

YADKIN COUNTY
NORTH CAROLINA

AGREEMENT FOR SERVICES

(Munis Contract Number) _____

This Agreement is made and entered into this 20 day of March, 20 17
("Effective Date") between Yadkin County, North Carolina ("County") and
Brad Goodman Solutions, LLC ("Provider").

WHEREAS, the County and the Provider wish to enter into a contract under which the Provider will provide certain specified services and/or materials to the County in exchange for payment. NOW, THEREFORE, in consideration of the mutual covenants, promises, terms, conditions, and agreements herein, the County and the Provider agree as follows:

1. **Services To Be Performed.** The Provider agrees to perform the services and to provide the materials (all collectively called the "Services") for the County as authorized by the County Manager. Provider acknowledges that this Agreement does not guarantee that the County will assign the Provider any work; however, that the County from time to time may request the Provider to perform services for Yadkin County.

The Provider warrants that all materials it provides shall be of good quality and shall meet industry standards and the County's expectations and approval, and the Provider warrants that it shall perform all Services in a good and workmanlike manner, in accordance with industry standards and the County's expectations, and to the County's full satisfaction.

See "Exhibit A" attached hereto and incorporated as if fully setout herein. "Exhibit A" lists in detail the scope of services to be provided under this contract. Any changes to "Exhibit A" must be approved by the County Manager, in writing, prior to the service being provided.

2. **Term of the Agreement.** (Check the one provision that applies.)

- ☒ This Agreement shall end on 30th April, 20 2018.
- ☐ This Agreement shall continue until the Provider has completed the Services to the County's satisfaction.
- ☐ This Agreement shall continue until terminated in accordance with Section 8 of the Agreement.

3. **Payment to the Provider.**

- ☐ The County shall pay the Provider \$ _____ every _____.
- ☒ The County shall pay the Provider a total not to exceed the amount of \$ \$ 1,067.50 for all Services performed under this Agreement. The Provider will invoice the County for Services as they are performed, but no more frequently than monthly.

In accordance with Item 3, Payment to the Provider, the County agrees to pay the Provider for Services satisfactorily performed in accordance with this Agreement. The County shall pay each properly submitted invoice within thirty (30) days of its submission. Each invoice shall document, to the County's satisfaction, the work performed and the basis for the amount of payment sought. If the Provider fails to perform in accordance with this Agreement, the County may, without penalty, withhold any payment(s) associated with Services not properly performed until and unless the Provider completes or corrects its performance, as applicable. The County's remedies under this Agreement are not exclusive and are in addition to all other rights and remedies provided by law.

4. **E-Verify.** North Carolina General Statutes prohibit counties from entering into contracts with contractors and subcontractors under the formal bid process and/or proposals who have not complied with the requirement of Article 2 of Chapter 64 of the NC General Statutes. Said Article 2 of Chapter 64 states *The prohibition applies to all contracts subject to G.S. 143-129, which are purchase contracts with an estimated cost of \$90,000 or more, and construction or repair contracts with an estimated cost of \$500,000 or more. GS 143-129 applies to virtually all public entities, including cities, counties, local school boards, water and sewer authorities, and other special purpose local government districts and authorities.* The Contractor must submit the E-Verify Affidavit with bid proposals and/or contracts as required by NC General Statutes.

5. **Non-waiver.** If the County at any time does not require the Provider to satisfy any of the Provider's obligations under this Agreement, or if the County fails at any time to exercise any right or privilege granted to it by this Agreement, that shall not waive or limit the County's ability to require the Provider to satisfy those obligations in the future or the County's ability to enforce its rights or privileges in the future. If the County waives any breach of this Agreement by the Provider that shall not be deemed a waiver of any later breach by the Provider, nor shall it be deemed a waiver of this section of the Agreement.

6. **Independent Contractor.** For purposes of this Agreement, the Provider at all times shall be considered an independent contractor, and the County shall not be deemed the employer of the Provider or of any of the Provider's agents or employees, nor shall the County be responsible for the actions or omissions of the Provider or its agents and employees. For purposes of this Agreement, the Provider and its agents and employees shall not be deemed an employee of the County for any purpose, including (by example only and not for purposes of limitation) federal or state income taxation, unemployment benefits, or worker's compensation benefits.

7. **Insurance.** During this Agreement's term, the Provider shall maintain at its sole expense all insurances as set out in this section. All insurance policies shall be issued by a company authorized to issue insurance in the State of North Carolina. Before beginning to perform under this Agreement, the Provider shall provide the County with a certificate of insurance showing that all insurance required by this Agreement is in effect, and the Provider shall keep that certificate current by submitting to the County updated certificates as the Provider's insurance policies are renewed or otherwise modified. The Provider shall notify the County immediately if any insurance required by this Agreement will be or has been cancelled or not renewed or if the amount of coverage of any such insurance will be or has been reduced.

The Provider shall maintain worker's compensation insurance as required by North Carolina law to cover all of the Provider's employees engaged in any work under the Agreement.

The Provider shall also maintain the following insurance to cover its performance under this Agreement during the Agreement's term:

- General commercial liability in the amount of \$1,000,000 per occurrence/\$2,000,000 aggregate.
- Workers' Compensation in the amount of \$500,000 employer's liability.
- Automobile liability covering all owned, hired, and non-owned vehicles used in connection with this Agreement. The minimum combined single limit shall be \$1,000,000 for bodily injury and property damage; and \$1,000,000 uninsured/underinsured motorist coverage.

8. **Indemnity.** The Provider agrees that it shall defend, indemnify, and hold harmless the County and its officials, employees, and agents from and against any and all losses, liabilities, claims, demands, suits, costs, damages, or expenses (including reasonable attorneys' fees) arising from or related to this Agreement and/or the Services, including (by example only and not for purposes of limitation) those for bodily injury, death, or property damage. The Provider's obligations under this section shall survive termination of this Agreement.

9. **Termination.** Notwithstanding any other provision of this Agreement, this Agreement may be terminated at any time by mutual written agreement of the County and the Provider, or it may be terminated by the County upon ten (10) days' written notice to the Provider. Ten days' written notice for termination by the County is not required if the County is terminating because the Provider has breached the Agreement.

10. **Entire Agreement.** This Agreement (including any attached Exhibits) constitute the complete and entire Agreement between the County and the Provider concerning the subject matter of the Agreement and supersedes any and all prior agreements, discussions, understandings, promises, or representations concerning that subject matter. This Agreement may be modified only by a writing signed by both the County and the Provider.

11. **Governing Law and Forum for Disputes.** This Agreement shall be governed by the laws of the State of North Carolina without regard to North Carolina's choice of law provisions. Any lawsuit or other legal proceeding concerning this Agreement and/or the Services must be filed in Yadkin County, North Carolina, unless it is properly filed in Federal Court, in which case it must be filed in the Federal District Court for the Middle District of North Carolina.

12. **Severance Clause.** If any part of this Agreement is deemed unenforceable by a court of competent jurisdiction, then that part shall be enforced to the greatest extent legally possible, and the rest of this Agreement will remain in full force and effect.

13. **Compliance With Laws.** The Provider acknowledges and agrees that it will perform all Services and will satisfy all of its obligations under this Agreement in full compliance with all applicable federal, state, and local laws and regulations.

14. **Repair of Damages.** The Provider shall promptly and fully repair any damages that it or its employees or agents cause to the County's property. Alternatively, the County may choose in its discretion to require the Provider to fully compensate the County for any such damages rather than have the Provider repair them.

15. **Titles and Headings.** Titles and headings used in this Agreement are for convenience only and do not limit or modify the language within each section of this Agreement.

16. **Non-Assignment.** The Provider may not assign its rights or obligations under this Agreement, nor may it sub-contract any part of this Agreement, without written approval from the County.

17. **Notices.** Any notice or communication to the County or the Provider for purposes of this Agreement shall be delivered or shall be deposited in the United States Mail, first class, addressed to the addressee below:

THE COUNTY

THE PROVIDER

Brad Goodman Solutions, LLC

Brad Goodman

Owner, Managing Member

18. **Number and gender.** This Agreement's use of singular, plural, masculine, feminine, and neuter pronouns shall include the others as the context may require.

19. **Exhibits.** To the extent of a conflict between the above language of this Agreement and any attachments, the above language of this Agreement will control.

IN WITNESS WHEREOF, the County and the Provider have caused this Agreement to be executed as of the Effective Date.

THE COUNTY

BY: *Lisa L. Hughes*
Digitally signed by Lisa L. Hughes
DN: cn=Lisa L. Hughes, o=Yadkin County,
ou=County Manager,
email=llhughes@yadkincountync.gov, c=US
Date: 2017.04.05 12:40:04 -0400

Name: Lisa Hughes

Title: County Manager

THE PROVIDER

BY: *Brad Goodman*

Name: Brad Goodman

Title: Owner, Managing Member

This instrument has been pre-audited in
the manner required by the Local
Government Budget and Fiscal Control Act.

Tom W. Sarratt
Digitally signed by Tom W. Sarratt
DN: cn=Tom W. Sarratt, o=Yadkin County, ou=Finance,
email=tsarratt@yadkincountync.gov, c=US
Date: 2017.04.05 09:30:25 -0400

Yadkin County Finance Officer

EXHIBIT A

TO AGREEMENT TO SERVICES

Below is a detailed listing of the scope of services to be provided under this contract. Any changes to "Exhibit A" must be approved by the County Manager, in writing, prior to the service being provided. (The detailed listing of the scope of services may also be described on one or more sheets attached hereto and incorporated herein, but each must be signed by the Provider and the County.)

See attached Software License Agreement

BRAD GOODMAN SOLUTIONS, LLC
Software License Agreement

1. **Parties; Effective Date.** This Software License Agreement ("Agreement") is between **BRAD GOODMAN SOLUTIONS, LLC.**, with offices at 7015 Centerline Drive, Charlotte, NC 28278 ("Licensor") and the undersigned entity ("Licensee").
2. **Purpose of Agreement.** Licensor is the owner or licensee of certain computer software programs relating to Emergency Services Scheduler (the "Software"). The Software is more fully described in Schedule A to this Agreement. This Agreement sets forth the terms and conditions under which Licensor will license the Software to Licensee.
3. **Grant of License.**
 - 3.1 Subject to Licensee's compliance with the terms of this Agreement, Licensor grants Licensee a nonexclusive, nontransferable, single-site license to:
 - a. load and execute the Software in executable machine-readable form only, and subject to the limitations on the number of sites, workstations and/or users specified in Schedule A; and
 - b. use any user documentation provided by Licensor for the Software ("Documentation") as required to exercise the rights granted in this Section.
 - 3.2 All rights not expressly granted to Licensee in this Agreement are reserved by Licensor, and Licensee may not use the Software or Documentation in any manner not expressly authorized by this Agreement. Licensee may use the Software and Documentation for its internal business operations only and not by, or for the benefit of, any affiliate, subsidiary, parent company or any other third party, nor may the Software be used for service bureau services. Licensee may exercise its rights under this Agreement only in the states and territories of the United States.
 - 3.3 Licensee shall not: remove or destroy any proprietary rights marks or legends on or in the Software or Documentation and on authorized copies; modify, enhance, adapt, translate, or create derivative works of the Software or Documentation; transfer, distribute, assign, sublicense, rent, lease, export or sell the Software; decompile, disassemble, or reverse engineer the Software; or make copies of the Software or Documentation other than for archival and backup purposes.
 - 3.4 Licensee acknowledges and agrees that the Software is licensed to operate only on the operating environment ("Environment") and in association with the third party computer software programs ("Third Party Software") set forth on Schedule A. Licensee is solely responsible for the acquisition, use and maintenance of all components of the Environment and all Third Party Software, and all associated costs and expenses.
4. **Delivery, Installation and Training.**
 - 4.1 Licensor will ship the Software, Documentation, and any other materials identified in Schedule A to Licensee, and will install the Software, within the time frames specified in Schedule A. Licensee shall make available a suitable place of installation with all facilities required.
 - 4.2 Installation of the Software by Licensor is included in the software license fees described in Schedule A. In addition, for no additional fees, Licensor will provide the training for the Software at Licensee's facility, as described in Schedule A. Licensee may acquire additional services from Licensor at Licensor's then-current professional services rates, or as otherwise agreed between the parties.

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- 4.3 Licensee understands that Licensor is not responsible to make any modifications, changes, additions, deletions, or corrections, to the Software; however, Licensee explicitly grants Licensor access to update the Software at any time.
5. **Acceptance.** The Software is deemed accepted fourteen (14) calendar days after installation unless, within that time (the "Acceptance Period"), Licensee provides written notice to Licensor that the Software does not operate in substantial conformance with the warranties contained in this Agreement. If Licensee provides such written notice to Licensor, Licensor will use commercially reasonable efforts to, at its sole option, repair or replace the Software within a reasonable time of its receipt of the notice. However, if Licensor is unable to repair or replace the Software within thirty (30) days of its receipt of the notice, then Licensee may terminate this Agreement, return all Software, Documentation and other materials to Licensor, and receive a full refund of all fees paid to Licensor for the Software under this Agreement.
6. **Warranties and Disclaimers.**
- 6.1 Licensor warrants that for a period thirty (30) days after the Acceptance Date, the Software will operate in substantial compliance with its applicable Documentation. If during this period the Software does not perform as warranted, then Licensor will use commercially reasonable efforts to correct the nonconformance. If Licensor is unable to correct the nonconformance within a reasonable time, but in no event more than sixty (60) days, Licensee may terminate this Agreement, return all Software, Documentation, and other materials to Licensor, and receive a full refund of all fees paid to Licensor for the Software under this Agreement.
- 6.2 This Software warranty applies only to Software used in accordance with this Agreement, and does not apply if the Software media, or Software code has been subject to accident, misuse, or modification, and only if the nonconformance can be demonstrated on an unmodified version of the Software. It shall not be deemed a breach of this Software warranty if any failure of the Software to operate in substantial compliance with its applicable Documentation is caused, in whole or in part, by an error, malfunction or other problem with the Environment and/or any one or more Third Party Software products.
- 6.3 If Licensor investigates any nonconformance and such nonconformance is found to be caused by operator error, erroneous system configuration, modification, or other cause not inherent in the Software, Licensor reserves the right to charge for its services at its then-current professional service rates.
- 6.4 Licensor does not warrant that the functions contained in the Software will meet Licensee's specific requirements, the requirements of Licensee's particular industry, or will be error-free or operate without interruption.
- 6.5 THE WARRANTY AND REMEDY PROVIDED ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTY AND REMEDY UNDER THIS AGREEMENT, AND ARE PROVIDED IN LIEU OF, AND CREDENDO DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 6.6 Licensee further understands that any and all damages proximately caused by errors in the entry of scheduling information into the Software are the Licensees sole responsibility.
7. **Technical Support Services.**
- 7.1 Licensee may obtain technical support services for the fees and pursuant to the terms in Schedule A and subject to Licensor's then-current technical support services policies and procedures.

- 7.2 Technical support services include: (a) when and if available, any updates, releases and enhancements to the Software made generally available to all licensees for no charge; and (b) telephone and remote computer support as to the use and operation of the Software, and error and defect verification, analysis and correction for the Software to the extent possible by telephone and remote computer.
- 7.3 Licensee may also request on-site assistance from Licensor. In such event Licensee shall pay Licensor its then current per-diem fees, and will reimburse Licensor for all reasonable traveling expenses, including meals, travel and lodging.

8. **Confidentiality.**

- 8.1 During this Agreement, each party may have access to information that is considered confidential by the other. This information may include, but is not limited to, the Software, Documentation, technical know-how, technical specifications, protocols, strategic business plans, results of testing, systems, financial information, product information, methods of operation, customer information, supplier information and compilations of data ("Confidential Information").
- 8.2 Each party shall use the other party's Confidential Information only for the purposes of this Agreement. Each party shall maintain the confidentiality of the other party's Confidential Information in the same manner in which it protects its own Confidential Information of like kind, but in no event shall either party take less than reasonable precautions to prevent the unauthorized disclosure or use of the other party's Confidential Information.
- 8.3 Each party is permitted to disclose the other party's Confidential Information to its employees, contractors and other third parties on a need to know basis only, provided that such employees, contractors and/or third parties have written or legal confidentiality obligations to that party no less stringent than those contained in this Agreement.
- 8.4 The confidentiality provisions of this Agreement do not apply to information that is or becomes generally available or known to the public through no act or omission of the receiving party; was received lawfully from a third party through no breach of any obligation of confidentiality owed to the disclosing party; or created by a party independently of its access to or use of the other party's Confidential Information.
- 8.5 Upon termination of this Agreement, each party shall return the other party's Confidential Information and shall not use the other party's Confidential Information for its own, or any third party's, benefit. The provisions of this Section shall survive termination of this Agreement for so long as the Confidential Information remains confidential.

9. **Ownership.** Licensor is the owner of all intellectual property rights in and to the Software and Documentation, including copyrights, trade secrets, trademarks, patents, and know-how. Licensee acknowledges the foregoing and agrees to implement software protection measures designed to prevent unauthorized use and reproduction of the Software or Documentation, including, but not limited to, keeping the Software and Documentation in a secure place, under reasonable access and use restrictions not less strict than those applied by Licensee with respect to its own confidential information.

10. **Indemnification.**

- 10.1 Licensor shall defend, at its sole expense, any third party claim, demand or suit ("Claim") against Licensee alleging that Licensee's authorized use of the Software and Documentation infringes a third party's U.S. patent, copyright, trademark, trade secret or other intellectual property right, and shall indemnify and hold Licensee harmless from and against any and all damages, fines, penalties, costs, expenses and/or fees (including reasonable attorneys' fees) awarded or assessed against Licensee in association with the Claim, or reached through a negotiated settlement of the Claim.

- 10.2 This indemnification extends only to the Software delivered by Licensor and does not extend to: (1) any modifications, enhancements or other changes to the Software or Documentation created by or on behalf of Licensee (unless created by Licensor); and/or (2) any Claim arising out of the combination of the Software and any other code, software, hardware or any other products, provided that such infringement would not have occurred but for such combination.
- 10.3 If the Software infringes a third party's U.S. patent, copyright, trademark, trade secret or other intellectual property right, or Licensor reasonably believes that it is likely to infringe, then Licensor shall, at its sole expense either (1) procure for Licensee the right to continue using the Software; or (2) replace or modify the Software so that it is non-infringing, but maintains substantially the same functionality. If neither of these options is reasonably practical for Licensor, Licensor may terminate Licensee's right to use the Software and Documentation and refund to Licensee all license fees paid for the Software and Documentation, prorated on a straight-line basis over a period of three (3) years from the Acceptance Date of the Software.
- 10.4 Except for claims that are Licensor's obligation under Sections 10.1, Licensee shall defend, at its sole expense, any Claim against Licensor arising out of Licensee's (a) use of the Software and/or breach of this Agreement; and/or (b) any assertion that Licensee made false, misleading and/or otherwise deceptive statements with regard to Licensor and/or the specifications, features or capabilities of the Software; and shall indemnify and hold Licensor harmless from and against any and all damages, fines, penalties, costs, expenses and/or fees (including reasonable attorneys' fees) awarded or assessed against Licensor in association with the Claim, or reached through a negotiated settlement of the Claim.
- 10.5 In order to receive indemnification under this Section, the party seeking indemnification must promptly notify the other party of the assertion of the Claim; allow the other party to retain sole and exclusive control over the defense and/or settlement of the Claim; and cooperate with the other party, at the other party's expense, in the defense and/or settlement of the Claim. This Section sets forth each party's sole indemnification obligations and indemnification remedies in association with the Claims described above.
- 11. Fees and Payments.**
- 11.1 Licensee will pay Licensor the license fees and technical support services fees pursuant to Schedule A. Licensee shall be charged a late fee of one and a half percent (1.5%) per month on all overdue amounts for any fees due and payable under this Agreement. Licensee shall pay all taxes arising out this Agreement, except for those based on Licensor's income.
- 11.2 Licensee may acquire additional licenses to the Software through the execution of agreed-upon Schedules to this Agreement. Unless otherwise specified in such additional Schedules, the terms of this Agreement shall apply to all Schedules executed between the parties.
- 12. Term and Termination.**
- 12.1 This Agreement is effective on the date last signed by the parties (the "Effective Date") and continues for a period of twelve months, or until terminated in accordance with this Agreement.
- 12.2 Each party may terminate this Agreement if the other party commits a material breach of this Agreement and fails to cure such breach within thirty (30) days after its receipt of written notice of such breach from the non-breaching party.
- 12.3 Upon termination of this Agreement by Licensor under Section 12.2, Licensee shall immediately: (a) discontinue all use of the Software and Documentation, (b) de-install and/or remove any and all copies of the Software, whether authorized or unauthorized,

from any computer or server upon which the Software has been installed by or on behalf of Licensee; and (c) return the all copies of the Software, Documentation and all other materials to Licensor.

12.4 Upon termination of this Agreement by Licensee under Section 12.2, Licensee's rights to use the Software and Documentation shall continue in effect subject to: (a) Licensee's continued compliance with all of the terms of this Agreement; and (b) Licensor's right to terminate Licensee's rights to use the Software and Documentation under the terms of Section 12.2 as the result of an uncured material breach of this Agreement.

12.5 All provisions of this Agreement regarding ownership, indemnification, non-solicitation, and limitations of liability shall survive any termination of this Agreement.

13. Limitation of Liability.

13.1 Except as in association with: (a) each party's indemnification obligations under this Agreement; (b) a party's violation of the other party's intellectual property rights; and/or (c) a party's breach of its confidentiality obligations under this Agreement; in no event shall either party be liable to the other party, regardless of the form of action or theory of recovery, in association with this Agreement or the Software for: (1) any indirect, special, exemplary, consequential, incidental or punitive damages, even if that party has been advised of the possibility of such damages; (2) lost profits, lost revenue, lost business expectancy, benefit of the bargain damages, business interruption losses or loss of data; or (3) direct damages in an amount in excess of all of the fees paid to Licensor under this Agreement during the twelve (12) month period immediately preceding the event giving rise to the dispute.

13.2 Except for claims arising out of a party's indemnification obligations, any claim arising out of, or related to, this Agreement must be initiated within one (1) year of the date the party knew, or reasonably should have known, of the existence of such claim against the other party.

14. **Non-Solicitation.** The Licensee shall not hire, solicit for hire or seek to engage the services of, nor offer to pay commissions, compensation or any other form of incentives to the employees or consultants of the Licensor without the prior express written consent of the Licensor, which may be withheld in that party's sole discretion. This Section shall expire twelve (12) months after the termination of this Agreement.

15. General.

15.1 This Agreement, all Schedules, and all amendments thereto contain the entire understanding of the parties with respect to the subject matter addressed herein and supersede, replace and merge all prior understandings, promises, representations and agreements, whether written or oral, relating thereto. This Agreement may not be modified except by a writing signed by both parties. No terms or conditions of either party's invoice, purchase order or other administrative document shall modify the terms and conditions of this Agreement, regardless of the other party's failure to object to such form. The remedies accorded Licensor under this Agreement are cumulative and in addition to those provided by law.

15.2 Any waiver of a party's right or remedy related to this Agreement must be in writing, signed by that party to be effective. No waiver shall be implied from a failure of either party to exercise a right or remedy. In addition, no waiver of a party's right or remedy will effect the other provisions of this Agreement

15.3 This Agreement shall be governed by the laws of the State of South Carolina (exclusive of its choice of law rules), and the federal laws of the U.S.

15.4 If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such provision will be enforced to the fullest extent that it is

valid and enforceable under applicable law. All other provisions of this Agreement shall remain in full force and effect.

- 15.5 All notices must be in writing and sent either by hand delivery; messenger; certified mail, return receipt requested; overnight courier; or by facsimile or by e-mail (with a confirming copy) and shall be effective when received by such party at the address listed herein or other address provided in writing.
- 15.6 Licensee may not assign or sublicense this Agreement, in whole or in part, without Licensor's prior express written consent, which shall not be unreasonably withheld or delayed. Any attempted assignment or sublicense without such written consent shall be void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.