

TM Consulting, Inc
6 Rolling Oaks Dr
Enid OK 73703

April 25, 2024

Muskogee County Treasurer

Muskogee County Treasurer
400 West Broadway, Room 220
Muskogee, OK 74401

RE: Rates for Software Lease/Maintenance Agreement

Dear Shelly,

To help you plan for your next year's budget this letter is to inform of rates for the "Software Lease/Maintenance Agreement" provided by TM Consulting, Inc.

The annual Lease/Maintenance fee is \$24,456 annually or \$2,038 monthly.

This rate will go in effect July, 1 2024, the beginning of fiscal year 2024-2025.

Our hourly rate is now \$95.00.

We have also enclosed the "Software Lease & Maintenance Agreement" please sign and return to me at the above address.

If you have any questions, please call me at 580-402-0722.

Sincerely,

John Westrope
President

24 day of Jan 2024
Chairman _____
Member _____
Member _____
Attest _____
County Clerk



SOFTWARE LEASE & MAINTENANCE AGREEMENT

This **Software Lease and Maintenance Agreement** is entered into, by and between Muskogee County Treasurer, State of Oklahoma (hereinafter the "Lessee") and TM Consulting, Inc. an Oklahoma corporation (hereinafter the "Lessor").

Muskogee County Treasurer is the lessee of Treasurer's Tax Accounting, Bookkeeping, Imaging and Internet software furnished by TM Consulting, Inc.

TM Consulting, Inc. has agreed to lease and provide maintenance to Muskogee County Treasurer on the software as set forth herein.

1. **MAINTENANCE.** Lessor agrees to provide reasonable telephone support and consulting for maintenance of the Software for the Lessee. This includes 2 trips yearly to clean document scanners.
2. **FEE.** The Lessee shall pay \$2,038 per month or \$24,456 annually for the Lease and Maintenance Agreement. The cost of this fee will not increase for one year from the date of this agreement.
3. **TERM.** The term of the agreement shall be from July 1, 2024 through June 30, 2025.
4. **RENEWAL.** This contract is renewable at the start of the fiscal year if both parties are in agreement.
5. **SUPPORT AND CUSTOMIZATION.** Lessee shall pay \$95.00 per hour for customization or additional programming as requested by the Lessee. On-site support shall also be \$95.00 per hour. Drive time shall also \$95.00 per hour.
6. **LEASE.** Lessor leases to Lessee and Lessee hereby hires and takes from Lessor the personal property consisting of certain proprietary computer software as set forth on the above lease schedule (hereinafter referred to as the "Software"). The Software is and shall at all times be and remain the sole and exclusive property of the Lessor and Lessee shall have no right, title or interest therein or thereto except as to the use thereof subject to the terms and conditions of this Lease.
7. **LIMITED WARRANTY.** Lessor makes no warranties (express, implied or statutory) with respect to the Software and the accompanying written materials including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose. In no event will Lessor be liable to Lessee for any direct or indirect damages including, lost savings, loss of data, or other special incidental or consequential damages arising out of Lessee's use of or inability to use the Software. In no event, will Lessor's liability exceed the amount of the lease payments charged per this agreement.
8. **SOFTWARE ACCEPTANCE.** Lessee's execution of this Agreement acknowledges that all Software set forth above was received and installed and is in good and operable condition and that Lessor has fully and satisfactorily performed all covenants and conditions to be performed by it under this Lease Agreement.
9. **PLACE OF USE.** Lessee shall keep the Software at its place of business as specified above. Lessee covenants and agrees not to allow the use of the Software by other business's, entities or individuals and that said Software shall be used only on the work stations authorized by this Lease. Lessee further covenants and agrees not to copy, rent, sublease, license, transfer, donate, commercially exploit, reverse engineer, decompile, disassemble (or allow the same to occur) the Software, or any part thereof.
10. **TITLE.** All of the Software shall remain personal property and the title thereto shall remain with the Lessor at all times. Lessee shall keep the Software free from any and all judgments, liens and

encumbrances. Lessee shall give Lessor immediate notice of the attachment or other judicial process, lien or encumbrance affecting the Software and shall indemnify and save Lessor harmless of and from any loss or damage caused thereby.

11. CONFIDENTIALITY. During the course of this Agreement, either party may have or may be provided access to the other's proprietary items or confidential information ("Confidential Information"). Each party agrees to maintain the confidentiality of the other's Confidential Information in accordance with this provision and any separate nondisclosure agreement that expressly references the disclosure(s) between Lessor and Lessee. At a minimum, each party agrees that it shall not make the other's Confidential Information available to any third party without the written consent of the other and that title and ownership of the Confidential Information provided by one party to the other shall remain the exclusive property of that party who has the right to possess the Confidential Information.
12. RIGHT OF INSPECTION. Lessor, its agents and representatives shall have the right at any time through remote on-line access or during usual business hours to inspect the Software and for that purpose to have access to the location of the Software.
13. NON-WAIVER. Lessor's failure at any time to require strict performance from Lessee of any of the provisions hereof shall not waive or diminish Lessor's right thereafter to demand strict compliance therewith or with any other provision. Waiver of any default shall not waive any other default. Lessor's rights hereunder are cumulative and not alternative.
14. POSSESSION OF SOFTWARE. Lessor covenants to and with Lessee that Lessor is the lawful owner of said Software and that conditioned upon Lessee's performance of the conditions herein, Lessee shall peacefully and quietly hold and use the Software during the term of this Lease without hindrance.
15. ASSIGNMENTS. Neither Lessee nor Lessor shall assign any rights or obligations herein with regard to this Lease without the written consent of the other party.
16. BINDING AGREEMENT. This Lease shall be binding upon the Lessee and its heirs, legal representatives, successors and assigns and shall inure to the benefit of the Lessor, its successors, legal representatives and assigns.
17. GOVERNING LAW. THIS AGREEMENT SHALL BE DEEMED TO BE MADE AND EXECUTED IN MUSKOGEE COUNTY, OKLAHOMA AND SHALL BE INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OKLAHOMA.
18. SEVERABILITY. If any provision hereof or any remedy herein provided for is invalid under any applicable law, such provision shall be inapplicable and deemed omitted. However, the remaining portions herein, including remaining default remedies, shall be given full force and effect in accordance with the intent of this document.
19. NO OTHER AGREEMENTS. This instrument contains the entire agreement between the parties hereto with respect to the subject matter contained herein. There are no other agreements, written or unwritten, that shall bind the parties.
20. DEFAULT. If Lessee fails to pay any amount herein provided within thirty five (35) days after the same is due and payable; or if Lessee fails to observe, keep or perform any other provision of this Lease required to be observed, kept or performed by Lessee; or if a petition is filed by or against Lessee under the Bankruptcy Act or any amendment thereto (including a petition for reorganization or an arrangement); or if a receiver is appointed for Lessee and its property; or if Lessee commits an act of bankruptcy, becomes insolvent, makes an assignment for the benefit of creditors, or offers a

composition or extension of any of its indebtedness; or if Lessee, without Lessor's prior consent, attempts to alter, modify, translate, decompile, disassemble, copy, sell, trade, transfer, encumber, pledge, sublease or in any way dispose of the Software, then Lessor or its agents shall have the right to exercise any one or more of the following remedies:

- a. Declare the entire amount of the rent hereunder immediately due and payable without notice or demand to Lessee.
- b. To sue and recover from Lessee and amount equal to the unpaid balance of any rent or other amounts due, or to become due, during the term of this Lease.
- c. To sue for and recover damages for the Lessee's default.
- d. To demand and take possession of the Software without demand or notice where ever the same may be located, with or without court order. Lessee hereby waives any and all damages occasioned by such retaking of possession of such Software. Any said taking of possession shall not constitute a termination of this Lease and shall not relieve Lessee of its original obligations under this Lease unless Lessor expressly so notifies Lessee in writing.

Additionally, Lessor shall have upon default such other and further remedies and rights as may be available at law by reason of the Lessee's default.

TM Consulting, Inc.

By: John Westrope _____

Title: President Date: 4/24/2024

Muskogee County

By: Shelly Sumpter

Title: Treasurer Date: 4/25/24

(Please sign and return)