


**ORDER: ACCEPT SERVICES AGREEMENT WITH IMAGE TREND FOR THE FIRE
DEPARTMENT**

Motion was made by Chad McLarty, duly seconded by Brent Larson, to accept services agreement with Image Trend for the Fire Department.


The vote on the motion was as follows:

Supervisor Brent Larson, voted yes
Supervisor Larry Gillespie, voted yes
Supervisor David Rikard, voted yes
Supervisor Chad McLarty, voted yes
Supervisor Mike Roberts, voted yes

After the vote, President Roberts, declared the motion carried, this the 3rd day of April, 2023.



Mike Roberts, President
Board of Supervisors



Sherry Wallace, Chancery Clerk

Services Agreement

CONTRACT NUMBER: 00006619.0

BETWEEN

**Lafayette County Fire
Department**

**50 County Road 1032
Oxford, MS 38655**

AND

IMAGETREND®

**ImageTrend, Inc.
20855 Kensington Blvd.
Lakeville, Minnesota 55044**

THIS AGREEMENT is made and entered into on the date last written below, by and between the ImageTrend, Inc., a Minnesota corporation (hereinafter "ImageTrend"), and Lafayette County Fire Department (hereinafter "Client"), together "the Parties."

RECITALS

WHEREAS, Client desires to have services performed by ImageTrend, or

WHEREAS, ImageTrend possesses technical skill, knowledge, and capability in consulting and designing custom and off-the-shelf software solutions and performing technical software services and Client desires such services,

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. DEFINITIONS

"Agreement" and **"This Agreement"** means this Services Agreement, the Work Orders issued hereunder, all Attachments and Exhibits attached hereto, or any Amendments made in mutually executed hereto.

"Business Day" means a single 8 hour period occurring on a Monday, Tuesday, Wednesday, Thursday or Friday, 9:00am CST to 5:00pm CST, excluding holidays per §14(b) below. Unless specified in a Service Order, ImageTrend personnel will only perform services during Business Days.

"Business Week" means a 5 day period, beginning Monday at 9:00am CST and ending Friday at 5:00pm CST, excluding holidays per below.

"Confidential information" means the proprietary products and trade secrets, including, but not limited to, computer software, code, technical parameters, price lists, methods of pricing, customer lists, designs, software documentations, manuals, models and account tables, and any and all information maintained or developed. Information shall be considered Confidential Information if it is identified in writing as confidential or proprietary, or if disclosed verbally or visually in discussion, upon written notice specifying and describing the nature of the orally disclosed Confidential Information at that time, or within fifteen (15) days of such disclosure.

"Deliverable" means an intangible or tangible product, material, or service produced as a result of a Work Order, and each Deliverable is specified in the corresponding Work Order from which it is produced.

"Disclosing Party" means the party disclosing Confidential Information to the other party, see also Receiving Party.

"Governmental Entity" shall have the same meaning as "State and local government entities" as defined in the General Services Administration Acquisition Manual (GSAM) at 538.7001, as updated.

"Intellectual Property" means any intellectual property or proprietary rights in any jurisdiction, whether owned or held for use under license, whether registered or unregistered, including such rights in and to: (i) trademarks, trade dress, service marks, certification marks, logos, trade names, brand names, corporate names, assumed names and business names ("Trademarks", which term shall include the

items described in clause (viii) below); (ii) patents and any and all divisions, continuations, continuations-in-part, reissues, continuing patent applications, reexaminations or extensions thereof, any counterparts claiming priority therefrom, utility models, patents of importation/confirmation, certificates of invention, certificates of registration and like statutory rights; inventions, invention disclosures, discoveries and improvements, whether patentable or not; (iii) copyrights and works of authorship; (iv) trade secrets (including those trade secrets defined in the Uniform Trade Secrets Act and under corresponding federal, state or foreign statutory or common law), business, technical and know-how information, non-public information, and confidential information and rights to limit the use or disclosure thereof by any Person; (v) mask works; (vi) moral rights, author's rights or rights of publicity; (vii) claims, causes of action and defenses relating to the enforcement of any of the foregoing; (viii) any applications for registration of any of the foregoing, and all renewals or extensions of any of the foregoing, whether now existing or hereafter arising; and (ix) the goodwill associated with each of the foregoing. For the avoidance of doubt, "Intellectual Property Rights" includes any and all of the foregoing related to computer software, data files, Source Code, Object Code, APIs, manuals, documentation, specifications, databases or other materials or information.

"Licensed Information" means any information pertaining to the Software which is owned by IMAGETREND and is licensed to CLIENT. Licensed Information includes such information as input form, user manuals and user documentation, interface format and input/output format, and any other materials pertaining to the Software.

"Local Travel" means travel to a destination in the Twin Cities Metro area, within 30 miles of Lakeville, MN.

"Materials" and "Expenses" means but is not limited to third party software licenses, physical hardware, test devices, or other items, reasonable travel expenses (including but not limited to food, lodging, and transportation), printing, delivery of materials, or any other cost reasonably incurred arising out of this Agreement.

"Services Agreement" means this document excluding Work Orders issued from this document.

"Pre-Existing Materials" means code, documentation, frameworks, development accelerators, tool sets or any other materials owned by ImageTrend and not developed as part of the services performed for Client. It may include, without limitation, Security Framework, Dashboard, ImageTrend Frameworks, Report Writer and any other tools or Intellectual Property made or used by ImageTrend unrelated to this Agreement.

"On-Site Hour" means time an hour worked by ImageTrend personnel on Client premises, or other premises of Client's choosing that are not ImageTrend's corporate offices.

"Support" means technical support for the configuration and functioning of the products, including taking and monitoring defect reports, as defined further below in the Service Level Agreement between ImageTrend and Client.

"Software" means ImageTrend software provided to Client by ImageTrend, specifically software developed and/or written by ImageTrend. Software developed by a third-party which is purchased on behalf of Client is considered Third Party Material.

"Receiving Party" means the party receiving Confidential Information from the Disclosing Party.

"The Agreement" means collectively this Services Agreement, its Exhibits, all Work Orders issued from this Services Agreement, and all Exhibits to Work Orders.

"Third Party Material(s)" means software or other materials owned by a party other than Client or ImageTrend.

"Work Order" means the document which outlines a mutually agreed upon set of services, products, or Deliverables and associated costs, payment terms, and acceptance procedures.

SECTION 2. TERM OF AGREEMENT

The Term of this Agreement begins on March 15, 2023 and runs to March 14, 2024.

SECTION 3. FEES, INVOICING, AND PAYMENT TERMS

FEES. Client shall owe to ImageTrend such fees as set forth in each mutually executed Work Order.

SCHEDULING NON-LOCAL TRAVEL. For air travel Client may, and is strongly advised to, schedule travel no less than 3 weeks in advance of the first on-site date by written request; ImageTrend reserves the right to approve or deny travel requests on a per-request basis. Client may also request travel by writing with 3 weeks or less advance notice; ImageTrend reserves the right to approve or deny such travel requests, and to invoice costs to Client due to scheduling changes ImageTrend must make to accommodate such a request if approved.

CANCELLATION, RESCHEDULE, OR DELAY. Client will provide to ImageTrend (10) ten business days prior written notice of Client's intent to delay, reschedule, or cancel ("Staffing Change") any service in a Work Order which requires an ImageTrend employee to perform work at a specific location or at a specific time (e.g. face-to-face meetings, on-site visits, after hours on-call status). If Client fails to provide such notice, Client shall reimburse ImageTrend for loss caused by the Staffing Change. ImageTrend shall use commercially reasonable efforts to mitigate any losses that would be incurred by a Staffing Change and due to ImageTrend by Client.

INVOICING. Unless otherwise specified in a Work Order, invoices must be paid on Net 30 terms. Any objection to an invoice must be made in writing. Client may request up to an additional 15 days to review Deliverables associated with an invoice, approval to which ImageTrend shall not unreasonably withhold. If Client does not object to an invoice, or request an extension to review Deliverables, within 15 days after receipt of the invoice then the invoice is deemed accepted and any right to object to the invoice is waived. Payment shall be made by check or by ACH transfer to ImageTrend.

REMEDIES FOR NON-PAYMENT. Should Client fail to pay per the terms of this Agreement and this Section 5, ImageTrend may 1) suspend services under all Work Orders until such payment is made in full, and/or 2) charge a late fee at the lesser of 1.5% or the maximum allowed by law, and/or 3) invoice Client for the costs of collection including reasonable attorney's fees.

TRAVEL COSTS. Should Client desire ImageTrend to send personnel to a location of Client's choosing in the continental United States, Client may pay \$1,750 per ImageTrend trainer per trip and a further \$1,400 per trainer per day spent at Client's chosen location. Travel outside of the continental US will be

quoted by ImageTrend upon request. Travel may only be scheduled for a maximum of one business week of Monday through Friday per trip; however Client may book consecutive trips. Non-local travel scheduling which runs from one business week into a subsequent business week(s) (e.g. start date on Friday at 8:00am, end date Wednesday at 5:00pm, "Overlapped Weekend") will result in ImageTrend invoicing Client an additional trip for each Overlapped Weekend. ImageTrend staff will work 8 hours each day, except on the first and last day of each trip ImageTrend may reserve up to 2 hours of the Business Day for travel time.

SECTION 4. INTELLECTUAL PROPERTY

OWNERSHIP OF IP. All Intellectual Property Rights connected to the ImageTrend pre-existing materials such as architectural structure, modules, processes, and Know-How that may be used in Deliverables ("Pre-existing IP"), shall remain owned by ImageTrend.

SECTION 5. CONFIDENTIALITY

CONFIDENTIALITY ACKNOWLEDGEMENT. Each party hereby acknowledges and agrees that the other Party's Data, potential clients or customers, client or customer lists, business plans, pricing structures, software and database designs, and any other information a Party has marked as Confidential, constitute Confidential Information. Each party agrees to treat (and take precautions to ensure that its authorized personnel treat) Confidential Information as confidential in accordance with the confidentiality requirements and conditions set forth below. Orally transmitted information shall not be Confidential Information unless specified as such in a writing transmitted from the Disclosing party to the Receiving party within 15 days of the oral transmission, with such writing providing a reasonable description and scope of the Confidential Information transmitted.

CONFIDENTIALITY OBLIGATIONS. 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); provided, however, that the provisions of this §7 shall not apply to information which: (i) is in the public domain; (ii) has been acquired by a Party by means other than the disclosure of the information by the Disclosing Party; (iii) is duly obtained by a Party directly or indirectly from a third party who has independently developed the information and is entitled to disclose the information to the Party, and such disclosure does not directly or indirectly violate the confidentiality obligation of such third party; or (iv) becomes known publicly, without fault on the part of a Party, subsequent to the receipt of the information by Party.

SURVIVAL. This §7 shall survive the termination of this Agreement or of any license granted under this Agreement.

SECTION 6. LIMITATION OF LIABILITY

EACH PARTY SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OR LOSSES

ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF THAT PARTY IS ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. EACH PARTY'S CUMULATIVE LIABILITY ARISING OUT OF OR IN ANY MANNER RELATED TO THIS SHALL BE LIMITED TO THE AMOUNT OF THE FEES DUE UNDER THIS AGREEMENT.

SECTION 7. DISPUTE RESOLUTION

ARBITRATION. If Client is NOT a Governmental Entity the following paragraph applies:

Any dispute between ImageTrend and Client under this Agreement shall be resolved by arbitration by an arbitrator selected under the rules of the American Arbitration Association in the State of the defending party and the arbitration shall be conducted in that same location under the rules of said Association. If an arbitrator cannot be agreed upon by the parties, ImageTrend and Client shall each choose an arbitrator, and those two chosen arbitrators shall choose a third arbitrator, that third arbitrator shall preside over any dispute. ImageTrend and Client shall each be entitled to present evidence and argument to the arbitrator. The arbitrator shall have the right only to interpret and apply the provisions of this Agreement and may not change any of its provisions. The arbitrator shall permit reasonable pre-hearing discovery of facts, to the extent necessary to establish a claim or a defense to a claim, subject to supervision by the arbitrator. The arbitrator shall endeavor to keep costs as low as possible while still allowing for the just and fair disposition of the dispute. The determination of the arbitrator shall be conclusive, final and binding upon the parties and judgment upon the same may be entered in any court having jurisdiction thereof. The arbitrator shall give written notice to the parties stating his determination, and shall furnish to each party a signed copy of such determination. ImageTrend and Client shall equally share the cost of the arbitrator(s) fees. The arbitrator may award reasonable costs and expenses, including reasonable attorney fees, to the prevailing party.

SECTION 8. NON-EXCLUSIVITY

This Agreement does not establish any exclusivity of service, contract, customer relationship, or otherwise between the parties.

SECTION 9. AMENDMENTS

This Agreement may only be modified by a mutually executed writing including but not limited to Work Orders, signed by a person having authority to sign.

SECTION 10. TERMINATION

Either Party may terminate this Agreement upon giving the other Party thirty days (30) days' prior written notice to the other Party in addition to any other remedy or right contained in this Agreement. This right of termination is additive to other rights of termination identified above in this Agreement and does not preclude the exercise of those other rights.

SECTION 11. INDEMNIFICATION

IMAGETREND INDEMNITY. ImageTrend shall defend and indemnify Client from and against third party claims, actions, suits, demands, damages, obligations, losses, settlements, judgments, costs, and expenses ("Claims"), which arise out of any negligent act or omission, or willful misconduct of ImageTrend. Client shall promptly notify ImageTrend for any actual or prospective Claim for which indemnification is sought. In the event that any third-party Claim is made and Client invokes this clause, ImageTrend shall have the right and option to undertake and control such defense of such action with

counsel of ImageTrend's choice with control to settle any such Claim. ImageTrend shall have no obligation to defend or indemnify Client from Claims arising out of Client's negligent or intentional wrongful acts or omissions. Because ImageTrend must provide its own insurers with notice of a claim within 60 days of actual knowledge of a Claim, Client accordingly must provide ImageTrend written notice no more than 60 days after Client has actual knowledge of a Claim else ImageTrend shall have no obligation to indemnify Client.

CLIENT INDEMNITY. IF CLIENT IS A GOVERNMENTAL ENTITY THE FOLLOWING PARAGRAPH DOES NOT APPLY. Client shall defend and indemnify ImageTrend from and against third party claims, actions, suits, demands, damages, obligations, losses, settlements, judgments, costs, and expenses ("Claims"), which arise out of any negligent act or omission, or willful misconduct of Client. ImageTrend shall promptly notify Client for any actual or prospective Claim for which indemnification is sought. In the event that any third-party Claim is made and Client invokes this clause, Client shall have the right and option to undertake and control such defense of such action with counsel of Client's choice with control to settle any such Claim. Client shall have no obligation to defend or indemnify ImageTrend from Claims arising out of Client's negligent or intentional wrongful acts or omissions. ImageTrend accordingly must provide Client written notice no more than 60 days after ImageTrend has actual knowledge of a Claim else Client shall have no obligation to indemnify Client.

SECTION 12. PROTECTION OF SOFTWARE AND LICENSED INFORMATION

Client agrees to respect and not to, nor permit any third-party to, remove, obliterate, or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on any of the Software or Licensed Information, and to reproduce and include the same on each authorized copy of the Software and Licensed Information.

Client shall not nor shall Client permit any third-party under Client's control to, copy, reverse engineer, or duplicate the Software or any part thereof except for the purposes of system backup, testing, maintenance, or recovery. Client may duplicate the Licensed Information only for internal training, provided that all the names, trademark rights, product names, copyright statement, and other proprietary right statements of ImageTrend are reserved. ImageTrend reserves all rights which are not expressly granted to Client in this Agreement.

Client shall not, nor shall Client permit any third-party to, modify, reverse engineer, disassemble, or decompile the Software, or any portion thereof, and shall not use the software or portion thereof for purposes other than as intended and provided for in this Agreement.

SECTION 13. GENERAL TERMS

- a. **INSURANCE REQUIREMENTS.** ImageTrend will provide to Client a Certificate of Insurance upon request.
- b. **ELECTRONIC SIGNATURES.** The parties agree to conduct transactions primarily via electronic means. Accordingly, each party accepts electronic signatures and Deliverables as equivalent to physical versions of the same.

- c. **BUSINESS DAYS AND HOLIDAYS.** The parties agree a business day is 8 hours long, and excludes Saturdays, Sundays, and days reasonably considered a holiday by either party per each party's written policies. Unless otherwise specified in a Work Order, ImageTrend shall perform services only during business days, from 9:00am CST to 5:00pm CST.
- d. **COUNTERPARTS.** This Agreement may be executed in counterpart originals, duly signed by both parties, each of which will be deemed an original but all of which, together, will constitute one and the same Agreement. Any terms not present in all counterpart copies are severed and void. Electronic counterparts are equally as valid as original counterparts.
- e. **FORCE MAJEURE.** Neither party will be liable for delays nor for non-performance due to an unforeseeable event, external to this Agreement and the parties, where the occurrence of the event beyond the non-performing or delayed party's reasonable control ("Force Majeure Events.") This clause shall not apply to costs due to ImageTrend to reimburse cancellation, reschedule, or modification of travel arrangements per §5 above. Force Majeure Events may include, but are not limited to: war, terrorism or threats of terrorism, civil disorder, labor strikes, fire, disease, medical epidemics or outbreaks, events which curtail necessary transportation facilities (e.g. airports), or other unforeseeable events where the occurrence of the event is beyond the non-performing or delayed party's control.
- f. **REASONABLE COOPERATION.** Client will reasonably cooperate with ImageTrend to the extent reasonably necessary to enable ImageTrend to perform the Services contemplated in each Work Order. Accordingly, Client will provide access, information or other materials in a fashion timely to the schedule of each Work Order. ImageTrend shall have no liability to Client for delays arising out the actions or non-actions of Client.
- g. **NON ASSIGNABILITY.** A party shall not assign this Agreement or its rights hereunder without the prior written consent of the other party.
- h. **JURISDICTION AND VENUE.** The parties agree that the law governing this Agreement shall be that of the State of Minnesota without regard to its conflict of laws principles. **IF CLIENT IS A GOVERNMENTAL ENTITY** the law governing this Agreement shall be that of the Client's jurisdiction without regard to its conflict of laws principles.
- i. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the parties, with respect to this subject matter, including, but not limited to the services, goods, products, and Software provided by ImageTrend for Client and the compensation provided by Client for said provision of such services therefore, and supersedes all previous proposals, both oral and written, negotiations, representations, writings and all other communications between the parties. This Agreement may not be released, discharged, or modified except by an instrument in writing signed by the parties.

- j. **SEVERABILITY.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.
- k. **WAIVER.** No waiver by either party of any of any provision hereof shall constitute a waiver of any other term of this Agreement nor shall it preclude either party from enforcing its rights.
- l. **ATTORNEYS' FEES.** In any action between the parties to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover reasonable expenses, including reasonable attorneys' fees.
- m. **INDEPENDENT CONTRACTORS.** It is the express intention of Client and ImageTrend that ImageTrend and its employees and agents will perform the services hereunder as independent contractors to Client. Nothing in this Agreement shall in any way be construed to constitute ImageTrend or its employees or agents as an agent, employee or representative of Client. Without limiting the generality of the foregoing, ImageTrend is not authorized to bind Client to any liability or obligation or to represent ImageTrend has any such authority. Client and ImageTrend agree that neither ImageTrend employees nor its agents will receive Client - sponsored benefits from Client.
- n. **NOTICES.** Any notice required to be given by either party to the other shall be deemed given if in writing on the date actually delivered (including electronic methods such as e-mail), or if deposited in the United States mail in registered or certified form with return receipt requested, postage prepaid, on the postmarked date and addressed to the notified party at the address set forth below, or to such other address as a party may designate from time to time by means of notice given hereunder to the other party.

If to Client:

Lafayette County Fire Department
50 County Rd. 1032
Oxford, MS 38655

If to ImageTrend:

ImageTrend, Inc.
Attn: Legal
Department
20855 Kensington Boulevard
Lakeville, MN 55044

PRICE SHEET AND WORK ORDER ATTACHMENT

One Time Fees

Description	SKU	Unit Price	Qty	Extended Amount
Webinar Training 2hr Session	ELT.006.003.009	\$450.00	3	\$1,350.00

Total One-Time Fees: \$1,350.00

TOTAL YEAR 1: \$1,350.00

Send Invoices To:

Lafayette County Fire
Department

50 County Rd. 1032
Oxford, MS 38655

Payment Terms:

- "One Time Fees" are due once, as specified by the Milestone terms below.
- ImageTrend may temporarily suspend performance (e.g. cease to provide access, hosting, support) due to Client's breach of contract provided Client shall have 30 days to cure such breach before ImageTrend may suspend performance.
- ImageTrend may charge to Client a late fee of 1.5% per month, or the highest rate allowed under the law, whichever is lower, on any overdue amounts. Client also agrees ImageTrend may charge to Client all reasonable costs and expenses of collection, including attorneys' fees where, in ImageTrend's discretion, payments are consistently deficient or late.
- ImageTrend will not be responsible for third-party fees related to this Agreement unless specifically outlined by this Agreement.

MILESTONE 1

Contract Signature. This Contract Signature Milestone is complete when all parties to this Agreement have signed and executed this Agreement, regardless of whether any activity has occurred or any deliverable has been provided to Client by ImageTrend.

Description	Unit Price	Quantity	Extended Amount
Webinar Training 2hr Session	\$450.00	3	\$1,350.00
Milestone 1 Total			\$1,350.00

IN WITNESS WHEREOF: the undersigned parties, each having authority to bind their respective organizations, hereby agree

ImageTrend®

Client

ImageTrend

Signature:

Signature:

Print Name:

Print Name:

Title:

Title:

Date:

Date: