or other provider of connectivity, failure of any lines of transmission, failure of any other third-party equipment or software through which Internet transmissions occur, failure of any telecommunications carrier, hacking or electronic vandalism, fire, riot, rebellion, natural disaster, war, act of terrorism or act of God that is beyond the control of the party and that makes performance impossible or illegal, unless otherwise specified in the Contract, provided that the affected party gives notice to the

other party as soon as practicable after the force majeure event, including reasonable detail and the expected duration of the event's effect on the party.

25. * AUTHORITY TO TRANSACT BUSINESS

The Contractor must, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the entire term of this Contract. Otherwise, the Contract is voidable at the sole option of and with no expense to the County.

26. * RELATION TO COUNTY

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will be considered employees, servants or agents of the County. The County will not be responsible for any negligence or other wrongdoing by the Contractor or its employees, servants or agents. The County will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes or Social Security tax or for any other benefits. The County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation.

27. ANTITRUST

The Contractor conveys, sells, assigns and transfers to the County all rights, title and interest in and to all causes of action under state or federal antitrust laws that the Contractor may have relating to this Contract.

28. AUDIT

The Contractor must retain all books, records and other documents related to this Contract for at least five years, after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents (excluding documents evidencing payments made internally by e-Builder to its vendors and employees) to the County for examination within 15 days of the request. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

The Purchasing Agent may require the Contractor to demonstrate that it has the necessary facilities, ability, and financial resources to comply with the Contract and furnish the service, material or goods specified herein in a satisfactory manner at any time during the term of this Contract.

29. ASSIGNMENT

Neither Party may assign, transfer, convey or otherwise dispose of any award or any of its rights, obligations or interests under this Contract without the prior written consent of the other Party.

30. AMENDMENTS

This Contract may not be modified except by written amendment executed by persons duly authorized to bind the Contractor and the County.

31. * ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Nothing in this Contract waives any provision of the Arlington County Purchasing Resolution, which is incorporated herein by reference, or any applicable County policy.

32. * DISPUTE RESOLUTION

All disputes arising under this Agreement or concerning its interpretation, whether involving law or fact and including but not limited to claims for additional work, compensation or time, and all claims for alleged breach of contract must be submitted in writing to the Project Officer as soon as the basis for the claim arises. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than 60 days after the final payment. The time limit for a final written decision by the County Manager is 30 days. Procedures concerning contractual claims, disputes, administrative appeals and protests are contained in the Arlington County Purchasing Resolution. The Contractor must continue to work as scheduled pending a decision of the Project Officer, County Manager, County Board or a court of law.

33. * APPLICABLE LAW, FORUM, VENUE AND JURISDICTION

This Contract is governed in all respects by the laws of the Commonwealth of Virginia; and the jurisdiction, forum and venue for any litigation concerning the Contract or the Work is in the Circuit Court for Arlington County, Virginia, and in no other court.

34. ARBITRATION

No claim arising under or related to this Contract may be subject to arbitration.

35. NONEXCLUSIVITY OF REMEDIES

All remedies available to the County under this Contract are cumulative, and no remedy will be exclusive of any other at law or in equity.

36. NO WAIVER

The failure to exercise a right provided for in this Contract will not be a subsequent waiver of the same right or of any other right.

37. SEVERABILITY

The sections, paragraphs, clauses, sentences, and phrases of this Contract are severable; and if any section, paragraph, clause, sentence or phrase of this Contract is declared invalid by a court of competent jurisdiction, the rest of the Contract will remain in effect.

38. SURVIVAL OF TERMS

In addition to any statement that a specific term or paragraph survives the expiration or termination of this Contract, the following sections also survive: INDEMNIFICATION; INTELLECTUAL PROPERTY INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP OF WORK PRODUCT; AUDIT; DISPUTE RESOLUTION; APPLICABLE LAW AND JURISDICTION; AND DATA SECURITY AND PROTECTION.

39. HEADINGS

The section headings in this Contract are inserted only for convenience and do not affect the substance of the Contract or limit the sections' scope.

40. AMBIGUITIES

The parties and their counsel have participated fully in the drafting of this Agreement; and any rule that ambiguities are to be resolved against the drafting party does not apply. The language in this Agreement is to be interpreted as to its plain meaning and not strictly for or against any party.

41. NOTICES

Unless otherwise provided in writing, all legal notices and other communications required by this Contract are deemed to have been given when either (a) delivered in person; (b) delivered by an agent, such as a delivery service; or (c) deposited in the United States mail, postage prepaid, certified or registered and addressed as follows:

TO THE CONTRACTOR:

e-Builder, Inc.
Attention: Legal
13450 W. Sunrise Blvd
6th FL, Suite 600
Sunrise, FL 33323
Email: carlos_abaunza@trimble.com

TO THE COUNTY:

Claudia O’Conner, Project Officer
2100 Clarendon Boulevard, Suite 900
Arlington, Virginia 22201
Phone: (703) 228-3282
Email: cloconnor@arlingtonva.us

AND

Dr. Sharon T. Lewis, LL.M, MPS, VCO, CPPB
Purchasing Agent
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201
Phone: (703) 228-3294
Email: slewis1@arlingtonva.us

TO COUNTY MANAGER’S OFFICE (FOR PROJECT CLAIMS):

Mark Schwartz, County Manager
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 318
Arlington, Virginia 22201

42. ARLINGTON COUNTY BUSINESS LICENSES

The Contractor must comply with the provisions of Chapter 11 (“Licenses”) of the Arlington County Code, if applicable. For information on the provisions of that Chapter and its applicability to this Contract, the Contractor must contact the Arlington County Business License Division, Office of the Commissioner of

the Revenue, 2100 Clarendon Blvd., Suite 200, Arlington, Virginia, 22201, telephone number (703) 228-3060, or e-mail business@arlingtonva.us.

43. * NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

44. LIMITED ENGLISH PROFICIENCY

The Contractor must comply with Executive Order 13166, Title VI of the Civil Rights Act of 1964 and make reasonable efforts to ensure that as part of the services that it provides, adequate communication services, including interpretation and translation, are available to persons who have limited English proficiency. If such services are not included in the Contract's scope of services and pricing, the Contractor will use a County-contracted service provider, and the County will pay the fees.

45. INSURANCE REQUIREMENTS

Before beginning work under the Contract or any extension, the Contractor must provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force at a minimum the coverage below. The Contractor must maintain this coverage until the completion of the Contract or as otherwise stated in the Contract Documents. All required insurance coverage must be acquired from insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides.

- a. Workers Compensation - Virginia statutory workers compensation (W/C) coverage, including Virginia benefits and employer's liability with limits of \$500,000/500,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. Employer's Liability - \$500,000/accident, \$500,00/disease, \$500,00/disease policy limit.
- c. Commercial General Liability - \$1,000,000 per occurrence, with \$2,000,000 annual aggregate covering all premises and operations and including personal injury, completed operations, contractual liability, independent contractors, and products liability. Evidence of contractual liability coverage must be typed on the certificate.
- d. Business Automobile Liability - \$1,000,000 combined single-limit (owned, non-owned and hired).
- e. Miscellaneous E&O/Professional Liability - \$1,000,000 per occurrence/claim.
- f. Cyber Insurance - \$2,000,000 per occurrence / aggregate
- g. Additional Insured – The County and its officers, elected and appointed officials, employees and agents must be included as additional insureds on all policies except workers compensation, Employer's liability, and automotive and professional liability; and the additional insured endorsement must be typed on the certificate.
- h. Cancellation - If there is a material change or reduction in or cancellation of any of the above coverages during the Contract Term, the Contractor must notify the Purchasing Agent immediately and must, with no lapse in coverage, obtain replacement coverage that is consistent with the terms of this Contract. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- i. Claims-Made Coverage - Any "claims made" policy must remain in force, or the Contractor must obtain an extended reporting endorsement, for at least three (3) years.
- j. Contract Identification - All insurance certificates must state this Contract's number and title.

The Contractor must disclose to the County the amount of any deductible or self-insurance component of any of the required policies. With the County's approval, the Contractor may satisfy its obligations under this section by self-insurance for all or any part of the insurance required, provided that the

Contractor can demonstrate sufficient financial capacity. In order to do so, the Contractor must provide the County with its most recent actuarial report and a copy of its self-insurance resolution.

The County may request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible and by providing 30 days advance written notice to The Contractor, the County may require a lower deductible; that funds equal to the deductible be placed in escrow; a certificate of self-insurance; collateral; or another mechanism to guarantee the amount of the deductible and ensure protection for the County.

The County’s acceptance or approval of any insurance will not relieve the Contractor from any liability or obligation imposed by the Contract Documents.

The Contractor is responsible for the Work and for all materials, tools, equipment, appliances and property used in connection with the Work. The Contractor’s insurance shall be the primary non-contributory insurance for any work performed under this Contract.

The Contractor is as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons whom the Contractor employs directly.

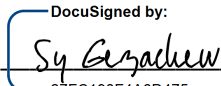
46. COUNTERPARTS

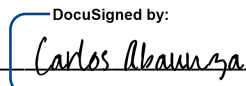
This Agreement may be executed in one or more counterparts and all of such counterparts shall together constitute one and the same instrument. Original signatures transmitted and received via facsimile or other electronic transmission, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall be effective as delivery of a manually executed original counterpart.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

e-BUILDER INCORPORATED

AUTHORIZED SIGNATURE:  DocuSigned by:
27FC198F4A6D475...

AUTHORIZED SIGNATURE:  DocuSigned by:
92969BE0AABA49F...

NAME: Sy Gezachew

NAME: Carlos Abaunza

TITLE: PROCUREMENT OFFICER

TITLE: Director of Legal

DATE: 12/16/2022

DATE: 12/15/2022

EXHIBIT A

NONDISCLOSURE AND DATA SECURITY AGREEMENT
(CONTRACTOR)

The undersigned, an authorized agent of the Contractor and on behalf of e-Builder Incorporation ("Contractor"), hereby agrees that the Contractor will hold County-provided information, documents, data, images, records and the like confidential and secure and protect them against loss, misuse, alteration, destruction or disclosure. This includes, but is not limited to, the information of the County, its employees, contractors, residents, clients, patients, taxpayers and property as well as information that the County shares with the Contractor for testing, support, conversion or other services provided under Arlington County Agreement No.22-DES-SLA-718 (the "Project" or "Main Agreement") or that may be accessed through other County-owned or -controlled databases (all of the above collectively referred to as "County Information" or "Information").

In addition to the DATA SECURITY obligations set in the County Agreement, the Contractor agrees that it will maintain the privacy and security of County Information, control and limit internal access and authorization for access to such Information and not divulge or allow or facilitate access to County Information for any purpose or by anyone unless expressly authorized. This includes, but is not limited to, any County Information that in any manner describes, locates or indexes anything about an individual, including, but not limited to, his/her ("his") Personal Health Information, treatment, disability, services eligibility, services provided, investigations, real or personal property holdings and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, social security number, tax status or payments, date of birth, address, phone number or anything that affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual, or the record of his presence, registration, or membership in an organization or activity, or admission to an institution.

Contractor also agrees that it will not directly or indirectly use or facilitate the use or dissemination of County information (whether intentionally or by inadvertence, negligence or omission and whether verbally, electronically, through paper transmission or otherwise) for any purpose other than that directly associated with its work under the Project or as authorized in the Contract Documents. The Contractor acknowledges that any unauthorized use, dissemination or disclosure of County Information is prohibited and may also constitute a violation of Virginia or federal laws, subjecting it or its employees to civil and/or criminal penalties.

Contractor agrees that it will not divulge or otherwise facilitate the disclosure, dissemination or access to or by any unauthorized person, for any purpose, of any Information obtained directly, or indirectly, as a result of its work on the Project. The Contractor shall coordinate closely with the County Project Officer to ensure that its authorization to its employees or approved subcontractors is appropriate and tightly controlled and that such person/s also maintain the security and privacy of County Information and the integrity of County-networked resources.

Contractor agrees to take strict security measures to ensure that County Information is kept secure; is properly stored in accordance with industry best practices, and if stored is encrypted; and is otherwise protected from retrieval or access by unauthorized persons or for unauthorized purposes. Any device or media on which County Information is stored, even temporarily, will have strict encryption, security, and access control. Any County Information that is accessible will not leave Contractor's work site or the

County’s physical facility, if the Contractor is working onsite, without written authorization of the County Project Officer. If remote access or other media storage is authorized, the Contractor is responsible for the security of such storage device or paper files.

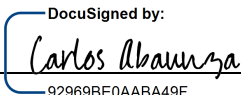
Contractor will ensure that any laptops, PDAs, netbooks, tablets, thumb drives or other media storage devices, as approved by the County and connected to the County network, are secure and free of all computer viruses, and running the latest version of an industry-standard virus protection program. The Contractor will ensure that all user accounts and passwords used by its employees or subcontractors are robust, protected and not shared. The Contractor will not download any County Information except as agreed to by the parties and then only onto a County-approved device. The Contractor understands that downloading onto a personally owned device or service, such as personal e-mail, Dropbox, etc., is prohibited.

Contractor agrees that it will notify the County Project Officer within seventy-two (72) hours upon discovery or becoming aware or suspicious of any unauthorized disclosure of County Information, security breach, hacking or other breach of this agreement, the County’s or Contractor’s security policies, or any other breach of Project protocols concerning data security or County Information. The Contractor will fully cooperate with the County to regain possession of any Information and to prevent its further disclosure, use or dissemination. The Contractor also agrees to promptly notify others of a suspected or actual breach if requested.

The Contractor agrees that all duties and obligations enumerated in this Agreement also extend to its employees, agents or subcontractors who are given access to County information. Breach of any of the above conditions by Contractor’s employees, agents or subcontractors shall be treated as a breach by the Contractor. The Contractor agrees that it shall take all reasonable measures to ensure that its employees, agents and subcontractors are aware of and abide by the terms and conditions of this agreement and related data security provisions in the Main Agreement.

It is the intent of this *Non-Disclosure and Data Security Agreement* to ensure that the Contractor has the highest level of administrative safeguards, information security, disaster recovery and other best practices in place to ensure confidentiality, protection, privacy and security of County information and County-networked resources and to ensure compliance with all applicable local, state and federal laws or regulatory requirements. Therefore, to the extent that this *Non-Disclosure and Data Security Agreement* conflicts with the Main Agreement or with any applicable local, state, or federal law, regulation or provision, the more stringent requirement, law, regulation or provision controls.

At the conclusion of the Project, the Contractor agrees to return all County Information to the County Project Officer. These obligations remain in full force and effect throughout the Project and shall survive any termination of the Main Agreement.

Authorized Signature:  _____
92969BE0AABA49F...

Printed Name and Title: Carlos Abaunza Director of Legal _____

Date: 12/15/2022 _____

EXHIBIT B
MASTER LICENSE AND SERVICES AGREEMENT

1. **INTRODUCTION.** Under this Master License and Services Agreement (“MSA”), the Contractor will provide the County with access (over the internet) to its proprietary multi-user software and system developed, maintained and owned by the Contractor for use by the County including, without limitation, the architecture, databases, infrastructure, software, basic software support, technology and web services deployed by the Contractor .
2. **DEFINITIONS** The following terms (used in this MSA) will have the meanings specified below:
- 2.1 **“Acceptable Use Policy”** means the policy that governs the Customer’s use of the SaaS Services and is incorporated in to this MSA as Exhibit 2.
- 2.2 **“Affiliate”** means the parent company of e-Builder, Trimble Inc., and other sister companies of e-Builder that are owned by Trimble Inc.
- 2.3 **“Annual Software Subscription”** means: the total Annual Software Subscription delineated in the Order Form and any follow-on amendments to the Order Form.
- 2.4 **“Confidential Information”** means: (i) any non-public information of a Party or an Affiliate; (ii) all information relating to the Contractor Offerings, as well as the Contractor’s current or planned products and services, technology, techniques, know-hows, research, engineering, designs, finances, accounts, procurement requirements, manufacturing, customer lists, business forecasts and marketing plans; (iii) County information received by the Contractor; (iv) other information of a Party or an Affiliate that is disclosed in writing and is conspicuously designated or disclosed orally as “Confidential” at the time of disclosure; and (v) the terms and conditions of this MSA. Notwithstanding the foregoing, Confidential Information shall not include information that: (i) is or becomes generally known or available by publication, commercial use or otherwise through no fault of the receiving Party; (ii) was in the receiving party’s possession at the time of disclosure without violation of any confidentiality restriction and without any restriction on the receiving Party’s further use or disclosure; or (iii) is independently developed by the receiving Party without use of the disclosing Party’s Confidential Information. For purposes of clarity, Confidential Information shall mean information in any median including hard copy, electronically stored or stored in any other means or manner
- 2.5 **“Contractor Offerings” or “e-Builder offerings”** means the products and services provided by Contractor to County as defined in the Usage, Ownership Section below and shall include, without limitation, any software or hardware configurations created by e-Builder for Customer.
- 2.6 **“Materials”** means all manuals, specifications, instructions, training documents and content provided by e-Builder in connection with the e-Builder Offerings, whether in written form or on a URL.
- 2.7 **“Order Form”** means a form in which the specific services obtained from the Contractor will be identified, as well as the pricing thereof. The Order Form is part of this MSA and is annexed as **Exhibit 1**. The Contractor will provide the e-Builder Offerings as described in an Order Form for the prices set forth therein.
- 2.8 **“Professional Services”** means services provided by the Contractor as defined in an Order Form and as mutually agreed to by the Contractor and the County for, among other things, consulting services, technical assessment, system configuration, system setup, data conversion, data migration, interface development, user training and applicable travel-related expenses.
- 2.9 **“Purchase Order”** means a document sent from the County to the Contractor indicating that the investment summary in Exhibit 1 is fully funded.
- 2.10 **“SaaS Service(s)”** means software-as-a-service, consisting of the Contractor’s proprietary multi-user system developed, maintained and owned by the Contractor for use by customers including, without limitation, the architecture, databases, infrastructure, software, basic software support, technology and web services deployed by e-Builder.
3. **Term.**
- 3.1 **Intentionally Omitted.**
- 3.2 **Return of Data.** After termination of this MSA and upon the request of the County, the Contractor shall export on a one-time basis all County data in the e-Builder database format, along with all County files uploaded to the County’s document libraries.. Such export will occur upon the execution of an amendment to the Parties’ Agreement and may involve additional fees. Any Return of Data request by County issued under this section must be submitted to Contractor within ninety (90) days of the termination or expiration of the Contract. Contractor shall not be liable for any data loss resulting from the County’s failure to issue a request within that timeframe.
4. **SUSPENSION; FEE CHANGES**
- 4.1 **Pro-Rated Purchases:** If Customer increases its usage of one or more of the e-Builder Offerings (including software licenses) during the term of the Parties’ agreement, the increased usage fees shall be pro-rated for the remainder of the then current term

EXHIBIT B
MASTER LICENSE AND SERVICES AGREEMENT

4.2 **Taxes.** All payments for the e-Builder Offerings are exclusive of Federal, state, local and foreign taxes, levies and assessments. Each Party shall be responsible for its own taxes (whether Federal, state or local), together with all governmental filings related thereto, which arise out of the e-Builder Offerings rendered hereunder. If the customer is a tax-free entity, it must provide a tax exemption certificate to e-Builder upon the signing of the MSA. Unless the customer is a tax-free entity, Customer shall be responsible for any sales and use taxes.

4.3 **Suspension of Service.** The Contractor may suspend access to the e-Builder Offerings if the County fails to timely remit payment or is otherwise in material default hereunder. Any notices of default/termination and suspension may be combined.

4.4 **County Delays.** Due to the firm fixed price nature of the e-Builder Offerings, any material failure to perform, or any material delays caused by the County, in permitting or assisting the Contractor in the configuration or implementation of the Professional Services, shall be deemed to be a material breach of this MSA by the County.

4.5 **No Pricing Options:** The Contractor cannot provide pricing commitments for e-Builder Offerings that the County may acquire in the future. Notwithstanding, if the County determines to acquire additional e-Builder Offerings, the Contractor will attempt to provide the County with favorable pricing based on its usage, purchasing history, purchasing needs and other factors. Notwithstanding, this Paragraph does not prohibit the Parties from agreeing on phased purchases or acquisitions of e-Builder Offerings for which there is an initial purchase by the County of an e-Builder Offering.

5. SYSTEM ACCESS AND USE; SUPPORT; UPDATES

5.1 **License of Software.** The County's use of the e-Builder Offerings includes a limited license to e-Builder software, subject to the restrictions contained herein. The County acknowledges that title to and copyright in the software applications supplied by the Contractor (including but not limited to the e-Builder Enterprise™, e-Builder mobile applications, and other e-Builder add on software) are reserved by the Contractor. The County acquires no right in any software, copyrights, patents or any other intellectual property belonging to or licensed by the Contractor, other than the limited rights to use the e-Builder Offerings. The Contractor is and shall remain the sole owner of all copyrights, trademarks, patents and other proprietary rights in and to all aspects of the SaaS Services (including, without limitation, all software, code, business process and designs used in providing the SaaS Services). The County acknowledges that the e-Builder software may be modified or upgraded from time to time, and that the e-Builder Offerings shall include the most recent version thereof. The County's use of the SaaS Services is governed the Acceptable Use Policy found in Exhibit 2.

5.2 **Limited Rights.** The County's use of the e-Builder Offerings is provided on a limited, non-exclusive, non-transferable basis during the Term. Except as authorized by the Contractor in writing, the County will **NOT**: (i) access or use the e-Builder Offerings to provide any products or services to Third Parties; (ii) access or use the e-Builder Offerings, except through the terms hereof including only for the specific number of seats outlined in the Subscription Seat Model or the County's Average Annual Capital Spend used to determine the Unlimited Licenses for the Capital Spend Model; (iii) resell, sublicense, lease, encumber, copy, distribute, publish, exhibit, transmit, provide access to, or provide use of the e-Builder Offerings to any third party, nor use or allow them to be used in any public system, public electronic bulletin board (unless agreed by the Contractor), multiple computer or user arrangement or network that includes access by any third party; (iv) derive specifications from, reverse engineer, reverse compile, disassemble, translate, record or create derivative works based on the e-Builder Offerings; or (v) use the e-Builder Offerings, or any part or aspect thereof, for any unlawful purpose or to mislead or harass anyone. Use of or access to the e-Builder Offerings in violation of the terms hereof is strictly prohibited. Permission to access or use the e-Builder Offerings may be limited or suspended immediately if, in the Contractor's discretion, this Section has been violated. For purposes of this Paragraph, a "Third Party" shall not include the County's consultants, lawyers, accountants, and part-time or temporary workers.

6.3 **Support.** e-Builder maintains and staffs the e-Builder Support Center that provides 24x7 customer support. The County will also be assigned business and technical account managers within to ensure continued success.

6.4 **SaaS License Updates.** During the Term, e-Builder will provide the County with the latest new releases, updates, patches, fixes and changes to the e-Builder Enterprise™ software used to operate the SaaS Services at no additional charge. The updates referenced herein do not include any new or different products provided by e-Builder to its customer base for which additional fees apply.

6. CONFIDENTIAL INFORMATION

6.1 **General Confidentiality Terms.** The receiving party shall maintain Confidential Information of the disclosing party with at least the same degree of care it uses to protect its own proprietary information of a similar nature or sensitivity, but no less than reasonable care under the circumstances. The receiving party shall advise the other party in writing of any misappropriation or misuse of Confidential Information of the disclosing party of which the receiving party becomes aware.

6.2 **Use.** The receiving party shall not use Confidential Information of the disclosing party for any purpose other than in furtherance of this MSA and the activities described herein. The receiving party may disclose Confidential Information of the disclosing party only to those persons who have a need to know such Confidential Information (including Authorized Users to the extent necessary to enable them to use the Licensed Products as intended) and shall make commercially reasonable efforts to have such persons respect the confidentiality of the Confidential Information.

6.3 **Legal Obligations.** This MSA will not prevent the receiving party from disclosing Confidential Information of the disclosing party to the extent required by a judicial order or other legal obligation, provided that the receiving party promptly notifies the disclosing party before

eXHIBIT B
MASTER LICENSE AND SERVICES AGREEMENT

complying with the order or demand and cooperates with the disclosing party to contest or minimize the scope of the disclosure (including application for a protective order). Without limiting the generality of the foregoing, if the receiving party receives a demand for Confidential Information from a court, governmental authority, or accrediting agency, it shall give prompt written notice to the disclosing party and, to the extent possible, provide for the opportunity to seek an appropriate protective order.

7. CUSTOMER DATA AND MARKETING

7.1 **Aggregation of Data.** The Contractor collects data from clients and third parties in the course of delivering the SaaS Service (the “**Customer Data**”). The Contractor aggregates the Customer Data that it collects from clients (the “**Aggregated Data**”) to perform market analysis and to improve the SaaS Services (the “**Data Purpose**”). The County authorizes the Contractor to incorporate any Customer Data obtained in providing the SaaS Service to the County into the Aggregate Data, as long as the Customer Data and Aggregate Data are both in a de-identified and anonymized form, and provided further that: (i) no confidential information (including the identity of the County or its suppliers, customers or employees) will be disclosed by the Contractor or be otherwise used or processed by the Contractor in a manner that enables the identity of the County to be deduced or extracted; and (ii) the Customer Data shall be used exclusively for the incorporation into the Aggregate Data, which shall be used exclusively for the Data Purpose.

7.2 **Marketing.** The County acknowledges that the Contractor will market the e-Builder Offerings to other organizations digitally and in print. For the purpose of this clause only, Marketing Materials shall include, but are not limited to, signage at events, e-Builder’s website, and other written or digital medium. The Contractor may also request that the County participate in a joint press release or case study and will seek mutual, written authorization before issuing a press release or case study containing a description of the implementation or any success metrics.

8. CUSTOMER NON-SOLICITATION During the Term and for a period of two (2) years thereafter, Customer will not, directly or indirectly, employ, offer employment to, or otherwise retain the services of, any officers, agents, representatives or employees of e-Builder, without the prior written consent of the Chief Executive Officer of e-Builder.

9. USAGE, OWNERSHIP Except for the limited right to use the “e-Builder Offerings” subject to the terms and conditions contained herein, this MSA does not confer upon the County a license or interest in, or ownership of, the e-Builder Offerings. The e-Builder Offerings were developed exclusively at private expense by the Contractor. The County agrees that the e-Builder Offerings include, without limitation, enhancements, edits, improvements, additions, modifications and derivations thereto, and will remain the exclusive property of the Contractor. The Contractor will have the unrestricted and permanent right to use and implement all ideas, advice, recommendations or proposals of the County with respect to the e-Builder Offerings in any manner and in any media, which the Contractor shall own. Should the Contractor provide Professional Services to the County that result in the creation of derivative works from the e-Builder Offerings or any new technology, the Contractor shall own all right, title and interest therein, which the County hereby assigns to the Contractor. The County shall, if requested, assist the Contractor in affecting filings/registrations needed to protect its rights in any derivative works and new technology including, without limitation, assignment documentation, copyright or patent filings, and the like. For purposes of clarity, the Contractor shall own all software and hardware configurations, regardless of who builds them.

10. REPRESENTATIONS, WARRANTIES AND LIMITATIONS

10.1 **The Contractor’s Representations and Warranties.** The Contractor represents and warrants that the e-Builder Offerings will be provided in a professional manner in accordance with industry best practices by e-Builder employees or subcontractors that are qualified to provide such services.

10.2 **The County’s Representations and Warranties.** The County represents, warrants and covenants the following to e-Builder, that: (i) it currently possesses all necessary licenses, permits, insurance and approvals required to execute, deliver and perform its duties under this MSA, and is qualified to do business in all jurisdictions where such qualification is required for the County’s performance of its duties under this MSA; (ii) to the best of its knowledge and ability, the County will comply with, and will use its best efforts to cause each employee or subcontractor it may engage to comply with all applicable federal and state laws and regulations in performing its and their respective responsibilities under this MSA and any subcontracts; and (iii) no information provided to the Contractor or disseminated through its software or systems shall infringe on or violate any trademark, copyright, trade secret, right of publicity or privacy (including but not limited to defamation), patent or other proprietary right of any third party.

10.3 **Contractor Disclaimers.** THE CONTRACTOR DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM ITS NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT THE COUNTY’S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH THE CONTRACTOR WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, E-BUILDER CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, E-BUILDER DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS. EXCEPT FOR THE WARRANTIES SPECIFICALLY AND EXPRESSLY MADE HEREIN, E-BUILDER MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR WARRANTIES OF FITNESS, AND ALL SUCH WARRANTIES ARE DISCLAIMED.

10.4 **Roadmap Disclaimer.** COUNTY AGREES THAT ITS PURCHASES ARE NOT CONTINGENT ON THE DELIVERY OF ANY FUTURE FUNCTIONALITY OR FEATURES, OR DEPENDENT ON ANY ORAL OR WRITTEN PUBLIC COMMENTS MADE BY E-BUILDER REGARDING FUTURE FUNCTIONALITY OR FEATURES.

eXHIBIT B
MASTER LICENSE AND SERVICES AGREEMENT

10.5 **Limitation of Liability.** EXCEPT FOR CLAIMS THAT THE CONTRACTOR OFFERINGS INFRINGE ANY COPYRIGHT, PATENT OR OTHER INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, FOR ANY ONE OR MORE BREACHES OF THIS AGREEMENT OR DEFAULTS HEREUNDER, THE ENTIRE AGGREGATE LIABILITY OF THE PARTY IN BREACH OR DEFAULT, AND THE EXCLUSIVE REMEDY OF THE OTHER PARTY, SHALL BE PAYMENT OF THE ACTUAL DAMAGES PROXIMATELY CAUSED BY SUCH BREACH OR DEFAULT, WHICH SHALL NOT EXCEED THE AMOUNT OF TWELVE (12) MONTHS ANNUAL SOFTWARE SUBSCRIPTION FEES PAID BY CUSTOMER FOR THE PRODUCT OR SERVICE GIVING RISE TO THE CLAIM. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, LOSSES, OR EXPENSES INCLUDING, WITHOUT LIMITATION, LOST PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS OR ANY OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND ARISING OUT OF OR RELATED TO THIS MSA. THESE LIMITATIONS ON THE LIABILITY OF EITHER PARTY SHALL APPLY TO ANY AND ALL CAUSES OF ACTION THAT EITHER PARTY MAY HAVE AGAINST THE OTHER, IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION UNDERLYING A CLAIM, DEMAND OR ACTION, INCLUDING, WITHOUT LIMITATION, WHETHER IT SOUNDS IN CONTRACT OR TORT.

11. **FORCE MAJEURE** No failure, delay or default in performance of any obligation under this MSA will constitute a breach hereof if it is caused by strike, fire, shortage of materials, act of a public authority, unavoidable casualty, civil disorder, riot, insurrection, vandalism, war, severe weather, natural disaster or other act of God, failure of the Internet, failure or error of an Internet services provider or other provider of connectivity, any lines of transmission, any other third party equipment or software through which Internet transmissions occur, or any telecommunications carrier; hacking or electronic vandalism; terrorism; or other cause that is beyond the reasonable control of the Party otherwise chargeable, for so long as such cause continues and for a reasonable period of time thereafter.

12. **FORUM, CHOICE OF LAW, NO JURY TRIAL** The e-Builder Offerings are offered, sold and provided from and within the State of Florida. Accordingly, this MSA will be governed by the laws of the State of Florida, without regard to conflicts of laws. Venue for all litigated matters shall be the United States District Court for the Southern District of Florida or the state courts of the State of Florida located in Broward County, Florida. The Parties expressly waive and forego any right to a trial by jury.

13. **AUDIT RIGHTS** e-Builder will have the right, during normal business hours and upon at least five (5) days' prior written notice, to have an independent firm audit the number of authorized users that the Customer has compared to the licenses contracted or in a construction capital spend model the amount of Annual Capital Spend that the customer has incurred. The audit will be conducted at e-Builder's expense, unless it reveals that Customer has not complied in which case Customer will (i) reimburse e-Builder for all reasonable costs and expenses incurred by e-Builder regarding such audit; and (ii) pay e-Builder any annual license fee underpayment disclosed by the audit.

14. **NO JOINT VENTURE OR PARTNERSHIP.** Nothing contained herein will be construed to create a joint venture, partnership or like relationship between the Parties, and their relationship is and will remain that of independent Parties to a contractual service relationship. Except as otherwise provided herein, in no event will either Party be liable for the debts or obligations of the other Party. e-Builder employees are not employees of the Customer.

**EXHIBIT B
MASTER LICENSE AND SERVICES AGREEMENT**

**Exhibit 1
e-Builder Order Form
Arlington County, Virginia
May 1, 2022**

THIS ORDER FORM (the "Order Form"), is between e-Builder, Inc. ("e-Builder") and the Arlington County, VA ("County"). This Order Form incorporates by reference the terms and conditions of the Agreement dated 12/16/2022, between e-Builder and the County. In the event of an inconsistency between the terms of this Order Form and the Agreement, the terms of the Agreement shall control.

The Initial Term of this Order Form (and Annual Software Subscription) shall commence on May 1, 2022 and shall expire on April 30, 2024.

EXHIBIT B
MASTER LICENSE AND SERVICES AGREEMENT

Investment Summary

The following details the investment summary for the **Annual Software Subscription**

Annual Software Subscription – Year 1

Annual Item	Scope Variable	Annual Price
Number of Users	Unlimited	\$185,265.48
Total Annual Software Subscription – Year 1		\$185,265.48

Total e-Builder Enterprise Investment – Initial Term

Item	Price
Total Year 1 Investment 5/1/2022 – 4/30/2023	\$185,265.48
Total Year 2 Investment 5/1/2023 – 4/30/2024	\$243,000.00
Total Year 3 Investment 5/1/2024 – 4/30/2025*	\$255,150.00
Total Year 4 Investment 5/1/2025 – 4/30/2026*	\$267,907.50
Total Year 5 Investment 5/1/2026 – 4/30/2027*	\$281,302.88
Total Initial Contract Term Investment	\$428,265.48

*Years 3-5 are optional years

Annual Subscription Includes

- Unlimited Projects
- Unlimited Document Storage
- 24x7 Technical Support
- Quarterly Enhancement/Upgrades
- Maintenance Releases
- Custom Development Maintenance related to General Invoice Import

Unlimited User License

The proposed annual subscription fees for unlimited e-Builder Enterprise Users are based on the Year 1 \$150,000,000.00 estimated Average Annual Capital Spend and up to \$300,000,000.00 in Year 2. e-Builder reserves the right to adjust the fee accordingly to align with the County's actual Average Annual Capital Spend.

EXHIBIT B MASTER LICENSE AND SERVICES AGREEMENT

Exhibit 2

Acceptable Use Policy.

1. **SCOPE.** This Acceptable Use Policy ("AUP") is incorporated into and forms a part of the MSA between the County and e-Builder, and governs the County's and each of the County's user's use of the SaaS Service. The terms "you" and "your" refer to the County or the County's User who is accessing and using the SaaS Service. The purpose of this AUP is to delineate the type of actions and content that are contrary to e-Builder's mission and philosophies as well as to ensure that your use of the SaaS Service is in compliance with these standards and applicable laws and regulations. Any capitalized terms that are not defined in this AUP are defined in the applicable MSA.
2. **USER CONDUCT.** This AUP is intended to protect the SaaS Service, employees, officers, agents, and customers of e-Builder, and any users of the SaaS Service, from improper, inappropriate, abusive, or illegal activity. The prohibited uses described in Section 3 below are intended as general guidelines regarding improper and inappropriate conduct and should not be interpreted as an exhaustive list.
3. **PROHIBITED USES.**
 - a. You may not use the SaaS Service for any transmission, distribution, retrieval, or storage of any data or other material in violation of any applicable laws or regulations. This prohibition includes, without limitation, material or data protected by copyright, trademark, trade secret, or other intellectual property or privacy right that is used without proper authorization, and material that is obscene, defamatory, or otherwise harmful or threatening, or violates export control laws. You may not use the SaaS Service to violate any system or network security, which may result in criminal or civil liability.
 - b. You may not engage, without limitation, in the following activities:
 - i. Gaining unauthorized access to, or attempting to compromise the normal functioning, operation, or security of, any network, system, computing facility, equipment, data, or information;
 - ii. Engaging in any activity or behavior that may interfere with the ability of others to access or use the SaaS Service, or that is likely to result in retaliation against the SaaS Service, other users or customers of e-Builder, or e-Builder's employees, officers, or other agents, including, without limitation, anything that results in any server being the target of a denial of service attack;
 - iii. Monitoring any data, information, or communications on any network or system not owned by the County without authorization, or attempting to intercept, redirect, or otherwise interfere with communications intended for others;
 - iv. Gaining or attempting to gain unauthorized access to accounts, passwords, devices, or networks without permission, or purposely altering or forging anyone's identity to gain such access, or concealing, forging, or otherwise falsifying identities in connection with any use of the SaaS Service;
 - v. Transmitting any advertising, promotional materials, contests, surveys, or any other form of solicitation or mass messaging, whether commercial in nature or not;
 - vi. Licensing, sublicensing, selling, renting, or otherwise commercially exploiting the SaaS Service to any third party, other than authorized users, in furtherance of the applicable Customer's internal business purposes as expressly permitted by the Agreement;
 - vii. Transmitting files or messages containing computer viruses or propagating worms, Trojan horses, or "spyware" programs; or
 - viii. Load testing, probing, scanning, penetration, or vulnerability testing of the SaaS Service.
4. **COUNTY RESPONSIBILITIES.** The County is responsible for the activities of its users and will ensure that its users abide by this AUP. Complaints about the County's users will be forwarded to the County's administrator for action, consistent with applicable law. If suspected violations of this AUP occur, e-Builder reserves the right to suspend the SaaS Service, block access to any SaaS Service, or take other action as e-Builder deems appropriate.
5. **COOPERATION WITH INVESTIGATIONS.** e-Builder will cooperate with appropriate law enforcement and other governmental agencies and other parties involved in investigating claims of illegal or inappropriate activity. This cooperation may include disclosing appropriate County information when required by law. e-Builder shall have no liability to you or any third party for any actions taken in connection with such cooperation. You must reasonably assist e-Builder in these matters when requested.
6. **NOTIFICATION OF VIOLATION.** If you become aware of any violation of this AUP by any person, including Users or third parties, you must immediately notify e-Builder via email at Support@e-Builder.net, or, if applicable, through the County's designated account manager.