

**DATE:**

04/19/2022

**AGENDA ITEM (ACTION ITEM):**

**Consider/Approve** the sales contract with EKOS and GE Software to purchase site licenses for Transportation Fueling System. This is a 5 year agreement with options to renew for 3 additional years.

**APPLICABLE BOARD POLICY:**

04.31 Authority to Encumber and Expend Funds

**HISTORY/BACKGROUND:**

The existing GasBoy fuel system is housed locally on a server at the Twenhofel Transportation Building. It has reached the end of its useful life and beginning to have trouble. Parts, repairs, and the software are no longer current. The vendor offers a cloud based solution that is comparable in pricing to replacing the onsite hardware. It is recommended that we switch to a cloud based solution to eliminate the onsite maintenance and ongoing support. The contract is for 5 years with an option to renew for an additional 3 years. The contract includes a maximum of 5% price increase per year and option to terminate at any time with 120 days notice. This system will utilize the existing equipment that was installed in 2013 and is hardware agnostic meaning should we switch tank hardware, the software will still work.

**FISCAL/BUDGETARY IMPACT:**

\$2,000 one-time setup cost, \$80/month/site = \$320/month for a total of \$19,200 for the 5 years.

**RECOMMENDATION:**

**Approval to** the sales contract with EKOS and GE Software to purchase a multi-year site license to support the Transportation Fueling System.

**CONTACT PERSON:**

**Matthew Winkler, Director of Technology; Jim Hale, Director of Transportation; David Lloyd, Executive Director of Operations**

  
Principal/Administrator

  
District Administrator

  
Superintendent

*Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda. Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent's mailbox.*

## CUSTOMER INTAKE INFORMATION

Customer Name (full legal name)

Kenton County Schools

Customer DBA

Address

Address

11800 Taylor Mill Road

City / State / Zip

Independence, KY 41051

## AUTHORIZED OFFICER

Full Name / Title

Email Address

Phone number

Sales Tax Exempt Status

Please indicate if you are exempt from sales tax.

Accounts Payable Contact and Phone

Accounts Payable Email Address \*receives EKOS invoices

Please select your EKOS Products and Services

<input checked="" type="checkbox"/> EKOS SOFTWARE + SERVICES MENU	Quantity	Per Month Prices	Setup Fees (One-time)
<input checked="" type="checkbox"/> EKOS Fuel Site Module	4	\$80 per site	\$2,000
<input type="checkbox"/> EKOS Bulk Fuel Module		\$100 per site	
<input type="checkbox"/> EKOS Fuel Card Module		\$70 per month Maximum Qty 1	
<input type="checkbox"/> EKOS Fleet Maintenance Module		See Section 3.5 for Pricing	\$10,000
<input type="checkbox"/> Cellular Connections		\$65 per controller \$20 per ATG	
<input type="checkbox"/> Site Compliance		\$20 per site	
<input type="checkbox"/> ATG Compliance		\$20 per gauge	
<input type="checkbox"/> REV		\$50 per device	
<input type="checkbox"/> Wireless Monitor Connect		\$20 per device	
<input type="checkbox"/> Bulk Fuel Concierge		\$0.02 per gallon	
<input type="checkbox"/> Single Sign On (SSO) Integration			\$1,000
<input type="checkbox"/> Custom Development Requests			Quoted based on scope of work
<input type="checkbox"/>			
<input type="checkbox"/>			
<b>Total One-Time Setup Fees</b>			<b>\$2,000</b>
<b>Total Monthly Amount</b>		<b>\$320</b>	
<b>Total Contract Amount (Minimum Amount Billed Over Term)</b>		<b>\$19,200</b>	

Customer acknowledgement:

\_\_\_\_\_





## EKOS - SOFTWARE LICENSE AGREEMENT

### 1. Software License Agreement

1.1. This Software License Agreement (the "Agreement") is entered into by and between GE Software, Inc., a corporation organized and existing under the laws of the State of North Carolina, and having its principal office and place of business at 1410 Commonwealth Drive, Suite 102B, Wilmington, NC 28403 ("GE Software") and Customer listed on Page 1 of the Agreement. GE Software and Customer are referred to herein individually as "Party" or collectively as the "Parties".

### 2. Software License

- 2.1. GE Software hereby grants to Customer a nonexclusive, nontransferable license to use the EKOS Platform (the "Software License" or "Software Products") for the selected products and services on Page 1 of this agreement. Should customer elect to "upgrade" or add additional software features during the term of the contract, this license will automatically extend to those additional products and services.
- 2.1.1.1. Customer agrees that should it elect to use fuel cards, it shall: (a) exclusively use a GE Software approved or qualified universal fuel card program; (b) provide a list of authorized card holders ("Authorized Card Holders") to GE Software; (c) be solely responsible for determining whether a card holder is an Authorized Card Holder and is tax exempt for billing purposes; and (d) be solely responsible for controlling the use of the Fuel Cards. In exchange, GE Software shall issue Fuel Cards to the Authorized Card Holders designated by Customer, to facilitate fueling at Customer's Private Sites.
- 2.1.2. "Inventory Monitoring" – this includes online presentment of inventory values as well as historical archiving and other related features.

### 3. Fees, Charges

- 3.1. **Software Fee.** Customer shall pay GE Software based on the Products and services selected on page 1 of the Agreement, at the listed price per month. Should Customer elect to access new Software Products developed by GE Software, Parties will agree on amended pricing.
- 3.1.1.1. Company will invoice Customer Annually beginning at time of contract execution. On the first invoice, a count of active products and services will be taken and will serve as the basis for the initial annual invoice. If Customer is purchasing new equipment that is required to utilize the functionality of a specific product or service listed on Page 1 of this agreement, then Company will invoice Customer for the applicable product or service on the day the equipment ships from the manufacturer. It is the customer's responsibility to provide the required data and schedule installation to utilize the software.
- 3.1.1.2. Any time the Customer adds a billable product or service, a new prorated invoice will be sent to Customer for the new site and any applicable optional services and will be for the remainder of the current contractual year. If a site is installed any time during a month then Customer will pay for the month.
- 3.1.2. A "Private Site" shall mean any fueling location owned and/or operated by Customer and for which fuel transactions are processed through the Software Products. The number of Private Sites shown on page 1 of the Agreement may change over time, and any modification of the number or location of Private Sites shall be made by Customer using the form attached as Exhibit E.
- 3.1.3. Software Fees are fixed for the initial term of this agreement. GE Software reserves the right to increase fees for any products and services listed in this agreement by a maximum of 5% for any additional renewal term.
- 3.2. **Inventory Monitoring Fees (Optional).** Customer shall pay to GE Software an inventory monitoring fee of Twenty Dollars (\$20.00) per inventory monitoring device per month for cellular based connections, and Twenty Dollars (\$20.00) per device per month for wireless tank level gauges.
- 3.3. **Communication Fees (Optional).** Customer shall pay to GE Software a communication fee of Sixty-Five Dollars (\$65.00) per unit per month, provided, however that Customer shall not exceed a monthly data usage of 150 megabytes per device. Customer shall be liable on a per device basis for all data charges incurred for exceeding the allotted 150 megabytes per device limit. Customer shall also purchase the equipment necessary to provide the EKOS Brain Digital Communication Link at a price to be quoted by GE Software at the time Customer makes an election under this subsection.
- 3.4. **Guest Management (Optional).** Customer shall pay GE Software Three Cents (\$0.03) per gallon, per month for all transactions by entities other than Customer that occur at a Private Site.
- 3.5. **Fleet Maintenance Module (Optional).** If Customer elects to use the EKOS Fleet Maintenance Module, customer shall pay an annual fee based on the Fleet Package Level chosen below and the number of assets to be managed in the Fleet Module at the start of each fiscal year. Customer can elect to purchase the Fleet Maintenance Module at any time during the life of this contract, and fees will be prorated based on date of purchase.

Package Level	Features	Price per asset per month
Level 1 – Track	Numerous additional database fields to track all facets of vehicles and assets	FREE
Level 2 – Maintain	Includes all features of Level 1 plus: PM's, Inspections, Reminders	\$4
Level 3 – Repair / Work	Includes all features of Level 1 and 2 plus: Work orders, technicians, parts management, service and expense entries, total vehicle cost calculations, iPad and tablet responsive for technicians	\$6
Level 4 – Manage	Includes all features of Levels 1,2, and 3 plus: Time Clock, driver management, vehicle assignments, GPS integrations, GPS discounts on Teletrac Navman, passive telematic solutions	\$7

Number of Assets to be managed: \_\_\_\_\_

Total Annual Cost (to be included on Page 1): \$ \_\_\_\_\_



**4. Term and Termination**

- 4.1 **Term.** This License Agreement shall commence on the Effective Date of this agreement (as defined herein), however, the term of this agreement will begin from the later of the Effective Date of this agreement; or the first invoice date in which all modules and services selected on Page 1 of this agreement are live and billable (Total Monthly Amount on Page 1) and shall continue in effect for Five (5) years thereafter. The Agreement shall be automatically renewed for additional terms of three (3) years each, unless either party gives written notice of termination to the other party as provided for herein (the "Renewal Term").
- 4.2 **Termination.** This Agreement and the license granted hereby may be terminated by either party for any reason or no reason upon one-hundred twenty (120) days written notice to the other party ("Termination for Convenience"), or, to the extent provided below, this Agreement shall terminate automatically without notice, in the event that either Party:
- fails to comply with the terms of this Agreement and such failure is not remedied within thirty (30) days of receipt of written notice from the other party;
  - becomes insolvent;
  - initiates any proceedings under bankruptcy, insolvency, reorganization or receivership law, or proceedings for liquidation;
  - is made a defendant in any such bankruptcy, insolvency, reorganization, liquidation or receivership proceedings or is placed in liquidation or receivership and such liquidation, proceedings or receivership is continued for sixty (60) days;
  - has any lien, petition or execution levied against the property and assets of that Party and such lien, petition or execution is not discharged within thirty (30) days;
  - makes a general assignment of its assets for the benefit of creditors or is unable to meet its debts in the ordinary course of business;

Upon the occurrence of any event specified in subsections (a) through (f) of this Section, the first Party to have notice of the occurrence shall immediately, in writing, notify the other Party and shall identify both the type of occurrence and the date of occurrence.

**5. Fuel Site**

- 5.1 GE Software shall not be responsible for any replacement parts, fueling equipment or software products that are damaged due to Acts of God, Customer negligence or repairs and/or service provided by technicians.

**6. Nonassignable and Nontransferable**

- 6.1 The license granted herein shall not be assignable or transferrable in any manner whatsoever nor shall Customer have the right to grant any sublicenses, except by written consent of GE Software. Any permitted assignment or other transfer of this Agreement shall bind the assignee, subcontractor or transferee and shall not relieve Customer from its obligations under this Agreement.

**7. Entire Agreement; Modification**

- 7.1. This Agreement sets forth the entire agreement and understanding between the parties as to the matters contained herein, and merges and supersedes all prior discussions, agreements and understandings of every kind between them as to the matters contained herein. No provision of this Agreement may be modified or amended unless such modification or amendment is agreed to in a writing signed by both of the parties hereto. Customer shall not assign its obligations hereunder without the prior written consent of GE Software.

**8. Notices**

- 8.1. Any notices required or permitted to be given under this Agreement shall be deemed sufficiently given if hand delivered or mailed by registered mail, postage prepaid, addressed to the party to be notified at its address shown at the beginning of this Agreement, or at such other address as may be furnished in writing to the notifying party.

**9. Governing Law**

- 9.1. This Agreement shall be interpreted in accordance with the laws of the State of Kentucky. For purposes of this Agreement, each party submits to the jurisdiction of the courts, both federal and state, in Kenton County, Kentucky, and each party hereby agrees that all suits, actions and proceedings brought by any party hereunder may be brought in either federal or state court located in Kenton County, Kentucky. Each party irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court, any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum and the right to object, with respect to any such suit, action, or proceeding brought in any such court, that such court does not have jurisdiction over such party or the other party.

**10. Intellectual Property**

- 10.1. Customer acknowledges and agrees that: (i) it has no right, title or interest, proprietary or otherwise, in or to the Software Products or any other GE Software Intellectual Property (defined below); (ii) the GE Software Intellectual Property is owned solely by, and is proprietary to, GE Software and embodies valuable trade secrets of GE Software; and (iii) this Agreement does not give, and shall not be construed to give, Customer any vested right, title or interest in or with respect to the GE Software Intellectual Property, except for a non-exclusive, limited and terminable right of access to the Software Products for the purposes of this Agreement. GE Software owns and will continue to own, without limitation, all GE Software Intellectual Property and all rights, title and interest in and to all ideas, works, custom reports, products, programs, procedures, plans, formats and other intellectual property of any kind created, prepared, developed or worked on by GE Software for Customer under this Agreement. As used herein, "GE Software Intellectual Property" means any copyrights, patent rights, trademarks, trade names, trade secrets, service marks, know-how (including, without limitation, all ideas, inventions, products, programs, software, procedures, customer lists, works, formats and other intellectual property) and any other similar rights or intangible assets recognized under any laws or conventions in any country or jurisdiction in the world as intellectual creations to which rights of ownership accrue, and all registrations, applications, extensions or reissues of the foregoing now or hereafter in force.

**11. Confidentiality**

- 11.1 Customer acknowledges that it may become aware of or familiar with Confidential Information of GE Software. "Confidential Information" shall mean any information relating to the business or affairs of GE Software including, but not limited to, information relating to the Software Products, other GE Software Intellectual Property, customer and client lists, pricing lists and methods, products, software, inventions, processes, procedures, techniques, formulae, design or other technical data, trade secrets, sources of products or materials, financial statements, equipment, programs, strategies and information, analyses, profit margins, or other proprietary information used by GE Software in connection with its business. During the term of this Agreement and for so long thereafter as





## EKOS - SOFTWARE LICENSE AGREEMENT

the Confidential Information remains proprietary to GE Software, Customer, for itself and its administrators, employees and agents, shall (a) keep the confidential Information secret and retain it in strictest confidence, and (b) not, without the prior written consent of GE Software, furnish, make available or disclose to any third party, or use for the benefit of Customer or any third party, any Confidential Information. Customer acknowledges that the Confidential Information is vital, sensitive, confidential and proprietary to GE Software and that this covenant is reasonable and necessary for the protection of GE Software's business interests. Customer acknowledges that the violation of any of the provisions of this Agreement will cause irreparable loss and harm to GE Software which cannot be reasonably or adequately compensated by damages in an action at law, and, accordingly, that GE Software will be entitled, without posting bond or other security, to injunctive and other equitable relief to enforce the provisions of this Agreement and to prevent or cure any breach or threatened breach thereof; but no action for any such relief shall be deemed to waive the right of GE Software to an action for damages. The rights and remedies of GE Software are cumulative and the exercise or enforcement of any one or more of them will not preclude GE Software from exercising or enforcing any other right or remedy. The obligations of the Customer and the rights of GE Software under this Agreement shall survive the termination of this Agreement regardless of the reason for or cause of the termination.

### 12. Binding Effect; Authorized Signatory

12.1. This Agreement shall bind and inure to the benefit of the parties hereto and their successors and permitted assigns. The individual executing this Agreement on behalf of Customer is a duly authorized representative of Customer with full power and authority to execute and deliver this Agreement on behalf of Customer and to bind Customer to its obligations hereunder.

### 13. Amendment

13.1. A modification, amendment or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed by the parties to this Agreement.

### 14. Waiver

14.1. A modification, amendment or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed by the parties to this Agreement.

### 15. Severability

15.1. If, in the final judgment of a court of competent jurisdiction, any provision of this Agreement is held to be invalid, said provision shall be considered void to the extent of such invalidity only, without invalidating any of the remaining provisions of this Agreement.

### 16. Counterparts

16.1. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument. Any facsimile or emailed signature attached hereto will be deemed to be an original and will have the same force and effect as an original signature.

### 17. Disclaimer

17.1. Except for any warranty otherwise expressly provided for herein, GE Software provides their services, software, equipment and systems on an "AS IS" BASIS, WITHOUT ANY WARRANTY OF ANY KIND, WHETHER ORAL OR WRITTEN OR EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY GE SOFTWARE AND GE SOFTWARE. IN NO EVENT SHALL GE SOFTWARE HAVE ANY LIABILITY TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOSS OF DATA, LOSS OF USE, BUSINESS INTERRUPTION, OR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY. In addition, GE Software shall not be liable or held responsible for any delay or failure to perform or deliver all or any part of the services or products required to be performed or delivered hereunder as a direct or indirect result of any causes, contingencies or circumstances beyond GE Software's control or which make the fulfillment of this Agreement impracticable by GE Software.

IN WITNESS WHEREOF, the Parties have executed this Agreement under seal, or caused this Agreement to be executed by their duly authorized officers, effective as of the last date of signing below (the "Effective Date").

Customer	GE Software, Inc.
By: (Printed Name)	By: (Printed Name)
Customer Signature:	Signature:
Title:	Title:
Date:	Date:



## EXHIBIT E: CHANGE REQUEST FORM

ADDENDUM NO. \_\_\_\_\_

to the SOFTWARE LICENSE AGREEMENT

**THIS ADDENDUM NO.** \_\_\_\_\_ (*"Addendum"*), dated \_\_\_\_\_ is between **GE SOFTWARE, INC.**, and **CUSTOMER** (as defined below) is for the sole purpose of adding, deleting, or changing Site information to the Ekos Agreement dated \_\_\_\_\_, between GE Software and Customer (the *"Agreement"*). Except as modified by this addendum, the Agreement shall remain in full force and effect. GE Software and Customer desire to amend the Agreement as follows:

Add/ Change/ Terminate	Site Number	Site Name	Site Street Address	City, State, Zip	Site Contact	Site Phone #

### BILLING INFORMATION (Required for Processing)

<b>Customer Name:</b>	<b>Contact Name:</b>	<b>Email:</b>
<b>Address:</b>	<b>City:</b>	<b>St:</b>
<b>Phone:</b>	<b>Fax:</b>	<b>Fed Tax ID:</b>
		<b>Zip:</b>

All capitalized terms used herein, unless defined, shall have the same meanings set forth in the Agreement. This Addendum is incorporated into the Agreement and made a part thereof. If any term of this Addendum conflicts with the terms of the Agreement, the terms of this Addendum shall control. This Addendum may be executed (i) in counterparts, and/or (ii) through the use of an electronic signature.

By signing below, the parties have executed this Addendum by their duly authorized representatives as set forth below. This Addendum is effective as of the date fully executed.

Customer:	GE Software, Inc.
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

Return signed Addendum to EKOS Contract Services Team: Email: [de@myekos.com](mailto:de@myekos.com)