AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
End User License and Warranty Agreement; Ethical Advocate; Anonymous Reporting Hotline; 4/15/14 thru 4/14/15; $2,250

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Gunnison County and Ethical Advocate

Term Begins: 4/15/2014 **Term Ends:** 4/15/2015 **Grant Contract #:**

Summary:
Please see the attached memo. This tool would allow anonymous reporting by county employees or members of the public of a variety of fraud and misconduct. The cost can be absorbed in the existing Finance budget.

Fiscal Impact: $2,250 first year ($1,750 ea yr thereafter)

Submitted by: Ben Cowan **Submitter's Email Address:** bcowan@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:

Cost covered in the adopted 2014 budget

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 3/25/2014

County Attorney Review: (●) Required ( ) Not Required

Comments:

Reviewed by: GUNCOUNTY1\atrezise Discharge Date: 3/26/2014 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reviewed by: GUNCOUNTY1\mbirnie Discharge Date: 3/26/2014

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted:

Agenda Date: 4/1/2014 Follow Up Agenda Date:

Revised April 2013

Memorandum

To: Board of County Commissioners

From: Ben Cowan

CC:

Date: Friday, March 28, 2014

Re: Anonymous Reporting Hotline

When Linda Nienhueser and I attended a fraud class at last year's Colorado Government Finance Officers Association (CGFOA) conference, we learned some very interesting statistics:

- 5% of total revenues are lost due to fraud or misuse of resources
- 90% of fraud is asset misappropriation (theft)

While many believe that external and internal audit processes catch fraud, the truth is that only 3% of all discovered fraud is caught by external audits (they really are designed to ensure accurate reporting of financial information, not to catch fraud) and only 14% is caught by internal audit activities.

The most frequent way fraud is discovered is actually by tip or accident – 50%. Unfortunately, we have seen a relevant example of this with the experiences of the Gunnison School District.

The Ethics Resource Center's 2007 National Government Ethics Survey found that:

- Rates of misconduct in government are already high — nearly 60 percent of government employees see misconduct.
- At present, 30 percent of misconduct across government goes unreported to management.

We found that a fraud hotline is the most cost effective fraud protection available. For the nominal cost of contracting this service, we may be able to prevent or discover a threat to the County organization representing many times the cost of the hotline. Accordingly, I sent out a listserv question to the members of CGFOA) to see what solutions they were using. After looking at a couple of options, we settled on Ethical Advocate because the price is reasonable and an online reporting option is also available to the public.

The tool, yet to be configured, will allow for reporting of a variety of types of fraud including theft, misreporting of hours worked, lying to customers or employees, misuse of county resources, and a variety of personnel related policy infractions. The planned "Go Live" is April 15, 2015.

If approved, this tool will provide a way for someone to report something anonymously if they do not feel they can go to their supervisor (or it is their supervisor they are concerned about). Users will be able to submit an incident report and check back for status updates or to answer questions, all while remaining completely anonymous.

We can absorb the nominal cost in the existing Finance Program budget.

Ethical Advocate

Jacob S. Blass
President

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Chapel Hill, NC 27514
919.942.2469
jblass@ethadv.com
www.ethicaladvocate.com

March 25, 2014

Mr. Ben Cowan
Assistant Finance Director
Gunnison County
200 E. Virginia
Gunnison, CO 81230

Dear Mr. Cowan

In accordance with your request I'm pleased to present Gunnison County this Engagement Letter to utilize Ethical Advocate's secure, anonymous reporting system. This Letter is effective through 04/24/14.

Users	Commercial Service	Annual Cost
Up to 250	Online and Phone Reporting for All Employees Online Only Reporting for All Others	$1,750

Set Up Fee
There is a one-time set-up fee of $500.

Language Translation
The service comes with the ability to submit reports in 16 languages online and 180 through the call center.
For incidents submitted online, language translation is available with price TBD by the language and number of words. For language translation services required for incidents submitted through the Call Center (other than Spanish), there will be a $1.90 per minute fee.

Included Services All At No Additional Cost
A list of the plan's extensive features Includes:
- 24/7/365 coverage
- Creating a custom URL taking Gunnison County's users directly to the user page
- Ability to have multiple URL's for all Gunnison County companies/divisions
- Unlimited customized categories/subcategories for incident reporting
- Unlimited customized locations for incident reporting
- Unlimited number of Administrators
- Unlimited training for the designated administrator/liaison(s)
- All technical support

- Immediate email notification to designated administrators when a report is submitted and upon all communications from the incident reporter
- Highly trained call center agents. Agents read back each answer to ensure accuracy
- Web-link directly from Gunnison County's Intranet to incident reporting pages
- Customized easy-to-use instructions
- EA's exclusive 'closed loop' system assuring internal follow up and information procedures that reach Gunnison County's chief administrator(s) and/or appropriate external interested parties for incidents involving senior staff
- Ongoing communication on building and maintaining an ethical culture
- User Guides for Gunnison County's administrators and users

Case Management

A comprehensive case management system and statistical analysis for the timely distribution, explanation, follow-up and management of every incident report to appropriate administrators is included at no additional fee.

Benchmarking

EA will conduct benchmarking with Gunnison County, using comparison and trend analysis data with respect to

- frequency of reports
- anonymous vs. reporters identifying themselves
- report aging
- frequency of management involvement
- relationship of reporter to Gunnison County
- how the incident reporter became aware of the incident
- correlation of reports locations to categories

Communication for the Introduction and Ongoing

While the plan's technology is very important, the benefits Gunnison County can derive from the plan will be in direct proportion to its effective communication about it. Consequently Ethical Advocate will provide suggestions and templates for effectively communicating to the system's users. Ethical Advocate has distinguished itself by working with a team of psychologists and communications specialists to craft positive mechanisms encouraging people to do the right thing – even when they feel uncomfortable by doing so.

Implementation

Ethical Advocate has developed a broad knowledge base in working with many government clients. As such we will work closely with Gunnison County to ensure that the reporting mechanisms reflect any regulatory obligations, risk exposures and those areas where situations need to be brought to light.

We will work closely with your staff to ensure timely implementation, transition and excellent training for administrative staff. We will also work closely with Gunnison County to structure the service for maximum ease of use for its plan users.

Our commitment is to provide Gunnison County with the most exemplary service it receives from any of its vendors and to provide it with the extra layers of protection and prevention it deserves. This is underscored by Ethical Advocate having received one of the highest scores ever given by D&B for client satisfaction based upon

anonymous client evaluations. This commitment is further underscored by Gunnison County's administrators having direct access to me.

Sincerely,

Jacob S. Blass

_____

Authorized Gunnison County Representative (Print name}

_____

Signature

_____

Date

Ethical Advocate

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2.6 United States Government Legend. If the Software is being acquired directly or indirectly on behalf of the U.S. Government, the following will apply. For civilian agencies and departments: the Software was developed at private expense and is "restricted computer software" submitted with restricted rights in accordance with subparagraphs (a) through (d) of the Commercial Computer Software-Restricted Rights clause of FAR 52.227-19 and its successors, and it is unpublished and all rights are reserved under the copyright laws of the U.S. For units of the Department of Defense, the Software is "commercial computer software" and "commercial computer software documentation" under the Rights in Computer Software and Computer Software Documentation clause of DEAR 227.7202-3 (a) and its successors, and all use, duplication or disclosure is subject to the license and restrictions set forth in this Agreement.

2.7 Term and Termination. This Agreement is effective as of as April 15, 2014, contingent upon receipt of this signed agreement and payment, and will terminate when the support and subscription services for the Product are not renewed. This Agreement will also terminate automatically and immediately if You fail to comply with any term or condition of this Agreement or fail to pay any amounts due and payable to KJAS or its authorized reseller. Upon such termination, You agree to stop using the Software, destroy any copies of related documentation in any form, and provide KJAS written certification of the same.

3. **WARRANTY**.

3.1 Product Warranty. KJAS warrants to You that the Product will be free from defects in workmanship and materials that cause complete service failure and will perform in substantial conformance to its specifications published by KJAS for a period of one (1) year from the date of original purchase from a KJAS authorized reseller. KJAS's sole obligation under this express warranty will be, at KJAS's option and expense, to replace the Product with a comparable Product, repair the Product, or if neither repair nor replacement is reasonably available, KJAS may, in its discretion, refund to You the prorated annual license purchase price paid for the Product based on a straight line amortization commencing on the date of first delivery of the Product to You, less any implementation or device fees. KJAS warrants any repaired Product for a period of ninety (90) days from release or

Licensee Initials: _____

through the end of the original warranty, whichever is longer. All Product replaced becomes the property of KJAS.

3.2 Obtaining Warranty Service. You must first contact during normal business hours the technical support department of the authorized reseller who sold you the Product within the applicable warranty period to obtain a warranty service authorization. If appropriate, your reseller will provide You with instructions regarding KJAS's warranty support process. If KJAS determines that the Product is covered by warranty, KJAS will issue You a letter for replacement or repair.

3.3 DISCLAIMER. EXCEPT AS SET FORTH IN SECTION 3.1, THE PRODUCT AND SUPPORT AND SUBSCRIPTION SERVICES ARE PROVIDED "AS IS," AND KJAS AND ITS SUPPLIERS AND RESELLERS MAKE NO WARRANTIES, GUARANTEES, OR REPRESENTATIONS OF ANY KIND WHATSOEVER, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, NO WARRANTY OR REPRESENTATION THAT THE PRODUCT OR THE SUPPOORT AND SUBSCRIPTION SERVICES WILL MEET YOUR REQUIREMENTS OR WILL WORK IN COMBINATION WITH ANY HARDWARE OR SOFTWARE APPLICATIONS PROVIDED BY THIRD PARTIES, THAT THE OPERATION OF THE PRODUCT OR THE SUPPORT AND SUBSCRIPTIONS SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL DEFECTS IN THE PRODUCT OR SUPPORT AND SUBSCRIPTION SERVICES WILL BE CORRECTED. IF THE PRODUCT DOES NOT OPERATE AS WARRANTED IN SECTION 3.1, YOUR SOLE REMEDY FOR BREACH OF THAT WARRANTY WILL BE REPLACEMENT OR REPAIR OF THE PRODUCT OR REFUND OF THE PRORATED ANNUAL LICENSE PURCHASE PRICE PAID, AT KJAS'S OPTION. TO THE FULL EXTENT ALLOWED BY LAW, THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, TERMS, OR CONDITIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, CORRESPONDENCE WITH DESCRIPTION, AND NONINFRINGEMENT, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. YOU ACKNOWLEDGE THAT YOU HAVE RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTY IN SECTION 3.1 AND THAT NO WARRANTIES ARE MADE BY ANY OF KJAS'S SUPPLIERS OR RESELLERS. KJAS NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE, IMPLEMENTATION, MAINTENANCE OR USE OF THE PRODUCT.

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4. **INDEMNIFICATION**.

4.1 Infringement Indemnification. Subject to the terms of this Article 4, KJAS will defend, indemnify, and hold You harmless from and against all claims, suits, actions, proceedings, judgments, damages, costs, fees (including reasonable attorneys' fees), and liabilities (individually and collectively referred to as, a "**Claim**") suffered or incurred by You as a result of any alleged and/or actual infringement of any third party patent, copyright, and/or trade secret right existing under the laws of the United States to the extent that such Claim arises solely as a result of your use of the Product within the United States in accordance with the provisions of this Agreement and the accompanying Product documentation. The foregoing indemnification will not apply if the alleged and/or actual infringement arises or results from: (i) the use of a superceded version of the Product, if the infringement would have been avoided by the use of the then current unaltered release of the Product; (ii) the modification of the Product by any party other than KJAS or at KJAS's express direction; (ii) the modification of the Product to comply with your specifications; or (iii) the combination and/or use of the Product with software, hardware, firmware, data, and/or technology not provided by KJAS. Additionally, the foregoing indemnification is subject to: (a) You promptly notifying KJAS in writing within ten (10) days of first becoming aware of each such Claim; (b) You not making any admission against KJAS's interests and not agreeing to any settlement of any such Claim without the prior written consent of KJAS; (c) You, at the request of KJAS, providing all reasonable assistance to KJAS in connection with the defense, litigation, and/or settlement by KJAS of each such Claim; and (d) KJAS having sole control over the selection and retention of legal counsel, as well as over the litigation and/or the settlement of each Claim.

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5.3 TIMING; JURY TRIAL WAIVER. YOU ACKNOWLEDGE AND AGREE THAT NO ACTION, REGARDLESS OF FORM, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS AGREEMENT OR THE SUPPORT AND SUBSCRIPTION SERVICES MAY BE BROUGHT BY YOU MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED, AND YOU HEREBY KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY WAIVE YOUR RIGHT TO A JURY TRIAL WITH RESPECT TO ANY SUCH ACTION.

5.4 Basis of the Bargain; Failure of Essential Purpose. You acknowledge and agree that KJAS has entered into this Agreement and determined the fees charged for the Product in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth in this Agreement and that the same form an essential basis of the bargain between the parties. You also acknowledge and agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive and apply even if found to have failed of their essential purpose.

6. **GOVERNING LAWS; VENUE**. This Agreement is made under and will be governed by and construed in accordance with the laws of the State of North Carolina except that body of law controlling conflicts of law and excluding the Convention on Contracts for the International Sale of Goods. The parties agree that the Uniform Computer Information Transactions Act, or any version thereof, adopted by any state located in the United States, in any form (the "**UCITA**"), will not apply to this Agreement. To the extent that the UCITA is applicable, the parties agree to opt out of the applicability of the UCITA pursuant to the opt-out provisions contained therein. In the event of any controversy, claim, or dispute arising under or relating to this Agreement or the support and subscription services, including the existence, validity, interpretation, performance, termination or breach thereof, the parties to this Agreement hereby expressly and irrevocably consent to the personal jurisdiction and venue of the federal courts sitting within North Carolina, unless no federal subject matter jurisdiction exists, in which case the parties consent to jurisdiction and venue in Orange County, North Carolina. The parties expressly waive all defenses of lack of personal jurisdiction and forum nonconveniens with respect to such federal and state courts. The prevailing party in any such action, at law or equity, shall be entitled to reimbursement of its reasonable attorneys' fees, expenses and costs incurred to pursue or defend such action from the non-prevailing party.

7. **PRESS RELEASE** Licensee grants KJAS-Ethical Advocate the right to use Licensee's name and logo as an Ethical Advocate customer subject to prior review and approval by Licensee. Licensee grants KJAS Ethical Advocate the right to issue a press release announcing that Licensee has selected Ethical Advocate as its Ethicsline platform subject to prior review and approval by Licensee. Licensee agrees to reasonably provide references upon successful implementation of the service.

8. **SERVICE AGREEMENT.** Technical Support is available Monday-Friday, 8:30a.m.-5p.m., EST, and weekends and holidays, on call. Response to requests for support will be returned no more than 24 hours of receipt of the request.

9. GENERAL. The foregoing terms comprise the entire and exhaustive statement of the agreement between KJAS and You relating to or arising out of your use of the Product. No modification, whether oral or written, to any of the above terms and conditions will be binding unless specifically agreed to in writing and signed by a duly authorized officer of KJAS. The above terms shall prevail notwithstanding any different or inconsistent terms in any ordering or other document issued by You. Failure or delay in enforcing any right or term or condition of this Agreement shall not be deemed a waiver of such right or term or condition with respect to any subsequent breach or continuance of any existing breach after demand for strict performance. If any term or condition shall be held by a court of competent jurisdiction to be unenforceable, that term or condition shall be interpreted as broadly as possible to give effect to the intent of the parties, and the remaining terms and conditions of this Agreement will remain in full force and effect.

YOU HEREBY EXPRESSLY ACKNOWLEDGE AND AGREE TO THE TERMS OF THIS END USER LICENSE AND WARRANTY AGREEMENT.

Gunnison County

By: _____

Name: _____

Title: _____

Address: _____

_____

Date: _____

Licensee Initials: _____