RESOLUTION NO. 2020-136

AUTHORIZING SHARED SERVICES AGREEMENT WITH THE COUNTY OF MONMOUTH TO PROVIDE COMMUNITY RATING SYSTEM PROJECT MANAGEMENT SOFTWARE

WHEREAS, Aberdeen Township desires to enter into a shared services agreement for Community Rating System Project Management Software; and

WHEREAS, the County of Monmouth has submitted an agreement for aforementioned service for a term of three (3) years; and

WHEREAS, Aberdeen Township and the County of Monmouth are authorized to enter into the Agreement, pursuant to the provisions of the Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-1 et seq.

NOW, THEREFORE, BE IT RESOLVED that the Township Council of the Township of Aberdeen hereby approves entering into a shared services agreement with the County of Monmouth to provide Community Rating System Project Management Software.

BE IT FURTHER RESOLVED that the Mayor and Township Clerk are hereby authorized and directed to take any and all steps necessary to effectuate the foregoing, including execution of the attached shared services agreement.

SHARED SERVICE AGREEMENT
FOR THE COUNTY OF MONMOUTH TO PROVIDE COMMUNITY RATING SYSTEM PROJECT MANAGEMENT SOFTWARE

THIS SHARED SERVICE AGREEMENT (the "Agreement") is made this ____ day of _____, 20____ by and between the COUNTY OF MONMOUTH, a body politic of the state of New Jersey, having its principal offices located at the Hall of Records, 1 E. Main Street, Freehold, New Jersey 07728 and <u>NAME OF MUNICIPALITY</u>, in the County of Monmouth, a municipal corporation of the State of New Jersey, (referred to as the "Sublicensee"). The Count and the Local Government Entity enter into this agreement pursuant to the New Jersey Uniform Shared Services and Consolidation Act (C.40A:565-1, et seq.)

        WHEREAS, The Community Rating System (CRS) Project Management Software, including its related software products, services and websites (collectively referred to as "CRS Software") provides for a municipal platform, elevation certificate storage and file management, and a CRS resident platform; and

        WHEREAS, CRS Software is owned by its developer, namely Forerunner; and

        WHEREAS, Monmouth has obtained a limited license from Forerunner for use of CRS Software; and

        WHEREAS, Under the terms of its license, Monmouth may operate a CRS Software web-based system for itself and may also sublicense the use of the system for use by other contracting units in Monmouth County, New Jersey.

        NOW, THEREFORE, in consideration of the above and the provisions set forth hereinafter, it is mutually agreed as follows:

IT IS AGREED:

1. Grant of Sublicense. Monmouth hereby grants the Sublicensee a sublicense to use CRS Software through Monmouth's web-based system, under the terms of this Agreement.

2. Costs. The Sublicensee shall pay to Monmouth:

    (a) The total cost for each participating municipality for a 3-year term $13,500.00*, computed as follows:

- $12,300.00 to Forerunner for Software Development and/or Procurement and Installation
- $850.00 for Training & Development
- $350.00 for Maintenance & Updates

(b) The County contribution through the NJDCA LEAP Challenge Grant shall be $7,353.00 (55.5%), requiring a municipal cost share of $6,147.00 (44.5%).

(c) The County will pay 100% of the program cost for each participating municipality ($13,500) to Forerunner; each participating municipality will pay 100% of their cost share (up to $6,147.00) to Monmouth County.

(d) *If it is determined CRS Software is eligible and approved for CARES Act funding, total municipal cost share for this program may be adjusted resulting in either a lower cost share or no cost to the municipality.

(e) Enhanced-release costs of additional releases and any other future add-ons, as mutually agreed upon by the parties.

(f) Annual maintenance costs for additional releases and any other future add-ons, as mutually agreed upon by the parties.

(g) In the event Monmouth fails to receive funding from other sources such as New Jersey LEAP Grant program, annual payments remain the sole responsibility of the Sublicensee.

3. **Other Costs.**

(a) The Sublicensee will retain Forerunner directly to perform any customization, data conversion or future additional training and implementation services required by the Sublicensee.

(b) The Sublicensee will also provide the necessary personal computer(s), scanner(s), printer(s) and internet connection for the proper operation of CRS Software. For current operating requirements, see Exhibit "A" attached.

4. **Maintenance and Support.**

(a) Monmouth intends to maintain an ongoing agreement with Forerunner for Basic Maintenance and Support Services. In the event of any major changes in the

maintenance and support arrangements with Forerunner, all Sublicensees in good standing under this Agreement will receive prior and timely notification of such changes.

(b) Whenever new major releases of the software are planned, all Sublicensees in good standing under this Agreement will receive notification of the new release and be afforded a reasonable time for acceptance testing prior to the deployment of the release(s).

(c) Prior to the general use of CRS Software by Sublicensee, both parties will put in place a mutually agreed process for Technical Problem Notification and follow-up. Bug Reports of known problems which could potentially impact the sublicenses issued by Forerunner will be disseminated by Monmouth, with projected completion dates for bug fixes, if available.

(d) The parties and Forerunner will also put in place a mutually agreed process for (a) User Acceptance Testing of problem fixes; (b) Notification to Sublicensees of planned system outages; (c) Training of Sublicensee's users and (d) the availability of appropriate user documentation for CRS Software.

5. Copyright & Trademark Acknowledgement.

(a) CRS Software is the exclusive property of Forerunner. Forerunner owns the title, copyright, and other intellectual property rights in CRS Software. CRS Software is licensed, not sold. CRS Software is protected by copyright and other intellectual property laws and treaties. Except for those rights expressly granted by Forerunner, Forerunner retains all proprietary rights to CRS Software.

(b) CRS Software may not be reproduced, exploited, modified, transmitted, licensed or distributed without the prior written consent of Forerunner. The licensee, Sublicensees and other users shall not disassemble; decompile, or reverse engineer CRS Software.

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All rights reserved.

6. Ownership of Images, Metadata, and Database Information.

(a) Sublicensee is solely responsible for the selection of indexing templates and the entry of indexing utilized in the retrieval of images and other content.

(b) All images, associated metadata and database information of the Sublicensee remain the sole property of the Sublicensee. Monmouth may not make any portion of this information deposited in the repository available to the public without the prior written consent of the Sublicensee.

7. Term of Agreement.

This Agreement shall be effective through (December 31, 2023), unless sooner terminated or extended.

8. Termination of Agreement.

(a) Either party has the right to terminate this Agreement upon ninety (90) days written notice to the other party. In addition, Monmouth may terminate this Agreement, upon thirty (30) days notice, if the Sublicensee fails to make timely payment(s) required under this Agreement.

(b) If the underlying agreement between Monmouth and Forerunner is terminated for any reason, Monmouth shall promptly notify all Sublicensees of such termination and the effective termination date, whereupon this Agreement shall terminate.

(c) If the agreement between Monmouth and the Sublicensee is terminated for any reason, upon the written request of the Sublicensee, Monmouth shall, within sixty (60) days from the effective termination date, provide the Sublicensee with a copy of all images and metadata stored within the County's CRS Software system for the Sublicensee ("Sublicensee's data"). At Monmouth's discretion, delivery may be on any standard media including, but not limited to CD, DVD or removable HDD. Upon delivery, Monmouth shall retain no custodial right or duty with regard to the Sublicensee's data.

9. Dispute Resolution.

(a) The parties will attempt to resolve any dispute(s) between them, in good faith, through non-binding mediation. Either party may demand such mediation by written notice to the other party. The written notice shall contain at least (a) a brief statement of the nature of the dispute, and (b) the name, address and phone number of that party's designated representative for purposes of mediation. The other party shall designate its representative for mediation in writing no later than five (5) business days after receipt of the demand for mediation. The respective designees shall thereupon, and promptly, with due regard for the need for timely action, choose a mediator. If the parties cannot agree on a mediator, or if they prefer, they shall choose a reputable mediation firm. Any mediation firm so chosen shall present a list of at least five proposed mediators to the parties and shall provide the parties with a summary of each person's qualifications to serve as the mediator. Each party shall rank the proposed mediators in order of preference. The fifth and any lower ranked persons on each list will be excluded from further consideration. The chosen mediator shall be the remaining person who is the combined highest ranking mediator on both preference lists, after deleting all excluded persons. In the event of a tie, the mediator shall be chosen by lot. The parties will not be bound by the Rules of Evidence in presenting their positions before the mediator. Each party will bear its own costs of participation in mediation and they will divide the costs of the mediator equally. If, after a good faith effort to resolve the dispute through mediation, the dispute is not resolved, either party may terminate the mediation by written notice to the mediator and to the other party, whereupon either party may submit the dispute to the Superior Court of New Jersey, Monmouth County, for adjudication, which Court shall have exclusive original jurisdiction over the dispute.

(b) Monmouth agrees to continue providing the Sublicensee access to the CRS Software and all data during the pendency of a dispute.

11. Limitation of Liability/Indemnification.

(a) Monmouth makes no warranties, either express or implied under this Agreement. Monmouth shall not be liable to the Sublicensee for damages of any kind arising from Monmouth's non-performance or flawed performance under this Agreement.

(b) The Sublicensee shall defend, indemnify and hold harmless Monmouth, its officers, agents and employees from and against any and losses, costs, damages, claims, suits and/or liabilities (including counsel fees and cost of suit), to which Monmouth may be subject by reason of any actions or inactions by the Sublicensee, its officers, agents and employees.

12. Terms of Use and Notices.

In order to access Monmouth's CRS Software, the Sublicensee and its external authorized users must agree to the Terms of Use posted thereon, a copy of which is attached hereto, as Exhibit "B". By executing this Agreement, the Sublicensee agrees to the terms of Exhibit B.

13. Support Process.

The CRS Software Support Process attached hereto as Exhibit "C" is incorporated herein.

14. Changes.

The terms and conditions of this Agreement may not be amended, waived or modified, except in a writing signed by the parties.

15. Force Majeure.

A party shall not be liable for any failure of or delay in the performance of this Agreement for the period of time that such failure or delay is (a) beyond the reasonable control of a party, including, without limitation, acts of God, terrorist acts, shortage of supply, breakdowns or malfunctions, interruptions or malfunctions of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, war, or civil unrest, and (b) materially affects the performance of any of its obligations under this agreement, and (c) could not reasonably have been foreseen or provided

against. The affected party shall provide the other with prompt notice as soon as practicable in the event that any such delay or failure in performance occurs and keep the other party apprised of developments and mitigation effort with respect thereto.

16. Choice of Law.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of New Jersey.

17. Filing of Agreement.

Monmouth's Clerk of the Board shall file a fully executed copy of this Agreement with the Division of Local Government Services, New Jersey Department of Community Affairs in accordance with N.J.S.A. 40A:65-4(b).

18. Authority to Execute Agreement.

Each party to this Agreement represents to the other party that its governing body has taken the necessary action to authorize the execution of this Agreement.

19. Counterparts.

This Agreement may be fully executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one agreement binding upon all parties, notwithstanding that all parties have not signed the same counterpart. Such executions may be transmitted to the parties electronically or by facsimile, and such electronic or facsimile execution shall have the same force and effect as an original signature.

20. Notices.

Any notices that are provided pursuant to this Agreement shall be in writing (including facsimile and electronic transmissions) and mailed or transmitted or delivered as follows:

To Monmouth:

      County of Monmouth
      1 East Main Street
      Freehold, NJ 07728
      Attn: Elizabeth Perez, Shared Services Coordinator
      Email: elizabeth.perez@co.monmouth.nj.us
      Fax:

To the Sublicensee:

_____

_____

_____

_____

_____

_____

Or to such other address or individual as any party may from time to time notify the other.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST: **COUNTY OF MONMOUTH**

                                                          By:_____

_____

Clerk of the Board   **Freeholder Director**

                                                          Date: _____

ATTEST:

_____   By: _____

                                                          Title:

                                                          Date: _____