

LICENSE AGREEMENT FOR WILLIAMSON ACT SYSTEM SOFTWARE

THIS LICENSE AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California, (hereafter Santa Barbara County) and the County of Kern, a political subdivision of the State of California (hereafter Kern County).

WHEREAS, The Santa Barbara County Assessor, Clerk-Recorder's office would like to provide the Kern County Assessor's office with a copy of Santa Barbara County's Williamson Act System software, known as the "Ag Preserve program" at no charge. Providing the Ag Preserve program to Kern County is of public benefit to Santa Barbara County because of efficiencies that may be obtained from use of the Ag Preserve program by more than one county.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. Product

The Ag Preserve program is the Santa Barbara County computer software used for the evaluation, assessment, tabulation and tracking of Williamson Act parcels within the County, as part of the mandate of the Assessor's office.

2. License

Subject to the terms of this Agreement, Santa Barbara County grants to Kern County a non-exclusive, non-transferable, revocable license to use the Ag Preserve program for the purpose of assessing Williamson Act parcels within Kern County. Kern County may use the Ag Preserve program for its own purposes, and may modify the application to meet its internal business requirements. Kern County may not however, transfer or sublicense the Ag Preserve program to any third party, in whole or in part, in any form, whether modified or unmodified.

The Ag Preserve program was created for Santa Barbara County in part by Mesa Systems, Inc. (hereafter Mesa). Mesa has agreed that Santa Barbara County may license the Ag Preserve program and provide the documentation to others. Mesa has stated that the Ag Preserve program's graphical user interface uses the following component licensed by ComponentOne, Pittsburgh, PA: C1FlexGrid. Mesa has stated that Kern County will need to purchase a license for C1FlexGrid. Therefore, Santa Barbara County's obligation to provide the Ag Preserve Program to Kern County and Santa Barbara County's license to Kern County to use and modify the Ag Preserve program are subject to Kern County's first obtaining and maintaining its own license for C1FlexGrid. In addition, Kern County shall ensure that any third party vendors that may have access to the Ag Preserve program also first obtain a license for C1FlexGrid.

Kern County may:

- a. install the Ag Preserve program on one or more computers;
- b. allow employees of the Kern County Assessor's office to use the Ag Preserve program, solely for the purpose it was designed;
- c. make a reasonable number of copies of the Ag Preserve program, solely for backup or archival purposes;

- d. make a reasonable number of copies of the documentation for the Ag Preserve program, and use the documentation solely to support Kern County's use of the Ag Preserve program; and
- e. enhance, alter or modify the code to best augment the internal business needs of the Kern County Assessor's office.

Restrictions: Kern County may not (and may not allow anyone else to):

- a. copy or use any piece of the Ag Preserve program (or documentation) in any manner that is not expressly allowed by the license rights stated above;
- b. distribute any copy of the Ag Preserve program (or documentation) except as expressly allowed by the license rights stated above, or allow anyone other than Kern County's employees to have access to or use the Ag Preserve program; (Notwithstanding the foregoing, Santa Barbara County understands that Kern County may be considering allowing third party vendor(s) to have access to and use the Ag Preserve program and documentation to assist with modifications, implementation and/or support for Kern County, and Santa Barbara County does not object to allowing third party vendor(s) such access and use for such purposes, provided that Kern County ensures that such third party vendors comply with the restrictions in this Agreement.);
- c. use the Ag Preserve program in the development of any third party product or software;
- d. claim title to or ownership of the intellectual property and core logic used in the creation of the Ag Preserve program. Title and ownership shall remain with Santa Barbara County and Kern County agrees to preserve the same. It is understood that nothing in this Agreement shall constitute, by implication or otherwise, an assignment of any intellectual property right or interest; or
- e. sell, license or use the Ag Preserve program for commercial purposes or applications.

3. No Services

No Implementation Services: Santa Barbara County and its Assessor's office are not obligated to provide Kern County with any implementation, planning, development, design, data modification, or testing related to the Ag Preserve program.

No Maintenance Services: Santa Barbara County and its Assessor's office are not obligated to provide Kern County with any maintenance services for the Ag Preserve program. Santa Barbara County will have no obligation to provide maintenance services for any third party products that are damaged, modified or incorporated into the Ag Preserve program; or for any version of the Ag Preserve program; or for any problems caused by negligence, abuse, misuse, or by any other causes.

No Support: Santa Barbara County and its Assessor's Office are not obligated to provide support services for the Ag Preserve program and its associated code to Kern County. Kern County will need to use internal support services or hire third party vendors to assist Kern County in the implementation and support of this application.

No Software Updates: Santa Barbara County and its Assessor's Office are not obligated to make available any updates, enhancements or improvements to the Ag Preserve program. Any updates to this application are strictly the responsibility of the participating parties, and are based on their internal business requirements.

4. No Warranty

KERN COUNTY ACKNOWLEDGES THAT THE AG PRESERVE PROGRAM IS A RESEARCH TOOL, AND THAT IT IS BEING SUPPLIED AS IS WITHOUT ANY ACCOMPANYING SERVICES, WARRANTIES OR IMPROVEMENTS FROM SANTA BARBARA COUNTY. ALL RISK AS TO QUALITY AND PERFORMANCE OF THE AG PRESERVE PROGRAM IS WITH KERN COUNTY. IN NO EVENT WILL SANTA BARBARA COUNTY OR THE SANTA BARBARA COUNTY ASSESSOR'S OFFICE BE LIABLE FOR DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE AG PRESERVE PROGRAM, INCLUDING BUT NOT LIMITED TO LOSS OF DATA OR DATA BEING RENDERED INACCURATE OR FINANCIAL LOSSES SUSTAINED BY KERN COUNTY OR THE OFFICE OF THE KERN COUNTY ASSESSOR-RECORDER. SANTA BARBARA COUNTY MAKES NO WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SANTA BARBARA COUNTY MAKES NO WARRANTY AS TO TITLE OR TO THE ACCURACY, COMPLETENESS, OR RELIABILITY OF THE AG PRESERVE PROGRAM. SANTA BARBARA COUNTY MAKES NO REPRESENTATIONS THAT USE OF THE AG PRESERVE PROGRAM WILL BE UNINTERRUPTED OR ERROR-FREE.

5. Limitation of Liability

THE CUMULATIVE LIABILITY OF SANTA BARBARA COUNTY AND ITS EMPLOYEES AND OFFICIALS RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT PAID BY KERN COUNTY TO SANTA BARBARA COUNTY UNDER THIS AGREEMENT, WHICH AMOUNT IS \$0.00. IN NO EVENT SHALL SANTA BARBARA COUNTY OR ITS EMPLOYEES OR OFFICIALS BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING LOST PROFITS, REVENUE, DATA OR USE), WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF SANTA BARBARA COUNTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS LIMITATION OF LIABILITY IS AN ESSENTIAL ELEMENT OF THE AGREEMENT AND THAT WITHOUT IT, THE ECONOMIC TERMS OF THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT.

6. Indemnification

Since Santa Barbara County is agreeing to license the Ag Preserve program to Kern County at no cost, pursuant to Govt. Code Section 895.4, and in lieu of the provisions of Govt. Code section 895.6, Kern County agrees to indemnify, defend (with counsel reasonably approved by Santa Barbara County) and hold harmless Santa Barbara County and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by Santa Barbara County on account of any claim except where such indemnification is prohibited by law. Kern County's indemnification obligation applies to Santa Barbara County's active as well as passive negligence but does not apply to Santa Barbara County's sole negligence or willful misconduct. Kern County shall notify Santa Barbara County immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

7. Designated Representatives

Keith Taylor at phone number 805-568-2562 is the designated representative of Santa Barbara County and will administer this Agreement for and on behalf of Santa Barbara County. Paul Dictos at phone number 559-600-3534 is the representative of Kern County. Changes in designated representatives shall be made only after advance written notice to the other party.

8. Notices

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To Santa Barbara County: Joseph Holland, Clerk-Recorder-Assessor, 105 East Anapamu Street, Room 204, Santa Barbara, CA, 93101, Fax No.: 805-568-3247,

To Kern County: James Fitch, Assessor-Recorder, 1115 Truxtun Avenue, Bakersfield, CA, 93301, Fax No.: 661-868-3209,

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

9. County Property and Information

All of Santa Barbara County's property, documents, and information provided for Kern County's use in connection with this Agreement shall remain Santa Barbara County's property, and Kern County shall return any such items whenever requested by Santa Barbara County and whenever required according to the Termination section of this Agreement. Kern County shall not disseminate any Santa Barbara County property, documents, or information without Santa Barbara County's prior written consent.

10. Nonexclusive Agreement

Kern County understands that this is not an exclusive Agreement and that Santa Barbara County shall have the right to negotiate with and enter into contracts with others regarding the Ag Preserve program.

11. Non-Assignment

Kern County shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of Santa Barbara County and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

12. Termination

a. For Convenience. Either party may terminate this Agreement for convenience upon sixty (60) days prior written notice to the other party.

b. For Cause. Should Kern County default in the performance of this Agreement or materially breach any of its provisions, Santa Barbara County may, at Santa Barbara County's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, Kern County shall immediately discontinue use of the Ag Preserve program (unless the notice directs otherwise) and notify Santa Barbara County that it has done so. The date of termination shall be the date the notice is received by Kern County, unless the notice directs otherwise. In addition, in the event that Santa Barbara County receives any claim or notice that the Ag Preserve program infringes upon any intellectual property or legal rights of any third party, Santa Barbara County may notify Kern County of such occurrence and Kern County shall suspend or terminate its use of the Ag Preserve program, as directed by Santa Barbara County.

c. Upon termination, Kern County shall deliver to Santa Barbara County all copies of the Ag Preserve program, documentation, and other Santa Barbara County property, records, documents and papers, except such items as Santa Barbara County may, by written permission, permit Kern County to retain.

13. Section Headings

The headings of the several sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

14. Severability

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

15. Remedies Not Exclusive

No remedy herein conferred upon or reserved to Santa Barbara County is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

16. No Waiver of Default

No delay or omission of Santa Barbara County to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy given by this Agreement to Santa Barbara County shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of Santa Barbara County.

17. Entire Agreement and Amendment

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

18. Successors and Assigns

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

19. Compliance with Law

Kern County shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of Kern County in any action or proceeding against Kern County, whether Santa Barbara County is a party thereto or not, that Kern County has violated any such ordinance or statute, shall be conclusive of that fact as between Kern County and Santa Barbara County.

20. California Law and Jurisdiction

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

21. Execution of Counterparts

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

22. Survival

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

License Agreement for Williamson Act Software between the County of Santa Barbara and the County of Kern.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by County of Santa Barbara.

ATTEST:
MONA MIYASATO
COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD

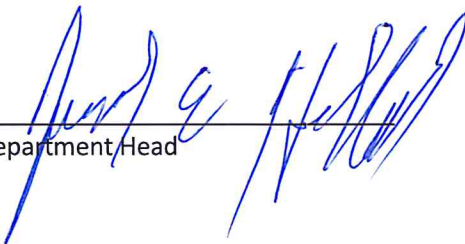
By: _____
Deputy Clerk

COUNTY OF SANTA BARBARA:


By: _____
Chair, Board of Supervisors

Date: _____

RECOMMENDED FOR APPROVAL:

By:  _____
Department Head

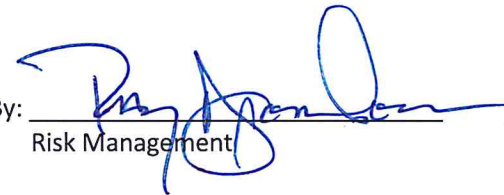
APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

By:  _____
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:
ROBERT W GEIS, CPA
AUDITOR-CONTROLLER

By:  _____
Deputy

APPROVED AS TO FORM:
RISK MANAGEMENT

By:  _____
Risk Management

ATTEST:
CLERK OF THE BOARD

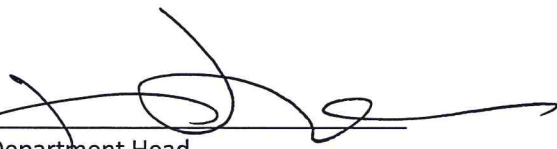
By: 
Deputy Clerk

COUNTY OF KERN:

By: 
Chair, Board of Supervisors

Date: JUN 09 2015

RECOMMENDED FOR APPROVAL:

By: 
Department Head

APPROVED AS TO FORM:
COUNTY COUNSEL

By: 
Deputy County Counsel