

SOFTWARE LICENSING AGREEMENT

Fiscal Years 2014, 2015, 2016

This Agreement is made and entered into as of this 16th day of December 2013 by and between Paul S. Kapinos & Associates, Inc., having its usual place of business at 29 College Street in South Hadley, Massachusetts (herein referred to as the "Company") and the Town of Chilmark, Massachusetts, a municipal corporation having its principal offices at Town Hall, 401 Middle Road, P.O. Box 119, Chilmark, Massachusetts, (hereinafter referred to as the "Municipality").

WITNESSETH:

WHEREAS, the Company is in the business of providing software technology and other services for the processing of appraisal information; and

WHEREAS, the Municipality is in need of software technology and such other services for the processing of its information.

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

1. Commencement Date and Delivery.

The Commencement date provided under this agreement is outlined in Schedule A. The Municipality shall at its own expense, have the site and/or necessary equipment prepared.

2. Terms.

Initial Term. Unless sooner terminated as provided for herein, the term of this Agreement shall be the period of three years commencing December 16, 2013.

3. Description of Software.

The Computer software system to be provided to the Municipality by the Company is described in Schedule A, attached hereto, and made a part hereof.

4. Scope of Services.

The services to be provided and the products to be delivered to the Municipality by the Company are as described in Schedule A., attached hereto, and made a part hereof.

5. Cost of Software and Services.

Charges shall commence on the Commencement date as defined herein. Payments shall be made in accordance with Schedule A., attached hereto and made a part hereof. There shall be added to any charges under this Agreement the amount of any sales or use tax or any tax in lieu thereof imposed by any government or government agency with respect to the services, licenses and/or equipment provided pursuant to the terms of this Agreement.

The Company shall present the Municipality with a written invoice. Payment is due within twenty (20) days after the date of receipt of each bill for services rendered in accordance with this Agreement. Failure of the Municipality to make payments when due shall constitute breach of a provision of this Agreement. Failure of the Municipality to cure said breach

within fourteen (14) days of receipt of written notice from the Company of said breach shall entitle the Company, in addition to its other rights and remedies, to suspend further performance under this Agreement without liability.

6. Cost Adjustment.

The Company may change the rates specified in the attached Schedule A. (Maintenance and Support) upon any renewal after the Initial Term of the Agreement, or at the end of any calendar month thereafter, by giving at least ninety (90) days written notice, however in no event shall the said rates be subject to increase in any twelve month period during the Initial Term of this Agreement more than the increase reflected in the then most recent published Boston Area All-Urban Consumer Price Index for the preceding twelve month period and further subject to the provisions of G.L. c. 30B, section 13.

7. Maintenance of Software.

During the Initial Term of this Agreement and renewals thereof, the Company shall maintain the software system on a timely basis with modifications (as that term is hereinafter defined) necessary for the system to continue to accomplish its principal computing functions. If the Municipality notifies the Company that it suspects an error in the program logic or documentation of the software system, the Company will use its best efforts to confirm the existence of such error. If the Company confirms the existence of such error, the Company shall correct it as part of its obligations hereunder. If the Company ultimately determines that no such error exists, the Municipality shall pay the Company for its services at the Company's hourly rates then in effect. Any modifications, enhancements and/or software options (as those terms are hereinafter defined) provided to the Municipality shall be subject to the provisions of the Agreement as if they had been part of the original software system provided hereunder, by the Company.

For purposes of this Agreement, the following terms shall be defined as follows:

- a. Modifications shall mean improvements (which term shall mean any updates, upgrades, extensions, additions or modifications) made by the Company to or in the software subsequent to the effective date of this Agreement;
 - (i) which improve the efficiency and effectiveness of the basic program function but which do not change such function or create one or more new ones,
 - (ii) which correct errors or bugs in the system.
- b. Enhancement shall mean a change in the basic program function or the addition of one or more new ones, and additional reports.
- c. Software Options shall mean:
 - (i) customized changes made to the system which develop a program function not available as a regular feature of the system
 - (ii) an additional application
 - (iii) a new program module.

8. Additional Charges.

The following items will be separately billed at the actual rates and costs of manufacturers of the equipment or providers of services where applicable:

- a. Software options, enhancements (as defined herein) and/or additional reports.
- b. Operating supplies, accessories, disks, tapes, etc.
- c. Maintenance of accessories, alterations, attachments or other devices not furnished by the Company.

- d. Telephone charges, (including those related to any rebuilding of the system) equipment, usage and support.
- e. Additional training and/or support services beyond that provided for in Paragraphs 7 and 9 hereof.
- f. System rebuilding as a result of electrical failure, improper backups or operator error.

9. Training Services.

The Company agrees to provide additional training and/or support services if required and the Municipality agrees to pay the Company for additional services at the rates as contained on Schedule A. The Municipality shall reimburse the Company for reasonable travel, meals and lodging expenses incurred by the Company in rendering said additional services.

10a. Warranty.

The Company warrants that the software system provided hereunder functions in accordance with the specifications as contained in the Company documentation as delivered to the Municipality and that it is fit for the purpose for which it is provided. If any failure or defect in the software system occurs, the Company will, upon receipt of written notification from the Municipality repair or replace the failed or defective system subject to the limitations on software maintenance contained in Paragraph 7 hereof.

10b. Limitation of Liability.

The Company shall not be liable for damages resulting from or arising out of the Municipality's negligent use of the software or wrongful handling of data, goods and services provided hereunder by the Company.

11. Rights Granted.

The Company hereby grants to the Municipality and the Municipality hereby accepts from the Company during the Initial Term of this Agreement a personal non-transferable and non-exclusive license for up to three(3) users to to use the software system as described in Schedule A. complete with Documentation and Modification, and Enhancements and Software Options (as those terms are defined herein) supplied to the Municipality pursuant to this Agreement or that portion of the Software System above described which may be part of any Modification, Enhancement or Software Option thereto or derivative therefrom developed by or for the Municipality during said Initial Term.

The license granted hereunder is restricted solely and exclusively to the Municipality and may not be assigned, subleased, sub-licensed, sold, offered for sale, disposed of, encumbered or mortgaged. No right to print or copy, in whole or in part, the licensed program or its documentation is granted.

12. Copyright Protection.

The Company will defend at its expense any action brought against the Municipality to the extent that it is based on a claim that the licensed software system or optional materials, used within the scope of the license hereunder, infringe a copyright in the United States or a United States patent, and subject to the limitation of liability stated herein the Company will pay any costs and damages finally awarded against the Municipality in such action which are attributable to such claim, provided that the Municipality notifies the Company promptly in writing of the claim and the Company may fully participate in the defense and/or agrees to any settlement of such claim. The Company shall have no liability for any

claim of copyright or patent infringement based on use or combination of the Company's software system or optional material with other software systems or programs or data if such infringement would have been avoided by the non-use of the licensed software system or optional material with other software or data. The foregoing states the entire liability of Company with respect to infringement of any copyright or patents by the licensed software system or optional materials or any parts thereof.

In the event that any of the licensed software system or optional materials are found by a court of competent jurisdiction to be infringing, the Company shall, in addition to paying the cost of any damages awarded against the Municipality, shall modify its product so as to render it non-infringing, or shall, at its sole cost, obtain a license on behalf of the Municipality authorizing its continued use of the product.

13. Non-Disclosure.

Title and full ownership rights to the software system licensed under this agreement shall remain with the Company. It is agreed that the software system is the proprietary information and trade secret of the Company, whether or not any portion thereof is or may be validly copyrighted or patented.

Each party agrees to keep confidential all confidential information disclosed to it by the other party in accordance herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own at all times exercising at least a reasonable degree of care in the protection of confidential information. However, confidential information shall not include information that, (i) is already known to the receiving party at the time it is disclosed and has not been obtained wrongfully, (ii) becomes publicly known without fault of the receiving party, (iii) is independently developed by the receiving party, (iv) is approved for release in writing by the disclosing party, (v) is disclosed without restriction by the disclosing party to a third party, or (vi) is disclosed pursuant to legal obligations beyond the control of the disclosing and receiving parties. .

14. Municipality's Data.

The data to be imported into the Company's software to be utilized by the Municipality shall be in the format specified in Schedule A. Any change in the format as specified would constitute a Software Option and be subject to additional charges as specified herein.

15. Request for Services.

Any request for service to be provided by the Company hereunder shall be in writing and signed by the designated representative of the Municipality. In the event an oral request for service is made and the Company at its option indicates its willingness to act thereon, then such oral request must be reduced to writing before delivery of such services or product.

16. Risk of Loss and Damage.

The Municipality assumes all risks of loss or damage resulting from fire or other casualty, theft, and/or the fault, negligence or intentional acts or conduct of persons other than that of the agents, servants and/or employees of the Company.

17. Force Majeure.

A Party shall not be considered in default due to any failure in performance of this Agreement, in accordance with its terms, should such failure arise out of a cause beyond its control and without its fault or negligence. Such causes may include, but are not limited

to, acts of God or a public enemy, acts of the Government (other than those of the Municipality Party hereto) in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, degradation of telephone or other communication service or unusually severe weather conditions. However, in every case the failure to perform must be beyond the control and without the fault or negligence of the Party. In such event, a party's performance shall be extended for the period of delay or inability to perform due to such occurrence.

18. Right of Entry.

During the term of this Agreement the Company shall have, upon reasonable advance notice, full and complete access and right of entry to the Municipality's real property wherein the System is located for the sole purpose of software maintenance during the hours of nine (9) a.m. to four (4) p.m. Monday through Friday.

19. Termination.

Subject to the provisions of the section entitled "Force Majeure", if the Company shall fail to fulfill in a timely and satisfactory manner its obligations under the Agreement, or if the Company shall violate any of the covenants, conditions, or stipulations of this Contract, where such failure or violation continues for a period of twenty one (21) business days after Company's receipt of written notice of such failure or violation, the Municipality shall have the right to terminate this Agreement by giving written notice of termination at least seven (7) days before the effective date of termination.

In the event the Company breaches this Agreement, the Municipality shall have the right to be fully compensated for all losses and expenses arising from such a breach notwithstanding any other provision of this Agreement to the contrary.

20. Survival.

The provisions of Paragraph 13 shall survive the termination of this Agreement, however brought about, until such time as the Company notifies the Municipality that it is released of such obligation.

21. Representation of Municipality.

The Municipality represents that prior to the delivery by the Company of the systems or services to be provided hereunder, it will provide satisfactory proof to the Company that funds have been appropriated or otherwise made available by the Municipality to meet its current fiscal year obligations hereunder. In the event that funds are not appropriated or otherwise made available to support the continuation of performance after the current fiscal year, the Municipality shall cancel this Agreement in accordance with G.L. c 30B. Section. 12 without further liability to the Company on account of such termination.

22. Non-Collusion

The Company affirms that:

- A. The proposed contract price has been arrived at independently, without collusion, consultation or communication as to any other company or with any competitor.
- B. The said price was not disclosed by the Company and was not knowingly discussed prior to the submission, directly or indirectly, to any other company or to any competitor.
- C. No attempt was made by the Company to induce any other person, Partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

23. Notice.

Any notice to be given by either party to the other shall be deemed duly given, if mailed via certified mail, return receipt requested as follows:

In the case of the Company:

Paul S. Kapinos & Associates, Inc.
29 College Street
South Hadley, MA 01075

In case of the Municipality:

Board of Assessors
Town of Chilmark
401 Middle Road,
P.O. Box 119
Chilmark, MA 02535

Attn: _____

Either party may designate in writing any other address to which such notice shall be thereafter so mailed.

24. Agreement.

This Agreement constitutes the entire Agreement between the parties hereunder and supersedes all prior understandings and Agreements between them and shall not be modified, amended, or altered, except by a written instrument duly executed by both parties, and incorporates the terms of the Municipality's request for proposals, the Company's Agreement and the Municipality's acceptance of the Company's Agreement. The relationship of the parties is to be governed by the terms of this Agreement and any term contained in such other documents which is contrary to, inconsistent with or at variance with any term contained herein is deemed waived or amended to conform to the terms of this Agreement.

25. Insurance Coverage

A. General

The Company shall, before commencing performance of the Agreement, be responsible for providing and maintaining insurance coverage in force for the life of the Agreement of the kind and in adequate amounts to secure all of the obligations under the Agreement and with insurance companies licensed to write insurance in the Commonwealth of Massachusetts. All such insurance carried shall not be less than the kinds and amounts designated herein, and the Company agrees that the stipulation herein of the kinds and limits of coverage shall in no way limit the liability of the Company to any such kinds and amounts of insurance coverage. All policies issued shall indemnify and save harmless the Municipality, and its employees from claims for damages to persons or property as may arise out of the performance of the Agreement. Certificates of Insurance for all required coverages evidencing coverages in force shall be supplied to the Town prior to the commencement of the work to be performed. Failure to provide and continue in force such insurance as aforesaid shall be deemed a material breach of this Agreement, and may constitute sufficient grounds for immediate termination of the same. All insurance

maintained as provided for in the above shall be carried and maintained at the sole expense of the Company.

B. Company's Comprehensive General Public Liability and Property

Damage Liability Insurance

The Company shall carry Comprehensive General Liability Insurance with a Combined Single Limit for Bodily Injury and Property Damage in an amount not less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate.

C. Comprehensive Automotive Liability and Property Damage Insurance

The Company shall carry Automobile Liability Insurance with a Combined Single Limit for Bodily Injury and property Damage in the amount of one million dollars (\$1,000,000.00). Such coverage shall include owned vehicles, hired vehicles or non-owned vehicles under the control of the Company while performing work under this Agreement.

D. Workman's Compensation

The Company shall carry Workman's Compensation Insurance as required by law.

26. Governing Law.

This agreement shall be governed by, and interpreted and construed

In accordance with, the substantive laws of the Commonwealth of Massachusetts, conflicts of law excluded. Both parties hereby irrevocably submit any disputes under this Agreement to the jurisdiction of the courts located in Dukes County , Massachusetts.

27. Severability.

In the event that any terms of this Agreement are in conflict with any applicable rule of law or statutory provision or otherwise unenforceable under applicable laws or regulations of any government or subdivision thereof, such terms shall be deemed stricken from the this Agreement, but such invalidity or unenforceability shall not invalidate any of the other terms of this Agreement and this Agreement shall continue in force, unless the invalidity or unenforceability of any such provisions hereof does substantial violence to, or where the invalid or unenforceable provisions comprise an integral part of or are otherwise inseparable from, the remainder of this Agreement.

28. Counterparts.

This Agreement shall be executed in two or more counterparts, and each such counterpart shall be deemed an original hereof. Any translation of this Agreement into any other language shall be for convenience purposes only and shall not be binding on any party.

IN WITNESS WHEREOF, Paul S. Kapinos & Associates and the Town of Chilmark have caused this Agreement to be executed by their duly authorized officers.

Town of Chilmark

Paul S. Kapinos & Associates, Inc.



Chairman, date

Paul S. Kapinos 12-16-13

date

date

Town Manager date

Town Accountant date

Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A, I certify under penalties of perjury that I, Paul S. Kapinos & Associates, Inc., to the best of my knowledge and belief have complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

In accordance with general Laws Chapter 30b, section 10, I Paul S. Kapinos

Certify under the penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this section the word person shall mean any natural person, joint, partnership, corporation, or other business or legal entity.



Paul S. Kapinos 12-16-13
EIN: 20-0710060

SCHEDULE A. Scope of Project and Overview:

PROJECT COST ITEMIZATION AND TIME TABLE

Description	Cost	Delivery Date
1. Software Licensing	\$5,000	12/2013
2. Data Conversion and Optimization	\$7,000	12/13-2/14
3. Training (40 hours)	Included	Ongoing
4. Dor Required Field Review	\$10,000	3/14-5/14
Additional Training \$75-\$125 per hour		

*1 Annual Fees to be prorated based on installation date

Software Specifications

Contents

1. User Interface
2. Legal File
3. Appraisal File
4. Report Writer
5. Additional Features
6. Application Updates

1. User Interface:

- a. A Table Driven User-defined PC-based mouse driven system with graphical user interface.
- b. A 3 user system
- c. 32 Bit Programming that runs on a Windows and Windows Server..
- d. Is capable of converting and emulating the Municipality's existing data and valuations.
- e. Provides context-sensitive interactive On-line Help with the ability to generate printed documentation from the user menu.
- f. Is completely seamless between modules so that the user can perform all functions through consistent on-screen menus.
- g. Provides for "error" messages and error logging for remote diagnostics.
- h. Is capable of generating a Tax Billing file that is "machine readable" for use by the Town's tax billing vendor.

- i. Audit functions:

Provides reports on all transaction activity for an audit trail. Provides a maintenance function producing audit trail listing and totals showing the before and after status of the data, indicating the change, the date, and the User ID.

- j. Data Extract Function:

The system has an on-line capability to create, store, and retrieve extract files (sub-sets of the data-base) by any of the fields in the system. The extract criteria shall include the following: equal to, greater than, less than, between, and inlist.

- k. Security functions:

Provides security devices to restrict access to various fields and screens based on user ID and access level. Has the ability to "lock" other users out of a file and/or record so only one edit/update can be performed at a time.

2. Legal File

- a. Multi-year; Capable of maintaining past and current year data while allowing for entry of future year data including automatic posting of Owner of Record and :Care of". Complete retrieval of all data for a user specifies number of years including printing of property record cards.
- b. Inquiry capability on all parcel information by parcel ID, location, and owner's name.
- c. Provides complete functionality for tracking and processing all abatements and exemptions. Including Appellate Tax Board proceedings and printing of all statutory forms and notices.
- d. A complete Automated Betterments Package.

3. Appraisal File

- a. Valuation capability for all residential, condominiums, commercial, industrial, mixed-use, vacant land, exempt, and personal property.
- b. Provides the cost approach, the income approach, and the direct sales comparison approach.

Cost Approach:

Completely Table driven User defined Market Adjusted cost system with pricing for land, multiple improvements, and outbuildings.

Income Approach:

Commercial/Industrial interface to produce Cost, Income, and Market correlation statistics and valuation worksheets. The on-line valuation capabilities shall include a complete Income Approach, including Discounted Cash Flow Analysis. The rental control table allows for size adjusting and for daily, weekly, monthly, and annual rental types.

Available for use at the Public Access Workstation

- c. Condominium valuation feature to value both Residential and Commercial Condominiums.
- d. Valuation Modeling and Analysis:

Valuation modeling feature to enable the user to specify land and building adjustments that update the database for valuation testing. This includes automatic and user specified tables, adjustments, stratification, criteria and options for all reports.

Ability to analyze sales ratio and other statistics by all fields. Multi-variate analyses including cross-tabs with summary and detail output options and direct spreadsheet interface.

4. Report Writer

- a. All reports are user selectable and on-line, with the capability to sort, group, browse, and print preview.
- b. On-Line ability to write LOTUS123, and MICROSOFT EXCEL files.
- c. Building Permit Reports to track and compile LA13 data.
- d. Performs all Massachusetts Department of Revenue required ratio analyses and also generates all required database reports and spreadsheets. This includes, but is not limited to, those required by the LA9-12 Form. These are all on-line selections and do not require the user to export data to other applications.

e. Generates LA3S forms and electronic files for submission to the DOR.

f. Calculates and prints totals by land use code and class (DOR LA4).

5. Additional Features

a. GIS interface capability

b. Video Imaging interface to allow for parcel by parcel storage and retrieval of standard image file formats.

6. Application Updates

The Application will be updated periodically as changes are made to modify or update the existing code or user interface. These changes will include compliance with DOR rule changes and reporting requirements, upgrades of existing operating systems and programming languages, and revisions to the existing functionality of the application.