

## AGREEMENT FOR THE PROVISION OF CODE3 STRATEGIST SOFTWARE AND ASSOCIATED SERVICES

### Parties and Scope

This Agreement is made as of 5-28-19 by between and East Pierce Fire and Rescue, a Washington entity (hereinafter "Agency"), and Levrum, Inc. (hereinafter "Supplier"), an Oregon corporation with principal offices at Corvallis, Oregon. Agency and Supplier are collectively termed "Parties."

The scope and intent this Agreement is that Agency shall buy and Supplier shall provide software for strategic planning of fire/EMS operations and the services necessary to support this software. Purchase and provision of said software and services shall be subject to all terms of this Agreement and all attachments thereto, which shall be incorporated by reference into this Agreement.

Both Parties hereto are authorized in their respective jurisdictions to enter into this Agreement.

### Goods and Services

Supplier shall furnish Agency with the following:

1. All digital materials necessary to operate the Code3 Strategist software, version 2.9.1 or later;
2. A perpetual, enterprise license to operate the Code3 Strategist software, such that any person authorized by Agency may operate the software for any legitimate purpose related to the Agency's own operations. Such license shall be subject to the terms set forth in EXHIBIT A attached to and incorporated by reference into this Agreement;
3. All end-user documentation included in the Code3 Strategist product;
4. 24 hours of training in the operation of the Code3 Strategist software as further specified in the "Fees and Payment Schedules" section of this Agreement and EXHIBIT C attached to and incorporated into this Agreement.
5. Maintenance and support as enumerated in EXHIBIT B attached to and incorporated into this Agreement, for one year from the execution of this Agreement ("Initial Support Period"), as a direct consequence and obligation of this Agreement.

6. Maintenance and support as enumerated in EXHIBIT B attached to and incorporated into this Agreement, for additional periods of one year beginning upon the expiration of the Initial Support Term, if and as mutually agreed by the Parties, according to the "Fees and Payment Schedules" section of this agreement.
7. Such additional professional services as Agency may require and Supplier may be able to provide, from time to time, by prior mutual agreement of the Parties. Such services may include, without limitation: data transformation, custom software development, deployment analysis and optimization, software interfaces, future event modeling and engineering consultation. Such services shall be undertaken by Supplier only upon request by an authorized official of Agency. Prices for such services are set forth in the "Fees and Payment Schedules" section of this agreement.

Agency shall furnish to Supplier the following deliverables:

1. Incident history data, or access to electronic sources of such data, as enumerated in EXHIBIT D attached and incorporated into this Agreement, not less than 12 months' worth.
2. Guidance and direction for creation of a base model of Agency's current operations, including without limitation, station locations, apparatus and staffing complement and scheduling, incident codes and classifications, dispatch rules and jurisdiction-specific domain knowledge.

### **Group Purchase**

It is the intent of the Parties that Agency shall complete the purchase covered by this Agreement simultaneously and cooperatively ("Group Purchase") with two neighboring fire/EMS agencies:

- Pierce County Fire District #21, also known as Graham Fire Department
- Pierce County Fire District #5, d/b/a Gig Harbor Fire and Rescue.

The objective of the Group Purchase is that (a) the three agencies shall share a common software license, enabling them to perform joint planning operations and (b) all three agencies shall enjoy price discounts.

The Group Purchase shall be effective if and only if the following conditions are met:

- All parties to the Group Purchase execute Agreements materially identical to this Agreement within 30 days of one another;
- All parties to the Group Purchase receive delivery of the goods, services and training governed by this agreement simultaneously; and

- The effective periods of all Agreements under the Group Purchase shall be the same, specifically including the Initial Support Periods of all such Agreements.
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#### **Fees and Payment Schedules**

The table below shows annual incident volume limits, software and support pricing effective for individual purchase by Agency, or for Group Purchase with one or both other agencies contemplating Group Purchase. Group Purchase prices shall apply if the Group Purchase conditions enumerated in the preceding section are met. In the event that one or more agency/agencies shall choose not to purchase continuing maintenance and support after the conclusion of the Initial Support Period, the remaining agencies party to Group Purchase shall pay the correspondingly higher rates for continuing maintenance and support at subsequent annual renewals. In the event that additional agencies join the Group Purchase subsequent to its initial institution, Supplier shall afford all parties to the Group Purchase discounts according to its then-current pricing table, but in no case shall maintenance and support pricing for existing parties to the Group Purchase exceed the provisions of this Agreement.

<b>Item:</b>	<b>Agency Individual Purchase</b>	<b>Group Purchase + Gig Harbor</b>	<b>Group Purchase + Gig Harbor + Graham</b>
Annual incident volume limit (group)	11,000	18,000	25,000
Code3 Strategist Software Initial Purchase Price	\$17,500.00	\$16,700.00	\$15,400.00
Annual maintenance and support (subsequent Support Periods)	\$5,250.00	\$4,950.00	\$4,620.00

Training for up to six trainees is included in the Initial Purchase Price. Training in excess of six trainees will incur charges of \$2,700.00 per each additional six trainees or fraction thereof. Training prices assume training is delivered at Supplier's place of business. Supplier may provide training to Agency at Agency's place of business or another mutually agreeable location, provided that Agency shall promptly reimburse Supplier for Supplier's direct expense of training, without markup, upon presentation of appropriate documentation of such expenses. Such expenses shall be limited to reasonable and necessary expenses of travel, food, lodging and incidentals directly related to provision of training, and shall in no

case exceed the IRS *per diem* guidelines applicable to the location of the training.

Agency shall be responsible for any sales, service, use, value-added or similar taxes levied as a result of work performed under this Statement. If required, Supplier may pay such taxes and be reimbursed by Agency upon presentation of appropriate documentation of the payment of such taxes.

Supplier shall be entitled to invoice Agency for one third of the Initial Purchase Price upon execution of this Agreement; one third upon completion of training; and one third 15 days subsequent to the completion of training, which shall constitute final acceptance of the goods and services covered by this agreement.

Additional professional services provided by Supplier in accordance with the provisions of Item 7 of the "Goods and Services" section of this Agreement shall be billed at the following rates:

- Engineer I / Data Analyst: \$80.00 / hour
- Engineer II / Architect: \$110.00 / hour
- Engineer III / Domain Expert: \$140.00 / hour

Agency shall pay all Supplier invoices within 30 days of receipt.

For the period of three years subsequent to the execution of this Agreement, Supplier shall be entitled to increase its prices once per year on or after the anniversary of the execution of this Agreement, provided that such increases shall not exceed the greater of 3.0% annually or the annual increase in the Consumer Price Index for Seattle, Washington as published by the U.S. Bureau of Labor Statistics.

#### **Venue and Governing Law**

The provisions of this Agreement shall be interpreted in accordance with the statutes and regulations applicable in the State of Washington. Disputes arising from this Agreement shall be resolved by mediation if mutually agreeable to both parties, and by a court of competent jurisdiction in the State of Washington otherwise. The prevailing party in any legal action arising out of this Agreement shall be entitled to reasonable attorney fees and costs.

### Agreement

This Agreement constitutes the entire agreement between the parties and may not be modified or contradicted unless in writing signed by both parties. The Agreement shall bind and inure to the benefit of any successors or assigns of the Parties to this Agreement.

### Notice

Notice under this Agreement shall be given in writing to the following addresses:

#### Agency

East Pierce Fire and Rescue  
18421 Veterans Memorial Drive East  
Bonney Lake, WA 98391  
253-863-1800

#### Supplier

Levrum, Inc.  
PO Box 2312  
Corvallis, OR 97339  
541-714-5882  
<http://www.levrum.com>

### Additional Terms and Conditions

1. Supplier shall use its best professional efforts in delivering goods and services under this Agreement. **Agency's sole remedy for any material breach of this Agreement by Supplier shall be limited to the payments enumerated in this Statement already remitted, and any direct damages resulting from the material breach. Supplier specifically disclaims any other warranty, express or implied, including but not limited to the implied warranty of merchantability and fitness for a particular purpose.**
2. Neither party to this Agreement shall be deemed to be an agent of the other party during the performance of this Agreement, and each party holds the other party harmless from any negligence, errors and omissions of the indemnifying party.
3. The failure of either party to insist upon strict performance of any term of this Statement shall not be deemed a waiver of that party's right to insist upon strict performance at a later time.
4. There are no third-party beneficiaries to this Agreement.
5. Should any court of law find any provision of this Agreement to be unlawful in any respect, that shall not impact the remaining provisions of the Agreement and such provisions shall remain in full force and effect.
6. This Agreement may be executed in counterparts, at separate times and in separate places. An electronic copy of this signed Statement may be deemed an original by both parties.

**Schedule of Attachments**

EXHIBIT A: SOFTWARE LICENSE AGREEMENT  
EXHIBIT B: SOFTWARE SUPPORT AGREEMENT  
EXHIBIT C: SOFTWARE TRAINING SYLLABUS  
EXHIBIT D: DATA SPECIFICATION

**Signatures**

By their signatures below, the undersigned certify that they are authorized to bind the respective Parties, and freely and with full knowledge consent to the entirety of this Agreement.

AGENCY

SUPPLIER



Signature



Signature

DEPUTY  
JON PARKINSON - CHIEF

Printed name / title

DOUGLAS E. BAILLY / PRESIDENT

Printed name / title

5-28-19

Date

10 MAY 2019

Date

#### EXHIBIT A: SOFTWARE LICENSE AGREEMENT

This License Agreement ("Agreement") is a portion of and incorporated by reference into the Agreement between Agency ("Licensee") and Supplier, to which it is attached.

#### LICENSE TERMS

Supplier grants to Licensee a non-exclusive, non-transferable, limited right to use the Software Application only for the use of authorized agents of Licensee under the following terms.

**Use on a PC.** Licensee has the right to obtain copies of the Software Application only for Licensee's internal use by Licensee's authorized agents on computers under the control of Licensee. Licensee is responsible for installing the Software Application on computers and equipment that comply with Supplier specifications and documentation.

#### OTHER LIMITATIONS

Licensee may not rent, lease, re-license, transfer, nor lend the Software Application. Licensee may not reverse engineer, decompile, modify, or disassemble the Software Application, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. Licensee agrees not to remove any copyright or other notice of proprietary rights in the Software Application. Licensee is responsible for ensuring that all users of the Software Application comply with the terms of this License.

Supplier may provide Licensee with support services related to the Software Application ("Support Services"). Use of Support Services is governed by the Software Support Agreement attached to this Agreement. Any supplemental software provided to Licensee as part of the Support Services shall be considered part of the Software Application and subject to the terms and conditions of this License. With respect to technical information Licensee provides to Supplier as part of the registration of the license to the Software Application or in connection with the Support Services, Supplier may use such information for its own business purposes, including for product support and development, but may not transfer such information to third parties without Licensee's written consent.

Without prejudice to any other rights, Supplier may terminate this License if Licensee fails to comply with the terms and conditions of

this License. In such event, Licensee must destroy all copies of the Software Application and all of its component parts, certify such destruction, and in such event Supplier may suspend or deactivate Licensee's use of the Software Application with or without notice.

#### GOVERNING LAW

This License shall be governed and construed in accordance with the terms of the Agreement to which it is attached.

#### PROPRIETARY RIGHTS

**Copyright.** All ownership, title and copyrights in and to the Software Application (including, without limitation, any images, photographs, animations, video, audio, music, text, and "applets" incorporated into the Software Application), the accompanying media and printed materials, and any copies of the Software Application are owned by Supplier or its suppliers. The Software Application is protected by copyright laws and international treaty provisions.

**U.S. Government Restricted Rights.** The Software Application and documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software -- Restricted Rights at 48 C.F.R. 52.227-19, as applicable. Manufacturer for such purpose is Supplier Incorporated., PO Box 2312, Corvallis, OR 97339. Licensee agrees that Licensee's use of the Software Application shall comply in all regards with all applicable federal, state and local statutes, administrative rulings and ordinances regarding export of technology to foreign countries.

**Open Source Software.** The Software Application makes use of Open Source Software components. Notwithstanding anything herein to the contrary, Open Source Software is licensed to under such Open Source Software's own applicable license terms, which can be found at the "Help | Open Source License Info" option of the Software Application's main menu. The documentation or, as applicable, the corresponding source files for the software, are available via links contained in the information provided by the "Help | Open Source License Info" option of the Software Application's main menu. These Open Source Software license terms are consistent with the license granted in this License and may contain additional rights benefiting Licensee. The Open Source Software license terms shall take precedence over this License to the extent that this License imposes greater restrictions on Licensee than the applicable Open Source Software license terms.



Notwithstanding the foregoing, Supplier will have no obligation under this License or otherwise with respect to any claim based on: (i) a combination comprised of primarily Open Source Software with Supplier's Software Application; (ii) use for a purpose or in a manner for which Supplier's Software Application was not designed; (iii) use of any older version of Supplier's Software Application when use of a newer revision would have avoided the infringement; (iv) any modification to Supplier's Software Application made without Supplier's express written approval; (v) any claim that relates to Open Source Software or freeware technology or any derivatives or other adaptations thereof that is not embedded by Supplier; or (vi) any other claim or action of liability or infringement arising from the use of such Open Source Software. This provision states Licensee's sole and exclusive remedy and Supplier's entire liability for any infringement claims or actions. Nothing in this provision shall be construed to interfere with Supplier's obligation to defend and hold harmless Licensee from any claims of infringement of intellectual property rights relating to Licensee's use of Software Application.

#### DISCLAIMER OF WARRANTY

This software application and the accompanying files are provided subject to the LIMITED WARRANTY that the software shall perform substantially in accordance with its published specifications for a period of one year. The warranty period shall begin on the date the software is received by Agency.

Supplier's liability for a defective copy of the software application shall be limited exclusively to: (a) Supplier's best professional efforts to remedy such defects in accordance with the terms of the current Code3 Strategist Software Support Agreement attached to the Agreement to which this License is attached; (b) replacement of Licensee's copy of the software application with another copy; or refund of the initial license fee Supplier received from Licensee for the defective copy of the product.

Some states or jurisdictions do not allow the exclusion or limitation of incidental, consequential or special damages, or the exclusion of implied warranties or limitations on how long a given warranty may last, so the above limitations may not apply to Licensee.

## EXHIBIT B: SOFTWARE SUPPORT AGREEMENT

This SOFTWARE SUPPORT AGREEMENT ("SSA") is made and entered into by the Parties to the Agreement to which it is attached and incorporated by reference.

### Section 1. DEFINITIONS

For the purposes of this SSA, the following definitions shall apply to the respective capitalized terms.

1.1 **"Enhancement."** Any modification or addition that, when made or added to the Software Application, materially changes its utility, efficiency, functional capability, or application, but that does not constitute solely an Error Correction. Enhancements may be designated by Supplier as minor or major, depending on Supplier's assessment of their value and of the function added to the preexisting Software Application.

1.2 **"Error."** Any failure of the Software Application to conform substantially to its functional specifications as published from time to time by Supplier. However, any nonconformity resulting from Agency's misuse, improper use, alteration, or damage of the Software Application, or Agency's combining or merging the Software Application with any hardware or software not supplied or identified as compatible by Supplier, shall not be considered an Error.

1.3 **"Error Correction."** Either a modification or an addition that, when made or added to the Software Application, establishes material conformity of the Software Application to the functional specifications, or a procedure or routine that, when observed in the regular operation of the Software Application, eliminates the practical adverse effect on Agency of such nonconformity.

1.4 **"Software Application."** The computer programs known as Code3 Strategist, including any extracts from such programs, derivative works of such programs, or collective works including such programs (such as subsequent Releases) to the extent offered to Agency under this SSA or the Agreement to which it is attached.

1.5 **"Releases."** New versions of the Software Application, which may include both Error Corrections and Enhancements.

1.7 **"Term."** An initial period of one year commencing upon delivery of the Software Application pursuant to the Agreement to which this SSA is attached. Thereafter, the Term shall automatically renew for successive periods of one (1) year each unless and until terminated pursuant to Section 6 hereof. In no event, however, shall the Term extend beyond the term of the License.

1.8 **"Valid Support Issue."** A suggestion, question or problem originated or experienced by an employee or agent of Agency relating to: (1) installation or configuration of the Software Application; (2) proper operation of an Enhancement newly developed since such employee or agent received training on the Software Application; (3) suspected or actual Errors in the Software Application; (4) suggestions for Enhancements to the Software Application.

1.9 **"Valid Support Contact."** Any contact initiated by an employee or agent of Agency who has been trained by Supplier in the operation of the Software Application, where such contact is related to a Valid Support Issue.

1.10 **"License."** The terms of the License Agreement attached to the Agreement to which this SSA is also attached.

## Section 2. SCOPE OF SERVICES

During the SSA term, Supplier shall render the following services in support of the Software Application, subject to the compensation fixed for each type of service in Supplier's rate schedule.

2.1 Supplier shall maintain an online electronic forum and provide telephone support access during its normal business hours that allows Agency to report system problems and to seek assistance in use of the Software Application.

2.2 Supplier shall maintain a trained staff capable of rendering the services set forth in this SSA.

2.3 Supplier shall not be responsible for correcting Errors in any version of the Software Application other than the most recent Release of the Software Application.

2.4 Supplier may, from time to time, issue new Releases of the Software Application to its customers generally, containing Error



Corrections, minor Enhancements, and, in certain instances if Supplier so elects, major Enhancements. Supplier make such new Releases available to Agency, without additional charge.

2.5 Supplier may, from time to time, offer major Enhancements to its customers generally for an additional charge.

2.6 Supplier shall consider and evaluate the development of Enhancements for the specific use of Agency and shall respond to Agency's requests for additional services pertaining to the Software Application (including, without limitation, data conversion, report-formatting assistance and consultation regarding data analysis and subject matter expertise), provided that such assistance, if agreed to be provided, shall be subject to supplemental charges mutually agreed to by Supplier and Agency.

2.7 Supplier shall employ its best reasonable efforts to resolve Valid Support Issues in a timely fashion. Supplier shall have no obligation to address issues other than those arising from contacts deemed in Supplier's sole discretion to be Valid Support Contacts, but may do so from time to time, with or without charge, without prejudice to the operation of this provision. Agency shall cooperate to the greatest extent possible to assist Supplier in performing this duty by providing diagnostic information, allowing Supplier reasonable access to Agency's computer systems for diagnostic purposes, and such other means as Supplier may reasonably request.

### Section 3. FEES AND CHARGES

3.1 Agency shall pay Supplier its fees and charges as provided by the Agreement to which this SSA is attached.

3.2 Agency shall reimburse Supplier for travel expenses (i.e., transportation, lodging, and meals) and other expenses incurred by Supplier in rendering services to Agency, as agreed in advance by Agency.

3.3 Supplier shall invoice Agency annually for base support and monthly at the beginning of each calendar month for all other fees and charges accrued, and all reimbursable expenses incurred, during the previous month. Agency shall pay the invoiced amount promptly upon receipt of such invoice. Any amount not paid within 30 days after the invoice date shall bear interest at the lesser of one percent per month or the highest rate allowed by applicable law.

3.4 Agency shall be responsible for procuring, installing, and maintaining all computers, telephone lines, networks, communications interfaces, and other equipment and conditions necessary to operate the Software Application and to obtain from Supplier the services called for by this SSA.

## Section 4. PROPRIETARY RIGHTS

4.1 Error Corrections or Enhancements or any other program, including any new programs or components, or any compilations or derivative works provided by Supplier shall be subject to the terms of the License.

4.2 The Software Applications and all related software provided by Supplier under the Agreement to which this SSA is attached, including any associated intellectual property rights, are and shall remain the sole property of Supplier, regardless of whether Agency, its employees, or contractors may have contributed to the conception of such work, joined in the effort of its development, or paid Supplier for the use of the work product. Agency shall from time to time take any further action and execute and deliver any further instrument, including documents of assignment or acknowledgment, that Supplier may reasonably request in order to establish and perfect its exclusive ownership rights in such works, including any associated intellectual property rights.

## Section 5. DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY

5.1 EXCEPT AS EXPRESSLY SET FORTH IN THIS SSA AND THE LICENSE AGREEMENT, SUPPLIER EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES CONCERNING THE SOFTWARE APPLICATION OR THE SERVICES TO BE RENDERED HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5.2 In no event shall Supplier's cumulative liability for any claim arising in connection with this SSA exceed the total fees and charges paid to Supplier by Agency within the year prior to the event giving rise to the liability. In no event shall Supplier be liable for any indirect, consequential, special, exemplary, or incidental damages of whatever kind and however caused, even if Supplier knew or should have known of the possibility of such damages.

5.3 No action, whether based in contract, strict liability, or tort, including any action based on negligence, arising out of the performance of services under this SSA, may be brought by either party more than one year after such cause of action accrued, except that an action for nonpayment may be brought within two years of the date of the last payment.

## Section 6. TERMINATION

6.1 This SSA may be terminated as follows:

6.1.1 This SSA shall immediately terminate upon the termination of the License;

7.5.1 This SSA may be terminated by either party upon the expiration of the then current term of this SSA, provided that at least sixty days' prior written notice is given to the other party; or

7.5.2 This SSA may be terminated by either party upon sixty days' prior written notice if the other party has materially breached the provisions of this SSA and has not cured such breach within such notice period.

7.6 Following termination of this SSA, Supplier shall immediately invoice Agency for all accrued fees and charges and all reimbursable expenses, and Agency shall pay the invoiced amount immediately upon receipt of such invoice. Agency may continue to use any work supplied to Agency by Supplier for the remaining term of the License.

## Section 7. MISCELLANEOUS

7.7 Each party acknowledges that it has read this SSA, understands it, and agrees to be bound by its terms. The parties further agree that this is the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and that it supersedes and merges all prior proposals, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof. This SSA may not be modified except by a written instrument duly executed by the parties hereto.

7.8 This SSA and the parties' obligations hereunder shall be governed, construed, and enforced in accordance the provisions of the Agreement to which it is attached.

7.3 In the event that any provision of this SSA is held invalid, illegal, or unenforceable, the remaining provisions shall be enforced to the maximum extent permitted by applicable law.

7.4 Neither party may assign its rights or duties under this SSA without the prior written consent of the other party, except to a successor of all or substantially all of its business and properties.

7.5 The waiver by either party of any term or condition of this SSA shall not be deemed to constitute a continuing waiver thereof nor of any further or additional right that such party may hold under this SSA.



EXHIBIT C: SOFTWARE TRAINING SYLLABUS

Separately attached.



## EXHIBIT D: DATA SPECIFICATION

Separately attached.