

**RESOLUTION APPROVING CONTRACT AMENDMENT AND SOFTWARE SERVICES ADDENDUM FOR DEBT MANAGEMENT OF ASHTABULA COUNTY FUNDS WITH FIFTH ASSET, INC. DBA DEBTBOOK, AUDITOR'S OFFICE**

WHEREAS, David Thomas, Ashtabula County Auditor, has presented a Contract Amendment for the approval of the Board, to-wit:

**Original Contract Date:** May 15, 2021 approved on May 11, 2021 by Resolution 2021-191

**Provider:** Fifth Asset, Inc. DBA DebtBook, 1920 Abbott Street, Suite 303, Charlotte, NC 28203

**Service:** Debt Management System for Ashtabula County Funds. The 2024 Tier 1 Debt 23DSTI-2 software as a service application

**Amendment:** Cost: Not to Exceed \$7,500 per year for a total of \$37,500.00

Term: 5 years, expiring on May 14, 2029

THEREFORE, BE IT RESOLVED, By the Board of Commissioners of Ashtabula County, Ohio that the Contract Amendment and Software Services Addendum are approved in accordance with the copies now on file in this office.

BE IT FURTHER RESOLVED, except as expressly amended by this Amendment and addendum, all of the terms, conditions and provisions of the Agreement shall remain in full force and effect.

BE IT FURTHER RESOLVED that the President of the Board, on behalf of the Board of Commissioners of Ashtabula County, is authorized to execute any and all necessary documents.

**ASHTABULA COUNTY COMMISSIONERS  
CERTIFICATION PAGE**

**Resolution No. 2024-285**

**June 04, 2024**

**RESOLUTION APPROVING AMENDMENT TO CONTRACT FOR DEBT  
MANAGEMENT OF ASHTABULA COUNTY FUNDS WITH FIFTH ASSET, INC. DBA  
DEBTBOOK, AUDITOR'S OFFICE**

**Upon the motion of Casey R. Kozlowski, seconded by J.P. Ducro IV.**

**VOTE:**

**Kathryn L. Whittington**

**Aye**

**J.P. Ducro IV**

**Aye**

**Casey R. Kozlowski**

**Aye**

**CERTIFICATE OF CLERK**

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution acted upon and duly passed by the Board of County Commissioners of Ashtabula County, Ohio, on the date noted above.



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Lisa Hawkins, Clerk of the Board  
Board of County Commissioners  
Ashtabula County, Ohio

## AMENDMENT

This Amendment to the Agreement (“Agreement”) dated May 15, 2021 is entered between Ashtabula County Board of Commissioners (“County”) and Fifth Asset, Inc. d.b.a. DebtBook (“Vendor”). The County and Vendor are sometimes collectively referred to herein as the “Parties” and individually as a “Party.”

The Parties agree to amend the Agreement as follows:

1. The Master Services Agreement shall extend for a term of five (5) years and expire on May 14, 2029.
2. Vendor shall provide the “2024 - Tier 1 - Debt - 23DST1-2” software as a service application at a cost of \$7,500.00 per year for a total of \$ 37,500.00 (the “Contract Price”).
3. The County’s total liability under the Agreement shall be limited to the amount set forth in the Auditor’s certificate accompanying the Agreement. Under no circumstances shall the elected officials, officers, employees, council members, or agents of the County be personally liable for any obligations or claims arising out of or related to this Agreement. No change or additional schedule to the Agreement shall be effective against the County without a new Auditor’s certificate.
4. Vendor shall indemnify and hold County harmless from and against all third-party claims, liabilities, judgments, fines, assessments, penalties, awards or other expenses, of any kind or nature whatsoever, including, without limitation, attorney’s fees, expert witness fees, and costs of investigation, litigation or dispute resolution, relating to or arising out Vendor’s negligence, willful misconduct, fraud, or material breach of the Agreement.
5. All questions regarding the validity, intention, or meaning of this Agreement or any modifications of it relating to the rights and obligations of the parties shall be construed and resolved under the laws of the State of Ohio. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, shall be brought in the Common Pleas Court of Ashtabula County, Ohio, and each party hereby expressly consents to the jurisdiction of such court.
6. The County’s Software Services Addendum as revised by mutual agreement between the Parties and attached hereto shall be incorporated into the Agreement as if fully set forth therein.

All other terms and conditions of the Agreement shall remain in full force and effect. In the event of any conflict or ambiguity between any provision of this Amendment and the Agreement, the provisions of this Amendment shall take precedence.

[SIGNATURE PAGE FOLLOWS]

Agreed upon and accepted by:

FIFTH ASSET, INC. d.b.a. DEBTBOOK

By: Michael Jubey

Date: June 3, 2024

Its: Chief Operating Officer

ASHTABULA COUNTY

By: Kathy [Signature]

Date: 6-4-24

Its: President

Approved as to Legal Form Only:

By: \_\_\_\_\_

Colleen M. O'Toole,  
Ashtabula County Prosecutor

Dated: \_\_\_\_\_

## **SOFTWARE SERVICES ADDENDUM**

This Addendum is hereby incorporated into the Agreement (the “Agreement”) between Ashtabula County (the “County”) and Fifth Asset, Inc. d.b.a. DebtBook (“Vendor”) dated May 15, 2021. Whereas the Services are a Software-as-a-Service offering, the parties agree to the additional terms and conditions as set forth below. In the case of any conflict or ambiguity between the terms of this Addendum and the terms in the Agreement, the terms of this Addendum shall take precedence.

### **A. REPRESENTATIONS AND WARRANTIES**

1. Vendor represents that it has sufficient training, expertise, staffing and experience to professionally provide the services as delineated in the Agreement and any exhibits attached thereto.
2. Vendor represents and warrants to County that neither Vendor, in connection with performing the services in performance of this Contract, will infringe any patent, copyright, trademark, trade secret or other proprietary right of any person and County’s sole recourse for breach of this warranty will be the Intellectual Property Indemnification provided in the Agreement. Vendor further represents and warrants to County that it will not use any trade secrets or confidential or proprietary information owned by any third party in performing the services related to this Contract unless Vendor has the authority to license, use or provide those trade secrets or confidential or proprietary information to County. Vendor further represents and warrants to County that neither Vendor nor any other company or individual performing services pursuant to this Contract is under any obligation to assign or give any work done under this Contract to any third party.

### **B. INSURANCE**

Vendor shall secure and maintain Cyber Liability and Security Insurance or equivalent insurance product(s), with minimum liability limits of not less than \$5,000,000 and first party limits of not less than \$1,000,000, that will provide, without cost to the Vendor or County, an immediate response in the event of a data breach, including meeting all notification obligations of Vendor and County and, in the event the Data Breach involves personal information as defined by Chapter 1347 of the Ohio Revised Code, may provide free credit monitoring for any affected individual for a minimum period of one year if required.

### **C. CONFIDENTIALITY**

1. Either Party who discloses Confidential Information, as defined herein, is a “Disclosing Party” for purposes of this Article, and either Party who receives such

Confidential Information is a “Receiving Party” for purposes of this Article. “Confidential Information” means inventions, ideas, intellectual property, formulae, patterns, compilations, programs, methods, techniques, processes, data, designs, algorithms, source code, object code, research plans, business plans, financial forecasts, business opportunities, pricing lists, customer lists, personnel lists, financial statements, and similar information, whether written or oral, that generally is not known to the public and is the subject of reasonable efforts to maintain its secrecy. Notwithstanding the foregoing, Confidential Information shall not include information that (a) is or becomes generally available to the public other than as a result of disclosure thereof by the Receiving Party, (b) is or becomes available to the Receiving Party on a non-confidential basis from a source (other than the Disclosing Party) which is not prohibited from disclosing such Confidential Information to the Receiving Party by a legal, contractual or fiduciary obligation to the Disclosing Party, (c) Receiving Party can demonstrate is independently developed by Receiving Party without use, directly or indirectly, of any Confidential Information, or (d) is required to be disclosed by law, including under O.R.C. Chapter 149, or by valid court order.

2. Confidential Information furnished directly or indirectly by the Disclosing Party to the Receiving Party or to any directors, officers, employees, agents, attorneys, accountants, advisors, affiliates, and other representatives and potential financing sources of the Receiving Party (collectively, “Representatives”), whether obtained by or furnished to the Receiving Party prior, contemporaneously, or subsequent to the Effective Date, shall be kept confidential and shall not, without the Disclosing Party's express prior written consent, be disclosed by the Receiving Party or its Representatives in any manner whatsoever, in whole or in part, and shall not be used by the Receiving Party or its Representatives other than in connection with this Agreement. Each party agrees to reveal the Confidential Information only to its Representatives who need to know the Confidential Information for the purpose of this Agreement, who are informed of the confidential nature of the Confidential Information and who agree to act in accordance with the terms and conditions of this Agreement.
3. In the event the Receiving Party or any party to which it transmits the Confidential Information pursuant to this Agreement becomes legally compelled to disclose any of the Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt notice so that the Disclosing Party may seek a protective order or other appropriate remedy. In the event that such protective order or other remedy is not obtained, the Receiving Party shall furnish only that portion of the Confidential Information which it is advised by written opinion of counsel is legally required, and the Receiving Party shall exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information.

4. Each party acknowledges and agrees that, given the nature of the Confidential Information, money damages would not be a sufficient remedy for any breach of this Article, and that, in addition to all other remedies, the aggrieved party shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach.

#### D. PUBLIC RECORDS

By entering into the Agreement, Vendor acknowledges and understands that records maintained by Vendor pursuant to the Agreement may be deemed public records and subject to disclosure under Ohio law. Vendor agrees to comply with Ohio Revised Code Chapter 149 and all public record laws and shall be responsible for any and all costs related to disclosing public records in its possession. Vendor further agrees that it will not in any manner interfere with County's access to any County public records, court records, data, or information in Vendor's possession or under Vendor's control. Vendor shall ensure that any software or hardware it owns, maintains, distributes, licenses, or in any manner controls or is utilized to access County public records, court records, information, or data will house or be able to be utilized in such a manner that ensures County's accessibility and readability to such public records, court records, information, and data before and after the term of the Agreement. Vendor agrees that it will not take any action or refrain from any action that corrupts, destroys, interferes with, or in any way limits County's ability to utilize any County public records, court records, data, or information during or after the term of the Agreement. Vendor acknowledges that taking or refraining from any action that in any way prevents, harms, or limits County's ability to access or utilize County public records, court records, data, or information is a material breach of the Agreement and a violation of Ohio law. Vendor or its agents and assigns shall be responsible for the cost of the aforementioned transfer of public records, court records, information, and data to the County.

#### E. DATA SECURITY

Vendor shall implement and maintain all appropriate administrative, physical, technical and procedural safeguards at all times during the term of this Contract to secure any County Data (which shall be defined as "any information provided to, or collected, generated, stored, or processed by the system, including user identification information and metadata which may contain such information or from which such information may be ascertainable") from any access, destruction, loss, theft, use, modification or disclosure of data by an unauthorized party or that is in violation of Agreement terms and/or applicable state or federal law (a "Data Breach"), and protect the data from hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the County access to its data, Vendor shall quarantine the Data Breach, ensure secure access to data, and repair the Services as needed in

accordance with the Contract Documents. Failure to do so may result in the County exercising its options for assessing damages or other remedies under this Agreement. Upon discovery or reasonable belief of any Data Breach, Vendor shall provide notice, by phone and through electronic mail, to County as soon as reasonably practicable and in any event within the lesser of seventy-two (72) hours or the timeframe required by applicable laws and regulations after Vendor reasonably believes there has been such a Data Breach. To the extent known at the time of notification, Vendor's notice shall include:

- (a) The nature of the Data Breach;
- (b) The County Data accessed, used or disclosed;
- (c) The person(s) who accessed, used, disclosed and/or received County Data (if known);
- (d) What Vendor has done or will do to quarantine and mitigate the Data Breach; and
- (e) What corrective action Vendor has taken or will take to prevent future Data Breaches.

Vendor shall conduct an investigation of the Data Breach and shall share the report of the investigation with the County. The County and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Vendor shall cooperate fully with the County, its agents and law enforcement.

#### F. RIGHTS TO DATA

The parties agree that as between them, all rights, including all intellectual property rights, in and to County Data shall remain the exclusive property of the County, and Vendor has a limited, non-exclusive license to access and use the County Data as provided to Vendor solely for performing its obligations under the Contract. Nothing herein shall be construed to confer any license or right to the County Data by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of County Data by Vendor or third parties is prohibited. For the purposes of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized.

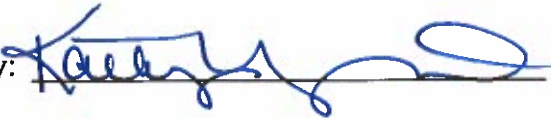
County shall have the ability to export County Data in partial or in entirety at its discretion without interference from the Vendor. This includes the ability for the County to export data to other service providers.

Upon expiration or termination of the Agreement for any reason, Vendor agrees to provide County with temporary access to the Services for up to 60 days after the

termination of the Agreement to permit County to retrieve County Data in a commercially transferrable format. Vendor further agrees to use commercially reasonable efforts to assist County, at County's request, with such retrieval. After such period, Vendor shall destroy any Customer Data in accordance with Vendor's data retention policies..

Agreed upon and accepted by:

Ashtabula County, Ohio:

By: 

Date: 6-4-24

Its: President

Fifth Asset, Inc. d.b.a. DebtBook:

By: Michael Jubey

Date: June 3, 2024

Its: Chief Operating Officer



# Ashtabula County, OH

25 W. Jefferson St  
Jefferson, OH 44047

**Prepared For:**  
David Thomas | County Auditor  
djthomas@ashtabulacounty.us  
440-576-3785

**Prepared By:**  
Josh Nassau-Young  
Customer Success Manager  
josh.nassau-young@debtbook.com

**Notice Address:**  
PO Box 667950  
Charlotte, NC 28266

The Renewal Term under this Renewal Order Form is 5 year(s). The Application Services purchased under this Renewal Order Form include the Products listed below. The Services include the Application Services, the Onboarding Services, the Support Services, and, if applicable for any Product, the Implementation Services option indicated below.

## Products

### Description

### Year 1-5

2024 - Tier 1 - Debt - 23DST1-2

DebtBook's debt management software-as-a-service application provided, if applicable, to Customer through access to the Application Services.

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**Product Bundle Total**

**\$7,500**

**Total Contract Value**

**\$37,500**

Agreed upon and accepted by:

FIFTH ASSET, INC. d.b.a. DEBTBOOK

By: \_\_\_\_\_

Date: \_\_\_\_\_

Its: \_\_\_\_\_


ASHTABULA COUNTY

By: \_\_\_\_\_

Date: \_\_\_\_\_

Its: \_\_\_\_\_

Approved as to Legal Form Only:

By:  \_\_\_\_\_

Colleen M. O'Toole,  
Ashtabula County Prosecutor

Dated: 5/31/24

**FISCAL OFFICER'S CERTIFICATE**

5705.41 O.R.C.

The undersigned, County Auditor of Ashtabula County, hereby certifies that the amount required to meet the obligations of the County during the year 2023 under the Agreement has been lawfully appropriated for that purpose, and is in the Treasury of the County or in the process of collection to the credit of:

1001.002.100-601 – Contract Services \$7,500

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**Agreement Title: DebtBook Renewal**

**Between: DebtBook and Ashtabula County Commissioners**



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**David Thomas**  
Ashtabula County Auditor

Date: 6/3/24